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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 - Adopted by the Council on 10 December 2015

REGULATION (EU) 2015/….
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

on the European Union Agency for Railways
and repealing Regulation (EC) No 881/2004

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure[3],

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1 OJ C 327, 12.11.2013, p. 122.
2 OJ C 356, 5.12.2013, p. 92.
3 Position of the European Parliament of 26 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 10 December 2015 (not yet published in the Official Journal).

Whereas:

(1) The progressive establishment of a single European railway area requires Union action in the field of the rules applicable to railways with regard to technical safety and interoperability aspects, the two being inextricably linked and both requiring a higher level of harmonisation at Union level. Relevant railway legislation has been adopted in the last two decades, in particular three railway packages of which Directive 2004/49/EC of the European Parliament and of the Council[1] and Directive 2008/57/EC of the European Parliament and of the Council[2] are the most relevant in this regard.

(2) The simultaneous pursuit of the goals of railway safety and interoperability requires substantial technical work 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.

[1] Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ 164, 30.4.2004, p. 44).

[2] Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (OJ L 191, 18.7.2008, p. 1).

(3) Regulation (EC) No 881/2004 of the European Parliament and of the Council[1] establishes a European railway agency ('the Agency') 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 contains important changes designed 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 of which are directly linked to the tasks of the Agency. Those Directives provide in particular for the performance of tasks relating to the issuing of vehicle authorisations and safety certificates at Union level. It involves a greater role for the Agency. Due to the substantial number of changes that it introduces to the tasks and internal organisation of the Agency, Regulation (EC) No 881/2004 should be repealed and replaced by a new legal act.

(4) The Agency should contribute to the development of a genuine European railway culture providing an essential tool for dialogue, consultation and the exchange of views between all the actors in the railway sector, having due regard to their respective functions, as well as the technical characteristics of the railway sector. When performing its tasks, and particularly when drafting recommendations and opinions, the Agency should take utmost account of external railway expertise, in particular that of professionals from the railway sector and from the relevant national authorities. The Agency should therefore set up competent and representative working parties and groups composed predominantly of those professionals.

[1] Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European railway agency (Agency Regulation) (OJ L 164, 30.4.2004, p. 1).

(5) 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 of the Agency ('the Management Board') and the Executive Director of the Agency ('the Executive Director') to make informed decisions, and to manage the work priorities and resource allocation within the Agency more effectively, the Agency should further develop its engagement in impact-assessment activity.

(6) The Agency should provide independent and objective technical support predominantly to the Commission. Directive (EU) 2015/… of the European Parliament and of the Council[1*] provides for the drafting and revision of technical specifications for interoperability ('TSIs'), while Directive (EU) 2015/… of the European Parliament and of the Council[2**] provides for the drafting and revision of common safety methods ('CSMs'), common safety targets ('CSTs') and common safety indicators ('CSIs'). The continuity of the work and of the development of TSIs, CSMs, CSTs and CSIs requires a permanent technical framework and a specialised body with a dedicated staff possessing a high level of expertise. To that end, the Agency should be responsible for providing the Commission with recommendations and opinions in relation to the drafting and revision of TSIs, CSMs, CSTs and CSIs. The Agency should also provide an independent technical opinion, upon request from the national safety authorities and regulatory bodies.

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1 Directive (EU) 2015/… of the European Parliament and of the Council of … on the interoperability of the rail system (OJ …).

* OJ: Please insert the number of the Directive in document 2013/0015 (COD) and complete footnote.

2 Directive (EU) 2015/… of the European Parliament and of the Council of … on railway safety (OJ …).

** OJ: Please insert the number of the Directive in document 2013/0016 (COD) and complete footnote.

(7) In order to make the issuing of single safety certificates to railway undertakings more efficient and impartial, it is essential that the Agency be assigned a central role. Where the area of operation is limited to one Member State, the railway undertaking concerned should have the possibility of choosing whether to submit its application for a single safety certificate to the Agency or to the national safety authority. Directive (EU) 2015/…[*] is to provide for this.

