

Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation) (repealed)

REGULATION (EC) No 881/2004 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 April 2004

establishing a European Railway Agency

(Agency Regulation) (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee⁽²⁾,

Having regard to the Opinion of the Committee of the Regions⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 23 March 2004,

Whereas:

- (1) The progressive establishment of a European railway area without frontiers requires Community action in the field of the technical regulations applicable to railways with regard to both the technical aspects and the safety aspects, the two being inextricably linked.
- (2) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways⁽⁵⁾ provides for progressively opening up rights of access to the infrastructure to any licensed Community railway undertakings which wish to operate goods services.
- (3) Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings⁽⁶⁾ provides that all railway undertakings must hold a licence and that a licence issued in a Member State shall be valid throughout the Community.
- (4) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification⁽⁷⁾ establishes a new framework with the aim of creating a European railway area without frontiers.
- (5) The technical and operational differences between the railway systems of the Member States have compartmentalised the national rail markets and prevented dynamic development of this sector on a European scale. Council Directive 96/48/EC of 23 July 1996 on the interoperability of the Trans-European high-speed rail system⁽⁸⁾ and Directive 2001/16/EC of the European Parliament and of the Council of 19 March

2001 on the interoperability of the Trans-European conventional rail system⁽⁹⁾ define essential requirements and establish a mechanism for defining mandatory technical specifications for interoperability.

- (6) Simultaneous pursuit of the goals of safety and interoperability requires substantial technical work which must be led by a specialised body. That is why it is necessary to create, within the existing institutional framework and with respect for the balance of power in the Community, a European Agency responsible for railway safety and interoperability (hereinafter referred to as "the Agency"). The creation of such an Agency will provide a means of considering the safety and interoperability goals for the European rail network jointly and with a high level of expertise and in this way contributing to revitalising the railways and to the general objectives of the common transport policy.
- (7) 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, the Agency should contribute to the development of a genuine European railway culture and form an essential tool of dialogue, consultation and exchange between all the actors in the railway sector, having due regard for their individual competences.
- (8) Directive 2004/ /EC of the European Parliament and of the Council of on safety on the Community's railways (Railway Safety Directive)⁽¹⁰⁾ provides for the development of common safety indicators, common safety targets and common safety methods. Development of these tools requires independent technical expertise.
- (9) In order to facilitate the procedures for issuing safety certificates to railway undertakings, it is essential to develop a harmonised format for safety certificates and a harmonised format for applications for safety certificates.
- (10) The Railway Safety Directive provides for examination of national safety measures from the point of view of safety and interoperability. To this end, an opinion based on independent and neutral expertise is essential.
- (11) In the field of safety, it is important to ensure the greatest possible transparency and an effective flow of information. An analysis of performances, based on common indicators and linking all players in the sector, does not yet exist and such a tool should be introduced. As regards statistics, close collaboration with Eurostat is necessary.
- (12) The national railway safety organisations, regulators and other national authorities should be able to request an independent technical opinion when they require information concerning several Member States.
- (13) Directive 2001/16/EC provides that a first group of technical specifications for interoperability (TSIs) is to be drawn up not later than 20 April 2004. The Commission has given a mandate to carry out this work to the European Association for Railway Interoperability (AEIF), which brings together the manufacturers of railway equipment and the infrastructure managers and operators. Steps should be taken to preserve the experience built up by professionals from the industry in the context of the AEIF. The continuity of the work and the development of the TSIs over time requires a permanent technical framework.

