



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 20 May 2014
(OR. en)**

9767/14

**Interinstitutional File:
2013/0014 (COD)**

**TRANS 265
CODEC 1269**

REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee / Council

No. prev. doc.: 9313/14 TRANS 243 CODEC 1179
No. Cion doc.: 6012/13 TRANS 38 CODEC 225 + ADD 1 + ADD 2

Subject: *Preparation of the Council meeting (Transport, Telecommunications and Energy) on 5 June 2014*
Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004
- Political agreement

1. The Commission submitted the above-mentioned proposal on 30 January 2013. This proposal is part of the fourth railway package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area. The package contains three groups of measures, with a view to:
 - renewing rules on governance structure in relation to infrastructure management and transport operations (governance pillar);
 - ensuring further opening of the market for domestic passenger transport services by rail (market opening pillar); and

- enhancing the quality and efficiency of rail services by removing the remaining market obstacles and reinforcing the harmonisation of interoperability and safety requirements to ensure a higher level of harmonisation of the EU railway network (technical pillar).
2. The purpose of the new Agency Regulation is to define the new tasks in the field of interoperability and safety resulting from the issuing of safety certificates and vehicle authorisations by the Agency. In addition, it is proposed to clarify existing provisions, as well as update and strengthen the provisions on the governance aspects of the Agency, in line with the principles contained in the "Common approach of the European Parliament, Council and Commission on decentralised agencies" agreed on 12 June 2012.
 3. The opinion of the Economic and Social Committee was issued on 11 July 2013 and the opinion of the Committee of the Regions was issued on 7 October 2013.
 4. The European Parliament's Committee on Transport and Tourism appointed Mr Roberts ZĪLE (LV/ ECR) as rapporteur. The vote in the TRAN Committee took place in November 2013 and the European Parliament voted the outcome of its first reading in plenary on 26 February 2014.
 5. The Council reached a general approach on this file on 14 March 2014. The Working Party on Land Transport examined the outcome of the European Parliament's first reading on 24 April 2014.
 6. The Permanent Representatives Committee could, therefore, approve the text of the draft political agreement as set out in the Annex to this report and invite the Council to adopt a political agreement at its meeting on 5 June 2014.

2013/0014 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Union Agency for Railways
and repealing Regulation (EC) No 881/2004**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 91(1) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Acting in accordance with the ordinary legislative procedure,
Whereas:

¹ OJ C ... p

² OJ C ... p

- (1) The progressive establishment of a Single European railway area requires Union action in the field of the regulations applicable to railways with regard to technical (interoperability) and safety aspects, the two being inextricably linked and both requiring higher level of harmonisation at the Union level. Relevant railway legislation, in particular three railway packages, was adopted in the last two decades, with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and 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 being the most relevant.
- (2) Simultaneous pursuit of the goals of railway safety and interoperability requires substantial technical work which must be led by a specialised body. That is why it was necessary, as part of the Second Railway Package in 2004, to create within the existing institutional framework, and with respect for the balance of power in the Union, a European agency dealing with railway safety and interoperability (hereinafter referred to as the Agency).
- (3) The European Railway Agency was originally established by Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004³, 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 Fourth Railway Package proposes important changes to improve the functioning of the Single European railway area through amendments by way of recast to Directive 2004/49/EC and Directive 2008/57/EC, both directly linked to the tasks of the Agency. Those Directives provide in particular for performing tasks related to issuing vehicle authorisations and safety certificates at the Union level. It implies a greater role of the Agency. Regulation 881/2004 has to be replaced by a new act due to a substantial amount of changes to the tasks of the Agency and its internal organisation.

- (4) [...]

³ OJ L 164, 30.4.2004, p. 1.

- (5) [...]
- (6) [...]
- (7) The Agency should contribute to the development of a genuine European railway culture and form an essential tool for dialogue, consultation and exchange of views between all the actors in the railway sector, having due regard to the respective competences of these actors, as well as the technical characteristics of the railway sector. While performing its tasks, and particularly in relation to drafting recommendations and opinions, it should take utmost account of external railway expertise. This expertise should predominantly consist of professionals from the railway sector and the relevant national authorities. They should form competent and representative working parties of the Agency.
- (8) In order to provide insight into the economic effects on the railway sector and its impact on society, to allow others, in particular the Commission, the Management Board and the Executive Director to make informed decisions, and to manage the work priorities and resource allocation more effectively within the Agency, the Agency should further develop its engagement in the impact assessment activity.
- (9) The Agency should provide independent and objective technical support, predominantly to the Commission. Directive [xx on interoperability of the rail system] provides the basis for drafting and revising Technical Specifications for Interoperability (TSIs), while Directive [xx on railway safety] provides the basis for drafting and revising Common Safety Methods (CSMs), Common Safety Targets (CSTs) and Common Safety Indicators (CSIs). The continuity of the work and the development of the TSIs, CSMs, CSIs and CSTs over time require a permanent technical framework and a specialised body with a dedicated staff having a high level of expertise. To this end, the Agency should be responsible for providing the Commission with recommendations and opinions in relation to drafting and revising the TSIs, CSMs and CSTs. The Agency should also provide an independent technical opinion, upon request from the national safety authorities and regulatory bodies.

- (10) In order to make the procedures for issuing safety certificates to railway undertakings more efficient and impartial, it is essential to give the Agency a central role in the issuing of safety certificates. Where the area of operation is limited to one Member State, the railway undertaking should have the possibility to choose whether it submits its application for safety certificate to the Agency or to the national safety authority. The revised Directive [xx on railway safety] provides a basis for this.
- (11) Currently, Directive 2008/57/EC provides, in the case of rail vehicles, an authorisation of placing in service in each Member State, except in specific cases. The Task Force on vehicle authorisation set up by the Commission in 2011 discussed several cases where manufacturers and railway undertakings have suffered from excessive duration and cost of the authorisation process and proposed a number of improvements. As some problems are due to the complexity of the current vehicle authorisation process, it should be simplified and, where possible, be unified under a single procedure. Each rail vehicle should only receive one authorisation. Where the area of use is limited to a network or networks within one Member State only, the applicant should have the possibility to choose whether it submits its application for vehicle authorisation to the Agency or to the national safety authority. This would bring tangible benefits for the sector by reducing the costs and time of the procedure, and would diminish the risk of potential discrimination, especially of new companies wishing to enter a railway market. The revised Directive [xx on the interoperability of the rail system] provides a basis for this.
- (11a) The revised Directive [xx on the interoperability of the rail system] should not lead to a reduced level of safety in the European Union's railway sector. In this respect, the Agency should take full responsibility for the authorisations it issues, including contractual and non-contractual liabilities.

- (11b) With regard to liability of the staff of the Agency when carrying out the tasks conferred to the Agency, the Protocol on the Privileges and Immunities of the European Union should apply. The application of the Protocol on the Privileges and Immunities of the European Union should not lead to undue delays or unfounded restrictions to the conduct of national judicial proceedings. In the event of judicial proceedings involving the staff of the Agency, in which a member of the staff is requested to appear in a national court, the Management Board should decide without undue delay to waive his/her immunity, provided that such waiver would not compromise the interests of the Union. Such decision should be duly justified and should be amenable to the European Court of Justice for judicial review.
- (11c) The Agency should cooperate loyally with the national judicial authorities, in particular in cases in which the involvement of the Agency is necessary on the grounds that the Agency has exercised its tasks related to vehicle authorisations and safety certificates issued by the Agency. In the event that the Agency or a member of its staff is requested to provide information in the context of relevant national proceedings, the Agency should ensure that such request for information or, if necessary, participation in proceedings, is treated with due diligence and within a reasonable time period. To that end, the Management Board should adopt appropriate procedures to be used in such situations.
- (12) In order to further pursue the development of the Single European rail area, in particular with relation to providing appropriate information to freight customers and passengers, and to avoid a fragmented development of such applications, it is necessary to give the Agency a strengthened role in the field of telematics applications. The Agency, as a competent body at Union level, should be given a prominent role to ensure consistent development and deployment of all telematics applications. To this end, the Agency should be empowered with the function of the System Authority for telematics applications, and, in that quality, the Agency should maintain, monitor and manage all corresponding subsystems requirements at EU level.

- (13) Given the importance of the European Rail Traffic Management System (ERTMS) for the smooth development of the Single European railway area and its safety, and to avoid its fragmented development, it is necessary to strengthen its overall coordination at EU level. Therefore, the Agency, as the most competent body at Union level, should be given a more prominent role in this field to ensure consistent development of the ERTMS, to contribute to ensuring that ERTMS equipment complies with the specifications in force and to ensure that ERTMS-related European research programmes are coordinated with the development of ERTMS technical specifications. In particular, the Agency should prevent that additional national requirements on ERTMS put into question its interoperability. Incompatible national requirements should be removed or applied on a voluntary basis.
- (13a) Moreover, in order to make the procedures for issuing authorisations for placing in service of trackside control-command and signalling sub-systems more efficient and harmonised at EU level, it is essential that the Agency provides national safety authorities with relevant opinions. The revised Directive [xx on the interoperability of the rail system] provides a basis for this. In addition, a working group of notified conformity assessment bodies active in the field of ERTMS should be established by the Agency. Participation of such bodies should be encouraged as much as possible.
- (14) Competent national authorities have been normally charging for issuing vehicle authorisations and safety certificates. With the transfers of competences to the Union level, the Agency should be entitled to charge the applicants for issuing the certificates and authorisations mentioned in the preceding recitals. The level of those charges should be estimated in order to cover the full cost of the service delivered, including as appropriate the relevant costs resulting from the tasks assigned to the national safety authorities. Those charges should be equal to or lower than the current average for the relevant services.

- (15) It is a general objective that the new allocation of functions and tasks between national safety authorities and the Agency should be done efficiently, without any reduction in the current high levels of safety. To this end, cooperation agreements between the Agency and the national safety authorities should be established, also including cost elements. The Agency should have sufficient resources for its new tasks, and the timing of the allocation of these resources should be based on clearly defined needs.
- (15a) When drafting recommendations, the Agency should take into account the cases of networks which are isolated from the rest of the Union's railway systems and which require specific expertise due to geographical or historical reasons. In addition, where operation is limited to such networks, it should be possible for the applicant for safety certificates and vehicle authorisations to perform the necessary formalities locally through interacting with the relevant national safety authorities. To this end, for the purposes of reducing administrative burden and costs, the cooperation agreements to be concluded between the Agency and the relevant national safety authorities may provide the appropriate allocation of tasks, without prejudice to the final responsibility of the Agency in issuing the authorisation or the single safety certificate.
- (15aa) Taking into account the know-how of national authorities, in particular the national safety authorities, the Agency should be allowed to make appropriate use of that expertise when granting the relevant authorisations and certificates. To this end, secondment of national experts to the Agency should be encouraged.
- (16) Directive [xx on railway safety] and Directive [xx on the interoperability of the rail system] provide for examination of national measures from the point of view of safety and interoperability, and compatibility with competition rules. They also limit the possibility for Member States to adopt new national rules. The current system in which a large number of national rules continue to exist may lead to possible conflicts with Union rules and create a risk of insufficient transparency. In order to migrate towards a system of truly transparent and impartial railway rules at Union level, gradual reduction of national rules needs to be reinforced. An opinion based on independent and neutral expertise is essential at Union level. To this end, the role of the Agency needs to be strengthened.