(8) Currently, Directive 2008/57/EC provides, in the case of rail vehicles, for the granting of authorisation for the placing in service of such vehicles in each Member State, except in certain 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 as a result of the 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, 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 of choosing whether to submit its application for vehicle authorisation, through the one-stop shop referred to in this Regulation, to the Agency or to the national safety authority. This would bring tangible benefits for the sector by reducing the cost and duration of the procedure, and would diminish the risk of potential discrimination, especially against new companies wishing to enter a railway market. Directive (EU) 2015/…[**] is to provide for this.

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[*] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

(9) It is essential that Directive (EU) 2015/…[*] and Directive (EU) 2015/…[**] should not lead to a reduced level of safety in the Union rail system. In that respect, the Agency should take full responsibility for the vehicle authorisations and single safety certificates it issues, assuming inter alia both contractual and non-contractual liability in respect thereof.

(10) With regard to liability of the staff of the Agency when carrying out the tasks assigned to the Agency, Protocol No 7 on the privileges and immunities of the European Union should apply. The application of that Protocol should not lead to undue delays or the imposition of unjustified restrictions on 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 before a national court, the Management Board should decide without undue delay to waive that member of the staff's immunity, provided that such waiver will not compromise the interests of the Union. Such a decision should be duly justified and should be amenable to judicial review before the Court of Justice of the European Union.

(11) The Agency should cooperate loyally with the national judicial authorities, in particular in cases in which the participation of the Agency is necessary by reason of the Agency having exercised its powers in relation to vehicle authorisations, single safety certificates issued by it and decisions for the approval of European Rail Traffic Management System (ERTMS) trackside equipment projects. Where 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 handled with due diligence and within a reasonable period of time. To that end, the Management Board should adopt appropriate procedures to be used in such cases.

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

(12) In order to further pursue the development of the single European railway area, in particular in relation to providing appropriate information to freight customers and passengers, and to avoid fragmented development of telematics applications, it is necessary to give the Agency a strengthened role in the field of such applications. The Agency, as a competent body at Union level, should be given a prominent role so as to ensure consistency in the development and deployment of all telematics applications. To that end, the Agency should be empowered to act as the system authority for telematics applications, and should, in that capacity, maintain, monitor and manage all corresponding subsystems requirements at Union level.

(13) Given the importance of the ERTMS for the smooth development of the single European railway area and its safety, and in order to avoid fragmented development of the ERTMS, it is necessary to strengthen overall coordination at Union level. Therefore, the Agency, as the Union body with the greatest expertise in the field, should be given a more prominent role in this field so as to ensure consistency in the 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 additional national requirements in relation to the ERTMS from jeopardising its interoperability. However, incompatible national requirements should be applied only on a voluntary basis or repealed.

(14) In order to make the procedures for issuing authorisations for the placing in service of trackside control-command and signalling subsystems more efficient and to harmonise those procedures at Union level, it is essential that, before any call for tenders relating to ERTMS trackside equipment, the Agency check that the technical solutions envisaged are fully compliant with the relevant TSIs and are therefore fully interoperable. Directive (EU) 2015/…* is to provide for this. The Agency should establish a group composed of notified conformity assessment bodies active in the field of the ERTMS. The participation of such bodies in the group should be encouraged as much as possible.

(15) In order to facilitate cooperation and guarantee a clear distribution of tasks and responsibilities between the Agency and national safety authorities, a communication protocol between them should be developed. In addition, a common information and communication platform with a virtual one-stop-shop functionality should be developed, if appropriate on the basis of the existing applications and registers, by extending their functionality with the aim of keeping the Agency and national safety authorities informed about all applications for authorisations and safety certifications, the stages of these procedures and their outcome. An important objective of this platform is to identify at an early stage the need to coordinate decisions to be taken by national safety authorities and the Agency in the case of different applications requesting similar authorisations and safety certificates. Such cases should be identified in a summarised way by automatic notifications.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

