



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 881/2004 establishing a European Railway Agency

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

At present, the national procedures for the approval of locomotives are regarded as among the most serious barriers to the creation of new railway undertakings in the freight sector and as a major stumbling block affecting the interoperability of the European rail system. As no Member State has the power to determine unilaterally that the operating authorisation it has issued will be valid on the territory of other Member States, a Community initiative is needed to harmonise and simplify the national procedures and to have more systematic recourse to the principle of mutual recognition.

This extension will entail amending Regulation (EC) No 881/2004 establishing the European Railway Agency (hereinafter referred to as the “Agency”), and the Interoperability Directives (96/48/EC, 2001/16/EC, 2004/50/EC) and the Railway Safety Directive (2004/49/EC).

- **General context**

This proposal is part of a wider initiative aimed at bringing about improvements to the technical part of the rail regulatory framework, namely the Rail Interoperability Directives, the Railway Safety Directive and the Regulation establishing the Agency.

Firstly, one of the crucial aspects that still has to be improved in order to facilitate the free movement of trains concerns the procedure for the approval of locomotives. According to the manufacturers and rail undertakings, these procedures are often very long drawn-out and highly expensive; furthermore, in their view, certain demands on the part of the competent authorities would be hard to justify even on purely technical grounds.

Secondly, under the legislation simplification programme, the Commission intends to consolidate and merge the Rail Interoperability Directives.

Thirdly, drawing on 10 years’ experience in implementing the Interoperability Directives, the Commission has a duty to propose a number of improvements to the technical part of the regulatory framework.

This proposal should be seen in conjunction with the proposals for merging/recasting the Interoperability Directives and for amending the Railway Safety Directive. It also proposes amendments to Regulation (EC) No 881/2004 establishing the Agency.

- **Existing provisions in the area of the proposal**

The procedure for bringing railway rolling stock into service is the subject of Article 14 of the Rail Interoperability Directives and of Article 14 of the Railway Safety Directive. The notification of national rules is the subject of Article 16 of the Rail Interoperability Directives and of Article 8 of the Railway Safety Directive. The Agency is subject to the provisions of the Regulation which established it and which is

to be amended.

- **Consistency with other policies and objectives of the Union**

This initiative will help to make rail transport more competitive. By reducing transport chain costs it will bolster the competitiveness of EU industry as a whole. A dynamic rail sector will also consolidate the European rail industry's position as a world leader, while at the same time safeguarding employment in the sector. A more competitive rail transport sector will also help the European Union to fulfil its basic commitments with regard to sustainable development and the struggle against climate change.

Consequently, this initiative forms part of the revised strategy for growth and jobs.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

This initiative came about in response to strong pressure from the interested parties themselves. The first signs of the difficulties in question became apparent in the course of a safety certification study carried out in 2004. Following this study, the Commission set up a Working Party which presented its recommendations at the end of 2005. In April 2006 the Commission drew up a consultation document identifying a number of options and presented it at a workshop to all the parties concerned (national authorities in charge of rail safety, the industry, operators, infrastructure managers, European standardisation bodies, etc.). The written positions of all of these parties were gathered together and examined as part of an impact assessment study conducted in accordance with the standards in force.

Summary of responses and how they have been taken into account

Since the initiative was actually requested by stakeholders in the sector, all the responses were in favour of a Commission initiative. Where they differed was in respect of the positions they took with regard to the various options. The impact assessment sets out the various options and the positions of the various players in relation to these options. The Commission has taken account of these differences of opinion with a view to drawing up its proposal, which is in two parts: on the one hand, to embark on the work that can be undertaken immediately, without waiting for the entry into force of new legislation; on the other, to amend the legislation so as to ensure a more secure legal framework that confers rights and responsibilities on the parties during the procedure for approving the placing into service of rolling stock.

- **Collection and use of expertise**

Scientific / expertise domains concerned

National procedures for the approval of railway rolling stock, national technical and/or safety rules, costs and deadlines associated with these procedures, etc.

Methodology used

Commission Guidelines set out in SEC(2005) 791 of 15 June 2005, updated in 2006.

Main organisations / experts consulted

The expertise of the European Railway Agency was drawn on with a view to evaluating the different positions of the interested parties in the sector and to analysing the impact of the various options.

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences was not mentioned.

See impact assessment.

Means used to make the expert advice publicly available

The impact assessment has been published on the internet.

• Impact assessment

Reference scenario: action restricted to applying the existing legislation and to intervening only in response to complaints.

Non-regulatory options: publication of the recommendations of the Working Party regarding the cross-acceptance of existing rolling stock; request to the Member States to apply these recommendations; request to the Agency to classify the national rules and to identify those that are equivalent; request to the Agency to assume a consultative or appeal role in the national entry-into-service procedures; speeding-up of the development and revision of the European standards; verification of the principle of mutual recognition and, if necessary, launching of the infringement procedures.