- (17) Performance, organisation and decision-making procedures in the field of railway interoperability and safety vary substantially among the national safety authorities and notified conformity assessment bodies, with a detrimental effect to smooth operation of the Single European rail area. In particular, small and medium companies wishing to enter the railway market in another Member State can be negatively affected. Therefore, a strengthened coordination with a view to greater harmonisation at the Union level is essential. To this end, the Agency should monitor the performance and decision-making of the national safety authorities and the notified conformity assessment bodies through audits and inspections if relevant in cooperation with national accreditation bodies.
- (18) In the field of safety, it is important to ensure the greatest possible transparency and an effective flow of information. An analysis of performance, based on common indicators and linking all parties in the sector, is important and should be carried out. As regards statistics, close collaboration with Eurostat is necessary.
- (19) The Agency should be responsible for publishing a relevant report every two years in order to monitor progress with the railway interoperability and safety. Given its technical expertise and impartiality, the Agency should also assist the Commission with monitoring the implementation of Union railway safety and interoperability legislation.
- (20) The interoperability of the Trans-European network should be enhanced and the new investment projects chosen for support by the Union should be in line with the objective of interoperability set in Regulation No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU⁴. The Agency is an appropriate institution to contribute to these objectives. With regard to ERTMS deployment and ERTMS projects, the Agency's role should include helping the applicant to implement a project which is compliant with the TSI on control-command and signalling.

⁴ OJ L 348, 20.12.2013, p.1.

- (21) Rolling stock maintenance is an important part of the safety system. There has been no genuine European market for the maintenance of rail equipment owing to the lack of a system for certification of maintenance workshops. This situation has been adding to the costs for the sector and results in journeys without loads. Common conditions for the certification of maintenance workshops and of the entity in charge of maintenance for vehicles other than freight wagons should therefore gradually be developed and updated, with the Agency being the most appropriate body to propose adequate solutions to the Commission.
- (22) The vocational qualifications required for train drivers are a major factor in both safety and interoperability in the Union. They are also a precondition for the free movement of workers in the railway industry. This question should be tackled with respect to the existing framework for social dialogue. The Agency should provide the technical support necessary in order to take account of this aspect at Union level.
- (23) The Agency should facilitate cooperation between the national safety authorities, the national investigating bodies and representative bodies from the railway sector acting on at European level, in order to promote good practices, exchange of relevant information, collection of railway-related data and monitor the overall safety performance of the railway system.
- (24) In order to ensure the necessary transparency and equal access for all parties to relevant information, the documents envisaged for the railway interoperability and safety processes should be accessible to the public. The same applies to licences, safety certificates and other relevant railway documents. The Agency should provide an efficient means of exchanging and publishing this information.
- (25) Promotion of innovation and research in the railway field 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.

- (26) In order to increase the efficiency of the Union financial support, its quality and compatibility with relevant technical regulations, the Agency should play an active role in the assessment of rail projects.
- (27) Proper and uniform understanding of railway interoperability and safety legislation, implementation guides, or recommendations of the Agency is a precondition for effective implementation of the railway acquis and the functioning of the railway market. Therefore, the Agency should actively engage in training and explanatory activities in that regard.
- (27a) Taking into account the new competences of the Agency in relation to the issuing of vehicle authorisations and safety certificates, there will be an important need for training and publication activities in these areas. The national safety authorities should be proposed to participate in training activities free of charge, whenever possible, in particular when they have been involved in their preparation.
- (28) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Union and through fees and charges paid by applicants. In order to ensure independence in its daily management and in the opinions, recommendations and decisions which it issues, the Agency's organisation should be transparent, the Executive Director should have full responsibility. The Agency's staff should be independent and should represent an appropriate balance of short-term and long-term contracts, in order to maintain its organisational knowledge and business continuity while keeping necessary and on-going exchange of expertise with the railway sector. The expenditure of the Agency should include staff, administrative, infrastructure and operational expenses, and amongst others, the amount paid to the national safety authorities for their work in the vehicle authorisation and safety certification process, in accordance with the relevant cooperation agreements and with the provisions of the implementing act concerning the determination of fees and charges.

(29) In order to streamline the decision-making process in the Agency and contribute to enhancing efficiency and effectiveness, a two-level governance structure should be introduced. For this purpose, the Member States and the Commission should be represented on a Management Board vested with the necessary powers, including to establish the budget and approve the programming document.

In addition to the Management Board, which should give general orientations for the Agency's activities, a small-sized Executive Board should be set-up and be more closely involved in the monitoring of the Agency's activities, with a view to reinforcing supervision on administrative and budgetary matters, properly preparing the meetings of the Management Board and supporting its decision-making process. The delineation of competences of the Executive Board should be defined in a mandate to be adopted by the Management Board and may include opinions and provisional decisions subject to their final endorsement by the Management Board.

(30) In order to guarantee the transparency of the Management Board's decisions, representatives of the sectors concerned should attend its meetings, but without the right to vote. The representatives of the sector should be appointed by the Commission on the basis of their representativeness at Union level of railway undertakings, infrastructure managers, railway industry, workers unions, passengers and freight customers.

(31) [...]

(32) It is necessary to ensure that parties affected by decisions made by the Agency enjoy the necessary remedies in an independent and impartial manner. An appropriate appeal mechanism should be set up so that decisions of the Executive Director can be subject to appeal to a specialised Board of Appeal.

(32a) In cases of disagreement between the Agency and the national safety authorities on the issuing of safety certificates or vehicle authorisations, an arbitration procedure should be established so that decisions are taken in a concerted and cooperative manner.

- (33) A broader strategic perspective in relation to the activities of the Agency would help to plan and manage its resources more effectively and would contribute to higher quality of its outputs. This is confirmed and reinforced by the Commission Delegated Regulation (EU) N° 1271/2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) N° 966/2012 of the European Parliament and of the Council. Therefore, a single programming document containing the annual and multi-annual work programmes should be adopted and updated regularly by the Management Board, following proper consultation of the relevant stakeholders.
- (33a) When a new task is granted to the Agency in relation to the interoperability and safety of the railway systems after the adoption of the programming document, the Management Board should, if necessary, amend the programming document to include this new task following an analysis of the human and budgetary consequences on resources.
- (34) The Agency's work should be transparent. Effective control by the European Parliament should be ensured and, to this end, the European Parliament should have the possibility of hearing the Executive Director of the Agency and receiving the annual report of the Agency's activities. The Agency should also apply the relevant Union legislation concerning public access to documents.

- (35) Over the past years, as more decentralised agencies have been created, the budgetary authority has looked to improve transparency and control over the management of the Union funding allocated to them, in particular concerning the budgetisation of fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). In a similar way, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁵ should apply without restriction to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office⁶.
- (36) Since the objectives of the action proposed, namely to establish a specialised body to formulate common solutions on matters concerning railway safety and interoperability, cannot be sufficiently achieved by the Member States by reason of the joint nature of the work to be done, and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives;
- (37) [...]
- (38) In order to ensure the implementation of Articles 21 and 22 of this Regulation concerning the examination of draft national rules and rules in force, the implementation of Articles 29 and 30 concerning the monitoring of the national safety authorities and notified conformity assessment bodies, and the implementation of Article 51 concerning the establishment of the rules of procedure of the Board of Appeal, implementing powers should be conferred on the Commission.

⁵ OJ L 136, 31.5.1999, p. 1.

⁶ OJ L 136, 31.5.1999, p. 15.

Implementing powers should also be conferred on the Commission in order to ensure the implementation of Article 73 concerning the determination of fees and charges which the Agency is entitled to levy for the issuing of vehicle authorisations and safety certificates.

Fees and charges should be set in a transparent, fair and uniform manner in cooperation with Member States and should not jeopardize the competitiveness of the European railway sector. They should be established on a basis which takes due account of the ability of undertakings to pay and should not lead to unnecessary financial burden on companies.

Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

(39) [...]

- (40) It is necessary for the proper functioning of the Agency to implement certain principles regarding the governance of the Agency in order to comply with the Joint Statement and Common Approach agreed by the Inter-Institutional Working Group on EU decentralised agencies in July 2012, the purpose of which is to streamline the activities of agencies and increase their performance.
- (41) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,
-

CHAPTER 1

PRINCIPLES

Article 1

Subject matter and scope

1. This Regulation establishes a European Union Agency for Railways (the “Agency”).
2. This Regulation provides for:
 - (a) the establishment and tasks of the Agency;
 - (b) the tasks of the Member States in the context of this Regulation.
3. This Regulation supports the establishment of the Single European railway area, and in particular the objectives related to:
 - (a) interoperability within the Union rail system provided for in Directive [xx on the interoperability of the rail system];
 - (b) safety of the rail system within the Union provided for in Directive [xx on railway safety];
 - (c) certification of train drivers provided for in 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 Community⁷.

⁷ OJ L 315, 3.12.2007, p.51

Article 1a
Objectives of the Agency

The objective of the Agency shall be to contribute to the creation and effective functioning of a Single European railway area without frontiers, by guaranteeing a high level of safety and interoperability, while improving the competitive position of the railway sector. In particular, the Agency shall contribute, on technical matters, to the implementation of European Union legislation by enhancing the level of interoperability of railway systems and by developing a common approach to safety on the European railway system.

The objective of the Agency shall also be to follow the development of national railway rules and support the performance of national authorities acting in the railway interoperability and safety fields.

Where provided for by the safety and interoperability Directives, the Agency shall perform the role of European authority responsible for issuing authorisations for placing on the market of railway vehicles and of vehicle types and for issuing safety certificates for railway undertakings.

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

Article 2
Legal status

1. The Agency shall be a body of the Union with legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

3. The Agency shall be represented by its Executive Director.
- 3a. The Agency shall have sole responsibility for the functions and powers assigned to it.

Article 3

Types of acts of the Agency

The Agency may:

- (a) address recommendations to the Commission concerning the application of Articles 11, 13, 14, 15, 31, 32 and 33;
- (b) address recommendations to Member States concerning the application of Article 30;
- (c) issue opinions to the Commission pursuant to Articles 9(2) and 38, and to the authorities concerned in the Member States pursuant to Articles 9, 21 and 22;
- (ca) address recommendations to national safety authorities pursuant to Article 29(4).
- (d) issue decisions pursuant to Articles 12, 16, and 17;
- (e) issue opinions constituting acceptable means of compliance pursuant to Article 15;
- (f) issue technical documents pursuant to Article 15;
- (fa) issue opinions to national safety authorities pursuant to Article 18;
- (g) issue audit reports pursuant to Articles 29 and 30;
- (h) issue guidelines and other non-binding documents facilitating application of railway interoperability and safety legislation pursuant to Articles 11, 15 and 24.

CHAPTER 2

WORKING METHODS

Article 4

Creation and composition of the working parties and other groups

1. The Agency shall set up a limited number of working parties for drawing up recommendations and, where relevant, guidelines, in particular related to technical specifications for interoperability (TSIs), common safety targets (CSTs), common safety methods (CSMs) and for the use of common safety indicators (CSIs).
The Agency may set up working parties in other duly justified cases at the request of the Commission or the Committee established by Article 75 or on its own initiative, after having consulted the Commission.
The working parties shall be chaired by a representative of the Agency.