(16) Competent national authorities have, thus far, been charging for issuing vehicle authorisations and single safety certificates. With the transfer of competences to the Union, the Agency should be entitled to charge applicants for issuing the certificates and authorisations mentioned in the preceding recitals. It is important to establish certain principles applicable to fees and charges payable to the Agency. The level of those fees and charges should be estimated in such a way as 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 fees and charges should be equal to or lower than the current average for the relevant services and should be set in a transparent, fair and uniform manner in cooperation with Member States. They should not jeopardise the competitiveness of the European railway sector and should be established on a basis which takes due account of the ability of undertakings to pay and should not result in the imposition of an unnecessary financial burden on companies. They should also take into account, as appropriate, the specific needs of small and medium-sized enterprises.

(17) 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 diminishing the current high levels of safety. To that end, cooperation agreements, including cost elements, should be concluded between the Agency and the national safety authorities. The Agency should have sufficient resources to enable it to carry out its new tasks, and the timing of the allocation of those resources should be based on clearly defined needs.

(18) When drafting recommendations, the Agency should take into account the cases of networks which are isolated from the rest of the Union rail system and which require specific expertise for geographical or historical reasons. In addition, where operation is limited to such networks, it should be possible for applicants for single safety certificates and vehicle authorisations to fulfil the necessary formalities locally through the relevant national safety authorities. To that end, and with a view to reducing administrative burdens and costs, it should be possible for cooperation agreements concluded between the Agency and the relevant national safety authorities to provide for the appropriate allocation of tasks, without prejudice to the assumption by the Agency of final responsibility for issuing the authorisation or the single safety certificate.

(19) Taking into account the knowledge 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 single safety certificates. To that end, secondment of national experts to the Agency should be encouraged.

(20) Directive (EU) 2015/…[*] and Directive (EU) 2015/…[**] are to provide for examination of national measures from the point of view of railway safety and interoperability, and compatibility with competition rules. They are also to limit the possibility for Member States to adopt new national rules. The current system in which numerous national rules continue to exist may lead to possible conflicts with Union rules and give rise to insufficient transparency and possible discrimination against operators, including smaller and new ones. In order to migrate towards a system of truly transparent and impartial railway rules at Union level, a gradual reduction of national rules, including operating rules, needs to be reinforced. An opinion based on independent and neutral expertise is essential at Union level. To that end, the role of the Agency needs to be strengthened.

(21) Performance, organisation and decision-making procedures in the field of railway safety and interoperability vary substantially among the national safety authorities and notified conformity assessment bodies, with a detrimental effect on the smooth operation of the single European railway area. In particular, small and medium-sized enterprises wishing to enter the railway market in another Member State can be negatively affected. Therefore, strengthened coordination with a view to greater harmonisation at Union level is essential. To that 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, where appropriate in cooperation with national accreditation bodies.

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[*] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

(22) 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 CSIs and linking all parties in the sector, is important and should be carried out. As regards statistics, close collaboration with Eurostat is necessary.

(23) The Agency should be responsible for publishing a report every two years in order to monitor progress in achieving railway safety and interoperability. Given its technical expertise and impartiality, the Agency should also assist the Commission in the performance by the latter of its task of monitoring the implementation of Union railway safety and interoperability legislation.

(24) The interoperability of the trans-European transport 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 out in Regulation No 1315/2013 of the European Parliament and of the Council[1]. The Agency is the appropriate body to contribute to the attainment of those objectives and should cooperate closely with competent Union bodies in relation to projects concerning the trans European transport network. With regard to ERTMS deployment and ERTMS projects, the Agency's role should include helping applicants to implement projects which are compliant with the TSI on control-command and signalling.

[1] 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/EU (OJ L 348, 20.12.2013, p. 1).

(25) The maintenance of rolling stock 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 led to increased costs for the sector and results in journeys without loads. Common conditions for the certification of maintenance workshops and of entities in charge of the maintenance of vehicles other than freight wagons should therefore be gradually developed and updated, with the Agency being the most appropriate body to propose adequate solutions to the Commission.