Regulatory options: amendment of the legislation with a view to: removing the obligation to obtain authorisation in each Member State; clarifying the procedure to be applied in respect of existing rolling stock; enabling the Agency to issue entry-into-service authorisations; enabling the Agency to play a coordinating, advisory and/or appeal role; enabling the bodies responsible for conformity verification to issue entry-into-service authorisations; enabling the infrastructure managers to issue entry-into-service authorisations.

The Commission has carried out an impact assessment as provided for in its Legislative and Work Programme. The report can be found at http://ec.europa.eu/transport/rail/index_en.html.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposed solution involves drawing up a procedure at Community level covering two aspects.

To begin with, the Agency is to be asked to identify the different national procedures and technical rules in force, and to draw up and update a list of requirements that can be verified only once. At the same time, the Member States are being asked, pending the amendment of the legislation, to apply on a voluntary basis those Working Party recommendations already published by the Commission.

Secondly, recourse to the principle of mutual recognition of entry-into-service authorisations already issued by Member States is to be made compulsory. In keeping with this principle, rolling stock in respect of which an entry-into-service authorisation has already been issued in one Member State will not, in appropriate cases, need to undergo further certification in another Member State except with regard to additional national requirements attributable, for instance, to the local system specifications. At the same time, however, the Agency Regulation must be updated to include any new tasks with which the Agency has been entrusted.

- **Legal basis**

Article 71

- **Subsidiarity principle**

The principle of subsidiarity applies insofar as the proposal does not concern an area in which the Community has exclusive competence.

The objectives of the proposal may not be achieved to a sufficient extent by the action of Member States for the following reasons:

This initiative seeks to deal with the problem of rolling stock authorised for entry into service in one Member State but not automatically accepted in another Member State. There is a transnational aspect to this problem that cannot be addressed by a national initiative, since no Member State can take it upon itself to authorise the entry into service of rolling stock in the territory of another Member State.

The aims of the proposal may be better achieved through Community action for the following reasons:

The principle of territoriality with regard to entry-into-service authorisations is enshrined in the Railway Interoperability and Railway Safety Directives, and no action taken solely at national level would be capable of achieving the objective pursued under the present proposal. The national safety authorities have been brought together into a network of which the Agency is the driving force. Therefore, the Agency is the most appropriate Community body to take forward the measures set out in this proposal.

The establishment of a reference table containing the national rules, the adoption of such a table by the Commission, and the future decisions taken by the Commission establishing the equivalence of certain national rules represent the most revealing indicators when it comes to demonstrating whether the objectives pursued under the present proposal have been achieved.

By amending Article 14 of the Railway Safety Directive it is possible to specify which part of an authorisation must be mutually recognised and which part is strictly linked to the compatibility of the vehicle in question with the infrastructure referred to. The option whereby the decision to authorise entry into service would be centralised and placed in the hands of the Agency has not been taken up; this serves to illustrate that the proposal has remained focused solely on what the Member States cannot achieve through national initiatives.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the principle of proportionality for the following reasons:

This proposal forms part of a package consisting of:

- a Communication
- a proposal on the amendment of the Regulation establishing a European Railway Agency (EC No 881/2004)
- a proposal on the merging/recasting of the Railway Interoperability Directives (96/48/EC and 2001/16/EC)
- a proposal on the amendment of the Railway Safety Directive (2004/49/EC).

The proposals have been drafted in such a way as to minimise the number of amendments required.

This proposal has virtually no impact whatsoever on the Commission's operating budget. As far as the Agency is concerned, this is less than €2.2 million for the first five years, falling subsequently to less than €0.5 million. As for the competent authorities and the industry itself, the expected benefits outweigh all else, given that the main aim is to simplify the procedure for authorising entry into service by eliminating redundant verifications and reducing regulation.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not have been adequate for the following reasons:

A Regulation needs to be amended.

4) BUDGETARY IMPLICATION

As far as the Agency is concerned, this is less than €2.2 million for the first five years, falling subsequently to less than €0.5 million (see the financial statement attached to the proposal).

5) ADDITIONAL INFORMATION

- **Simplification**

The proposal introduces simplified administrative procedures applicable to entities and private individuals.

Rolling stock in respect of which an entry-into-service authorisation has already been issued in one Member State will not, in appropriate cases, need to undergo further certification in another Member State except with regard to additional national requirements attributable, for instance, to the local system specifications.

The proposal is included in the Commission's Work and Legislative Programme under the reference 2006/TREN/005.

- **European Economic Area**

As the proposed act concerns a matter covered by the EEA Agreement, it should therefore be extended to the European Economic Area.