2. The Agency shall set up the working parties composed of :
 - representatives nominated by the competent national authorities for the working parties in which they wish to participate;
 - professionals from the railway sector selected by the Agency from the list referred to in paragraph 3. It shall ensure adequate representation of those sectors of the industry and of those users which could be affected by measures the Commission may propose on the basis of the recommendations addressed to it by the Agency.

The Agency may, if necessary, appoint to the working parties independent experts and representatives of international organisations recognised as competent in the field concerned. Staff of the Agency may not be appointed to the working parties.

3. Each representative body referred to in Article 34(2) shall forward to the Agency a list of the most qualified experts mandated to represent them in each working party and update this list regularly.

4. Whenever the work of such working parties 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 as full members.
5. Travel and subsistence expenses of the members of the working parties, based on rules and scales adopted by the Management Board, shall be met by the Agency.
6. [...]
7. [...]
- 7a. The Agency shall take due account of the outcome of the working parties when drawing up recommendations and guidelines referred to in paragraph 1.
- 7b. The Agency shall set up other groups for the purpose of Articles 20, 25 and 34(1).
- 7c. In addition, the Agency may set up other groups in accordance with Article 34(2) and in duly justified cases at the request of the Commission or the Committee established by Article 75 or on its own initiative.
- 7d. The work of the working parties and the other groups shall be transparent. The Management Board shall adopt their rules of procedure.

Article 5

Consultation of the social partners

Whenever the work provided for in Articles 11, 13, 15, and 32 has a direct impact on the social environment or working conditions of workers in the industry, the Agency shall consult the social partners within the framework of the sectoral dialogue committee set up pursuant to Decision 98/500/EC⁸. The social partners may react if they so wish within three months.

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 75.

Article 6

Consultation of rail freight customers and passengers

Whenever the work provided for in Articles 11 and 15 has a direct impact on rail freight customers and passengers, the Agency shall consult the organisations representing them. The rail freight customers and passengers may react if they so wish within three months.

The list of organisations to be consulted shall be drawn up by the Commission with the assistance of the committee referred to in Article 75.

⁸ 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).

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 75.

Article 7

Impact assessment

1. The Agency shall conduct an impact assessment of its recommendations and opinions. The Management Board shall adopt impact assessment methodology based on the methodology of the Commission. The Agency shall liaise with the Commission to ensure that relevant work at the Commission is duly taken into account.
2. Before including an activity in the programming document adopted by the Management Board, in accordance with Article 48(1), the Agency shall conduct an early assessment in relation to it which shall state:
 - (a) the issue to be solved and likely solutions;
 - (b) the extent to which a specific action, including issuing a recommendation or an opinion of the Agency, would be required;
 - (c) the expected Agency contribution to the solution of the problem.

Moreover, each activity and project to be included in the programming document shall be previously subject to an efficiency analysis individually and in conjunction with each other, to make best use of the budget and resources of the Agency.

3. The Agency may conduct an ex post assessment of the legislation resulting from its recommendations.
4. Member States shall provide the Agency with the data necessary for the impact assessment, where available.

Article 8

Studies

Where required for the implementation of its tasks, the Agency shall order studies, involving, where appropriate, the working parties and other groups referred to in Article 4, and finance them from its budget.

Article 9

Opinions

1. The Agency shall issue opinions at request of the national regulatory bodies referred to in Article 55 of Directive 2012/34/EU establishing a single European railway area⁹ in particular concerning safety and interoperability-related aspects of matters drawn to their attention.
2. The Agency shall issue opinions at request of the Commission on amendments to any act adopted on the basis of Directive [xx on interoperability of the rail system] or Directive [xx on railway safety], especially where any alleged deficiency is signalled.
3. With regard to opinions referred to in previous paragraphs and in other articles of this Regulation, the Agency shall give its opinions as soon as possible and at the latest within two months from the receipt of the request, unless otherwise agreed with the requesting parties. The opinions shall be made public by the Agency within one month after they are issued, in a version from which all commercially confidential material has been removed.

⁹ OJ L 343 of 14.12.2012, p. 32

Article 10

Visits to Member States

1. In order to perform the tasks entrusted to it, in particular those referred to in Articles 12, 16, 17, 21, 22, 27, 28, 29, 30, 31 and 38 and to assist the Commission in fulfilling its duties under the TFEU, and notably the assessment of the effective implementation of relevant Union law, the Agency may carry out visits to the Member States, in accordance with the policy, working methods and procedures adopted by the Management Board.
2. Following consultation with the Member State concerned, the Agency shall inform the latter in good time of the planned visit, the names of the delegated Agency officials, and the date on which the visit is to start and its expected duration. The Agency officials delegated to carry out such visits shall do so on presentation of a decision in writing by the Executive Director specifying the purpose and the aims of their visit.
3. The national authorities of the Member States shall facilitate the work of the Agency's staff.
4. The Agency shall draw up a report on each visit and send it to the Commission and to the Member State concerned.
5. The preceding paragraphs are without prejudice to inspections referred to in Articles 29 (6) and 30(6).
- 5a. Travel, accommodation, subsistence and other expenses incurred by the Agency staff shall be met by the Agency.

CHAPTER 3

TASKS RELATING TO RAILWAY SAFETY

Article 11

Technical support - recommendations on railway safety

1. The Agency shall issue recommendations to the Commission on the Common Safety Indicators (CSIs), Common Safety Methods (CSMs) and the Common Safety Targets (CSTs) provided for in Articles 5, 6 and 7 of Directive [xx on railway safety]. The Agency shall also issue recommendations on periodic revision of CSIs, CSMs and CSTs to the Commission.

2. The Agency shall issue recommendations to the Commission, at the request of the Commission or on its own initiative, on other measures in the field of safety, taking into account the experience gained.
 - 2a. The Agency shall develop guidelines in order to assist national safety authorities with regard to supervision of railway undertakings, infrastructure managers and other actors in accordance with Article 16a of Directive [xx on railway safety].

 - 2b. The Agency may issue recommendations on the CSMs covering elements of the safety management system which needs to be harmonised at Union level, in accordance with Article 9(5) of Directive [xx on railway safety].

3. The Agency may issue guidelines and other non-binding documents to facilitate the implementation of railway safety legislation, including assistance to Member States in identifying national rules that can be removed further to the adoption and/or revision of CSMs.

Article 12
Safety certificates

The Agency shall issue, renew, suspend and amend single safety certificates and cooperate with national safety authorities in that respect in accordance with Articles 10, 11 and 17 of Directive [xx on railway safety].

The Agency shall restrict or revoke single safety certificates and cooperate with national safety authorities in that respect in accordance with Article 16a of Directive [xx on railway safety].

Article 13
Maintenance of vehicles

1. The Agency shall assist the Commission with regard to the system of certification of the entities in charge of maintenance in accordance with Article 14(6) of Directive [xx on railway safety].
2. The Agency shall issue recommendation to the Commission for the purpose of Article 14(7) of Directive [xx on railway safety].
3. The Agency shall analyse any alternative measures decided in accordance with Article 15 of Directive [xx on railway safety] and include the outcome of its analysis in the report referred to in Article 31(4) of this Regulation.
- 3a. The Agency shall support and, upon request, coordinate the national safety authorities in the supervision activities of the entities in charge of maintenance referred to in Article 16a(1)(c) of Directive [xx on railway safety].

Article 13a

Cooperation with national investigating bodies

The Agency shall cooperate with national investigating bodies in accordance with Articles 20(2a), 21(1), 21(2), 21(5), 21(7) and 25 of Directive [xx on railway safety].

Article 14

Transport of dangerous goods by rail

The Agency shall follow developments in the legislation dealing with the transport of dangerous goods by rail within the meaning of Directive 2008/68/EC of the European Parliament and of the Council¹⁰ and, together with the Commission, ensure that such developments are consistent with the legislation dealing with rail interoperability and safety, in particular the essential requirements. To this end, the Agency shall assist the Commission and may issue recommendations at the Commission's request or on its own initiative.

¹⁰ OJ L 260, 30.9.2008, p. 13.

CHAPTER 4

TASKS RELATING TO INTEROPERABILITY

Article 15

Technical support in the field of railway interoperability

1. The Agency shall:
 - (a) issue recommendations to the Commission on the TSIs, and their revision, in accordance with Article 5 of Directive [xx on interoperability of the rail system];
 - (b) issue recommendations to the Commission on the templates for the 'EU' declaration of verification and for documents of the technical file that has to accompany it for the purpose of Article 15(7) of Directive [xx on interoperability of the rail system];
 - (c) issue recommendations to the Commission on specifications for registers, and their revision for the purpose of Articles 43, 44 and 45 of Directive [xx on interoperability of the rail system];
 - (d) issue opinions which constitute acceptable means of compliance concerning TSI deficiencies, in accordance with Article 6(3) of Directive [xx on interoperability of the rail system], and provide it to the Commission;
 - (e) At the request of the Commission, issue opinions to it regarding requests for non-application of TSIs by Member States, in accordance with Article 7 of Directive [xx on interoperability of the rail system];
 - (f) issue technical documents, in accordance with Article 4(9) of Directive [xx on interoperability of the rail system];

- (fa) issue opinions to national safety authorities in order to ensure a coherent development of ERTMS in the Union pursuant to Article 18(2a) and (2b) of Directive [xx on interoperability of the rail system];
 - (g) issue recommendations to the Commission relating to the working conditions of all staff carrying out safety-critical tasks;
 - (ga) issue recommendations to the Commission in relation to harmonised standards to be developed by European standardisation bodies. This may include standards related to interchangeable spare parts which may improve the level of interoperability and safety of the EU railway system, as well as safety critical components.
2. For drafting recommendations referred to in paragraph 1, points (a), (b), (c) and (ga), the Agency shall:
- (a) ensure that the TSIs and the specifications for registers are adapted to technical progress and market trends and to social requirements;
 - (b) ensure that the development and updating of the TSIs, on the one hand, and the development of any European standards which prove necessary for interoperability, on the other hand, are coordinated and maintain the relevant contacts with European standardisation bodies.
3. The Agency may issue guidelines and other non-binding documents to facilitate the implementation of railway interoperability legislation, including assistance to Member States in identifying national rules that can be removed further to the adoption and/or revision of TSIs.
4. In case of non-compliance of interoperability constituents with essential requirements, the Agency shall assist the Commission in accordance with Article 11 of Directive [xx on interoperability of the rail system].

Article 16

Authorisations for placing on the market for vehicles

The Agency shall issue, renew, amend, suspend and revoke authorisations it has issued for placing on the market for railway vehicles and cooperate with national safety authorities to that purpose in accordance with Article 20 of Directive [xx on interoperability of the rail system].

Article 17

Authorisations for placing on the market of vehicle types

The Agency shall issue, renew, amend, suspend and revoke authorisations it has issued for placing on the market of vehicle types in accordance with Article 22 of Directive [xx on interoperability of the rail system].

Article 18

Placing in service of trackside control-command and signalling sub-systems

The Agency shall issue opinions to national safety authorities regarding installation of the trackside control-command and signalling subsystems involving ETCS and/or GSMR equipment in accordance with Article 18(2a) and (2b) of Directive [xx on interoperability of the rail system].