(26) The vocational qualifications required of train drivers are a major factor in both railway safety and interoperability within the Union. Vocational qualifications are also a precondition for the free movement of workers in the railway sector. This issue should be addressed within 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.

(27) The Agency should facilitate cooperation between the national safety authorities, the national investigating bodies and representative bodies from the railway sector acting at Union level in order to promote good practice, the exchange of relevant information and the collection of railway-related data, and to monitor the overall safety performance of the Union rail system.

(28) In order to ensure the greatest possible levels of transparency and equal access for all parties to relevant information, the registers, where relevant, and the documents envisaged for the railway safety and interoperability processes should be accessible to the public. The same applies to licences, single safety certificates and other relevant railway documents. The Agency should provide efficient, user-friendly and easily accessible means of exchanging and publishing that information, in particular through appropriate IT solutions, with a view to improving the cost-effectiveness of the railway system and supporting the operational needs of the sector.

(29) The promotion of innovation and research in the railway field is important and should be encouraged by the Agency. 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.

(30) In order to increase the efficiency of Union financial support, its quality and its compatibility with relevant technical regulations, the Agency should play an active role in the assessment of rail projects.

(31) Proper and uniform understanding of legislation on railway safety and interoperability, implementation guides and recommendations of the Agency are preconditions 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.

(32) Taking into account the new functions of the Agency in relation to the issuing of vehicle authorisations and single safety certificates, there will be an important need for training and publication activities in those areas. The national safety authorities should be invited to participate in training activities free of charge, whenever possible, in particular when they have been involved in their preparation.

(33) In order to perform its tasks properly, the Agency should have legal personality and an autonomous budget funded mainly through a contribution by the Union and through fees and charges paid by applicants. The Agency's independence and impartiality should not be compromised by any financial contribution that it receives from Member States, third countries or other entities. In order to ensure independence in its daily management and in the opinions, recommendations and decisions which it issues, the Agency's organisation should be transparent and the Executive Director should have full responsibility. The Agency's staff should be independent and should be employed on both short-term and long-term contracts in order to maintain its organisational knowledge and business continuity, while keeping a necessary and ongoing exchange of expertise with the railway sector. The expenditure of the Agency should include staff, administrative, infrastructure and operational expenses, and, inter alia, the amount paid to the national safety authorities for their work in the vehicle authorisation and the single 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.

(34) With regard to the prevention and management of conflicts of interest, it is essential that the Agency act impartially, demonstrate integrity and establish high professional standards. There should never be any legitimate reason to suspect that decisions might be influenced by interests conflicting with the role of the Agency as a body serving the Union as a whole or by private interests or affiliations of any member of the Agency staff, any seconded national expert, or any member of the Management Board or Boards of Appeal which would create, or have the potential to create, a conflict with the proper performance of the official duties of the person concerned. The Management Board should therefore adopt comprehensive rules on conflicts of interests that cover the entire Agency. Those rules should take account of recommendations issued by the Court of Auditors in its Special Report No 15 of 2012.

(35) In order to streamline the decision-making process in the Agency and to contribute to enhancing efficiency and effectiveness, a two-level governance structure should be introduced. To that end, the Member States and the Commission should be represented on a Management Board vested with the necessary powers, including the power to establish the budget and approve the programming document. The Management Board should give general orientations for the Agency's activities and be more closely involved in the monitoring of the Agency's activities, with a view to reinforcing supervision on administrative and budgetary matters. A smaller Executive Board should be set up with the task of preparing the meetings of the Management Board in an appropriate manner and supporting its decision-making process. The powers of the Executive Board should be defined in a mandate to be adopted by the Management Board and should, where appropriate, include opinions and provisional decisions subject to final endorsement by the Management Board.

(36) 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 various stakeholders should be appointed by the Commission on the basis of their representativeness at Union level of railway undertakings, infrastructure managers, the railway industry, trade-union organisations, passengers and freight customers.