- **Detailed explanation of the proposal by chapter or by article**

1. Certification of existing rolling stock (new Article 8a)

The Agency will facilitate the certification procedure for existing rolling stock by creating a reference document cross-referencing the national rules for each of the relevant parameters and by providing ad hoc technical opinions on specific aspects of projects.

2. National rules (Article 11)

National rules are to be notified both in accordance with the Interoperability Directives and in accordance with the Railway Safety Directive. The two sets of rules should be compared, classified and then presented in a coherent manner on the Agency's website.

3. Notified bodies (Article 13)

A study conducted by the Commission has shown that there is much scope for interpretation of the notification criteria to be applied by Member States for notifying the bodies responsible for the verification procedures. It is important to assess the impact of such differences in interpretation and to check that they do not cause difficulties with regard to the mutual recognition of conformity certificates and the EC declaration of verification.

4. Interoperability assessment of projects receiving Community funding (Article 15)

It is proposed that, at the Commission's request, the Agency will assess the "interoperability" aspect of certain applications for Community funding for infrastructure projects. Provision should also be made for the Agency to assess applications for funding relating to rolling stock so that the Agency can decide whether the system is coherent.

5. Relationship between railway undertakings and wagon keepers (new Article 16a)

The new COTIF convention, which entered into force in 1999, introduced new rules for vehicle usage contracts and, consequently, replaced the old RIV Agreement between railway undertakings. Under these new rules, keepers are not obliged to register their wagons with a railway undertaking. The Railway Safety Directive has to be amended to include a definition of "keeper" and specify the relationships between keepers and railway undertakings, particularly with regard to maintenance. The Agency should assess this relationship and make recommendations to the Commission where necessary.

6. Certification of train and locomotive drivers (Article 17)

Following the adoption of the third rail package, reference should be made to the Directive on the certification of train personnel responsible for safety, which lays down various tasks to be performed by the Agency, from developing standard models for licences and complementary certificates to conducting a study on the use of smart cards.

7. The Agency's ERTMS tasks (new Article 21a)

Since the adoption of the second rail package, several initiatives relating to the development and implementation of the ERTMS system have been taken. These include the signing of a memorandum of understanding between the Commission and the various stakeholders in the sector, the setting up of a steering committee for implementing this cooperation agreement, the adoption by the Commission of a Communication on the implementation of the ERTMS¹, the appointment of a European coordinator² for the ERTMS project as a priority project of Community interest, the definition of the Agency's role as system authority in the context of the various annual work programmes, and the adoption of the "control-command and signalling" TSI for conventional rail³. Given the growing importance of the Agency's input in this area, its tasks should be specified in the Regulation.

¹ OJ

² OJ

³ OJ

8. Ad hoc tasks (new Article 21b)

The Agency now has a large number of experts specialising in the interoperability and safety of the European rail system. It should be authorised to carry out ad hoc tasks at the Commission's request even if such activity is not expressly provided for in the Regulation establishing the Agency or in its annual work programme. However, such authorisation should be subject to the compatibility of the ad hoc task with the Agency's mission, the availability of budget resources and compliance with the Agency's other priorities.

9. Date of adoption of the work programme (Article 25(2))

The date by which the annual work programme must be adopted should be amended to allow for better synchronisation with the budgetary decision-making process.

10. Information on the results of the Agency's work (Article 25(3))

The work programme should identify the expected outcome of each activity and to whom it is to be addressed. The Commission should also be informed of the technical results of each activity as this information goes well beyond the scope of the general report, which is addressed to all the institutions.

11. Composition of the Administrative Board (Article 26(1))

For practical reasons, alternates should also be appointed for the observers.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 881/2004 establishing a European Railway Agency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Whereas:

- (1) Regulation (EC) No 881/2004 of the European Parliament and of the Council⁸ established a European Railway Agency to make a technical contribution to creating a European railway area without frontiers. Following developments in Community legislation on rail interoperability and safety, market developments and on the basis of the experience gained in operating the Agency and the relationship between the Agency and the Commission, certain amendments need to be made to Regulation (EC) No 881/2004, and in particular certain tasks need to be added.
- (2) Article 14 of Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways⁹ established a common procedure for authorising the placing into service of rolling stock. In the spirit of the principle of mutual recognition, the procedure for obtaining an entry-into-service authorisation in a Member State other than the one which issued a first authorisation must be facilitated by limiting the elements which the competent authority may examine. To this end, all the technical and safety rules in force in each Member State should be classified into three groups and the results of this classification should be presented in a reference document. The Agency is therefore required to facilitate this

⁴ OJ C, , p. .

⁵ OJ C, , p. .

⁶ OJ C, , p. .

⁷ OJ C, , p. .

⁸ OJ L 164, 30.4.2004, p. ; corrected version in OJ L 220, 21.6.2004, p. 3.