Article 19

Telematics applications

1. The Agency shall act as the system authority to ensure the coordinated development of the telematics applications in the Union, in accordance with relevant TSIs. To this end, the Agency shall maintain, monitor and manage the corresponding subsystems requirements.

2. The Agency shall define, publish and apply the procedure for managing requests for changes to those specifications. To this end, the Agency shall set up, maintain and update a register of requests for changes to telematics applications specifications and their status, with the relevant justifications.
3. The Agency shall develop and maintain the technical tools for managing the different versions of the telematics applications' specifications.
4. The Agency shall assist the Commission in the monitoring of deployment of telematics applications in accordance with relevant TSIs.

Article 20

Support for the notified conformity assessment bodies

1. The Agency shall support the activities of notified conformity assessment bodies referred to in Article 27 of Directive [xx on interoperability of the rail system]. That support shall in particular include drafting guidelines for assessing the conformity or suitability for use of an interoperability constituent referred to in Article 9 of Directive [xx on interoperability of the rail system] and guidelines for the EC verification procedure referred to in Articles 10 and 15 of Directive [xx on interoperability of the rail system].
2. The Agency may facilitate cooperation of notified conformity assessment bodies, in accordance with Article 41 of Directive [xx on interoperability of the rail system] and in particular act as the technical secretariat for their coordination group.

CHAPTER 5

TASKS RELATING TO NATIONAL RULES

Article 21

Examination of draft national rules

1. The Agency shall, within two months of their receipt, examine the draft national rules submitted to it in accordance with:
 - (a) Article 8(4) of Directive [xx on railway safety];
 - (b) Article 14(4) of Directive [xx on interoperability of the rail system].

Within this period, the Agency shall exchange relevant information with the Member State concerned, consult, where appropriate, the relevant stakeholders, and subsequently inform it on the outcome of the examination.

2. Where after the examination referred to paragraph 1 the Agency considers that national rules enable the essential requirements for interoperability to be fulfilled, the CSMs and TSIs in force to be respected and the CSTs to be achieved, and that they would not result in arbitrary discrimination or a disguised restriction on rail transport operation between Member States, the Agency shall inform the Commission and the Member State concerned about its positive assessment. The Commission may validate the rule in the IT system referred to in Article 23. Where the Agency does not inform the Commission and the Member State concerned within two months of the receipt of the draft national rules, its assessment shall be considered as positive, unless a longer period was agreed with the Member State concerned.
3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask for its position regarding this assessment. Following this exchange of views with the Member State concerned within a maximum period of one month, the Agency shall:

- (a) issue an opinion addressed to the Member State concerned stating the reasons why the rule in question should not enter into force and/or be applied;
- (b) inform the Commission about its negative assessment, stating the reasons why the rule in question should not enter into force and/or be applied.

This does not prejudice the right of a Member State to adopt a new national rule in accordance with Article 8(3)(b) of Directive [xx on railway safety] and with Article 14(3)(b) of Directive [xx on interoperability of the rail system].

4. The Member State concerned shall inform the Commission about its position on the above opinion within two months, including its reasons in case of disagreement.
 - 4a. Where the reasons provided are deemed not sufficient or in the absence of such information, and if the Member State adopts the rule in question without sufficient consideration for the opinion referred to in paragraph 3, the Commission may adopt a decision addressed to the Member State concerned requesting it to modify or repeal the rule in question in accordance with the advisory procedure referred to in Article 75(2).

Article 22

Examination of national rules in force

1. The Agency shall, within two months of their receipt, examine the national rules notified in accordance with Article 14(5) of Directive [xx on interoperability of the rail system] and Article 8(6) of Directive [xx on railway safety].

Within this period, the Agency shall exchange relevant information with the Member State concerned and subsequently inform it on the outcome of the examination.

2. Where after examination referred to in paragraph 1 the Agency considers that national rules enable the essential requirements for interoperability to be fulfilled, the CSMs and TSIs in force to be respected and the CSTs to be achieved, and that they would not result in arbitrary discrimination or a disguised restriction on rail transport operation between Member States, the Agency shall inform the Commission and the Member State concerned about its positive assessment. In that case, the Commission shall validate the rule in the IT system referred to in Article 23. Where the Agency does not inform the Commission and the Member State concerned within two months of the receipt of the national rules, its assessment shall be considered as positive, unless a longer period was agreed with the Member State concerned.
3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask for its position regarding this assessment. Following this exchange of views with the Member State concerned within a maximum period of one month, the Agency shall:
 - (a) issue an opinion addressed to the Member State concerned stating the reasons why the rule in question should be modified or repealed;
 - (b) inform the Commission about its negative assessment, stating the reasons why the rule in question should be modified or repealed.
4. The Member State concerned shall inform the Commission about its position on the above opinion within two months, including its reasons in case of disagreement. Where the reasons provided are deemed not sufficient or in the absence of such information, the Commission may adopt a decision addressed to the Member State concerned requesting it to modify or repeal the rule in question in accordance with the advisory procedure referred to in Article 75(2).
5. The procedure described in paragraphs 2 and 3 shall apply, *mutatis mutandis*, in cases where the Agency becomes aware of any national rule, notified or not, being redundant or in conflict with the CSMs, CSTs, TSIs or any other Union legislation in the railway field.

Article 23

IT system to be used for notification purposes and classification of national rules

1. The Agency shall manage a dedicated IT system containing national rules referred to in Articles 21 and 22 and make them accessible to stakeholders for the purpose of consultation, where appropriate.
2. Member States shall notify national rules referred to in Articles 21(1) and 22(1) to the Agency and to the Commission through the IT system referred to in paragraph 1. The Agency shall publish the rules in this system, including the status of their examination and use it for informing the Commission in accordance with Articles 21 and 22.
3. The Agency shall classify notified national rules in accordance with Article 14(8) of Directive [xx on interoperability of the rail system]. To this end, it shall use the system referred to in the first paragraph of this Article.
4. The Agency shall classify notified national rules in accordance with Article 8 and Annex IA of Directive [xx on railway safety], taking into account the development of EU legislation. To this end, the Agency shall develop a Rule Management Tool to be used by Member States for simplifying their systems of national rules. The Agency shall use the system referred to in the first paragraph of this Article to publish the Rule Management Tool.

CHAPTER 6

TASKS RELATING TO EUROPEAN RAIL TRAFFIC MANAGEMENT SYSTEM (ERTMS)

Article 24

System authority for the ERTMS

1. The Agency shall act as the system authority to ensure the coordinated development of ERTMS in the Union, in accordance with relevant TSIs. To this end, the Agency shall maintain, monitor and manage the corresponding subsystem requirements, including the technical specifications for ETCS and GSM-R.
2. The Agency shall define, publish and apply the procedure for managing requests for changes to the ERTMS specifications. To this end, the Agency shall set up, maintain and update on its own a register of requests for changes to ERTMS specifications and their status, with the relevant justifications.
3. The development of new versions of ERTMS technical specifications shall not be detrimental to the rate of deployment of the ERTMS, the stability of the specifications which is needed to optimise the production of ERTMS equipment, the return on investment for railway undertakings, infrastructure managers and keepers and efficient planning of the deployment of the ERTMS.
4. The Agency shall develop and maintain the technical tools for managing the different versions of the ERTMS with the aim of ensuring technical and operational compatibility between networks and vehicles fitted with different versions and of providing incentives for the swift and coordinated implementation of the versions in force.
5. In accordance with Article 5(9) of Directive [xx on interoperability of the rail system], the Agency shall ensure that successive versions of ERTMS equipment are technically compatible with earlier versions.

6. The Agency shall prepare and disseminate relevant application guidelines for stakeholders and explanatory documentation related to the technical specifications for the ERTMS.

Article 25

ERTMS working group of notified conformity assessment bodies

1. The Agency shall set up and chair an ERTMS working group of notified conformity assessment bodies referred to in Article 27(7) of Directive [xx on interoperability of the rail system].
The working group shall check the consistency of application of the procedure for assessing the conformity or suitability for use of an interoperability constituent referred to in Article 9 of Directive [xx on interoperability of the rail system] and of the 'EC' procedures for verification referred to in Article 10 of Directive [xx on interoperability of the rail system] and carried out by notified conformity assessment bodies.
2. The Agency shall report every year to the Commission on the activities of the working group referred to in paragraph 1, including statistics on attendance of notified conformity assessment bodies' representatives in the working group.
3. The Agency shall evaluate the application of the procedure for conformity assessment of interoperability constituents and of the 'EC' verification procedure for ERTMS equipment and every two years shall submit a report proposing to the Commission, where appropriate, improvements to be made.

Article 26

Compatibility between ERTMS on-board and trackside subsystems

1. (a) Without prejudice to Article 20(1d) of Directive [xx on interoperability of the rail system], the Agency may assist applicants before issuing the authorisation of placing on the market of a vehicle equipped with ERTMS on-board subsystem, at their request, by checking the technical compatibility between ERTMS on-board and trackside subsystems.

(b) Without prejudice to Article 16a of Directive [xx on railway safety], and after having delivered an authorisation of placing on the market of a vehicle equipped with an ERTMS on-board subsystem, the Agency may assist railway undertakings before using a vehicle equipped with an ERTMS on-board subsystem, at their request, by checking the operational compatibility between ERTMS on-board and track-side subsystems.

To this end, the Agency shall cooperate with the relevant national safety authorities.

2. Where the Agency finds that there is a risk of a lack of technical and operational compatibility between networks and vehicles fitted with ERTMS equipment in the context of specific ERTMS projects, it may request the appropriate actors, in particular manufacturers, notified conformity assessment bodies, railway undertakings, infrastructure managers, keepers and national safety authorities, to provide any information relevant to the procedures applied for 'EC' verification and placing in service, and to operational conditions. The Agency shall inform the Commission about such a risk and, if necessary, recommend appropriate measures to the Commission.

Article 27

Supporting ERTMS deployment and ERTMS projects

1. The Agency shall assist the Commission in monitoring the deployment of the ERTMS in accordance with the EU deployment plan in force. At the Commission's request, it shall facilitate the coordination of ERTMS deployment along the Trans-European Transport Corridors and Rail Freight Corridors as provided for in Regulation (EU) No 913/2010¹¹.
2. The Agency shall ensure technical follow up of Union-funded projects for the deployment of the ERTMS, including, where applicable without undue delay to the process, analysis of tendering documents at the time of the call for tenders. The Agency shall also assist, if necessary, the beneficiaries of the Union funds to ensure that the technical solutions implemented within projects are fully compliant with the TSIs relating to control-command and signalling and are therefore fully interoperable.

Article 28

Accreditation of laboratories

1. The Agency shall support, in particular by giving appropriate guidelines to the accreditation bodies, harmonised accreditation of ERTMS laboratories in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council¹².
 - 1a. The Agency shall inform Member States and the Commission in case of non-conformities with the requirements of Regulation (EC) No 765/2008 of the European Parliament and of the Council in relation with the accreditation of ERTMS laboratories.
2. The Agency may participate as an observer in the peer reviews required by Regulation (EC) No 765/2008.

¹¹ OJ L 276, 20.10.2010, p. 22.

¹² OJ L 218, 13.8.2008, p. 30.