(37) It is necessary to ensure that parties affected by decisions made by the Agency have the right to seek the necessary remedies, which should be granted in an independent and impartial manner. An appropriate appeal mechanism should be set up in order for decisions of the Executive Director to be subject to appeal before a specialised Board of Appeal.

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

(39) A broader strategic perspective in relation to the activities of the Agency would facilitate the planning and management of its resources in a more effective manner and would contribute to a higher quality of its outputs. This is confirmed and reinforced by the Commission Delegated Regulation (EU) No 1271/2013[1]. Therefore, a single programming document containing the annual and multi-annual work programmes should be adopted and updated periodically by the Management Board, following proper consultation of the relevant stakeholders.

[1] Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

(40) When a new task is assigned to the Agency in relation to the safety and interoperability of the Union rail system after the adoption of the programming document, the Management Board should, if necessary, amend the programming document to include that new task following an analysis of the impact, in human and budgetary terms, on resources.

(41) The activity of the Agency should be transparent. Effective control by the European Parliament should be ensured and, to that end, the European Parliament should be consulted on the draft multiannual part of the programming document of the Agency and have the possibility of hearing the Executive Director of the Agency and receiving the annual report on the Agency's activities. The Agency should also apply the relevant Union legislation concerning public access to documents.

(42) Over the past years, as more decentralised agencies have been created, transparency and control over the management of Union funding allocated to them has improved, in particular as regards the budgetisation of fees, financial control, power of discharge, pension scheme contributions and the internal budgetary procedure (code of conduct). Similarly, Regulation (EU) No 883/2013 of the European Parliament and of the Council[1] should apply without restriction to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)[2].

[1] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

[2] OJ L 136, 31.5.1999, p. 15.

(43) The Agency should actively promote the Union approach to railway safety and interoperability in its relations with international organisations and third countries. That should also include, within the limits of the Agency's competence, facilitating reciprocal access for Union railway undertakings to the rail markets of third countries and access for Union rolling stock to the networks of third countries.

(44) In order to ensure uniform conditions for the implementation of this Regulation with regard to the examination of draft national rules and existing national rules, the monitoring of national safety authorities and notified conformity assessment bodies, the establishment of the rules of procedure of the Boards of Appeal and the determination of fees and charges which the Agency is entitled to levy, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1].

(45) Since the objective of this Regulation, 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 but can rather, by reason of the joint nature of the work to be done, 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 on European Union. 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 that objective.

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

(46) 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.

(47) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1
PRINCIPLES

Article 1

Subject-matter and scope

1. This Regulation establishes a European Union Agency for Railways ('the Agency').

2. This Regulation provides for:

   (a) the establishment and tasks of the Agency;

   (b) the tasks of the Member States in the context of this Regulation.

3. This Regulation supports the establishment of the single European railway area, and in particular the objectives relating to:

   (a) interoperability within the Union rail system provided for in Directive (EU) 2015/…[*];

   (b) safety of the Union rail system provided for in Directive (EU) 2015/…[**];

   (c) the certification of train drivers provided for in Directive 2007/59/EC of the European Parliament and of the Council[1].

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

[1] Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p.51).

Article 2

Objectives of the Agency

The objective of the Agency shall be to contribute to the further development and effective functioning of a single European railway area without frontiers, by guaranteeing a high level of railway 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 Union legislation by developing a common approach to safety on the Union rail system and by enhancing the level of interoperability on the Union rail system.

Further objectives of the Agency shall be to follow the development of national railway rules in order to support the performance of national authorities acting in the fields of railway safety and interoperability and to promote the optimisation of procedures.

Where provided for by Directive (EU) 2015/…[*] and Directive (EU) 2015/…[**], the Agency shall perform the role of Union authority responsible for issuing authorisations for the placing on the market of railway vehicles and vehicle types and for issuing single safety certificates for railway undertakings.

In pursuing those 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.

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

Article 3

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.

