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P7_TA(2014)0151

European Union Agency for Railways ***I

European Parliament legislative resolution of 26 February 2014 on the 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 (COM(2013)0027 — C7-0029/2013 — 2013/0014(COD))

(Ordinary legislative procedure: first reading)

(2017/C 285/56)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0027),
- having regard to Article 294(2) and Article 91(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0029/2013),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 11 July 2013 ⁽¹⁾,
- having regard to the opinion of the Committee of the Regions of 8 October 2013 ⁽²⁾,
- having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Lithuanian Parliament, the Romanian Senate and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to Rule 55 of its Rules of Procedure,
- having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on Budgets and the Committee on Budgetary Control (A7-0016/2014),

1. Adopts its position at first reading hereinafter set out;
2. Requests that the Commission present a financial statement which fully takes into account the result of the legislative agreement between the European Parliament and the Council on all pieces of legislation within the Fourth Railway Package to meet the budgetary and staff requirements of ERA and possibly of the Commission services;
3. Emphasises that any decision of the legislative authority on the draft regulation shall be without prejudice to the decisions of the budgetary authority in the context of the annual budgetary procedure;
4. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

⁽¹⁾ OJ C 327, 12.11.2013, p. 122.

⁽²⁾ OJ C 356, 5.12.2013, p. 92.

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P7_TC1-COD(2013)0014**Position of the European Parliament adopted at first reading on 26 February 2014 with a view to the adoption of Regulation (EU) No .../2014 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 ⁽¹⁾,Having regard to the opinion of the Committee of the Regions ⁽²⁾,Acting in accordance with the ordinary legislative procedure ⁽³⁾,

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 ⁽⁴⁾ and Directive 2008/57/EC of the European Parliament and of the Council ⁽⁵⁾ 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) No 881/2004 of the European Parliament and of the Council, in order to promote the establishment of a European railway area without borders and to help revitalise the railway sector while reinforcing its essential advantages in terms of safety. Regulation (EC) No 881/2004 has to be replaced by a new act due to **the substantial amount of changes which are required in relation** to the tasks of the Agency and its internal organisation. **[Am. 1]**
- (4) The Fourth Railway Package proposes important changes to improve the functioning of the ~~Single~~ **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 **especially in cross-border traffic** at the Union level. It implies a greater role of the Agency. **[Am. 2]**

⁽¹⁾ OJ C 327, 12.11.2013, p. 122⁽²⁾ OJ C 356, 5.12.2013, p. 92.⁽³⁾ Position of the European Parliament of 26 February 2014.⁽⁴⁾ Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44).⁽⁵⁾ 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 (OJ L 191, 18.7.2008, p. 1).

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- (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, **at Union level**, authorisations for placing **railway vehicles** 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~~ **European Rail Traffic Management System (ERTMS)** sub-systems **located or operated throughout the Union**. Moreover, it should monitor national railway rules and the performance of national authorities acting in the railway interoperability and safety fields. [Am. 3]
- (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,~~ **and the specific situation of rail networks with a different track gauge, particularly where the Member States are well integrated into those networks together with third countries but isolated from the main Union rail network**. It should ~~have sole responsibility for the functions and powers assigned to it~~ **also seek to facilitate the principle of reciprocity between access for third countries to the Union market and access for Union undertakings to the markets of third countries**. [Am. 4]
- (6a) **The Agency should have sole responsibility for the functions and powers assigned to it. National safety authorities should have sole responsibility for the decisions that they take.** [Am. 5]
- (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 experts from the railway sector and the national safety authorities and other relevant national authorities~~ **as well as professionals from the railway sector, including representative bodies and independent notified conformity assessment bodies**. They should form competent and representative working parties of the Agency. **The Agency should bear in mind the need to maintain a balance between risks and benefits, in particular as regards the management of conflicts of interest, on the one hand, and the objective of obtaining the best possible expertise, on the other.** [Am. 6]
- (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 Directive] provides the basis for drafting and revising Technical Specifications for Interoperability (TSIs) while Directive ... [Railway Safety Directive] 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 **within the specified areas of operation** and issued by the Agency. The revised Directive ... [Railway Safety Directive] provides a basis for this. [Am. 7]

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- (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 Directive] provides a basis for this.
- (11a) ***In an open European railway market with increasing cross-border operations, the respect of requirements on driving and rest time is essential for railway safety and for fair competition and should be controlled and enforced. National safety authorities should monitor driving and rest times, including for cross-border operations.*** [Am. 8]
- (11b) ***On-board personnel perform operational safety tasks within the railway system and are responsible for passengers' comfort and safety on-board trains. A certification similar to the certification of locomotive drivers should be set up by the Agency in order to guarantee a high level of qualifications and competences, to recognise the importance of this professional group for safe rail services and also in order to facilitate the mobility of workers.*** [Am. 9]
- (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 ***within a flexible framework ensuring interoperability as well as enabling innovative commercial strategies to coexist.*** This would ensure their consistent development and swift deployment. [Am. 10]
- (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~~ ***the failure of the development and deployment*** to date, it is necessary to strengthen its overall coordination at the Union level. ***The objective of achieving interoperability and harmonisation of train control and signalling systems across the Union is currently seriously undermined by a multitude of diverging national versions of ERTMS.*** [Am. 11]

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.