- (14) The interoperability of the Trans-European network should be enhanced and the new investment projects chosen for support by the Community should be in line with the objective of interoperability set in Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the Trans-European transport network⁽¹¹⁾.
- (15) In order to ensure continuity, the working parties to be set up by the Agency should rely as appropriate on the composition of the AEIF, supplemented by additional members.
- (16) Rolling stock maintenance is an important part of the safety system. There is no genuine European market for the maintenance of rail equipment owing to the lack of a system for certification of maintenance workshops. This situation adds to the costs for the sector and results in journeys without loads. A European certification system for maintenance workshops should therefore gradually be developed.
- (17) The vocational competences required for train drivers are a major factor in both safety and interoperability in Europe. 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 European level.
- (18) Registration is first and foremost an act of recognition of the capability of rolling stock to operate under specified conditions. The registration should be transparent and non-discriminatory and fall within the competence of the public authorities. The Agency should provide technical support in order to establish a system for registration.
- (19) In order to ensure the greatest possible transparency and equal access for all parties to relevant information, the documents envisaged for the interoperability process should be accessible to the public. The same applies to licences and safety certificates. The Agency should provide an efficient means of exchanging this information.
- (20) Promotion of innovation in the field of railway safety and interoperability is an important task which the Agency should encourage. 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.
- (21) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Community. In order to ensure independence in its daily management and in the opinions and recommendations which it issues, the Agency's Executive Director should have full responsibility and the Agency's staff should be independent.
- (22) In order to ensure effectively the accomplishment of the functions of the Agency, the Member States and the Commission should be represented on an Administrative Board vested with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency, approve its work programme, adopt its budget, define a policy for visits to the Member States and appoint the Executive Director.

- (23) In order to guarantee the transparency of the Administrative Board's decisions, representatives of the sectors concerned should attend its deliberations, but without the right to vote, that right being reserved to the representatives of public authorities who are answerable to the democratic control authorities. The representatives of the sector should be appointed by the Commission on the basis of their representativeness at European level for railway undertakings, infrastructure managers, railway industry, workers unions, passengers and freight customers.
- (24) 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. The Agency should also apply the relevant Community legislation concerning public access to documents.
- (25) 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 Community funding allocated to them, in particular concerning the budgetisation of the fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽¹²⁾ should apply without restriction to the Agency, which should accede to the Interinstitutional 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⁽¹³⁾.
- (26) 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 Community level, the Community 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,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

PRINCIPLES

Article 1

Establishment and objectives of the Agency

This Regulation establishes a European Railway Agency, hereinafter referred to as "the Agency".

The objective of the Agency shall be to contribute, on technical matters, to the implementation of the Community legislation aimed at improving the competitive position of the railway sector by enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system, in order to contribute to creating a European railway area without frontiers and guaranteeing a high level of safety.

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

The Agency shall have sole responsibility in the context of the functions and powers assigned to it.

Article 2

Type of acts of the Agency

The Agency may:

- (a) address recommendations to the Commission concerning the application of Articles 6,7,12, 14,16,17 and 18;
- (b) issue opinions to the Commission pursuant to Articles 8,13 and 15, and to the authorities concerned in the Member States pursuant to Article 10.

Article 3

Composition of the working parties

1 For drawing up the recommendations provided for in Articles 6,7,12,14,16,17 and 18, the Agency shall establish a limited number of working parties. These working parties shall take as a basis, on the one hand, the expertise built up by professionals from the railway sector, in particular the experience gained by the European Association for Railway Interoperability (AEIF), and, on the other hand, the expertise of the competent national authorities. The Agency shall ensure that its working parties are competent and representative and that they include adequate representation of those sectors of the industry and of those users which will be affected by measures which might be proposed by the Commission on the basis of the recommendations addressed to it by the Agency. The work of the working parties shall be transparent.

Whenever the work provided for in Articles 6,12,16 and 17 has a direct impact on the working conditions, health and safety of workers in the industry, representatives from the workers' organisations shall participate in the relevant working parties.

2 The Agency shall forward the adopted work programme to the representative bodies from the railway sector acting on a European level. The list of these bodies shall be drawn up by the Committee referred to in Article 21 of Directive 96/48/EC. Each body and/or group of bodies shall forward to the Agency a list of the most qualified experts mandated to represent them in each working party.

3 The national safety authorities defined in Article 16 of the Railway Safety Directive shall appoint their representatives for the working parties in which they wish to participate.

4 The Agency may, if necessary, add to the working parties independent experts recognised as competent in the field concerned.

5 The working parties shall be chaired by a representative of the Agency.

Article 4

Consultation of the social partners

Whenever the work provided for in Articles 6, 7, 12, 16 and 17 has a direct impact on the social environment or working conditions of workers in the industry, the Agency shall consult the social partners within the framework of the sectoral dialogue committee set up pursuant to Decision 98/500/EC⁽¹⁴⁾.