CHAPTER 7

TASKS RELATING TO MONITORING THE SINGLE EUROPEAN RAILWAY AREA

Article 29

Monitoring of the performance and decision-making of national safety authorities

1. In order to perform the tasks entrusted to it and to assist the Commission in fulfilling its duties under the TFEU, the Agency shall monitor the performance and decision-making of national safety authorities through audit and inspections, on behalf of the Commission.

2. The Agency shall be entitled to audit:
 - (a) the capacity of national safety authorities to execute tasks related to railway safety and interoperability;
 - (b) the effectiveness of national safety authorities' monitoring of safety management systems of actors as referred to in Article 16a of Directive [xx on railway safety].

The Management Board shall adopt the policy, working methods, procedures and practical arrangements for the application of this paragraph, including, where appropriate, arrangements regarding consultation with Member States before the publication of information.

The Agency shall promote the inclusion of qualified auditors from national safety authorities that are not subject to the actual audit in the audit team. For that purpose, the Agency shall establish a list of qualified auditors and provide them with training when needed.

3. The Agency shall issue audit reports and send them to the national safety authority concerned, to the Member State concerned and to the Commission. Each audit report shall include, in particular, a list of any deficiencies identified by the Agency as well as recommendations for improvement.

4. If the Agency considers that the deficiencies referred to in paragraph 3 prevent the national safety authority concerned from effectively performing its tasks in relation to railway safety and interoperability, the Agency shall recommend to the national safety authority to take appropriate steps within a time limit to be defined taking into account the importance of the deficiency. The Member State concerned shall be kept informed by the Agency on such recommendation.
5. Where a national safety authority disagrees with the Agency's recommendation referred to in paragraph 4, or do not take the appropriate steps referred to in paragraph 4, or where no answer is given by a national safety authority as a result of the Agency's recommendation within 3 months from its receipt, the Agency shall inform the Commission.
 - 5a. The Commission shall inform the Member State concerned about the issue and ask for its position regarding the above recommendation. Where the answers provided are deemed not sufficient or where no answer is given by the Member State within 3 months from the Commission's request, the Commission may take appropriate actions concerning the steps to be taken as a result of the audit within six months, in accordance with the advisory procedure referred to in Article 75(2) where relevant.
6. The Agency shall be also entitled to conduct announced inspections in national safety authorities, to verify specific areas of their activities and operation, in particular review documents, processes and records related to their tasks referred to in Directive [xx on railway safety]. The inspections may be conducted on an ad-hoc basis or in accordance with a plan developed by the Agency. The duration of an inspection shall not exceed two days. The national authorities of the Member States shall facilitate the work of the Agency's staff. The Agency shall provide the Commission, the Member State and national safety authority concerned with a report on each inspection.

The policy, working methods and procedure for performing the inspections shall be adopted by the Management Board.

Article 30

Monitoring of notified conformity assessment bodies

1. For the purpose of Article 37 of the Directive [xx on interoperability of the rail system], the Agency shall support the Commission in monitoring the notified conformity assessment bodies through assistance to accreditation bodies and to the relevant national authorities, audits and inspections, as provided for in paragraphs 2-6.
2. The Agency shall support harmonised accreditation of notified conformity assessment bodies, in particular by giving appropriate guidance on evaluation criteria and procedures to assess whether notified bodies meet the requirements referred to in Chapter VI of Directive [xx on interoperability of the rail system] to the accreditation bodies, via the European Accreditation infrastructure recognised by Article 14 of Regulation (EC) No. 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No. 339/93.
3. In case of notified conformity assessment bodies which are not accredited according to Article 23 of Directive [xx on interoperability of the rail system], the Agency may audit their capacities to meet the requirements referred to in Article 27 of Directive [xx on interoperability of the rail system]. The procedure for performing audits shall be adopted by the Management Board.
4. The Agency shall issue audit reports covering the activities referred to in paragraph 3 and send them to the notified conformity assessment body concerned, to the Member State concerned and to the Commission. Each audit report shall include, in particular, a list of any deficiencies identified by the Agency as well as recommendations for improvement. If the Agency considers that these deficiencies prevent the notified conformity assessment body concerned from effectively performing its tasks in relation to railway interoperability, the Agency shall adopt a recommendation requesting the Member State in which that notified body is established to take appropriate steps, within a time limit to be defined, taking into account the importance of the deficiency.

5. Where a Member State disagrees with the recommendation referred to in paragraph 4, or do not take the appropriate steps referred to in paragraph 4 or where no answer is given by a notified body as a result of the Agency's recommendation within 3 months from its receipt, the Agency shall inform the Commission. The Commission shall inform the Member State concerned about the issue and ask for its position regarding the above recommendation. Where the answers provided are deemed not sufficient or where no answer is given by the Member State within 3 months from the Commission's request, the Commission may adopt an opinion within a period of six months in accordance with the advisory procedure referred to in Article 75(2).
6. The Agency may conduct announced or unannounced inspections of notified conformity assessment bodies to verify specific areas of their activities and operation, in particular review documents, certificates and records related to their tasks referred to in Article 38 of Directive [xx on interoperability of the rail system]. In the case of accredited bodies, the Agency shall cooperate with the relevant national accreditation bodies. In the case of conformity assessment bodies which are not accredited, the Agency shall cooperate with the relevant national authorities that recognised the notified bodies. The inspections may be conducted on an ad-hoc basis or in accordance with a policy, working methods and procedures developed by the Agency. The duration of an inspection shall not exceed two days. The notified conformity assessment bodies shall facilitate the work of the Agency's staff. The Agency shall provide the Commission and the Member State concerned with a report on each inspection.

Article 31

Monitoring progress of interoperability and safety

1. The Agency, together with the national investigation bodies, shall collect relevant data on accidents and incidents taking into account the contribution of the national investigation bodies to the safety of the railway system as a whole.

2. The Agency shall monitor the overall safety performance of the railway system. The Agency may in particular seek the assistance of the bodies referred to in Article 34, including collection of data. The Agency shall also draw on the data collected by Eurostat and shall cooperate with Eurostat to prevent any duplication of work and to ensure methodological consistency between the common safety indicators and the indicators used in other modes of transport.
3. At the Commission's request, the Agency shall issue recommendations on how to improve the interoperability of the railway systems, in particular by facilitating coordination between railway undertakings and infrastructure managers, or between infrastructure managers.
4. The Agency shall monitor progress on the interoperability and safety of the railway systems. Every two years it shall present to the Commission and publish a report on progress on interoperability and safety in the Single European railway area.
5. The Agency shall, at the Commission's request, provide reports on the state of implementation and application of the Union legislation on safety and interoperability in a given Member State.
- 5a. The Agency shall, at the request of a Member State or the Commission, provide an overview of the interoperability and safety level of the rail system in the Union and establish a dedicated tool to that purpose, in accordance with Article 50(2) of Directive [xx on interoperability of the rail system].

CHAPTER 8

OTHER TASKS

Article 32

Railway staff

1. The Agency shall perform the appropriate tasks relating to railway staff set out in Articles 4, 22, 23, 25, 28, 33, 34, 35 and 37 of 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 Community¹³.
2. The Agency may be requested by the Commission to perform other tasks relating to railway staff in accordance with Directive 2007/59/EC.
3. The Agency shall consult the national authorities competent on railway staff issues on the tasks referred to in paragraphs 1 and 2. The Agency may promote cooperation between those authorities, including by organising appropriate meetings with their representatives.

Article 33

Registers and their accessibility

1. The Agency shall act as the system authority for all registers and databases referred to in Directive [xx on railway safety], Directive [xx on interoperability of the rail system] and 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 Community¹⁴. This shall include, in particular:
 - (a) developing and maintaining specifications of the registers;
 - (b) coordinating of developments in the Member States in relation to the registers;
 - (c) providing guidance on the registers to relevant stakeholders;

¹³ OJ L 315, 3.12.2007, p. 51.

¹⁴ OJ L 315, 3.12.2007, p.51

- (d) making recommendations to the Commission regarding improvements to the specification of existing registers, where necessary including simplification and deletion of redundant information, and any need to set up new ones, subject to a cost-benefits analysis;
2. The Agency shall make the following documents and registers provided for by Directive [xx on interoperability of the rail system] and Directive [xx on railway safety] publicly available:
- (a) the EC declarations of verification of subsystems;
 - (b) the EC declarations of conformity of interoperability constituents and EC declarations of suitability of use of interoperability constituents;
 - (c) the licences issued in accordance with Article 24(8) of Directive 2012/34/EU establishing a single European railway area¹⁵;
 - (d) the safety certificates issued in accordance with Article 10 of Directive [xx on railway safety];
 - (e) the investigation reports sent to the Agency in accordance with Article 24 of Directive [xx on railway safety];
 - (f) the national rules notified to the Commission in accordance with Article 8 of Directive [xx on railway safety] and Article 14 of Directive [xx on interoperability of the rail system];
 - (g) the vehicle registers, including via the links to relevant national registers;
 - (h) the infrastructure registers, including via the links to relevant national registers;
 - (ha) registers related to entities in charge of maintenance and their certification bodies.
 - (i) the European register of authorised types of vehicles in accordance with Article 44 of Directive [xx on interoperability of the rail system];
 - (j) the register of requests for changes and planned changes to the ERTMS specifications, in accordance with Article 24(2);
 - (k) the register of requests for changes and planned changes to the Telematics Applications for Passengers (TAP) TSI/Telematics Applications for Freight (TAF) TSI specifications, in accordance with Article 19(2);

¹⁵ OJ L 343 of 14.12.2012, p.32.

- (l) the register of vehicle keeper markings kept by the Agency in accordance with the TSI on operation and traffic management;
 - (m) quality reports issued in accordance with Article 28(2) of Regulation (EC) No 1371/2007.
3. The practical arrangements for sending the documents referred to in paragraph 2 shall be discussed and agreed by the Commission and the Member States on the basis of a draft prepared by the Agency.
 4. When sending the documents referred to in paragraph 2, the bodies concerned may indicate which documents are not to be disclosed to the public for reasons of security.
 5. The national authorities responsible for issuing the licences referred to in points (c) of paragraph 2 shall notify the Agency of each individual decision to issue, renew, amend or revoke those licenses, in accordance with Directive 2012/34/EU establishing a single European railway area.
The national safety authorities responsible for issuing the certificates referred to in paragraph 2(d) shall notify the Agency, in accordance with Article 10(7) of Directive [xx on railway safety], of each individual decision to issue, renew, amend, restrict or revoke those certificates.
 6. The Agency may include any public document or link relevant to the objectives of this Regulation in the public database, taking into account applicable Union legislation on data protection.

Article 34

Networks of national safety authorities, investigating bodies and representative bodies

1. The Agency shall establish a network of the national safety authorities referred to in Article 16 of Directive [xx on railway safety] and shall support the investigating bodies in accordance with Article 21(7) of Directive [xx on railway safety]. The Agency shall provide the above network with a secretariat. If provided by the Agency, the secretariat for the cooperation of investigating bodies shall be organised separately from the functions within the Agency in charge of safety certification of railway undertakings and authorisations to place vehicles on the market. The objective of the cooperation of such bodies shall, in particular, be:
 - (a) exchange of information related to railway safety and interoperability;
 - (b) promotion of good practices and dissemination of relevant knowledge;
 - (c) provision of data on railway safety to the Agency, in particular data relating to common safety indicators.