- (13a) ***During recent years, several accidents in the rail freight sector illustrated the need to improve the rules at Union level for the maintenance of freight wagons. The Agency should work on harmonised compulsory requirements for regular maintenance intervals.*** [Am. 12]
- (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~~ ***vary according to the extent of operations and area of use specified in the Union certificate or authorisation*** and should be determined in a delegated act to be adopted by the Commission. ***Establishment plan posts financed by those charges should not be subject to the staff reductions envisaged for all Union institutions and bodies.*** [Am. 13]

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- (14a) *That delegated act should ensure that the level of charges does not exceed the costs of the certification or authorisation procedures in question.* [Am. 14]
- (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 **including through contractual agreements** when granting the relevant authorisations and certificates. To this end, secondment of national experts to the Agency should be **strongly** encouraged, **promoted and facilitated**. [Am. 15]
- (16) Directive ... [Railway Safety Directive] and Directive ... [Railway Interoperability Directive] 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 **safety risks and** 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, **including operational 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. [Am. 16]
- (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. **Monitoring of the notified conformity assessment bodies should be carried out by the national accreditation bodies in accordance with Article 5(3) of Regulation (EC) No 765/2008 of the European Parliament and of the Council** ⁽¹⁾. **Equal monitoring of the performance of the Agency is also required.** [Am. 17]
- (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~~ **both ongoing and** 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 ⁽²⁾. The Agency is the right institution to contribute to these objectives. [Am. 18]
- (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.

⁽¹⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

⁽²⁾ 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 (OJ L 228, 9.9.1996, p. 1).

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- (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 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, **user-friendly and easily accessible** means of exchanging and publishing this information. [Am. 19]
- (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~~ **should play an active role** in the railway field, ~~should play an active role in the assessment of rail projects~~ **with European added value, in close cooperation with national infrastructure managers.** [Am. 20]
- (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, **while giving particular attention to small and medium-sized enterprises.** [Am. 21]
- (27a) **The Agency should cooperate fully with, and give the maximum possible assistance to, national authorities carrying out civil or criminal investigations when the investigations concern issues for which the Agency has responsibility.** [Am. 22]
- (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. **The Union contribution should be assessed and revised each time new powers are added which are not subject to fees or charges paid by applicants. The Agency's independence and impartiality should not be compromised by any financial contributions that it receives from Member States, third countries or other entities.** 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, **of seconded national experts and permanent officials**, in order to maintain its organisational knowledge and business continuity while keeping necessary and on-going exchange of expertise with the railway sector. [Am. 23]
- (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.

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- (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, **notified bodies, designated bodies**, workers unions, passengers and, **in particular, passengers with reduced mobility, and also** freight customers. [Am. 24]
- (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 **that acts in complete independence from the Commission, the Agency, national safety authorities and any actor in the railway sector**, whose decisions are, in turn, open to action before the Court of Justice. [Am. 25]
- (32a) **The Agency staff advising a Board of Appeal should not themselves have been previously involved in the decision under appeal.** [Am. 26]
- (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 **and annual** work programme **programmes**. The Agency should also apply the relevant Union legislation concerning public access to documents. [Am. 27]
- (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⁽¹⁾ 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⁽²⁾.~~ [Am. 28]
- (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 **ERTMS** subsystems, authorisations for placing on the market for vehicles and for types of vehicles, and safety certificates. **A differentiated level of fees and charges should be applied according to the areas of use and extent of operations specified in safety certificates and authorisations.** It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. **Fees and charges should be set in a transparent, fair and uniform manner and should not jeopardize the competitiveness of the European industries concerned.** [Am. 29]

⁽¹⁾ 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) (OJ L 136, 31.5.1999, p. 1).

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

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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.

- (37a) ***In order to properly encourage the standardisation of railway spare parts, 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 standardisation regarding spare parts. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. [Am. 30]***
- (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 ⁽¹⁾.
- (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 [Railway 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 ⁽²⁾ ***and certification of all safety-relevant staff. [Am. 31]***
- 3a. The objectives of the Agency shall be to ensure a high level of rail safety and to help complete the Single European Rail Area. These objectives shall be achieved by:**

⁽¹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽²⁾ 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 (OJ L 315, 3.12.2007, p. 51).