These consultations shall be held before the Agency submits its recommendations to the Commission. The Agency shall take due account of these consultations, and shall, at all times, be available to expound on its recommendations. The opinions expressed by the sectoral dialogue committee shall be forwarded by the Agency to the Commission and by the Commission to the committee referred to in Article 21 of Directive 96/48/EC.

Article 5

Consultation of rail freight customers and passengers

Whenever the work provided for in Articles 6 and 12 has a direct impact on rail freight customers and passengers, the Agency shall consult the organisations representing them. The list of organisations to be consulted shall be drawn up by the committee referred to in Article 21 of Directive 96/48/EC.

These consultations shall be held before the Agency submits its proposals to the Commission. The Agency shall take due account of these consultations, and shall, at all times, be available to expound on its proposals. The opinions expressed by the organisations concerned shall be forwarded by the Agency to the Commission and by the Commission to the committee referred to in Article 21 of Directive 96/48/EC.

CHAPTER 2

SAFETY

Article 6

Technical support

1 The Agency shall recommend to the Commission the common safety methods (CSMs) and the common safety targets (CSTs) provided for in Articles 6 and 7 of the Railway Safety Directive.

2 The Agency shall recommend to the Commission, at the request of the Commission or of the committee referred to in Article 21 of Directive 96/48/EC or on its own initiative, other measures in the field of safety.

3 For the transitional period preceding adoption of the CSTs, of the CSMs and of the technical specifications for interoperability (TSIs), as well as for matters concerning equipment and infrastructure not covered by the TSIs, the Agency may submit any appropriate recommendation to the Commission. The Agency shall ensure consistency between these recommendations and the TSIs already existing or being drawn up.

4 The Agency shall present a detailed cost-benefit analysis in support of the recommendations which it submits pursuant to this Article.

5 The Agency shall organise and facilitate cooperation between the national safety authorities and the investigating bodies defined in Articles 16 and 21 of the Railway Safety Directive.

Article 7

Safety certificates

With a view to the application of Articles 10 and 15 of the Railway Safety Directive concerning the harmonisation of safety certificates, the Agency shall draft and recommend a harmonised format for safety certificates, including an electronic version, and a harmonised format for applications for safety certificates, including a list of the essential details to be provided.

Article 8

National safety rules

1 At the request of the Commission, the Agency shall carry out a technical examination of the new national safety rules submitted to the Commission in accordance with Article 8 of the Railway Safety Directive.

2 The Agency shall examine the compatibility of the abovementioned rules with the CSMs defined by the Railway Safety Directive and with the TSIs in force. The Agency shall also examine whether these rules enable the CSTs defined by the said Directive to be achieved.

3 If, after taking account of the reasons given by the Member State, the Agency considers that any of these rules either is incompatible with the TSIs or the CSMs or does not allow CSTs to be reached, it shall submit an opinion to the Commission within two months of transmission of the rules to the Agency by the Commission.

Article 9

Monitoring of safety performance

1 The Agency shall establish a network with the national authorities responsible for safety and the national authorities responsible for the investigations provided for by the Railway Safety Directive in order to define the content of the common safety indicators listed in Annex I to that Directive and to collect relevant data on railway safety.

2 On the basis of the common safety indicators, national reports on safety and accidents and its own information, the Agency shall submit every two years a report on safety performance, which shall be made public. The first such report shall be published during the Agency's third year of operation.

3 The Agency shall draw on the data collected by Eurostat and shall cooperate with Eurostat to avoid any duplication of work and to ensure methodological consistency between the common safety indicators and the indicators used in other modes of transport

Article 10

Technical opinions

1 The national regulatory bodies referred to in Article 30 of Directive 2001/14/EC may request a technical opinion from the Agency concerning the safety-related aspects of matters drawn to their attention.

2 The committees provided for in Article 35 of Directive 2001/14/EC and Article 1 la of Directive 91/440/EEC may request a technical opinion from the Agency concerning safety-related aspects within their respective areas of competence.

3 The Agency shall give its opinion within two months. This opinion shall be made public by the Agency in a version from which all commercially confidential material has been removed.