The Agency shall facilitate cooperation between the national safety authorities and national investigating bodies, in particular by holding joint meetings.

2. The Agency may establish a network of representative bodies from the railway sector acting at the Union level. The list of these bodies shall be defined by the Commission. The Agency may provide the network with a secretariat. The tasks of the network shall, in particular, be:
 - (a) exchange of information related to railway safety and interoperability;
 - (b) promotion of good practices and dissemination of relevant knowledge;
 - (c) provision of data on railway safety and interoperability to the Agency.
3. The networks and bodies referred to in paragraphs 1 and 2 may comment on draft opinions referred to in Article 9(2).

4. The Agency may establish other networks with bodies or authorities with responsibility for a part of the railway system.
5. The Commission may participate in meetings of networks referred to in this Article.

Article 35

Communication and dissemination

The Agency shall communicate and disseminate to relevant stakeholders information related to the European framework of railway legislation, development of standards and guidance, in accordance with relevant communication and dissemination plans adopted by the Management Board, on the basis of a draft prepared by the Agency. Those plans, based on an analysis of needs, shall be regularly updated by the Management Board.

Article 36

Research and promotion of innovation

1. The Agency shall contribute, upon request of the Commission or upon its own decision subject to the procedure referred to in Article 48(4), to railway research activities at Union level, including through support to relevant Commission services and representative bodies. This contribution shall be without prejudice to other research activities at the Union level.
2. The Commission may entrust the Agency with the task of promoting innovation aimed at improving railway interoperability and safety, particularly the use of new information technologies and tracking and tracing systems.

Article 37

Assistance to the Commission

1. The Agency shall, at the Commission's request, assist the Commission with the implementation of Union legislation aimed at enhancing the level of interoperability of railway systems and at developing a common approach to safety on the European railway system.
2. This assistance may include:
 - (a) providing technical advice in matters requiring specific know-how;
 - (b) collecting information through the networks referred to in Article 34.

Article 38

Assistance with the assessment of rail projects

Without prejudice to the derogations provided for by Article 7 of Directive [xx on interoperability of the rail system], the Agency shall, at the Commission's request, examine, from the point of view of interoperability and safety, any project involving the design, construction, renewal or upgrading of the subsystem for which an application for Union financial support has been submitted.

Within a period to be agreed with the Commission according to the importance of the project and the resources available and which may not exceed two months, the Agency shall give an opinion on whether the project complies with the relevant railway interoperability and safety legislation.

Article 39

Assistance to Member States, candidate countries and stakeholders

1. At the request of the Commission, Member States, candidate countries or the networks referred to in Article 34, the Agency shall engage in training and other appropriate activities concerning the application and explanation of railway interoperability and safety legislation and related Agency's products such as registers, implementation guides or recommendations.

2. The nature and extent of the activities referred to in paragraph 1, including the possible impact on resources shall be decided by the Management Board and included in the programming document. The costs of such assistance shall be borne by the requesting parties unless otherwise agreed.

Article 40

International relations

1. In so far as is necessary to achieve the objectives set out in this Regulation and without prejudice to the respective competences of the Member States and the Union institutions, including the European External Action Service, the Agency may strengthen coordination with international organizations on the basis of concluded agreements and develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries competent in matters covered by Agency activities in order to keep up with scientific and technical developments and to ensure promotion of the European Union railways legislation and standards.
2. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those supervisory authorities, international organisations and the administrations of third countries. Those arrangements and cooperation shall be subject to prior discussion with the Commission and regular reporting to it. The Management Board shall be duly informed of those arrangements.
3. The Management Board shall adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency is competent. This strategy shall be included in the programming document of the Agency, with a specification of associated resources.

Article 41

[...]

CHAPTER 9

ORGANISATION OF THE AGENCY

Article 42

Administrative and management structure

The Agency's administrative and management structure shall comprise:

- (a) A Management Board, which shall exercise the functions set out in Article 47;
- (b) An Executive Board which shall exercise the functions set out in Article 49;
- (c) An Executive Director who shall exercise the responsibilities set out in Article 50;
- (d) One or more Boards of Appeal which shall exercise the responsibilities set out in Articles 54 to 56.

Article 43

Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission, all with a right to vote.

The Management Board shall also include six representatives, without the right to vote representing at European level the following groups:

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

For each of these groups, the Commission shall appoint a representative and an alternate from a shortlist of four names submitted by their respective European organisations.

2. Board members and their alternates shall be appointed in light of their knowledge of the agency's core business, taking into account relevant managerial, administrative and budgetary skills. All parties shall make efforts to limit turnover of their representatives in the Board, in order to ensure continuity of the Board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board.
3. Member States and the Commission shall appoint their members of the Management Board and an alternate who will represent the member in his/her absence.
4. The term of office of the members shall be four years and may be renewed.
5. When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 68.

Article 44

Chairperson of the Management Board

1. The Management Board shall elect, by a two-thirds majority of its members entitled to vote, a Chairperson from among the representatives of the Member States and a Deputy Chairperson from among its members.

The Deputy Chairperson shall replace the Chairperson in the event of the Chairperson being unable to attend to his/her duties.

2. The term of office of the Chairperson and Deputy Chairperson shall be four years and may be renewed once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date also.

Article 45

Meetings

1. Meetings of the Management Board shall be conducted according to the rules of procedure referred to in Article 47(1)(f) and convened by its Chairperson. The Executive Director of the Agency shall normally participate in the meetings, except when his/her participation may lead to a conflict of interests, subject to a decision of the Chairperson.

The Management Board may invite any person whose opinion can be of interest to attend specific agenda items of its meetings as an observer.

2. The Management Board shall meet at least twice a year. It shall also meet on the initiative of the Chairperson, at the request of the Commission, at the request of the majority of its members or of one-third of the Member States' representatives on the Board.
 - 2a. When there is a matter of confidentiality or conflict of interest, the Management Board may decide to examine specific items of its agenda without the presence of the members concerned. This does not affect the right of the Member States and the Commission to be represented by an alternate or any other person. Detailed rules for the application of this provision shall be laid down in the rules of procedure.

Article 46

Voting

Unless stated otherwise in this Regulation, the Management Board shall take its decisions by an absolute majority of its members entitled to vote. Each member entitled to vote shall have one vote.

Article 47

Functions of the Management Board

1. In order to ensure that the Agency carries out its tasks, the Management Board shall:
 - (a) adopt the Annual Report on the Agency's activities for the previous year, send it, by 1 July, to the European Parliament, the Council, the Commission and the Court of Auditors and make it public;
 - (b) adopt each year, by a two-thirds majority of its members entitled to vote, after having received the opinion of the Commission and in accordance with Article 48, the programming document of the Agency;
 - (c) adopt, by a two-thirds majority of its members entitled to vote, the annual budget of the Agency and exercise other functions in relation to the Agency's budget, in accordance with Chapter 10;
 - (d) establish procedures for decision-making by the Executive Director;
 - (e) adopt a policy, working methods and procedures on visits, audits and inspections pursuant to Articles 10, 29 and 30;
 - (f) establish its rules of procedure;
 - (g) adopt and update the communication and dissemination plans referred to in Article 35;
 - (h) [...]
 - (i) subject to paragraph 2, exercise, with respect to the staff of the Agency, the appointing authority powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contract of Employment ("the appointing authority powers");

- (ii) take motivated decisions in relation to immunity waiver in accordance with Article 17 of the Protocol on the Privileges and Immunities of the European Union;
- (j) submit to the Commission for its agreement implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants if they are different from those adopted by the Commission, in accordance with the procedure provided for in Article 110 of the Staff Regulations;
- (k) appoint the Executive Director and may extend his term of office or remove him from the office, by a two-thirds majority of its members entitled to vote, in accordance with Article 62;
- (ka) appoint the members of the Executive Board, by a two-third majority of its members entitled to vote, in accordance with Article 49;
- (kaa) adopt a mandate for the tasks of the Executive Board referred to in Article 49;
- (kb) adopt the decisions related to the arrangements referred to in Article 68(2);
- (kc) appoint and remove the members of the Boards of Appeal, by a two-thirds majority of its members entitled to vote, in accordance with Articles 51 and 52(3);
- (ke) adopt a decision laying down rules on the secondment to the Agency of national experts, in accordance with Article 63;
- (l) adopt an anti-fraud strategy, which is proportionate to the fraud risks having regard to cost-benefit of the measures to be implemented;
- (m) ensure adequate follow-up to the findings and recommendations stemming from investigations of the European Anti-fraud Office (OLAF) and the various internal or external audit reports and evaluations, verifying that appropriate actions are taken by the Executive Director;

- (n) adopt rules for the prevention and management of conflicts of interest in respect of members of the Management Board and of the Board of Appeal;
 - (na) adopt guidelines and the list of the main elements to be included in the cooperation agreements between the Agency and the national safety authorities, taking into account the provisions of Article 69;
 - (nb) adopt a framework model for the financial apportioning of the fees paid by the applicant referred to in Article 69(2) for the purposes of Articles 12, 16 and 17;
 - (nc) establish procedures for cooperation of the Agency and its staff in national judicial proceedings;
 - (nd) adopt rules of procedure of working parties and other groups, and scales relating to travel and subsistence expenses of its members as referred to in Article 4(5) and (7d);
 - (ne) appoint an observer from amongst its members to follow the selection procedure by the Commission for the appointment of the Executive Director;
 - (nf) adopt appropriate implementing rules to Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community¹⁶, in accordance with the voting rules defined in Article 67(1).
2. The Management Board shall adopt, in accordance with the procedure provided for in Article 110 of the Staff Regulations, a decision in application of Article 2(1) of the Staff Regulations and of Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate these powers.

¹⁶ OJ 17, 6.10.1958, p. 385.

In application of the previous subparagraph, where exceptional circumstances so require, the Management Board may, by way of a decision, suspend temporarily the delegation of appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 48

Programming document

1. The Management Board of the Agency shall adopt the programming document containing annual and multi-annual programmes by 30 November each year, taking into account the opinion of the Commission, and forward it to the Member States, the European Parliament, the Council, the Commission and to the networks referred to in Article 34. The annual work programme shall lay down the actions that the Agency shall perform during the coming year. The Management Board shall establish appropriate procedures to be applied for the adoption of the programming document, including for the consultation of relevant stakeholders, as referred to in Article 47(1)(f).
2. The programming document shall become definitive after final adoption of the EU general budget and, if necessary, shall be adjusted accordingly.
If, within 15 days of the date of adoption of the programming document, the Commission expresses its disagreement with such document, the Management Board shall re-examine the programme and adopt it, as amended if necessary, within a period of two months, in second reading either by a two-thirds majority of its members entitled to vote, including by all Commission representatives, or by unanimity of the representatives of the Member States.
3. The Agency's annual work programme shall identify the objectives of each activity. As a general rule, each activity shall be clearly linked with the budgetary and human resources required to carry it out, in accordance with the principles of activity-based budgeting and management and the early assessment procedure provided for in Article 7(2).