4. The Agency shall have sole responsibility for the functions and powers assigned to it.

Article 4

Type of acts of the Agency

The Agency may:

(a) address recommendations to the Commission concerning the application of Articles 13, 15, 17, 19, 35, 36 and 37;

(b) address recommendations to Member States concerning the application of Article 34;

(c) issue opinions to the Commission pursuant to Article 10(2) and Article 42, and to the authorities concerned in the Member States pursuant to Articles 10, 25 and 26;

(d) address recommendations to national safety authorities pursuant to Article 33(4).

(e) issue decisions pursuant to Articles 14, 20, 21 and 22;

(f) issue opinions constituting acceptable means of compliance pursuant to Article 19;

(g) issue technical documents pursuant to Article 19;

(h) issue audit reports pursuant to Articles 33 and 34;

(i) issue guidelines and other non-binding documents facilitating application of railway safety and interoperability legislation pursuant to Articles 13, 19, 28, 32, 33 and 37.

CHAPTER 2
WORKING METHODS

Article 5

Creation and composition of the working parties and groups

1. The Agency shall set up a limited number of working parties for the purpose of drawing up recommendations and, where relevant, guidelines, in particular relating to technical specifications for interoperability ('TSIs'), common safety targets ('CSTs'), common safety methods ('CSMs') and 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 referred to in Article 81 ('the committee') or on its own initiative, after consulting the Commission.

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

2. The working parties shall be composed of:

– representatives nominated by the competent national authorities to participate in the working parties;

– professionals from the railway sector selected by the Agency from the list referred to in paragraph 3. The Agency 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 shall strive, where possible, for a balanced geographical representation.

The Agency may, if necessary, appoint to the working parties independent experts and representatives of international organisations recognised as competent in the field concerned. Members of the staff of the Agency may not be appointed to the working parties, except for the chair of the working parties, who shall be a representative of the Agency.

3. Each representative body referred to in Article 38(4) shall forward to the Agency a list of the most qualified experts mandated to represent it in each working party and shall update that list whenever changes occur.

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 designated by the trade-union organisations acting at European level 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. The Agency shall take due account of the outcome of the work done by the working parties when drawing up the recommendations and guidelines referred to in paragraph 1.

7. The Agency shall set up groups for the purposes of Articles 24, 29 and Article 38(1).

8. The Agency may set up groups in accordance with Article 38(4) and in duly justified cases at the request of the Commission or of the committee, or on its own initiative.

9. The work of the working parties and of the groups shall be transparent. The Management Board shall adopt the rules of procedure of the working parties and of the groups, including transparency rules.

Article 6

Consultation of the social partners

Whenever the tasks provided for in Articles 13, 15, 19, and 36 have 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 Commission Decision 98/500/EC[1]. In such cases, the social partners may react to those consultations, provided that they do so within three months.

[1] Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the dialogue between the social partners at European level (OJ L 225, 12.8.1998, p. 27).

Those consultations shall be held before the Agency addresses its recommendations to the Commission. The Agency shall take due account of those 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, together with the recommendation by the Agency, to the Commission and by the Commission to the committee.

Article 7

Consultation of rail freight customers and passengers

Whenever the tasks provided for in Articles 13 and 19 have a direct impact on rail freight customers and passengers, the Agency shall consult the organisations representing them, including representatives of persons with disabilities and persons with reduced mobility. In such cases, those organisations may react to those consultations, provided that they do so within three months.

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

Those consultations shall be held before the Agency addresses its recommendations to the Commission. The Agency shall take due account of those consultations, and shall, at all times, be available to expound on its recommendations. The opinions expressed by the organisations concerned shall be forwarded by the Agency, together with the recommendation by the Agency, to the Commission and by the Commission to the committee.

Article 8

Impact assessment

1. The Agency shall conduct an impact assessment of its recommendations and opinions. The Management Board shall adopt an 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. The Agency shall clearly identify the assumptions used as the basis for the impact assessment and the data sources used in the report accompanying each recommendation.