Article 11

Public database of documents

1 The Agency shall be responsible for keeping a public database of the following documents:

- a the licences issued in accordance with Directive 95/18/EC;
- b the safety certificates issued in accordance with Article 10 of the Railway Safety Directive;
- c the investigation reports sent to the Agency in accordance with Article 24 of the Railway Safety Directive;
- d the national safety rules notified to the Commission in accordance with Article 8 of the Railway Safety Directive.

2 The national authorities responsible for issuing the documents referred to in paragraph 1(a) and (b) shall notify the Agency within one month of each individual decision to issue, renew, amend or revoke them.

3 The Agency may add to this public database any public document or link relevant to the objectives of this Regulation.

CHAPTER 3

INTEROPERABILITY*Article 12***Technical support provided by the Agency**

The Agency shall contribute to the development and implementation of rail interoperability in accordance with the principles and definitions laid down in Directives 96/48/EC and 2001/16/EC. To this end, the Agency shall:

- (a) organise and conduct, on a mandate from the Commission, the work of the working parties referred to in Article 3 on drafting the TSIs and forward the draft TSIs to the Commission;
- (b) ensure that the TSIs are adapted to technical progress and market trends and to the social requirements and propose to the Commission the amendments to the TSIs which it considers necessary;
- (c) ensure coordination between the development and updating of the TSIs on the one hand and the development of the European standards which prove necessary for interoperability on the other and maintain the relevant contacts with the European standardisation bodies;
- (d) assist the Commission in organising and facilitating the cooperation of notified bodies, as described in Article 20(5) of Directives 96/48/EC and 2001/16/EC;
- (e) advise and address recommendations to the Commission relating to the working conditions of all staff executing safety-critical tasks.

*Article 13***Monitoring the work of notified bodies**

Without prejudice to the responsibility of Member States for the notified bodies which they designate, the Agency may, at the request of the Commission, monitor the quality of the work of notified bodies. It shall submit an opinion to the Commission where appropriate.

*Article 14***Monitoring interoperability**

1 The Agency shall recommend, at the request of the Commission, procedures for implementing interoperability of the railway systems by facilitating coordination between railway undertakings and between infrastructure managers, in particular to organise systems migration.

2 The Agency shall monitor progress with the interoperability of the railway systems. Every two years it shall present and publish a report on progress with interoperability. The first such report shall be published during the Agency's second year of activity.

Article 15

Interoperability of the trans-European network

At the request of the Commission, the Agency shall examine, from the point of view of interoperability, any railway infrastructure project for which Community financial support is requested. The Agency shall give an opinion on the conformity of the project with the relevant TSIs within two months of the request. This opinion shall take fully into account the derogations provided for in Article 7 of Directive 96/48/EC and of Directive 2001/16/EC.

Article 16

Certification of maintenance workshops

Within 3 years from the start of its activities, the Agency shall develop a European system for certification of maintenance workshops for rolling stock and shall make recommendations with a view to the implementation of the system.

These recommendations shall address in particular the following items:

- structured management system,
- staff with the necessary competences,
- facilities and tools,
- technical documentation and maintenance prescriptions.

Article 17

Vocational competences

1 The Agency shall draw up recommendations concerning the determination of common uniform criteria for the vocational competences and the assessment of the staff involved in the operation and maintenance of the railway system. In doing so it shall give priority to drivers and trainers. The Agency shall consult the representatives of the social partners in accordance with the arrangements laid down in Article 4.

2 The Agency shall draw up recommendations with a view to putting in place a system for accreditation of training centres.

3 The Agency shall promote and support exchanges of drivers and trainers between railway companies from different Member States.

Article 18

Registration of rolling stock

The Agency shall draw up and recommend to the Commission a standard format for the national vehicle register in accordance with Article 14 of Directives 96/48/EC and 2001/16/EC.

Article 19

Register of documents on interoperability

1 The Agency shall keep a public list of the following documents provided for by Directives 2001/16/EC and 96/48/EC:

- a the "EC" declarations of verification of subsystems;
- b the "EC" declarations of conformity of constituents;
- c the authorisations for putting into service, including the corresponding registration numbers;
- d the registers of infrastructure and rolling stock.