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- (a) *contributing, on technical matters, to the implementation of Union legislation aimed at enhancing the level of interoperability of the railway system and developing a common approach to safety on the Union railway system;*
- (b) *acting as a European authority, in cooperation with the Member States, for authorising the placing of vehicles on the market and issuing safety certificates to railway undertakings;*
- (c) *harmonising national rules and optimising procedures;*
- (d) *monitoring action taken by the national safety authorities on interoperability and rail safety.* [Am. 32]

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 **and to national safety authorities concerning the application of Article 29(4);** [Am. 33]
- (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), **common safety indicators (CSIs), registers, entities in charge of maintenance, the documents referred to in Article 15 and provisions on minimum qualifications of railway staff entrusted with safety-critical tasks.** [Am. 34]

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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 all the Member States**, 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. [Am. 35]

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, **except for the chair of the working parties, who shall be a representative of the Agency**. [Am. 36]

3. Each **year, 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. [Am. 37]

4. Whenever the work of such working parties has a ~~direct~~ **an** impact on the working conditions, health and safety of workers in the industry, representatives from the workers' organisations **from all the Member States** shall participate in the relevant working parties as full members. [Am. 38]

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.~~ [Am. 39]

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 **in all the Member States** within the framework of the sectoral dialogue committee set up pursuant to Commission Decision 98/500/EC⁽¹⁾. [Am. 40]

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, **within two months**, by the Agency to the Commission and by the Commission to the committee referred to in Article 75. [Am. 41]

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, **including in particular representatives of passengers with reduced mobility**. 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. [Am. 42]

These consultations shall be held before the Agency submits its proposals to the Commission. The Agency shall take due account of these consultations, and shall, at all times, be available to expound on its proposals. The opinions expressed by the organisations concerned shall be forwarded, **within two months**, by the Agency to the Commission and by the Commission to the committee referred to in Article 75. [Am. 43]

⁽¹⁾ 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).

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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, **taking into account the requirements laid down in Directive ... [the Railway Safety Directive]**. The Agency shall liaise with the Commission to ensure that relevant work at the Commission is duly taken into account. **The assumptions used as the basis for the impact assessment and the data sources used shall be clearly identified in the report accompanying each recommendation.** [Am. 44]

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 **and stakeholders** shall provide the Agency, **as required and at its request**, with the data necessary for the impact assessment. [Am. 45]

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 **the** request of ~~the~~ **one or more** national regulatory bodies referred to in Article 55 of Directive 2012/34/EU **of the European Parliament and of the Council** ⁽¹⁾ concerning safety-related and interoperability-related aspects of matters drawn to their attention. [Am. 46]

2. The Agency shall issue opinions at request of the Commission on amendments to any act adopted on the basis of Directive ... [Railway Interoperability Directive] or ... [Railway Safety Directive], 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, **18** 27, **28**, 29, 30, 31, **33** and 38, in accordance with the policy defined by the Management Board. [Am. 47]

⁽¹⁾ Directive 2012/34/EU **of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32.)**

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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), **the Common Safety Indicators (CSIs)** and the Common Safety Targets (CSTs) provided for in Articles 6 and 7 of Directive ... [Railway Safety Directive]. The Agency shall also issue recommendations on periodic revision of CSMs and CSTs to the Commission. [Am. 48]
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

Without prejudice to Article 10 (2a) of Directive... [the Safety Directive] the Agency shall issue, **renew, suspend, amend or revoke** single safety certificates in accordance with Articles 10 and 11 of Directive ... [Railway Safety Directive]. [Am. 49]

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.

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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 ⁽¹⁾ 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.

Article 14a

Spontaneous reporting of incidents

The Agency shall establish a system enabling the spontaneous and anonymous reporting of any incident that may jeopardise the system's safety. It shall create a mechanism for informing the responsible actors automatically. The Agency shall also coordinate the communication of reports from national agencies, in particular where they affect safety in more than one State. [Am. 50]

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 ... [Railway 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 ... [Railway 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 ... [Railway Interoperability Directive];
 - (d) issue opinions which constitute acceptable means of compliance concerning TSI deficiencies, in accordance with Article 6(2) of Directive ... [Railway 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 ... [Railway Interoperability Directive];
 - (f) issue technical documents in accordance with Article 4(9) of Directive ... [Railway Interoperability Directive];
 - (g) issue recommendations to the Commission relating to the working conditions of all staff carrying out safety-critical tasks.
 - (ga) *issue recommendations to the Commission on European standards to be developed by the relevant European standardisation bodies, particularly concerning spare parts; [Am. 52]***
 - (gb) *issue detailed requests concerning standards for the relevant European standardisation bodies in order to fulfil the mandate given to them by the Commission; [Am. 53]***