⁹ OJ L 164, 30.4.2004, p. ; corrected version in OJ L 220, 21.6.2004, p. 16.

classification by cross-referencing the national rules for each of the relevant parameters and by providing ad hoc technical opinions on specific aspects of projects.

- (3) National rules are to be notified to the Commission both in accordance with Directive .../.../EC (*) [*Rail Interoperability Directive*] and Directive 2004/49/EC. The dividing line between the two sets of rules is unclear because the safety rules partly concern the subsystems, which themselves are also subject to interoperability rules. The two sets of rules should therefore be compared, classified and then presented in a coherent manner on the Agency's website.
- (4) Under Article 13 of Regulation (EC) No 881/2004, the Agency may monitor the quality of the work of the bodies notified by the Member States. A study conducted by the Commission has shown that there is much scope for interpretation of the criteria to be applied for notifying these bodies. Without prejudice to the Member States' responsibility with regard to the bodies that they choose to notify and the checks that they make to ensure that these criteria have been met, it is important to assess the impact of such differences in interpretation and to check that they do not cause difficulties with regard to the mutual recognition of conformity certificates and the EC declaration of verification. The Agency should therefore be able to assume a coordinating role in this area, for example by undertaking missions to collect information.
- (5) Article 15 of Regulation (EC) No 881/2004 authorises the Agency to assess, at the request of the Commission and from the point of view of interoperability, applications for Community funding for railway infrastructure projects. The definition of "infrastructure projects" should be extended so that the coherence of the system can also be assessed, as in the case of projects implementing the ERTMS system, for example.
- (6) Following developments of an international dimension, and in particular the entry into force of the new COTIF Convention in 1999, the Agency should be asked to assess the relationship between railway undertakings and keepers of rolling stock, particularly with regard to maintenance, and to formulate recommendations where necessary. This task should be an extension of the Agency's work in the area of maintenance workshop certification.
- (7) Following adoption of the third railway package¹⁰, reference should be made to Directive .../.../EC (*) [*Directive on the certification of train personnel responsible for safety*], which lays down various tasks to be performed by the Agency.
- (8) Since the adoption of the second rail package, several initiatives relating to the development and implementation of the ERTMS system have been taken. These include the signing of a cooperation agreement between the Commission and the various stakeholders in the sector, the setting up of a steering committee for implementing this cooperation agreement, the adoption by the Commission of a Communication on the implementation of the ERTMS¹¹, the appointment, by Decision¹², of a European coordinator for the ERTMS project as a priority project of Community interest, the definition of the Agency's role as system authority in the

¹⁰ OJ

¹¹ OJ

¹² OJ

context of the various annual work programmes, and the adoption of the “control-command and signalling” TSI for conventional rail¹³. Given the growing importance of the Agency’s input in this area, its tasks should be specified.

- (9) The Agency now has a large number of experts specialising in the interoperability and safety of the European rail system. The Agency should be authorised to carry out ad hoc tasks at the Commission’s request, subject to the compatibility of the ad hoc task with the Agency’s mission, the availability of budget resources and compliance with the Agency’s other priorities.
- (10) The date by which the Agency’s annual work programme must be adopted should be amended to allow for better synchronisation with the budgetary decision-making process.
- (11) The Agency’s work programme should identify the objective of each activity and to whom it is to be addressed. The Commission should also be informed of the technical results of each activity as this information goes well beyond the scope of the general report, which is addressed to all the institutions.
- (12) Since the main objective of the proposed action, namely the extension of the Agency’s mission to include its participation in the simplification of the Community procedure for the certification of railway rolling stock, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale of that action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 881/2004 is hereby amended as follows:

- (1) The following Article 8a is inserted:

“Article 8a

Classification of national rules

- 1. The Agency shall facilitate Member States’ acceptance of rolling stock put into service in another Member State in accordance with the procedures laid down in paragraphs 2 to 5 of this Article.
- 2. The Agency shall progressively create and update a reference document cross-referencing all the national rules applied by the Member States for putting rolling stock into service. This document shall contain the national rules of each Member State for each of the parameters listed in Annex VI to Directive 2004/49/EC and also

¹³ OJ

specify the Annex VI group to which these rules belong. These rules shall include those notified under Article 16(3) of Directive .../EC (*) [*Interoperability Directive*], those notified following adoption of TSIs (specific cases, open issues, exceptions) and those notified under Article 8 of Directive 2004/49/EC.

3. With the cooperation of the national safety authorities established under Article 6(5) to gradually reduce the national rules in Group B, the Agency shall regularly update the reference document and forward it to the Commission. The first version of the document shall be presented to the Commission no later than one year after the entry into force of this Regulation.
4. The Agency may be called upon by a national safety authority, as part of the action taken in response to a request for entry-into-service authorisation, or by the Commission to provide technical opinions on:
 - (a) the equivalence of technical rules for one or more parameters;
 - (b) a request for complementary information, for a risk analysis or for a test and/or any outcome of such a request;
 - (c) the grounds for refusing authorisation.