4. The Management Board shall, if necessary, amend the adopted programming document when a new task is given to the Agency. Inclusion of such a new task shall be subject to an analysis of the human and budgetary resources implications in accordance with Article 7(2), and may be subject to a decision to postpone other tasks.

5. This multi-annual work programme shall set out overall strategic programming, including objectives, expected results and performance indicators. It shall also set out resource programming, including multi-annual budget and staff.
The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation and review referred to in Article 76.

- 5a. The transitional provisions referred to in Articles 115 and 116 of Regulation (EU) N° 1271/2013 shall apply.

Article 49

Executive Board

1. The Management Board shall be assisted by an Executive Board.

2. The Executive Board shall prepare decisions to be adopted by the Management Board. Where necessary, because of urgency, it shall take certain provisional decisions on behalf of the Management Board, in particular on administrative and budgetary matters, subject to a mandate received from the Management Board.
Together with the Management Board, it shall ensure adequate follow-up to the findings and recommendations stemming from investigations of OLAF and the various internal or external audit reports and evaluations, including by appropriate actions of the Executive Director.

Without prejudice to the responsibilities of the Executive Director, as set out in Article 50, it shall assist and advise him/her in the implementation of the decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.

3. The Chairperson of the Management Board shall be the Chairperson of the Executive Board. It shall also be composed of one representative of the Commission and four other Members' States representatives of the Management Board, on the grounds of relevant competence and experience. The Management Board shall appoint members and their alternates of the Executive Board, and shall strive for a balanced representation between men and women.
4. The term of office of members of the Executive Board shall be the same as that of members of the Management Board unless the Management Board decides on a shorter term.
5. The Executive Board shall meet at least once every three months, and where possible, no less than two weeks prior to the Management Board. The chairperson of the Executive Board shall convene additional meetings at the request of its members, or of the Management Board.
6. The Management Board shall lay down the rules of procedures of the Executive Board, shall be regularly informed on the work of the Executive Board, and shall have access to its documents.

Article 50

Duties of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. The Executive Director shall be accountable to the Management Board for his/her activities.
2. Without prejudice to the powers of the Commission, the Management Board, or the Executive Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.
3. When invited, the Executive Director shall report on the performance of his/her duties to the European Parliament and to the Council.

4. The Executive Director shall be the legal representative of the Agency. He/she shall adopt decisions, recommendations, opinions and other formal acts of the Agency.

5. The Executive Director shall be responsible for the administrative management of the Agency and for the implementation of the tasks assigned to it by this Regulation. In particular, the Executive Director shall be responsible for:
 - (a) the day-to-day administration of the Agency;
 - (b) implementing the decisions adopted by the Management Board;
 - (c) preparing the programming document and submitting it to the Management Board after consultation of the Commission;
 - (d) implementing the programming document and as far as possible, responding to requests for assistance from the Commission in relation to the tasks of the Agency in accordance with this Regulation;
 - (da) preparing the annual report on the Agency's activities and presenting it to the Management Board for approval;
 - (g) taking the necessary steps, in particular the adoption of internal administrative instructions and the publication of orders, to ensure that the Agency operates in accordance with this Regulation;
 - (h) establishing an effective monitoring system in order to compare the Agency's results with its operational objectives and establishing a regular assessment system corresponding to recognised professional standards;
 - (i) preparing each year a draft general report on the basis of the monitoring and assessment systems referred to in point (g), and submitting it to the Management Board;
 - (j) preparing the Agency's draft statement of estimates of the revenue and expenditure of the Agency pursuant to Article 58 and implementing the budget pursuant to Article 59;
 - (ka) taking the necessary steps to follow the work of the networks of national safety authorities, investigating bodies and representative bodies pursuant to Article 34;
 - (l) preparing an action plan following-up on the conclusions of the internal or external audit reports and evaluations, as well as investigations by OLAF and reporting on progress bi-annually to the Commission and regularly to the Management Board;

- (m) protecting the financial interests of the Union by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties;
- (n) preparing an anti-fraud strategy of the Agency and presenting it to the Management Board for approval;
- (o) preparing the Agency's draft financial regulation for adoption by the Management Board under Article 60, and its implementing rules;
- (oa) concluding, on behalf of the Agency, cooperation agreements with national safety authorities in accordance with Article 69 of this Regulation.

Article 51

Establishment and composition of the Boards of Appeal

1. Upon decision of the Management Board, the Agency shall establish one or more Boards of Appeal which shall be in charge of the appeals and arbitration procedures referred to in Articles 54 and 55b.
2. Each Board of Appeal shall be composed of a Chairperson and two other members. They shall have alternates to represent them in their absence, or in case of conflict of interests.
- 2a. The establishment and composition of each Board of Appeal shall be decided on a case-by-case basis or as a permanent body for a period of maximum four years, in accordance with the following procedure:
 - (a) The Commission shall establish a list of qualified experts on the grounds of relevant competence and experience, and following an open selection procedure;
 - (b) The Management Board shall appoint the Chairperson, the other members and their alternates from the list referred to above. Where it is not a permanent body, the Management Board shall take into account the nature and content of the appeal or arbitration, and avoid any conflict of interests in accordance with Article 53.

3. [...]
4. Where the Board of Appeal considers that the nature of the appeal so requires, it may request the Management Board to appoint two additional members and their alternates from the list referred to in paragraph 2a(a).
5. On the proposal of the Agency, the Commission shall establish the rules of procedure of the Board of Appeal, including the procedures for filing an appeal and the conditions for reimbursement of expenses of its members, after having consulted the Management Board and in accordance with the examination procedure referred to in Article 75(3).
- 5a. The Board of Appeal may request the opinion of experts from the Member States concerned, in particular with a view to clarifying the national legislation concerned, in the initial examination phase of the procedure.

Article 52

Members of the Board of Appeal

1. In the case of a permanent Board of Appeal, the term of office of the members and alternates of a Board of Appeal shall be limited to a maximum period of four years and may be renewed once. In other cases, the term of office shall be limited to the duration of the appeal or arbitration.
2. The members of a Board of Appeal shall be independent and may not perform any other duties within the Agency. In making their decisions they shall not be bound by any instructions and shall be free of any conflict of interests.
- 2a. The members of the Board of Appeal shall not be part of the Agency's staff and shall be remunerated for their actual involvement in a given appeal or arbitration.

3. The members of a Board of Appeal may not be removed from office during their term of office, unless there are serious grounds for such removal and the Management Board takes a decision to that effect.
4. The members of a Board of Appeal may not be removed from the list of qualified experts during their term of office, unless there are serious grounds for such removal and the Commission takes a decision to that effect.

Article 53

Exclusion and objection

1. In case of an established Board of Appeal, its members may not take part in any appeal or arbitration proceedings if they have any personal interest in the proceedings, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
2. Any member of the Board of Appeal who considers that himself or any other member should not take part in any appeal or arbitration proceeding, for one of the reasons referred to in paragraph 1 or for any other reason, shall inform the Board of Appeal which decides on the exclusion on the basis of the rules adopted by the Management Board as defined in Article 47(1)(n).
3. Any party to the appeal or arbitration proceedings may object, in accordance with the rules of procedures defined in Article 51(5), to any member of the Board of Appeal on any of the grounds given in paragraph 1, or if the member is suspected of partiality. No objections may be based on the nationality of the members.

4. The Board(s) of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his/her alternate. The Management Board shall be informed of the decisions taken by the Board of Appeal.

Article 54

Decisions and failure to act subject to appeal

1. An appeal may be brought before the Board of Appeal against decisions taken by the Agency pursuant to Articles 12, 16, and 17, or if the Agency fails to act within the defined time limits, and following the completion of the interlocutory revision referred to in Article 55a.
2. An appeal lodged pursuant to paragraph 1 shall not have a suspensory effect. However, upon request of the parties involved, the Board of Appeal may decide that the appeal lodged pursuant to paragraph 1 shall have a suspensory effect, if it considers that circumstances so permit. In such a case, the Board of Appeal shall justify its decision.

Article 55

Persons entitled to appeal, time limit and form

1. Any natural or legal person may appeal against a decision addressed to that person, or of direct and individual concern to that person, by the Agency pursuant to Articles 12, 16 and 17, or if the Agency fails to act within the defined timelimits.
2. The appeal, together with the statement of grounds thereof, shall be filed in writing in accordance with the rules of procedure referred to in Article 51(5) within two months of the notification of the measure to the person concerned, or, if the person is not notified of the measure, within two months of the day on which it came to their knowledge.

Article 55a

Interlocutory revision

1. If the Agency considers the appeal to be admissible and well founded, it shall rectify the decision or failure to act referred to in Article 54(1). This shall not apply where the appealed decision affects another party involved in the appeal proceedings.
2. If the decision is not rectified within one month after receipt of the appeal, the Agency shall forthwith decide whether or not to suspend the application of its decision and shall remit the appeal to the Board of Appeal.

Article 55b

Arbitration procedure

In the event of a disagreement between the Agency and a national safety authority or authorities pursuant to Articles 20(1f) and 22 of Directive [xx on interoperability of the rail system] and Articles 10(1f) and 16a(4 and 4a) of Directive [xx on railway safety], the Board of Appeal shall act as an arbitrator upon request of the national safety authority concerned. In such case, the Board of Appeal shall decide whether to agree with the Agency's position.

Article 56

Examination and decisions on appeals and arbitration

1. When examining the appeal or acting as arbitrator, the Board of Appeal shall act within the deadlines set out in the rules of procedure. It shall, as often as necessary, invite the parties to the appeal proceedings to file, within specified time limits, observations on its notifications or on communications from other parties to the appeal proceedings. Parties to the appeal proceedings shall be entitled to make oral presentations.

2. As regards the arbitration, the Agency takes its final decision in accordance with the procedures referred to in Article 20(1f) of Directive [xx on interoperability of the rail system] and Article 10(1f) of Directive [xx on railway safety],
3. As regards the case of a successful appeal, the Agency shall review its position in the light of the findings of the Board of Appeal and decide whether or not to confirm its original decision. The Agency shall justify its final decision and inform the parties to the appeal proceedings accordingly.

Article 57

Actions before the Court of Justice

1. Actions for the annulment of Agency decisions taken for the purposes of Articles 12, 16 and 17, or for the failure to act within the time limits may be brought before the Court of Justice of the European Union only after the appeal procedure within the Agency in accordance with Article 54 has been exhausted.
2. The Agency shall take all necessary measures to comply with the judgment of the Court of Justice of the European Union.

CHAPTER 10

FINANCIAL PROVISIONS

Article 58

Budget

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

2. Without prejudice to other resources, the revenue of the Agency shall consist of, :
 - (a) a contribution from the Union and grants from Union bodies;
 - (b) any contribution from third countries participating in the work of the Agency, as provided for by Article 68;
 - (c) the fees paid by applicants for, and holders of, certificates and authorisations issued by the Agency in accordance with Articles 12, 16 and 17;
 - (d) charges for publications, training and any other services provided by the Agency;
 - (e) any voluntary financial contribution from Member States, third countries or other entities, provided such a contribution is transparent, is clearly identified in the budget and does not compromise the independence and impartiality of the Agency.