2 The bodies concerned shall submit these documents to the Agency, which shall determine in agreement with Member States the practical procedures for submitting them.

3 When transmitting the documents referred to in paragraph 1, the bodies concerned may indicate which documents are not to be disclosed to the public for reasons of security.

4 The Agency shall set up an electronic database for the documents, taking full account of paragraph 3. This database shall be accessible to the public through a website.

CHAPTER 4

STUDIES AND PROMOTION OF INNOVATION

Article 20

Studies

Where required for implementation of the tasks set by this Regulation, the Agency shall order studies, financed from its own budget.

Article 21

Promotion of innovation

The Commission may entrust the Agency, in accordance with the Agency's work programme and budget, with the task of promoting innovations aimed at improving railway interoperability and safety, particularly the use of new information technologies and tracking and tracing systems.

CHAPTER 5

INTERNAL STRUCTURE AND OPERATION*Article 22***Legal status**

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

*Article 23***Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and its staff.

*Article 24***Staff**

- 1 The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency.
- 2 Without prejudice to Article 26, the powers conferred on the appointing authority and on the contracting authority by the said Staff Regulations and Conditions of Employment shall be exercised by the Agency in respect of its own staff.
- 3 Without prejudice to Article 26(1), the Agency's staff shall consist of:
 - temporary employees recruited by the Agency for a maximum of five years from among professionals from the sector on the basis of their qualifications and experience in the field of railway safety and interoperability;
 - officials assigned or seconded by the Commission or Member States for a maximum of five years; and
 - other servants, as defined in the Conditions of Employment of Other Servants of the European Communities, to carry out implementing or secretarial tasks.
- 4 The experts who participate in the working parties organised by the Agency shall not belong to the Agency's staff. Their travel and subsistence expenses, based on rules and scales adopted by the Administrative Board, shall be met by the Agency.

Article 25

Creation and powers of the Administrative Board

- 1 An Administrative Board is hereby set up.
- 2 The Administrative Board shall:
 - a appoint the Executive Director pursuant to Article 31;
 - b adopt, by 30 April each year, the general report of the Agency for the previous year and forward it to the Member States, the European Parliament, the Council and the Commission;
 - c adopt, by 31 October each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. This work programme shall be adopted without prejudice to the annual Community budgetary procedure. If the Commission expresses, within 15 days from the date of adoption of the work programme, its disagreement with the programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, on a second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
 - d exercise its functions in relation to the Agency's budget, pursuant to Chapter 6;
 - e establish procedures for decision-making by the Executive Director,
 - f define a policy for the visits to be carried out pursuant to Article 33;
 - g exercise disciplinary authority over the Executive Director and the Heads of Unit referred to in Article 30(3);
 - h establish its rules of procedure.

Article 26

Composition of the Administrative Board

1 The Administrative Board shall be composed of one representative of each Member State and four representatives of the Commission, as well as of six representatives, without the right to vote, the latter representing at European level the following groups:

- railway undertakings
- infrastructure managers
- railway industry
- worker unions
- passengers
- freight customers,

and appointed by the Commission from a shortlist of three names submitted by their respective European organisations.

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

2 Each Member State and the Commission shall appoint their members of the Administrative Board as well as an alternate.

3 The term of office shall be five years and may be renewed once.

4 When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 36(2).

Article 27

Chairperson of the Administrative Board

1 The Administrative Board shall elect a Chairperson 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 three years and may be renewed once. If, however, their membership of the Administrative Board ends at any time during their term of office as Chairperson or Deputy Chairperson, then their term of office shall automatically expire on that date also.

Article 28

Meetings

1 Meetings of the Administrative Board shall be convened by its Chairperson. The Executive Director of the Agency shall participate in the meetings.

2 The Administrative Board shall meet at least twice a year. It shall also meet at the instance 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 29

Voting

Unless stated otherwise, the Administrative Board shall take its decisions by a two-thirds majority of its members entitled to vote. Each member entitled to vote shall have one vote.

Article 30

Functions and powers 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, without prejudice to the respective competences of the Commission and the Administrative Board.

