

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European railway agency (Agency Regulation) (repealed)

[^{X1}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(Agency Regulation)] (repealed)

[^{X1}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

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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 2004/49/EC of the European Parliament and of the Council of 30 April 2004 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

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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-

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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:

Editorial Information

- X1** Substituted by [Corrigendum to Regulation \(EC\) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European railway agency \(Agency Regulation\) \(Official Journal of the European Union L 164 of 30 April 2004\)](#).

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.

[^{F1}Article 2

Types of acts of the Agency

The Agency may:

- (a) address recommendations to the Commission concerning the application of Articles 6, 7, 9b, 12, 14, 16, 16a, 16b, 16c, 17 and 18; and
- (b) issue opinions to the Commission pursuant to Articles 9a, 10, 13 and 15, and to the authorities concerned in the Member States pursuant to Article 10.]

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\) \(Text with EEA relevance\).](#)

Article 3

Composition of the working parties

[^{F1}1. For drawing up the recommendations provided for in Articles 6, 7, 9b, 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

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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.

[^{F13} The national safety authorities defined in Article 16 of the Railway Safety Directive, or, depending on the subject, the competent national authorities, 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.

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\) \(Text with EEA relevance\).](#)

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.

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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.

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^{F2}Article 8

[^{F2}National safety rules]

Textual Amendments

- F2** Deleted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\) \(Text with EEA relevance\)](#).

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.

[^{F3}CHAPTER 2a

NATIONAL RULES, CROSS-ACCEPTANCE AND TECHNICAL OPINIONS]

[^{F3}Article 9a

National rules

- 1 At the request of the Commission, the Agency shall carry out a technical examination of the new national rules submitted to the Commission in accordance with Article 8 of the Railway Safety Directive or Article 17(3) of 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 (recast)⁽¹⁵⁾, (hereinafter referred to as the 'Railway Interoperability Directive').
- 2 The Agency shall examine the compatibility of the rules referred to in paragraph 1 with the CSMs and with the TSIs in force. The Agency shall also examine whether these rules enable the CSTs in force 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

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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 9b

Classification of national rules

1 The Agency shall facilitate Member States' acceptance of vehicles placed in service in another Member State in accordance with the procedures laid down in paragraphs 2 to 4.

2 The Agency shall, by 19 January 2009 review the list of parameters in Section 1 of Annex VII to the Railway Interoperability Directive and make the recommendations it considers appropriate to the Commission.

3 The Agency shall draw up a draft for a reference document cross-referencing all the national rules applied by the Member States for placing vehicles in service. This document shall contain the national rules of each Member State for each of the parameters listed in Annex VII to the Railway Interoperability Directive and specify the group referred to in Section 2 of that Annex to which these rules belong. These rules shall comprise those notified under Article 17(3) of the Railway Interoperability Directive, including those notified following adoption of TSIs (specific cases, open points, derogations) and those notified under Article 8 of the Railway Safety Directive.

4 With a view to gradually reducing the national rules in Group B referred to in Section 2 of Annex VII of the Railway Interoperability Directive, the Agency shall regularly draw up a draft for updating the reference document and forward it to the Commission. The first version of the document shall be presented to the Commission no later than 1 January 2010.

5 For the purpose of implementation of this Article, the Agency shall make use of the cooperation of the national safety authorities established under Article 6(5) and set up a working party in accordance with the principles of Article 3.]

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 11a of Directive 91/440/EEC may request a technical opinion from the Agency concerning safety-related aspects within their respective areas of competence.

[^{F3}2a The Agency may be called upon to provide technical opinions:

- a by a national safety authority or the Commission, on the equivalence of national rules for one or more parameters listed in Section 1 of Annex VII to the Railway Interoperability Directive;
- b by the competent appeal body referred to in Article 21(7) of the Railway Interoperability Directive, in the case of a decision by a competent national safety authority refusing the placing in service of a railway vehicle.