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

4. Revenue and expenditure shall be in balance.

5. Each year, the Management Board, on the basis of a draft drawn up by the Executive Director on the basis of activity-based budgeting, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be forwarded by the Management Board to the Commission by 31 January at the latest.
6. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the Union.
7. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the Treaty, together with a description of and justification for any difference between the Agency's statement of estimates and the subsidy to be charged to the general budget.
8. The budgetary authority shall authorise the appropriations for the contribution to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.
9. The budget shall be adopted by the Management Board, by a two-thirds majority of its members entitled to vote. The Budget of the Agency shall become final following final adoption of the general budget of the Union. Where appropriate, it shall be adjusted accordingly.
10. For any property-related project likely to have significant implications for the budget of the Agency, the provisions of Article 203 of Regulation 966/2012 (EU, Euratom) shall apply.

Article 59

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.
2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 147 of Regulation (EU, Euratom) No 966/2012 (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 287 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 148 of the general Financial Regulation, the accounting officer shall draw up the Agency's final accounts. The Executive Director shall submit them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on the Agency's final accounts.
6. The accounting officer shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

7. The final accounts shall be published.
8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest following each financial year. He shall also send this reply to the Management Board and to the Commission.
9. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of the general Financial Regulation.
10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2 give a discharge to the Executive Director in respect of the implementation of the budget for year N.

Article 60

Financial Regulation

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from Commission Delegated Regulation (EU) N°1271/2013 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent.

CHAPTER 11

STAFF

Article 61

General Provisions

1. The Staff Regulations of the European Union and the Conditions of Employment of Other Servants of the European Union and the rules adopted by agreement between the institutions of the European Union for giving effect to those Staff Regulations shall apply to the staff of the Agency.
2. [...]
- 2a. Without prejudice to Article 47(1)(j), implementing rules adopted by the Commission to give effect to the Staff Regulations and the conditions of Employment of Other Servants of the European Union, including the general implementing provisions, shall apply by analogy to the Agency, in accordance with Article 110 of the Staff Regulations.
3. The Agency shall take appropriate administrative measures to organise its services in order to avoid any conflict of interest.

Article 62

Executive Director

1. The Executive Director shall be engaged as a temporary agent of the agency under Article 2(a) of the Conditions of Employment of Other servants.

2. The Executive Director shall be appointed by the Management Board on the grounds of merit, documented administrative and managerial skills, as well as relevant knowledge and experience of the transport sector, from a list of at least three candidates proposed by the Commission, after an open and transparent selection procedure, following publication of the vacancy notice in the Official Journal of the European Union, and elsewhere, as appropriate. Before the decision of the Management Board is taken, the observer referred to in Article 47(1)(ne) shall report on the procedure.

For the purpose of concluding the contract of the Executive Director, the Agency shall be represented by the Chair of the Management Board.

Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and to answer questions by its members.

3. The term of office of the Executive Director shall be five years. By the end of this period, the Commission shall undertake an assessment which takes into account the evaluation of the performance of the Executive Director and the Agency's future tasks and challenges.
4. The Management Board, acting on a proposal from the Commission which takes into account the assessment referred to in paragraph 3, may extend the term of office of the Executive Director once, for no more than five years.
5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within the month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.
6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post following the extension of the term of office.

7. The Executive Director may be removed from the office only upon a decision of the Management Board acting on a request from the Commission or from one third of its members.

Article 63

Seconded national experts and other staff

The Agency may also make use of Seconded National Experts or other staff which are not employed by the Agency under the Staff Regulations and the Conditions of Employment of Other Servants.

Without prejudice to the rules of the relevant Commission Decision on the secondment of national experts, which apply to the Agency, the Management Board shall adopt a decision laying down rules on the secondment to the Agency of national experts.

CHAPTER 12

GENERAL PROVISIONS

Article 64

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the agency and its staff.

Article 65

Headquarters agreement and operating conditions

1. Where the necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the Agency's host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families are not yet in place or not yet provided in a written agreement, an agreement between the Agency and the host Member State shall be concluded, in accordance with the legal order of the host Member State, and after the approval of the Management Board and no later than one year after the entry into force of this Regulation. This agreement may take the form of a headquarters agreement.
2. The host Member State shall provide the best possible conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

Article 66

Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the event of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the course of performance of their duties.
4. The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage as referred to in paragraph 3.
- 4a. 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 66a

Cooperation with the national judicial authorities

In case of national judicial proceedings involving the Agency on the grounds that the Agency has exercised its tasks in accordance with Articles 20(1e) of Directive [xx on interoperability of the rail system].and 10(1e) of Directive [xx on railway safety], the Agency and its staff shall cooperate without undue delay with the competent national judicial authorities. Appropriate procedures to be applied in such situations shall be established by the Management Board in accordance with Article 47 (1)(nc).

Article 67

Language arrangements

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community¹⁷ shall apply to the Agency. If necessary, the Management Board shall adopt appropriate implementing rules to Regulation No 1.
At the request of a Member of the Management Board, this decision shall be taken by unanimity.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

Article 68

Participation by third countries in the work of the Agency

1. Without prejudice to Article 40, the Agency shall be open to participation by third countries, in particular by countries within the scope of the European Neighbourhood Policy, the Enlargement policy countries and EFTA countries which have concluded agreements with the Union under which the countries concerned have adopted and are applying Union legislation, or its equivalent national measures, in the field covered by this Regulation, in accordance with the procedure laid down in Article 218 of the TFEU.
2. In accordance with the relevant provisions of the agreements referred to in paragraph 1, arrangements between the Agency and the third countries shall be made to set out detailed rules for participation by these countries in the work of the Agency, in particular the nature and extent of such participation. These arrangements shall include provisions on financial contributions and staff. They may provide for representation, without the right to vote, on the Management Board.

¹⁷ OJ 17, 6.10.1958, p. 385.

The Agency shall sign the arrangements after having received an agreement of the Commission and of the Management Board.

Article 69

Cooperation with national authorities and bodies

1. The Agency and the national safety authorities shall conclude cooperation agreements in relation to the implementation of Articles 12, 16 and 17, taking into account Article 47(1)(na).
2. These cooperation agreements may be specific or framework agreements, and involve one or more national safety authorities. These agreements shall contain a specified description of tasks and conditions for deliverables, the time-limits applying to their delivery, and the apportioning of the fees paid by the applicant between the Agency and the national safety authorities. Such apportioning shall take into account the framework model referred to in Article 47(1)(nb).
3. The agreements may also include specific cooperation arrangements in the case of networks requiring specific expertise due to geographical or historical reasons, with a view to reducing administrative burden and costs to the applicant. Where such networks are isolated from the rest of the Union's rail system, such specific cooperation arrangements may include the possibility for contracting tasks to the relevant national safety authorities when it is necessary in order to ensure efficient and proportionate allocation of resources.
 - 3a. These agreements shall be in place before the Agency is entitled to receive applications in accordance with Articles 12, 16 and 17 of this Regulation, and in any case no later than three years following the date of entry into force of this Regulation.
 - 3b. The Agency may conclude agreements with other national authorities and competent bodies in relation to the implementation of Articles 12, 16 and 17.

4. The agreements described in the paragraphs above are without prejudice to the overall responsibility of the Agency for performing its tasks as provided for in Articles 12, 16 and 17.

Article 70

Transparency

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹⁸ shall apply to documents held by the Agency.

The Management Board shall adopt practical measures for the implementation of Regulation (EC) No 1049/2001 by [one year after entry into force].

Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under Articles 228 and 263 of the Treaty respectively.

- 1a. The Agency shall publish its recommendations, opinions, studies, reports and outcome of impact assessments on its website, without prejudice to paragraph 1 and after all confidential information has been removed.

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

¹⁸ OJ L 145, 31.5.2001, p. 43.

Article 71

Security rules for protecting classified or sensitive information

The Agency shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure. This shall cover, *inter alia*, provision for exchanging, processing and storing such information.

Article 72

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No 1073/1999, within six months from the day of entry into force of this Regulation, the Agency shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and adopt the appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council ¹⁹and Council Regulation (Euratom, EC) No 2185/96²⁰ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency.

¹⁹ OJ L 136, 31.5.1999, p. 1.

²⁰ OJ L 292, 15.11.1996, p. 2.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

CHAPTER 13

FINAL PROVISIONS

Article 73

Implementing acts relating to fees and charges

1. The Commission shall establish, by means of implementing acts, measures concerning fees and charges, in particular in application of Articles 12, 16 and 17. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 75(3).
2. The measures referred to in paragraph 1 shall determine in particular the matters for which fees and charges pursuant to Articles 12, 16 and 17 are due, the amount of the fees and charges and the way in which they are to be paid.
3. Fees and charges shall be levied for:
 - a) the issuing and renewal of authorisations for placing on the market for vehicles and for types of vehicles;
 - (b) the issuing and renewal of safety certificates;
 - (c) the provision of services; they shall reflect the actual cost of each individual provision;

Fees and charges may be levied for the processing of appeals.

All fees and charges shall be expressed, and payable, in euro.

Fees and charges shall be set in a transparent, fair and uniform manner, taking into account the competitiveness of the European railway sector. They shall not lead to unnecessary financial burden on companies. The apportioning of the fees shall be clearly identified in the accounts.

4. The amount of the fees and charges shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient to cover the full cost of the services delivered, including the relevant costs resulting from the tasks assigned to the national safety authorities in accordance with Article 69(2) and (3). All expenditures of the Agency attributed to staff involved in activities referred to in paragraph 3, including the employer's pro-rata contribution to the pension scheme, shall be in particular reflected in this cost. Should a significant imbalance resulting from the provision of the services covered by fees and charges become recurrent, the revision of the level of the fees and charges shall become mandatory. These fees and charges shall be assigned revenues for the Agency.

Article 74

Exercise of the delegation

[...]

Article 75

Committee procedure

1. The Commission shall be assisted by the committee established by Article 48 of Directive [xx on interoperability of the rail system]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third paragraph of Article 5(4) of Regulation (EU) 182/2011 shall apply.

Article 76

Evaluation and review

1. No later than five years after the entry into force of this Regulation and every five years thereafter, the Commission shall commission an evaluation to assess, in particular, the impact, effectiveness and efficiency of the Agency and its working practices, taking into account the views and recommendations of the relevant stakeholders, including national safety authorities. The evaluation shall address, in particular, any need to amend the mandate of the Agency, and the financial implications of any such amendment.
2. The Commission shall forward the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. The findings of the evaluation shall be made public.
3. On the occasion of every second evaluation, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks.

Article 77

Transitional provisions

1. The Agency replaces and succeeds the European Railway Agency established by Regulation (EC) No 881/2004 as regards all ownership, agreements, legal obligations, employments contracts, financial commitments and liabilities.
2. By way of derogation from Article 43, the Members of the Administrative Board appointed under Regulation (EC) No 881/2004 before the date of entry into force of this Regulation, shall remain in office until the expiry date of their term as Members of the Management Board, without prejudice to the right of each Member State to appoint a new representative.

By way of derogation from Article 50, the Executive Director which has been appointed in accordance with Regulation (EC) No 881/2004 shall remain in office until the expiry date of his term.

3. By way of derogation from Article 61, all employment contracts in force on the date of entry into force of this Regulation, shall be honoured until their expiry date.

Article 78

Repeal

Regulation (EC) No 881/2004 is repealed.

Article 79

Entry into force

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

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President