OJ

- (2) In Article 11, the following paragraph 4 is added:

“4. The Agency shall, with the agreement of the Member States and the Commission, specify the practical arrangements for forwarding the documents referred to in paragraph 1.”

- (3) Article 13 is replaced by the following text:

“Article 13

Notified bodies

Without prejudice to the responsibility of Member States for the notified bodies which they appoint, the Agency may, at the request of the Commission, check to ensure that the criteria for the notification of these bodies, which are listed in Annex VII to the Interoperability Directives, are met and to assess the quality of the work of these bodies. The Agency shall, if necessary, issue an opinion to the Commission.”

- (4) Article 15 is replaced by the following text:

“Article 15

Interoperability of the rail system

At the request of the Commission, the Agency shall examine, from the point of view of interoperability, any project involving the renewal, upgrading or construction of the rail system for which an application for Community financial aid has been submitted. Within a period to be agreed with the Commission according to the importance of the project and the resources available, the Agency shall give an opinion on whether the project conforms with the relevant TSIs. This opinion shall take full account of the exceptions provided for by Article 7 of Directive 96/48/EC and Article 7 of Directive 2001/16/EC.”

- (5) The following Article 16a is inserted:

“Article 16a

Relationship between wagon keepers and railway undertakings

Within a period of one year from the date on which this Regulation enters into force, the Agency shall assess the relationship between wagon keepers and railway undertakings with regard to maintenance, in accordance with Article 14b of Directive 2004/49/EC. Within the same period, the Agency shall send to the Commission a report setting out, if necessary, recommendations on the implementation of a voluntary or mandatory system of certification for wagon keepers.

The Agency’s assessment shall examine in particular the following aspects:

- (a) whether the keeper is capable, from the point of view of organisation, staff and equipment, of ensuring the maintenance of the types of wagon which the keeper manages;
- (b) whether the keeper is in possession of the information needed to perform the requisite maintenance activities (and in particular, maintenance records and maintenance plans);
- (c) whether the keeper is in possession of the tools necessary for the monitoring and supervision of the state of the wagons.”

- (6) Article 17 is amended as follows:

- (a) The title and paragraph 1 are replaced by the following text:

“Article 17

Certification of train crews and professional competences

1. The Agency shall make recommendations on specifying common criteria for defining professional competences and assessing staff who are involved in the operation and maintenance of the rail system. In so doing, it shall take into

account the criteria and priorities provided for in Directive .../.../EC [*Directive on the certification of train staff*]¹⁴. The Agency shall consult with representatives of the social partners in accordance with the provisions of Article 4.”

(b) The following paragraph 4 is added:

“4. The Agency shall contribute to the implementation of Directive .../.../EC [*Directive on the certification of train staff*] by assuming the functions assigned to it under that Directive.”

(7) Article 18 is replaced by the following text:

“Article 18

Registration of rolling stock

The Agency shall draw up and recommend to the Commission a standard application form for registration and common specifications for the national vehicle register in accordance with Article 14 of Directive .../.../EC [*Rail Interoperability Directive*].”

(8) Article 19 is amended as follows:

(a) the following point (e) is added in paragraph 1:

“(e) the technical rules notified by the Member States under Articles 16(3) and 17(2) of Directive .../.../EC [*Rail Interoperability Directive*].”

(b) The following paragraph is added:

“5. The databases created under this Article and under Article 11 shall be consistent with each other, particularly with regard to the national rules.”

(9) Chapter 4 is amended as follows:

(a) the title of Chapter 4 is replaced by the following text:

“SPECIAL TASKS”

(10) The following Articles 21a and 21b are inserted:

“Article 21a

ERTMS

1. The Agency shall assume the role of systems authority for developing and implementing the European Rail Traffic Management System (“ERTMS”). To that end, the Agency shall assume the tasks set out in paragraphs 2 to 5 of this Article.

¹⁴ When the third rail package is adopted, check that the title and reference are correct.

2. The Agency shall set up a procedure for managing requests for changes to specifications of the ERTMS.
3. The Agency shall support the efforts of the Commission in migrating to ERTMS and coordinating installation of the ERTMS along the trans-European transport corridors.
4. The Agency, in cooperation with the notified bodies and national safety authorities, shall supervise the application of the procedures for “EC” verification and putting into service in the context of specific projects, particularly with a view to assessing technical compatibility between infrastructure and rolling stock fitted by different constructors. The Agency shall, if necessary, recommend appropriate measures to the Commission.
5. The Agency shall develop a strategy for managing the different versions of the ERTMS with a view to ensuring technical and operational compatibility between infrastructure and rolling stock fitted with different versions.