2 The Executive Director shall:

- a prepare the work programme and, after consultation of the Commission, submit it to the Administrative Board;
- b make the necessary arrangements for implementation of the work programme and, as far as possible, respond to requests for assistance from the Commission in relation to the tasks of the Agency in accordance with this Regulation;

- c take 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;
- d establish an effective monitoring system in order to compare the Agency's results with its operational objectives and establish a regular assessment system corresponding to recognised professional standards. On this basis the Executive Director shall prepare each year a draft general report and submit it to the Administrative Board;
- e exercise the powers laid down in Article 24(2) in respect of the Agency staff;
- f prepare a draft statement of estimates of the revenue and expenditure of the Agency pursuant to Article 38 and implement the budget pursuant to Article 39.

3 The Executive Director may be assisted by one or more Heads of Unit. If the Executive Director is absent or unable to attend to his/her duties, one of the Heads of Unit shall take his/her place.

Article 31

Appointments of the Agency staff

1 The Executive Director shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to the railway sector. The Administrative Board shall take its decision by a four-fifths majority of all members entitled to vote. The Commission may propose a candidate or candidates.

Power to dismiss the Executive Director shall lie with the Administrative Board, according to the same procedure.

2 The Executive Director shall appoint the other members of the Agency's staff in accordance with Article 24.

3 The term of office of the Executive Director shall be five years. This term of office is renewable once.

Article 32

Hearing of the Executive Director

Each year the Executive Director shall present to the European Parliament a general report on the Agency's activities. The European Parliament or the Council may also ask at any time for a hearing of the Executive Director on any subject related to the Agency's activities.

Article 33

Visits to Member States

1 In order to perform the tasks entrusted to it by Articles 8,9,10,13 and 15, the Agency may carry out visits to the Member States in accordance with the policy defined by the Administrative Board. The national authorities of the Member States shall facilitate the work of the Agency's staff.

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 from the Executive Director specifying the purpose and the aims of their visit.

3 At the end of each visit, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

Article 34

Liability

1 The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2 The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3 In the case 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 Communities shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5 The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 35

Languages

1 The Administrative Board shall decide on the linguistic arrangements for the Agency. At the request of a Member of the Administrative Board, this decision shall be taken by unanimity.

The Member States may address the Agency in the Community language of their choice.

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 36

Participation by third countries

1 The Agency shall be open to participation by European countries which have concluded agreements with the Community, whereby the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation.

2 In accordance with the relevant provisions of the abovementioned agreements, arrangements shall be made which shall specify the 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, inter alia, provisions on financial contributions and staff. They may provide for representation, without vote, on the Administrative Board.

*Article 37***Transparency**

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⁽¹⁵⁾ shall apply to the documents held by the Agency.

The Administrative Board shall adopt the practical measures for implementation of Regulation (EC) No 1049/2001 by ...⁽¹⁶⁾

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 Communities, under Articles 195 and 230 of the Treaty respectively.

CHAPTER 6

FINANCIAL PROVISIONS*Article 38***Budget**

1 Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year, corresponding to the calendar year, and shall be set out in the budget of the Agency. Revenue and expenditure shall be in balance.

2 The revenue of the Agency shall consist of:

- a contribution from the Community;
- any contribution from third countries participating in the work of the Agency, as provided for by Article 36;
- charges for publications, training and any other services provided by the Agency.

3 The expenditure of the Agency shall include staff, administrative, infrastructure and operational expenses.

4 Each year, the Administrative Board, on the basis of a draft drawn up by the Executive Director, 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 Administrative Board to the Commission by 31 March at the latest.

5 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 European Union

6 On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European 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 272 of the Treaty.

7 The budgetary authority shall authorise the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.

8 The budget shall be adopted by the Administrative Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

9 The Administrative 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 Administrative Board within six weeks after the date of notification of the project.

Article 39

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 128 of the general Financial Regulation.

3 By 31 March at the latest, following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and the Council.

The Court of Auditors shall examine these accounts in accordance with Article 248 of the Treaty. It shall publish a report on the Agency's activities every year.

4 On receipt of the Court of Auditors' observations on the Agency's provisional accounts, under Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his own responsibility and submit them to the Administrative Board for an opinion.