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2b The Agency may be called upon by the Commission to provide technical opinions on urgent modifications to TSIs, in accordance with Article 7(1) of the Railway Interoperability Directive.]

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.

^{F2}Article 11

[^{F2}Public database of documents]

Textual Amendments

- F2** Deleted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

Textual Amendments

- F3** Inserted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

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;

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- (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.

[^{F1}Article 13

Notified bodies

1 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 those bodies. It shall submit an opinion to the Commission where appropriate.

2 Without prejudice to the responsibility of Member States, the Agency shall, at the request of the Commission when it, in accordance with Article 28(4) of the Railway Interoperability Directive, considers that a notified body does not meet the criteria referred to in Annex VIII to that Directive, check to ensure that those criteria are met. The Agency shall issue an opinion to the Commission.]

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\) \(Text with EEA relevance\)](#).

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.

[^{F1}Article 15

Interoperability within the Community rail system

Without prejudice to the derogations provided for by Article 9 of the Railway Interoperability Directive, the Agency shall, at the request of the Commission, examine, from the point of view of interoperability, any project involving the design and/or construction or the renewal or upgrading of the subsystem for which an application for Community financial aid has been submitted. Within a period to be agreed with the Commission according to the importance of the project and the resources available and which cannot extend beyond two months, the Agency shall give an opinion on whether the project conforms with the relevant TSIs.]

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Textual Amendments

- F1** Substituted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

[^{F3}CHAPTER 3a

MAINTENANCE OF VEHICLES]

Article 16

Certification of maintenance workshops

Within three 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.

[^{F3}These recommendations shall be consistent with the responsibilities already allocated to railway undertakings as provided for in Article 4 of the Railway Safety Directive and the entity in charge of maintenance as provided for in Article 14a of that Directive, and shall take full account of the certification mechanisms of railway undertakings and entities in charge of maintenance.]

[^{F3}Article 16a

Certification of entities in charge of maintenance

1 The Agency shall by 1 July 2010 send to the Commission a recommendation in view of the implementation of the system of certification of entities in charge of maintenance in accordance with Article 14a(5) of the Railway Safety Directive.

The Agency's assessment and recommendation shall in particular cover the following aspects taking due account of relations an entity in charge of maintenance can have with other parties such as keepers, railway undertakings and infrastructure managers:

- a whether the entity in charge of maintenance has adequate systems in place, including operational and management processes, to ensure the effective and safe maintenance of vehicles;
- b the content and the specifications of a system of certification adapted to the maintenance of wagons;
- c the type of bodies competent for certification and the requirements to be imposed on such bodies;
- d the format and validity of the certificates to be delivered to the entities in charge of maintenance;

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e the technical and operational inspections and controls.

2 Within a period of three years from the adoption by the Commission of the system of certification of maintenance referred to in Article 14a(5) of the Railway Safety Directive, the Agency shall send to the Commission a report evaluating the implementation of such system. By the same date, the Agency shall also send to the Commission a recommendation with a view to defining the content and the specifications of a similar certification system in the case of entities in charge of the maintenance for other vehicles, such as locomotives, passenger cars, electrical multiple units (EMUs) and diesel multiple units (DMUs).

3 The Agency shall analyse the alternative measures decided in accordance with Article 14a(8) of the Railway Safety Directive in the context of its report on safety performance referred to in Article 9(2) of this Regulation.]

[^{F3}CHAPTER 3b

RAILWAY STAFF]

[^{F3}Article 16b

Train drivers

1 On matters related to 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⁽¹⁶⁾ (hereinafter referred to as the ‘Train Drivers Directive’) the Agency shall:

- a prepare a draft of a Community model for the licence, the certificate and the certified copy of the certificate, their physical characteristics, taking into account therein anti-forgery measures;
- b cooperate with the competent authorities in order to ensure the interoperability of the registers for train drivers' licences and certificates. To this end the Agency shall prepare a draft on the basic parameters of the registers to be set up, such as data to be recorded, their format and the data exchange protocol, access rights, the duration of data retention and the procedures to be followed in cases of bankruptcy;
- c prepare draft Community criteria on the choice of examiners and examinations;
- d evaluate the development of the certification of train drivers by submitting to the Commission, not later than four years following the adoption of the basic parameters of the registers, as provided for in Article 22(4) of the Train Drivers Directive, a report containing, where appropriate, improvements to be made to the system and measures regarding the theoretical and practical examination of the professional knowledge of applicants for the harmonised certificate for rolling stock and relevant infrastructure;
- e by 4 December 2012, examine the possibility of using a smartcard combining the licence and certificates provided for in Article 4 of the Train Drivers Directive, and shall prepare a cost/benefit analysis thereof. The Agency shall prepare a draft for the technical and operating specifications for such a smartcard;
- f assist the cooperation amongst Member States in the implementation of the Train Drivers Directive and organise appropriate meetings with representatives of the competent authorities;
- g if asked by the Commission, carry out a cost/benefit analysis of the application of the provisions of the Train Drivers Directive to train drivers operating exclusively on the territory of the requesting Member State. The cost/benefit analysis shall cover a period

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of ten years. This cost/benefit analysis shall be submitted to the Commission within two years of the setting-up of the registers in accordance with point 1 of Article 37 of the Train Drivers Directive;

- h if asked by the Commission, carry out another cost/benefit analysis which is to be submitted to the Commission no later than 12 months prior to the expiry of the temporary exemption period possibly granted by the Commission;
- i ensure that the system set up under paragraph 2(a) and (b) of Article 22 of the Train Drivers Directive complies with 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⁽¹⁷⁾.

2 On matters related to the Train Drivers Directive, the Agency shall make recommendations on:

- a modification of the Community Codes for the different types in categories A and B as referred to in Article 4(3) of the Train Drivers Directive;
- b the codes reflecting additional information, or medical restrictions for use imposed by a competent authority in accordance with Annex II to the Train Drivers Directive.

3 The Agency may make a reasoned request to the competent authorities for information on the status of train driver licences.]

[^{F3}Article 16c

Other on-board staff

In accordance with Article 28 of the Train Drivers Directive, the Agency shall, in a report to be presented by 4 June 2009, and taking into account the TSI on operation and traffic management developed under Directives 96/48/EC and 2001/16/EC, identify the profile and tasks of other crew members performing safety-critical tasks whose professional qualifications accordingly contribute to railway safety which should be regulated at Community level by means of a system of licences and/or certificates which may be similar to the system established by the Train Drivers Directive.]

[^{F1}Article 17

Vocational competences and training

1 The Agency shall make recommendations on specifying common criteria for defining vocational competences and assessing staff in the case of staff involved in the operation and maintenance of the rail system but which is not covered by Articles 16b or 16c.]

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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

Textual Amendments

- F1** Substituted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

[^{F3}CHAPTER 3c

REGISTERS AND AGENCY'S PUBLIC DATABASE]

[^{F1}Article 18

Registers

1 The Agency shall draw up and recommend to the Commission common specifications for:

- a the national vehicle registers in accordance with Article 33 of the Railway Interoperability Directive, including arrangements for exchange of data and a standard application form for registration;
- b the European register of authorised vehicle types in accordance with Article 34 of the Railway Interoperability Directive, including arrangements for exchange of data with the national safety authorities;
- c the register of infrastructure in accordance with Article 35 of the Railway Interoperability Directive.

2 The Agency shall set up and keep a register of types of vehicles authorised by the Member States for placing in service on the rail network within the Community, in accordance with Article 34 of the Railway Interoperability Directive. The Agency shall also prepare a draft for the model of declaration of conformity to type, in accordance with Article 26(4) of that Directive.]