Article 21b

Other tasks

The Agency shall, in agreement with or at the request of the Commission, perform any ad hoc task which is consistent with its mission as stated in Article 1, even if that task is not expressly provided for in this Regulation or in the work programme provided for in Article 25(2)(c)”

- (11) Article 25 is amended as follows:

- (a) in paragraph 2, point (c) is replaced by the following text:

"c) adopt, by 30 November each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. That work programme shall be adopted without prejudice to the annual Community budgetary procedure. If, within 15 days of the date of adoption of the work programme, the Commission expresses its disagreement with the programme, the Administrative Board shall re-examine the programme and adopt it, amended if necessary, within a period of two months, in second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;"

- (b) the following paragraph 3 is added:

“3. The Agency’s work programme shall identify the objectives of each activity. As a general rule, each activity and/or each outcome shall be the subject of a report to the Commission.”

- (12) In Article 26, paragraph 1 is replaced by the following text:

“1. The Administrative Board shall be composed of one representative of each Member State appointed by that Member State and four representatives appointed by

the Commission, as well as of six representatives, without the right to vote, the latter representing at European level the following groups:

- (a) railway undertakings,
- (b) infrastructure managers,
- (c) the railway industry,
- (d) worker 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.

Board members and their alternates shall be appointed on the basis of their relevant experience and expertise.”

(13) In Article 36, paragraph 1 is replaced by the following text:

“1. The Agency shall be open to participation by European countries and countries within the scope of the European Neighbourhood Policy¹⁵ which have concluded agreements with the European Community under which the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation.”

Article 2

This Regulation shall enter into force on the 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

¹⁵ See Commission Communication COM(2004) 373 of 12 May 2004.

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

Proposal to amend Regulation (EC) No 881/2004 establishing a European railway agency.

This proposal is part of a package containing:

- a Communication
- a proposal to merge/recast the Rail Interoperability Directives (96/48/EC and 2001/16/EC)
- a proposal to amend the Railway Safety Directive (2004/49/EC)
- a summary of the impact analysis report.

2. ABM / ABB FRAMEWORK

Title 06: Energy and transport

Budget chapter 06 02: Inland, air and maritime transport

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings:

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)

3.2. Duration of the action and of the financial impact:

As some tasks are continuous, the duration is indefinite.

3.3. Budgetary characteristics:

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in Financial Perspective
06.020801	Non-comp	CD ¹⁶	NO	YES	NO	No 3 Internal policies (2000-2006) / No 1a Competitiveness for growth and jobs (2007-2013)
06.020802	Non-comp	CD	NO	YES	NO	No 3 Internal policies (2000-2006) / No 1a Competitiveness for growth and jobs (2007-2013)

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

€ million (to three decimal places)

Type of expenditure	Section No		Year n ¹⁷	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
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Operational expenditure¹⁸

Commitment Appropriations (CA)	8.1.	a	1.685	2.185	1.685	1.685	1.685	0.48	n.a.
Payment Appropriations (PA)		b	1.685	2.185	1.685	1.685	1.685	0.48	n.a.

Administrative expenditure within reference amount¹⁹

Technical & administrative assistance (NDA)	8.2.4.	c							
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¹⁶ Differentiated appropriations.

¹⁷ Year *n* is the first year in which the amendments resulting from this legislative financial sheet are implemented, i.e. the first year following the adoption of these amendments by both arms of the budgetary authority.

¹⁸ Expenditure that does not fall under Chapter xx 01 of Title xx concerned.

¹⁹ Expenditure within article xx 01 04 of Title xx.

TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c	1.685	2.185	1.685	1.685	1.685	0.48	n.a.
Payment Appropriations		b+c	1.685	2.185	1.685	1.685	1.685	0.48	n.a.

Administrative expenditure not included in reference amount²⁰

Human resources and associated expenditure (NDA)	8.2.5.	d							n.a.
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e							

Total indicative financial cost of intervention

TOTAL CA including cost of human resources		a+c +d +e	1.685	2.185	1.685	1.685	1.685	0.48	n.a.
TOTAL PA including cost of human resources		b+c +d +e	1.685	2.185	1.685	1.685	1.685	0.48	n.a.

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if it is expected that several bodies will provide the co-financing):

€ million (to three decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
.....	f							
TOTAL CA including co-financing	a+c+ d+e+ f							

4.1.2. Compatibility with Financial Programming

- ☒ Proposal is compatible with existing financial programming.
- ☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.

²⁰ Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

- ☐ Proposal may require application of the provisions of the Interinstitutional Agreement²¹ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on revenue

- ☒ Proposal has no financial impact on revenue
- ☐ Proposal has financial impact – the effect on revenue is as follows:

€ million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			[Year n]	[n + 1]	[n + 2]	[n + 3]	[n + 4]	[n + 5] ²²
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

4.2. Human resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later
Total staff numbers						

The adoption of this legislative proposal will have no repercussions on the staff of DG TREN who supervise the Agency's work.