⁽¹⁾ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

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- (gc) *issue recommendations to the Commission regarding the training and certification of on-board personnel with safety tasks;* [Am. 54]
- (gd) *issue recommendations to the Commission to harmonise national rules in accordance with Article 22(1), particularly in cases where one rule concerns several Member States. This work shall be carried out in cooperation with the national safety authorities;* [Am. 55]
- (ge) *at the request of the Commission, issue opinions to it on interoperability constituents not complying with the essential requirements in accordance with Article 11 of Directive ... [Railway Interoperability Directive];* [Am. 56]
- (gf) *issue recommendations to the Commission on minimum inspection intervals (time periods and kilometrage) in respect of rolling stock (goods wagons, passenger carriages and locomotives).* [Am. 57]
2. For drafting recommendations referred to in paragraph 1, points (a) ~~and~~, (b) **and** (c), the Agency shall: [Am. 58]
- (a) ensure that the TSIs and the specifications for registers are adapted to technical progress and market trends and to social requirements **with a view to improving the efficiency of the railway system while taking into account its cost-effectiveness;** [Am. 59]
- (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.
- (ba) **participate as an observer in the relevant working groups on standardisation;** [Am. 60]
3. The Agency may issue guidelines and other non-binding documents to facilitate the implementation of railway interoperability legislation.
- 3a. **The Agency shall involve the working parties where this is provided for in Article 4.** [Am. 61]

Article 16

Authorisations for placing on the market for vehicles

Without prejudice to Article 20 (9a) of Directive ... [Railway Interoperability Directive] the Agency shall issue, **renew, suspend, amend or revoke** authorisations for placing on the market for railway vehicles in accordance with Article 20 of **that** Directive ... ~~[the Interoperability Directive]~~. [Am. 62]

Article 17

Authorisations for placing on the market for types of vehicles

The Agency shall issue, **renew, suspend, amend or revoke** authorisations for placing on the market for types of vehicles in accordance with Article 22 of Directive ... [Railway Interoperability Directive]. [Am. 63]

Article 18

~~Authorisations~~ **Authorisation** for placing in service of trackside ~~control-command and signalling sub-systems~~ **ERTMS** [Am. 64]

The Agency shall issue, **renew, suspend, amend or revoke** authorisations for placing in service of the trackside ~~control-command and signalling~~ **ERTMS** subsystems located or operated in the entire Union in accordance with Article 18 of Directive ... [Railway Interoperability Directive]. [Am. 65]

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.

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1a. The Agency may play a role in promoting open and full access to data including international timetable datasets.
[Am. 66]

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 **and enforce the compatibility, both downwards and upwards, of these different versions.**
[Am. 67]

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 ... [Railway 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 ... [Railway 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 ... [Railway Interoperability Directive].

2. Where after ~~the~~ examination **and within the deadlines** 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. [Am. 68]

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.

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4a. *The provisions of this Article do not apply to national rules on health and safety at work and qualification and training requirements for railway staff with safety-relevant tasks. [Am. 69]*

4b. *In the case of the urgent preventive measures referred to in Article 8 of Directive ... [the Safety Directive] and Article 14(4) of Directive ... [Railway Interoperability Directive], in particular after an accident or an incident, the Agency shall lead the harmonisation of the rule at Union level, together with the national safety authorities. If necessary, the Agency shall issue a recommendation or an opinion to the Commission. [Am. 70]*

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 ... [Railway Interoperability Directive].

1a. *The Agency shall examine the national rules in force on the date of application of this Regulation. Accordingly, the Agency shall propose a plan of work to the Management Board, for carrying out the examination, as part of the annual and multiannual work programmes referred to in Article 48. Each year, pursuant to Article 50, the Agency shall submit a progress report to the Management Board on its work and the results achieved. [Am. 71]*

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. **[Am. 72]**

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, **that the rule, which has been the subject of the negative assessment be repealed or modified immediately, and** stating the reasons why ~~the that rule in question should~~ **has to** be modified or repealed; **[Am. 73]**

(b) inform the Commission about its negative assessment **and forward to it the recommendation addressed to the Member State concerned. [Am. 74]**

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 **and 4** 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 **or creating an unjustified barrier to the single railway market. In that event, the time limit laid down in paragraph 1 shall apply. [Am. 75]**

5a. *On matters dealing with training, occupational health and safety for rail professionals responsible for safety critical tasks, the Agency may only apply this paragraph if the national rule has a potential discriminatory impact. [Am. 76]*

Article 22a

Use of the database

The Agency shall carry out the technical examination of the national rules in force referred to in available national legislation as listed in its reference document database as at the date of entry into force of this Regulation. [Am. 77]

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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 **national acceptable means of compliance referred to in Article 2(28a) of Directive ... [Railway Interoperability Directive]. The Agency shall** make it accessible to stakeholders and the public. [Am. 78]

1a. Within one month of the entry into force of this Regulation, Member States shall notify to the Commission any existing national rule which has not been notified by the date of entry into force of this Regulation. [Am. 79]

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. **The Agency shall use the IT system to inform the Commission about any negative recommendation forwarded to a Member State pursuant to Article 21(3), and Article 22(3)(b).** [Am. 80]

3. The Agency shall classify notified national rules in accordance with Article 14(8) of Directive [Railway 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.