5 The Administrative 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 Administrative 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. He shall also send this reply to the Administrative 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 146(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 40

Financial Regulation

The financial rules applicable to the Agency shall be adopted by the Administrative Board after the Commission has been consulted. They may not depart from Regulation (EC, Euratom) No 2343/2002⁽¹⁷⁾ unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

Article 41

Combating fraud

1 For the purposes of combating fraud, corruption and other unlawful acts, Regulation (EC) No 1073/1999 shall apply in full.

2 The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt the necessary provisions applicable to all Agency staff.

3 The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly state that the Court of Auditors and OLAF may, if necessary, carry out on-the-spot checks on the recipients of the Agency's funding.

CHAPTER 7

GENERAL AND FINAL PROVISIONS

Article 42

Start of the Agency's activities

The Agency shall be operational within 24 months of the entry into force of this Regulation.

Article 43

Evaluation

Five years after the Agency takes up its duties, the Commission shall carry out an evaluation of implementation of this Regulation, the results obtained by the Agency and its working methods. This evaluation shall take account of the views of the representatives of the railways sector, of the social partners and of customers' organisations. The findings of the evaluation shall be made public. The Commission shall propose, if necessary, an amendment to this Regulation.

In that context, the Commission shall, if appropriate, present a proposal for revision of the provisions of this Regulation in light of developments in respect of regulatory agencies, in accordance with the procedure laid down in Article 251 of the Treaty. The European Parliament and Council shall examine this proposal and in particular consider whether the composition of the Administrative Board needs to be revised, in accordance with the general framework to be adopted for regulatory agencies.

Article 44

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

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

Done at Brussels, 29 April 2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. MCDOWELL

COMMISSION STATEMENT

The Commission recalls its December 2002 communication on a framework for European regulatory agencies and its proposal for a Regulation establishing the European Railway Agency. The Commission believes, in accordance with European Parliament resolution of 13 January 2004 on the abovementioned communication, that a Board of limited size with members appointed by the Community's executives would ensure a better functioning of the Agency in an enlarged EU.

In this respect, the Commission looks forward to receiving the Council's response to its communication on a framework for regulatory agencies. The Commission confirms its intention to present, when appropriate, a proposal on a framework for European agencies, which will also cover the composition of the Management Board.

- (1) [OJ C 126E, 28.5.2002, p. 323.](#)
- (2) [OJ C 61, 14.3.2003, p. 131.](#)
- (3) [OJ C 66, 19.3.2003, p. 5.](#)
- (4) Opinion of the European Parliament of 14.1.2003 ([OJC 38 E, 12.2.2004, p. 135](#)), Council Common Position of 26 June 2003 ([OJ C 270 E, 11.11.2003, p. 48](#)) and Position of the European Parliament of 23 October 2003 (not yet published in the Official Journal). Legislative Resolution of the European Parliament of 22 April 2004 and Decision of the Council of 26 April 2004.
- (5) [OJ L 237, 24.8.1991, p. 25](#), Directive as amended by Directive 2001/12/EC of the European Parliament and of the Council ([OJ L 75, 15. 3. 2001, p. 1](#)).
- (6) [OJ L 143, 27.6.1995, p. 70](#), Directive as amended by Directive 2001/13/EC of the European Parliament and of the Council ([OJ L 75, 15. 3.2001, p. 26](#)).
- (7) [OJ L 75, 15.3.2001, p. 29](#), Directive as amended by Commission Decision 2002/844/EC ([OJ L 289, 26.10.2002, p. 30](#)).
- (8) [OJ L 235, 17.9.1996, p. 6](#). Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council ([OJ L 284, 31.10.2003, p. 1](#)).
- (9) [OJ L 110, 20.4.2001, p. 1.](#)
- (10) OJ L
- (11) [OJ L 228, 9.9.1996, p. 1](#). Decision as amended by Decision No 1346/2001/EC ([OJ L 185, 6.7.2001, p. 1](#)).
- (12) [OJ L 136, 31.5.1999, p. 1.](#)
- (13) [OJ L 136, 31.5.1999, p. 15.](#)
- (14) 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](#)).
- (15) [OJ L 145, 31.5.2001, p. 43.](#)
- (16) Six months after the entry into force of this Regulation.
- (17) 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](#)).