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

The new activities planned for the Agency are needed in the short term as regards both the mutual recognition of locomotives and the certification of train drivers.

As regards the mutual recognition of locomotives, the Agency is required to facilitate the certification procedure for existing rolling stock by developing a reference tool which will ensure the applicable national legislation complies with each parameter checked and by providing ad hoc technical opinions within the framework of specific projects.

²¹ See points 19 and 24 of the Interinstitutional Agreement.

²² Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

Following the adoption of the third railway package²³, the Directive on the certification of train crews in charge of safety²⁴ includes a number of tasks to be carried out by the Agency, from developing model licences and additional certificates to carrying out a study on the use of smartcards.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

High added value thanks to the use of a structure and qualified staff, some of whom are already available, as well as tried and tested methods (for example, using the established and operational network of national safety authorities).

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

Operational objective No 1: Mutual recognition of locomotives (main objective of this package):

- Objective: to increase the number of national rules which are mutually recognised
- Result: to reduce the duration of locomotive approval procedures
- Indicator: the number of locomotives in operation outside their State of origin

Operational objective No 2: Certification of train drivers (third railway package):

- Objective and result: to develop model licences and register specifications
- Indicator: the number of train drivers certified in accordance with the Directive on the certification of train crews

Operational objective No 3: other tasks

See point 8.2.2.

5.4. Methods of Implementation (indicative)

X Centralised Management

☐ Directly by the Commission

X Indirectly by delegation to:

☐ Executive Agencies,

X Bodies set up by the Communities as referred to in Article 185 of the Financial Regulation,

☐ National public-sector bodies/bodies with public-service mission

²³ OJ

²⁴ OJ and check title.

- ☐ *Shared or decentralised management*
 - ☐ with Member States
 - ☐ with third countries
- ☐ *Joint management with international organisations (please specify)*

6. MONITORING AND EVALUATION

6.1. Monitoring system

Each year, the work of the ERA is monitored and evaluated in the annual general report (for the previous year) and the work programme (for the following year). These two documents are adopted by the Agency's Management Board and sent to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

6.2. Evaluation

6.2.1. Ex ante evaluation

Several options were discussed and evaluated at the pre-legislative consultation with representatives of the Member States and organisations representing the sector. The Agency was also consulted. A very detailed analysis impact assessment report is available on the Commission's website and a summary is attached to this proposal.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

The Agency was audited in September 2006 and corrective measures are being developed as this proposal is being drawn up.

6.2.3. Terms and frequency of future evaluations

In addition to the checks and audit planned by the European Anti-Fraud Office (OLAF) and the Court of Auditors, Article 43 of the Agency Regulation provides for the Commission to carry out an evaluation of the Agency (results, working methods) five years after its establishment, i.e. around 2010.

7. ANTI-FRAUD MEASURES

The Executive Director implements the Agency's budget. Each year, he presents detailed accounts for the previous year showing revenue and expenditure to the Commission, the Court of Auditors and the Agency's Management Board. In addition, the Commission's internal auditor has the same terms of reference with respect to the ERA as it does with respect to the Commission departments, and the Agency has an internal audit system similar to that of the Commission.

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), and the inter-institutional agreement of 25 May 1999 concerning internal investigations conducted by OLAF apply without restriction to the ERA.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in € million (to 3 decimal places)

(State headings of objectives, actions and outputs)	Type of output	Average cost	Year n ²⁵		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5 and later		TOTAL	
			Number of outputs	Total cost	Number of outputs	Total cost	Number of outputs	Total cost	Number of outputs	Total cost	Number of outputs	Total cost	Number of outputs	Total cost	Number of outputs	Total cost
OPERATIONAL OBJECTIVE No 1 ²⁶ (mutual recognition of rolling stock)																
TOTAL				1.18		1.68		1.18		1.18		1.18		0.185		
Title I				0.488		0.488		0.488		0.488		0.488		0.122		
Title II				0.052		0.052		0.052		0.052		0.052		0.013		
Title III				0.64		1.14		0.64		0.64		0.64		0.05		
OPERATIONAL OBJECTIVE No 2 (certification of																

²⁵ Year *n* is the first year in which the amendments resulting from this legislative financial sheet are implemented, i.e. the first year following the adoption of these amendments by both arms of the budgetary authority.