4a. The Agency shall also make the status of the evaluation of those rules and, when completed, the results of the evaluation, publicly available via the system referred to in paragraph 1 of this Article. [Am. 81]

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 keepers** and efficient planning of the deployment of the ERTMS. [Am. 82]

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.

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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 ... [Railway 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~~ **shall** 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. [Am. 83]

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, **keepers**, 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 **immediately** inform the Commission about such a risk and, if necessary, recommend appropriate measures to the Commission. [Am. 84]

2a. The Agency shall set up a test track and laboratory for centralised testing of ERTMS track-side and on-board equipment. [Am. 85]

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 Commission Decision 2012/88/EU ⁽¹⁾ 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 of the European Parliament and of the Council ⁽²⁾.

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.

⁽¹⁾ Commission Decision 2012/88/EU of 25 January 2012 on the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European rail system (OJ L 51, 23.2.2012, p. 1).

⁽²⁾ Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight (OJ L 276, 20.10.2010, p. 22).

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

2a. Where the Agency has doubts as to the performance of an accredited laboratory, it shall notify the competent accreditation body, the Member State concerned and the national safety authorities accordingly. The Agency shall be invited to participate as an observer in the peer review. Where doubts are raised, the Agency shall immediately inform the Member State concerned and the national safety authorities accordingly. [Am. 86]

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~~ **which it shall define** taking into account the importance of the deficiency. **[Am. 87]**
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 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.

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6a. In the cases referred to in Article 10(2a) of Directive ... [Railway Safety Directive] and Article 20(9a) of Directive ... [Railway Interoperability Directive] if national safety authorities take conflicting decisions and no mutually acceptable decision is reached, the applicant concerned by those decisions or a national safety authority that is involved may refer the decisions to the Agency who shall take a decision. [Am. 88]

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~~ **Chapter 6** of Directive ... [Railway Interoperability Directive] to the accreditation bodies, via the European Accreditation infrastructure recognised by ~~Art. Article~~ **Article 14** of Regulation (EC) No 765/2008 **[Am. 89]**
3. In case of notified conformity assessment bodies which are not accredited according to Article 24 of Directive... [Railway 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 **set by the Agency. [Am. 90]**
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 [...] [Railway 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 **and the safety regulatory framework**. 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. **[Am. 91]**
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~~ **develop a common occurrence reporting and monitoring system. [Am. 92]**

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4. The Agency shall monitor **and assess** progress on the interoperability and safety of the railway systems **and the related costs and benefits**. 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. [Am. 93]

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.

2. The Agency may be requested by the Commission to perform other tasks relating to railway staff in accordance with Directive 2007/59/EC **and relating to railway staff entrusted with safety-critical tasks not covered by Directive 2007/59/EC**. [Am. 94]

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~~ **define** European registers provided for in Article 43, 44 and 45 of Directive ... [Railway Interoperability Directive] **in a practical, efficient and user-friendly format to fully support business and operational needs**. The Agency shall act as the system authority for all registers and databases referred to in the Safety, Interoperability and Train Drivers Directives. This shall include, in particular: [Am. 95]

(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,

(da) setting-up and maintaining the registers referred to in points(g), (i) and (ma), [Am. 96]

(db) creating an European Vehicle Register. [Am. 97]

1a. The European Vehicle Register:

(a) shall be kept by the Agency;

(b) shall be public;

(c) shall have the national vehicle registers incorporated in it no later than two years after the entry into force of this Regulation. The Commission shall establish, by means of implementing acts, the format type document. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 75;

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(d) shall include at least the following details for each type of vehicle:

- (i) the technical characteristics of the type of vehicle, as defined in the relevant TSI;
- (ii) the manufacturer's name;
- (iii) the dates and references of the successive authorisations for that type of vehicle, including any restrictions or withdrawals, and the Member States granting the authorisations;
- (iv) design features intended for persons with reduced mobility and persons with disabilities.

When the Agency issues, renews, amends, suspends or revokes an authorisation to place vehicle types in service, it shall update the register without delay. [Am. 98]

2. The Agency shall make the following documents and registers provided for by Directive ... [Railway Interoperability Directive] and Directive ... [Railway Safety Directive] publicly available **through an implemented, user-friendly and easily accessible IT solution: [Am. 99]**

- (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 Article~~ **Article 14 of Directive ... [Railway Interoperability Directive] and the Agency's assessment of them; [Am. 100]**
- (g) the **European** vehicle registers, ~~including via links to relevant national registers~~ **register; [Am. 101]**
- (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 of the European Parliament and of the Council⁽¹⁾,
- (ma) the register of certified entities in charge of maintenance, in accordance with Article 14 of Directive... [Railway Safety Directive]. [Am. 102]**

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.