Textual Amendments

- F1** Substituted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

[^{F1}Article 19

Accessibility of documents and registers

1 The Agency shall make publicly accessible the following documents and registers provided for by the Railway Interoperability Directive and the Railway Safety Directive:

- a the EC declarations of verification of subsystems;
- b the EC declarations of conformity of constituents available to the national safety authorities;
- c the licences issued in accordance with Directive 95/18/EC;

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

- d the safety certificates issued in accordance with Article 10 of the Railway Safety Directive;
- e the investigation reports sent to the Agency in accordance with Article 24 of the Railway Safety Directive;
- f the national rules notified to the Commission in accordance with Article 8 of the Railway Safety Directive and Articles 5(6) and 17(3) of the Railway Interoperability Directive;
- g the link to the national vehicle registers;
- h the link to the registers of infrastructure;
- 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 vehicle keeper markings kept by the Agency in accordance with the TSI on operation and traffic management.

2 The practical arrangements for transmitting the documents referred to in paragraph 1 shall be discussed and agreed by Member States and the Commission on the basis of a draft of the Agency.

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

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

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\)](#) (Text with EEA relevance).

CHAPTER 4

[^{F1}SPECIAL TASKS]

Article 20

Studies

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

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

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.

^{F3}Article 21a

ERTMS

1 The Agency, in coordination with the Commission, shall assume the tasks set out in paragraphs 2 to 5 with a view to

- a ensuring a coherent development of the ERTMS;
- b contributing to the compliance of ERTMS equipment as implemented in Member States with the specifications in force.

2 The Agency shall set up a procedure for managing requests for changes to specifications of the ERTMS. To this end, a register of requests for changes and planned changes to ERTMS specifications shall be set up and maintained by the Agency.

The Agency shall recommend the adoption of a new version only 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 for the optimisation of the production of ERTMS equipment, the return of investment for railway undertakings and the efficient planning of the deployment of the ERTMS.

3 The Agency shall support the efforts of the Commission in developing an EU deployment plan for the ERTMS and coordinating installation of the ERTMS along the trans-European transport corridors.

4 The Agency shall develop a strategy 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 to the swift implementation of the version in force and of possible newer versions.

In accordance with Article 6(9) of the Railway Interoperability Directive, the Agency shall ensure that successive versions of ERTMS equipment are backward compatible, as from the version adopted by the Commission on 23 April 2008.

With regard to ERTMS equipment which was placed in service before 23 April 2008 or whose installation or upgrading was at an advanced stage of deployment on that date, the Agency shall prepare an assessment report which shall identify:

- a the additional costs to be borne by early implementers as a consequence of the introduction of the version adopted by the Commission on 23 April 2008;
- b all possible mechanisms, including financial ones, to support the migration from the earlier versions to the version referred to in point (a).

The Commission shall take the appropriate measures within one year from the date on which it received the Agency's assessment report.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

5 The Agency shall set up and chair an ad hoc working group of notified bodies with a view to checking that the EC procedures of verification carried out by notified bodies in the context of specific ERTMS projects are applied consistently. The Agency shall also cooperate with national safety authorities with a view to checking that the procedures for authorisation for placing in service are applied consistently. Where the Agency finds that there is a risk of lack of technical and operational compatibility between networks and vehicles fitted with equipment being subject to these procedures, it shall forthwith inform the Commission which shall take the appropriate measures.

6 Should technical incompatibilities emerge between networks and vehicles in the context of specific ERTMS projects, notified bodies and national safety authorities shall ensure that the Agency is able to obtain any relevant information on the applied procedures for 'EC' verification and placing in service as well as on the operational conditions. The Agency shall, if necessary, recommend appropriate measures to the Commission.

7 The Agency shall evaluate the certification process of the ERTMS equipment by submitting to the Commission by 1 January 2011 a report containing, where appropriate, improvements to be made.

8 On the basis of the report referred to in paragraph 7, the Commission shall assess the costs and benefits of using a single type of laboratory equipment, a single reference track and/or a single certification body at Community level. Such certification body needs to comply with the criteria of Annex VIII of the Railway Interoperability Directive. The Commission may present a report and, if appropriate, bring forward a legislative proposal to improve the ERTMS certification system.