²⁶ As described under Sections 5.3 and 8.2.2.

drivers)																
TOTAL	0.37				0.37		0.37		0.37		0.37		0.160			
Title I	0.244				0.244		0.244		0.244		0.244		0.122			
Title II	0.026				0.026		0.026		0.026		0.026		0.013			
Title III	0.1				0.1		0.1		0.1		0.1		0.025			
OPERATIONAL OBJECTIVE No 3 (other tasks)																
TOTAL	0.135				0.135		0.135		0.135		0.135		0.135			
Title I	0.122				0.122		0.122		0.122		0.122		0.122			
Title II	0.013				0.013		0.013		0.013		0.013		0.013			
Title III																
TOTAL COST				1.685		2.185		1.685		1.685		1.685		0.48		

8.2. Administrative expenditure

8.2.1.a. Number and type of human resources (DG TREN)

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Officials or temporary staff ²⁷ (XX 01 01)	A*/AD						
	B*, C*/AST						
Staff financed ²⁸ by Art. XX 01 02							
Other staff financed ²⁹ by Art. XX 01 04/05							
TOTAL							

The adoption of this legislative proposal will have no repercussions on the staff of DG TREN who supervise the Agency's work.

8.2.1.b. Number and type of human resources (ERA)

A total of 7 additional AD8 posts must be added for years n to n+4 to the staff table set out in the 2007 draft budget, and 1 additional AD8 post for years n+5 and later. These extra posts are justified below.

8.2.2. Description of tasks deriving from the action

NB: the following is a description of the Agency's tasks and not those of DG TREN E2, which will monitor the Agency's tasks.

Operational objective 1: mutual recognition of rolling stock

- Develop the reference guide comprising all national rules applicable to rolling stock
- Classify and compare these rules
- Coordinate the work of the network of national authorities to reduce the number of national rules
- Publish a correlation table between national rules

²⁷ Cost of which is NOT covered by the reference amount.

²⁸ Cost of which is NOT covered by the reference amount.

²⁹ Cost of which is included within the reference amount.

- Prepare technical opinions at the request of the national safety authorities and the Commission
- Draft recommendations for Commission decisions to reduce the number of national rules and increase the number of rules which are mutually recognised

This operational objective will necessitate:

- 4 additional experts for the first 5 years, then 1 per year. One A8 costs on average €0.122 million under Title I and €0.013 million under Title II;
- in addition, €100 000 per year must be allocated for the working group for the first 5 years, thereafter €50 000 per year (Title III);
- €540 000 per year for the 5 coming years (Title III) must be allocated for the translation of some of the national rules;
- specific material/software must also be developed costing €500 000 in the second year (Title III).

Operational objective 2: certification of drivers (third railway package)

- Recommendations for additional harmonised model licences and certificates
- Recommendations for Community codes in licence categories
- Draft specifications for drivers' registers
- Cooperation with the competent authorities of the Member States to ensure the interoperability of registers
- Report on the other agents performing safety-critical tasks
- Report on the implementation of the Directive
- Report on the use of smartcards

This objective will necessitate:

- two additional experts for the first 5 years, then 1 expert per year (Titles I and II);
- in addition, €100 000 per year must be allocated for the first 5 years (€50 000 for the working group, €50 000 for studies), then €25 000 per year for the working group (Title III).

Operational objective 3: other tasks

- Tasks linked to ERTMS: systems authority, specification management, management of coexistence of different systems in the network, support for the coordination and deployment of ERTMS along corridors
- Develop Community criteria for the certification of wagon keepers as part of work on the certification of maintenance workshops

- Draw up a guide on the implementation of infrastructure and rolling stock registers
- Etc.

These tasks will require one expert per year in addition to available resources (Titles I and II)

8.2.3. *Sources of human resources (statutory)*

NB: this refers to staff of DG TREN E2 which will monitor the relevant activities of the Agency X. Posts currently allocated to the management of the programme to be replaced or extended

- ☐ Posts pre-allocated within the APS/PDB exercise for year n
- ☐ Posts to be requested in the next SPA/PDB procedure
- ☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)
- ☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. *Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

€ million (to three decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1. Technical and administrative assistance (including related staff costs)							
Executive Agencies ³⁰							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
Total technical and administrative assistance							

³⁰ Reference should be made to the specific legislative financial statement for the Executive Agency or Agencies concerned.

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

€ million (to three decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff ³¹ (XX 01 01)						
Staff financed under article XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of human resources and associated costs (NOT in reference amount)						

Calculation– *Officials and Temporary agents*

Calculation– *Staff financed under article XX 01 02*

³¹ Average cost of an A official based on n=2008 and 2% per year.

8.2.6. *Other administrative expenditure not included in reference amount*

€ million (to three decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions							
XX 01 02 11 02 – Meetings & Conferences							
XX 01 02 11 03 – Committees ³²							
XX 01 02 11 04 - Studies and consultations							
XX 01 02 11 05 - Information systems							
2. Total other management expenditure (XX 01 02 11)							
3. Other expenditure of an administrative nature (specify including reference to budget line)							
Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)							

Calculation - *Other administrative expenditure not included in reference amount*

Human resources and administrative requirements will be covered from the allocation given to the managing DG under the annual allocations procedure.

³² Specify the type of committee and the group to which it belongs.