⁽¹⁾ Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

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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~~ **ten days** of each individual decision to issue, renew, amend or revoke those licenses and certificates. [Am. 103]
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 [Am. 104]

1. The Agency shall establish a network of the national safety authorities ~~and a network of the investigating bodies~~ referred to in Article ~~24~~ **17(4)** of Directive.../... [Railway Safety Directive]. The Agency shall provide them with a secretariat. The tasks of the networks shall, in particular, be: [Am. 105]
 - (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;
 - (ca) **provision of information to the Agency, if necessary, on deficiencies of the secondary legislation that derives from Directive ... [Railway Safety Directive] and Directive ... [Railway Interoperability Directive].** [Am. 106]

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, **including representatives of passengers, passengers with reduced mobility and employees**, 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: [Am. 107]
 - (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.

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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. ***In the case of projects funded under the Trans European Network — Transport (TEN-T) programme, the Agency should closely cooperate with the TEN-T Executive Agency. [Am. 108]***

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.

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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. ***The strategy shall seek to ensure that the activities of the Agency facilitate reciprocal access for Union railway undertakings to the rail markets of third countries.*** [Am. 109]

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~~ **shall** establish a working party in order to coordinate the stakeholders' activities and ~~may~~ **shall** establish contacts with the European standardisation bodies. The Agency shall present the Commission with appropriate recommendations **no later than two years after the entry into force of this Regulation.** [Am. 110]

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~~ **two** representatives of the Commission, all with a right to vote. [Am. 111]

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.

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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~~ **five** years and may be renewed **once**. [Am. 112]
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~~ **five** years and may be renewed **once**. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date also. [Am. 113]

2a. The Chairperson of the Management Board shall decide whether or not to accede to a request to exclude a member of the Board of Appeal, in accordance with Article 53(3a), and, if necessary, in accordance with Article 53(3b), shall appoint a temporary member to the Board of Appeal. [Am. 114]

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 **except where the Management Board is to take a decision relating to Article 64**. [Am. 115]
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;

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- (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 **and transparency** strategy, which is proportionate to the fraud risks having regard to cost-benefit of the measures to be implemented; **[Am. 116]**
- (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 the Agency as established in Article 68a and** in respect of members of the Management Board and of the Board of Appeal. **[Am. 117]**

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. **Such sub-delegation of powers shall not affect his or her liability. The Executive Director shall inform the Management Board of such delegations and sub-delegations. [Am. 118]**

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. **The delegate shall inform the Management Board of such a delegation. [Am. 119]**

2a. The Management Board shall waive the immunity of the Agency or of present or past members of its staff, in accordance with Article 64. [Am. 120]

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. [Am. 121]~~

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.

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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;

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- (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 **independent** Boards of Appeal. [Am. 122]
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.

5a. The qualifications required for each member of the Board of Appeal, the power of each member at the preparatory decision-making stage and the voting conditions shall be determined by the Commission with the assistance of the committee referred to in Article 48(3) of Directive ... [Railway Interoperability Directive]. [Am. 123]

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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~~ **five** years and may be renewed **once**. [Am. 124]
2. The members of a Board of Appeal shall be independent ~~and~~ **of all parties involved in an appeal**. They may not perform any other duties within the Agency **or the Commission**. In making their decisions **or delivering their opinions** they shall not be bound by any instructions. [Am. 125]
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~~ **shall** 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, **including, in the case of appeals lodged pursuant to Article 54(1), in delivering an opinion pursuant to Article 54(4) in respect of the same authorisation or the same certificate**. [Am. 126]
 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~~ **of their decision not to take part**. [Am. 127]
- 3a. A party may apply in writing to the chair of the Management Board for a member of the Board of Appeal to be excluded. The exclusion application shall be made on one of the grounds referred to in paragraph 1 or on the grounds of a risk of bias. The application shall be accompanied by relevant supporting documents. The request shall only be admissible if it is made before the start of proceedings before the Board of Appeal, or, where the information constituting the grounds for the exclusion request becomes known after the proceedings have started, within five days of the requesting party becoming aware of that information.**

The Board of Appeal member concerned shall be notified of the request. Within five days of being notified of the exclusion request, the Board of Appeal member concerned shall state whether he or she agrees to be excluded. If he or she does not agree, the chair of the Management Board shall take a decision within seven working days of the response by the member concerned, or, where there is no response, after expiry of the deadline set for issuing a response. [Am. 128]

3b. The Board of Appeal shall deliver its opinion or take its decision without the participation of the member who has decided not to take part or who has been excluded in accordance with paragraphs 2 and 3. In order for the decision to be taken or the opinion delivered, the member concerned shall be replaced on the Board of Appeal by his or her substitute.