Textual Amendments

- F3** Inserted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\) \(Text with EEA relevance\)](#).

Article 21b

Assistance to the Commission

1 Within the limits of Article 30(2)(b), the Agency shall, at the request of the Commission, assist the Commission in the implementation of the Community 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 shall be limited in time and scope, and carried out without prejudice to all other tasks assigned to the Agency in this Regulation and may include:

- a communicating information on how specific aspects of the Community legislation are implemented;
- b providing technical advice in matters requiring specific know-how;
- c collecting information through the cooperation of national safety authorities and investigation bodies provided for in Article 6(5).

3 The Executive Director shall report at least once a year to the Board on the implementation of this Article, including its impact on resources.]

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

Textual Amendments

- F3** Inserted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

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.
- [^{F13} 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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

During the first 10 years of operation of the Agency, the period of 5 years referred to in the first indent of the first subparagraph may be extended for another period of up to a maximum of 3 years when required to guarantee the continuity of its services.]

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.

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\)](#) (Text with EEA relevance).

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;
- [^{F1}c adopt, by 30 November each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. That work programme shall be adopted without prejudice to the annual Community budgetary procedure. If, within 15 days of the date of adoption of the work programme, the Commission expresses its disagreement with the programme, the Administrative Board shall re-examine the programme and adopt it, amended if necessary, within a period of two months, in second reading either by 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.

[^{F33} The Agency's work programme shall identify the objectives of each activity. As a general rule, each activity and/or each outcome shall be the subject of a report to the Commission.]

Textual Amendments

- F1** Substituted by [Regulation \(EC\) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation \(EC\) No 881/2004 establishing a European Railway Agency \(Agency Regulation\)](#) (Text with EEA relevance).

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

F3 Inserted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

Article 26

Composition of the Administrative Board

[^{F1} 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:

- a railway undertakings;
- b infrastructure managers;
- c the railway industry;
- d worker unions;
- e passengers;
- f freight customers.

For each of these groups, the Commission shall appoint a representative and an alternate from a shortlist of four names submitted by their respective European organisations with a view to ensuring appropriate representation of all interests.

Board members and their alternates shall be appointed on the basis of their 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).

Textual Amendments

F1 Substituted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

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

[^{F1} In order to perform the tasks entrusted to it by Articles 9, 9a, 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.

Textual Amendments

F1 Substituted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

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

[^{F1}1 The Agency shall be open to participation by European countries and countries within the scope of the European Neighbourhood Policy which have concluded agreements with the European Community under which the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation.]

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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

Textual Amendments

- F1** Substituted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

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⁽¹⁸⁾ 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 1 October 2004.

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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

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⁽¹⁹⁾ 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.

Status: Point in time view as at 01/01/2009.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)*

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.]

Status: Point in time view as at 01/01/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the European Parliament and of the Council (repealed). (See end of Document for details)

- (1) [^{X1}OJ C 126 E, 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 (OJ C 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) See page 16 of this Official Journal.
- (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) [^{F3}OJ L 191, 18.7.2008, p. 1.]
- (16) [^{F3}OJ L 315, 3.12.2007, p. 51.
- (17) OJ L 8, 12.1.2001, p. 1.]
- (18) OJ L 145, 31.5.2001, p. 43.
- (19) 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).]

Editorial Information

- X1** Substituted by Corrigendum to Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European railway agency (Agency Regulation) (Official Journal of the European Union L 164 of 30 April 2004).

Textual Amendments

- F3** Inserted by Regulation (EC) No 1335/2008 of the European Parliament and of the Council of 16 December 2008 amending Regulation (EC) No 881/2004 establishing a European Railway Agency (Agency Regulation) (Text with EEA relevance).

Status:

Point in time view as at 01/01/2009.

Changes to legislation:

There are currently no known outstanding effects for the Regulation (EC) No 881/2004 of the european parliament and of the council (repealed).