If the substitute is unable to take his or her seat on the board for whatever reason, the chair of the Management Board shall appoint a temporary member to the board from the list referred to in Article 51(3) to replace him or her in the case concerned. [Am. 129]

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 **or against recommendations issued pursuant to Articles 21 and 22 or against a failure by the Agency to respond within the prescribed time limits**. [Am. 130]

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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, **as long as the suspension of the decision does not affect railway safety.** [Am. 131]

Article 55

Persons entitled to appeal, time ~~limit~~ **limits** 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 **or against a failure to take a decision within the prescribed time limits. Such rights of appeal shall also apply to bodies representing the persons referred to in Article 34(2), as duly authorised in accordance with their statutes.**

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.

2a. Appeals against the absence of a decision shall be filed in writing at the Agency within two months of the expiry of the time limit defined in the relevant Article. [Am. 132]

Article 56

Examination and decisions on appeals

1. ~~When examining the appeal, the Board of Appeal shall act expeditiously~~ **decide within three months of the appeal being filed whether to grant or refuse that appeal. It shall request any additional information it may require within one month of the appeal being filed. That relevant information shall be supplied within a reasonable time period set by the Board of Appeal that shall not exceed one month.** It shall, as often as necessary, invite the parties to the appeal proceedings to file, within specified time limits **that shall not exceed one month**, 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. [Am. 133]

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, **in particular**, of: [Am. 134]

(a) a contribution from the Union,

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- (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. ***The delegated act referred to in Article 73 shall set charges at different levels according to the areas of use of certificates and authorisations and type and extent of railway operations; [Am. 135]***
- (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.

2a. Any task or obligation in addition to the tasks stemming from Union legislation and not entailing compensation as laid down in Article 58(2)(b), (c), (d) and (e) shall be subject to an assessment and to compensation from the budget of the Union. [Am. 136]

- 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 of the European Parliament and of the Council⁽¹⁾ (the general Financial Regulation).

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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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. **Based, where necessary, 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, **together with a statement of assurance**, to the Management Board for ~~an~~ **opinion approval**. [Am. 137]

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 Commission Regulation (EC, Euratom) No 2343/2002 ⁽¹⁾ unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

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.

⁽¹⁾ 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).

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3. The Agency shall take appropriate administrative measures, **inter alia through training and prevention strategies**, to organise its services in order to avoid ~~any conflict~~ **conflicts** of interest, **including relating to post-employment issues such as: 'revolving doors' and 'insider information'**. [Am. 138]

3a. The Agency and its staff shall carry out the tasks defined in this Regulation with the highest degree of professional integrity and the requisite technical competence in the specific field. They shall be free from all pressures and inducements, in particular financial inducements, that might influence their judgement or the results of their work, especially from persons or groups with an interest in the results of this work. The Agency shall have sufficient staff to ensure that the tasks defined in this Regulation are carried out properly.

3b. Staff shall have:

(a) a thorough technical and professional grounding covering all the Agency's activities;

(b) a satisfactory knowledge of the requirements of the assessments that the Agency carries out and adequate authority to carry out those assessments;

(c) appropriate knowledge and understanding of the requirements necessary to formulate the Agency's decisions;

(d) the ability to review opinions delivered and decisions taken by the national safety authorities as well as national regulations. [Am. 139]

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.

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Article 63

Seconded national experts and other staff

The Agency ~~may~~ **shall** also make use of Seconded National Experts **and, in particular, staff from national safety authorities**, or other staff not employed by the Agency under the Staff Regulations and the Conditions of Employment of Other Servants. **The Agency shall adopt and implement a policy to evaluate and manage potential conflicts of interest of seconded national experts including prohibiting them from attending working group meetings when their independence and impartiality could be undermined.** [Am. 140]

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 **without prejudice to judicial and/or extra-judicial proceedings relating to the Agency's remit.** [Am. 141]

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 Agency shall take full responsibility, including accepting contractual and non-contractual liability, for the authorisations and certifications that it issues. [Am. 142]

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.

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Article 67

Language arrangements

-1. Without prejudice to any agreement between the Agency and the applicant with regards to translation requirements, the documents provided by applicants and holders of certificates and authorisations, in accordance with Articles 12, 16, 17 and 18, to notify the Agency and national safety authorities of those certificates and authorisations, shall be translated into all the official Union languages of the countries in which the rolling stock is used and in which the railway company concerned operates. Each translation shall be the authentic text in the country concerned, including for procedures under Article 56. The authorisation and the certificate shall be issued in all the Union languages of the countries concerned. [Am. 143]

- 1. Where Article 67(-1) does not apply**, the provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community⁽¹⁾ shall apply to the Agency. **[Am. 144]**
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 law, or its equivalent national measures, in the field covered by this Regulation. This paragraph shall apply, in particular, to countries within the scope of the European Neighbourhood Policy, Union enlargement policy countries and EFTA countries. [Am. 145]**
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 68a

Conflict of interest

- 1. The Executive Director, as well as officials seconded by Member States and the Commission on a temporary basis shall make a declaration of commitments and a declaration of interests indicating the absence of any direct or indirect interests, which might be considered prejudicial to their independence. These declarations shall be made in writing on their entry into service and shall be renewed in the event of a change in their personal circumstances. Members of the Administration board, the executive board and the board of appeal shall also make these declarations public together with their curricula vitae. The agency shall publish on its website a list of the members of the bodies described in Article 42 as well as external and in-house experts.**
- 2. The Administrative Board shall implement a policy to manage and avoid conflicts of interest, which shall at least include:**
 - (a) principles for managing and verification of the declarations of interest including rules for making them public taking into consideration Article 77;**
 - (b) compulsory training requirements on conflict of interest for the staff of the Agency and seconded national experts;**

⁽¹⁾ OJ 17, 6.10.1958, p. 385.

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- (c) *rules on gifts and invitations;*
- (d) *detailed rules for incompatibilities for staff and members of the Agency once they have ended their employment relation with the Agency;*
- (e) *rules of transparency on Agency's decisions including the minutes of the Boards of the Agency which shall be made public taking into consideration sensitive, classified and commercial information; and*
- (f) *sanctions and mechanisms to safeguard the autonomy and independency of the Agency.*

The Agency shall bear in mind the need to maintain balance between the risks and the benefits, in particular as regards the objective of obtaining the best technical advice and expertise, and the management of conflicts of interest. The Executive Director shall include the information related to implementation of that policy when reporting to the European Parliament and the Council in accordance with this Regulation. [Am. 146]

Article 69

Cooperation with national authorities and bodies [Am. 147]

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. **Such agreements may involve one or more national safety authorities.** [Am. 148]
2. The agreements may include ~~contracting of some of the~~ **delegating tasks and responsibilities** of the Agency to the national authorities, such as checking and preparing files, verifying technical compatibility, performing visits and drafting technical studies. [Am. 149]
- 2a. **Conversely, a national safety authority may subcontract to the Agency tasks other than those conferred on it in accordance with Article 20 of Directive ... [Railway Interoperability Directive] and Article 16(2) of Directive ... [Railway Safety Directive].** [Am. 150]
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.
4. The agreements described in paragraphs 1, 2 and 3 ~~are~~ **shall clearly specify the levels of responsibility of the Agency and the national safety authorities in respect of tasks carried out by each contractual party as stipulated in the agreements. This shall be** without prejudice to the overall responsibility of the Agency for performing its tasks as provided for in Articles 12, 16, 17 and 18. [Am. 151]

Article 70

Transparency

Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾ 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.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

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The processing of data of a personal nature by Agency shall be subject to the Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾.

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 ⁽²⁾. This shall cover, *inter alia*, provision for exchanging, processing and storing such information.

Article 72

Combating fraud **and monitoring performance** [Am. 152]

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.

2a. The European Court of Auditors shall monitor the performance and decision-making of the Agency through audit and inspections. [Am. 153]

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 and Council Regulation (Euratom, EC) No 2185/96 ⁽³⁾ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency.

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 **and 41** [Am. 154]

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.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽²⁾ Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure (OJ L 317, 3.12.2001, p. 1).

⁽³⁾ Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

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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 **relating to the Agency** 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. [Am. 155]

4a. The Commission shall also be empowered to adopt delegated acts in accordance with Article 74 concerning standardisation of railway spare parts in application of Article 41. [Am. 156]

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~~ **to adopt delegated acts** referred to in Article 73 shall be conferred on the Commission for an ~~indefinite~~ **period of time five years** from the date of entry into force of this Regulation. **The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. Provided the report has been received, the delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.** [Am. 157]

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.

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Article 75

Committee procedure

The Commission shall be assisted by the committee established by Article 21 of Council Directive 96/48/EC⁽¹⁾. 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 take account of the views of the representatives of the railway sector, of the social partners and of consumer organisations.*** The evaluation shall address, in particular, any need to amend the mandate of the Agency, and the financial implications of any such amendment. [Am. 158]
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.

3a. The Agency shall undertake the certification and authorisation tasks pursuant to Articles 12, 16, 17 and 18 within one year following the entry into force of this Regulation. Until then, Member States shall continue to apply their national legislation. [Am. 159]

3b. For an additional period of three years after the one-year period laid down in Article 77(3a), applicants may apply either to the Agency or the national safety authority. During this period, national safety authorities may continue to issue certificates and authorisations by way of derogation from Articles 12, 16, 17 and 18, in accordance with Directives 2008/57/EC and 2004/49/EC. [Am. 160]

3c. In the cases referred to in Article 10(2a) of Directive ... [the Safety Directive] and Article 20 (9a) of Directive... [Railway Interoperability Directive] the national safety authorities may continue to issue certificates and authorisations after the period referred in paragraph 3b of this Article, under the conditions stipulated in those Articles. [Am. 161]

Article 78

Repeal

Regulation (EC) No 881/2004 is repealed.

⁽¹⁾ Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L 235, 17.9.1996, p. 6).

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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 ...,

For the European Parliament

The President

For the Council

The President