2. Before including an activity in the programming document adopted by the Management Board, in accordance with Article 51(1), the Agency shall conduct an early impact assessment in relation to which it shall state:

   (a) the issue to be solved and the possible solutions;

   (b) the extent to which a specific action, including addressing a recommendation or issuing an opinion of the Agency, would be required;

   (c) the expected Agency contribution to the solution of the problem.

   Before any activities or projects are included in the programming document, they shall be made subject to an efficiency analysis individually and in conjunction with each other, in order to make best use of the budget and resources of the Agency.

3. The Agency may conduct an ex post assessment of the legislation based on its recommendations.

4. Member States shall provide the Agency with the data necessary for an impact assessment, where available.

At the request of the Agency, the representative bodies shall provide the Agency with non-confidential data necessary for the impact assessment.

Article 9

Studies

Where required for the implementation of its tasks, the Agency shall order studies, involving, where appropriate, the working parties and groups referred to in Article 5, and shall finance those studies from its budget.

Article 10

Opinions

1. The Agency shall issue opinions at the request of one or more national regulatory bodies referred to in Article 55 of Directive 2012/34/EU of the European Parliament and of the Council[1], in particular concerning safety- and interoperability-related aspects of matters drawn to their attention.

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

2. The Agency shall issue opinions at the request of the Commission on amendments to any act adopted on the basis of Directive (EU) 2015/…* or Directive (EU) 2015/…**, especially where any alleged deficiency is signalled.

3. All opinions of the Agency, and in particular those referred to in paragraph 2, shall be issued by the Agency as soon as possible and at the latest within two months of receipt of the request therefor, unless otherwise agreed with the requesting party. Those 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.

Article 11

Visits to Member States

1. In order to perform the tasks entrusted to it, in particular those referred to in Articles 14, 20, 21, 25, 26, 31, 32, 33, 34, 35 and 42, and to assist the Commission in fulfilling its duties under the Treaty on the Functioning of European Union (TFEU), including, in particular the assessment of the effective implementation of relevant Union legislation, 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 Agency officials delegated to carry out the visit, 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.

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* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

** OJ: Please insert the number of the Directive in document 2013/0016 (COD).

3. The national authorities of the Member States concerned shall facilitate the work of the Agency's staff.

4. The Agency shall draw up a report on each visit referred to in paragraph 1 and send it to the Commission and to the Member State concerned.

5. This Article is without prejudice to the inspections referred to in Articles 33(7) and 34(6).

6. Travel, accommodation, subsistence and other expenses incurred by the Agency's staff shall be met by the Agency.

Article 12

One-stop shop

1. The Agency shall establish and manage an information and communications system with at least the following one-stop-shop functions:

   (a) a single entry point through which the applicant shall submit its application files for type authorisation, vehicle authorisations for placing on the market and single safety certificates. Where the area of use or operation is limited to a network or networks within one Member State only, the single entry point shall be developed so as to ensure that the applicant selects the authority it wishes to process the application for issuing authorisations or single safety certificates for the whole procedure;

(b) a common information-exchange platform, providing the Agency and national safety authorities with information about all applications for authorisations and single safety certificates, the stages of these procedures and their outcome, and, where applicable, the requests and decisions of the Board of Appeal;

(c) a common information-exchange platform, providing the Agency and national safety authorities with information about requests for approvals by the Agency in accordance with Article 19 of Directive (EU) 2015/…* and applications for authorisations of trackside control-command and signalling subsystems involving European Train Control System (ECTS) and/or Global System for Mobile Communications – Railway (GSM-R) equipment, the stages of these procedures and their outcome, and, where applicable, the requests and decisions of the Board of Appeal;

(d) an early-warning system able to identify at an early stage the needs for coordination between decisions to be taken by national safety authorities and the Agency in the case of different applications requesting similar authorisations or single safety certificates.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

2. The technical and functional specifications of the one-stop shop referred to in paragraph 1 shall be developed in cooperation with the network of national safety authorities referred to in Article 38 on the basis of a draft prepared by the Agency taking into account the results of a cost-benefit analysis. On this basis, the Management Board shall adopt the technical and functional specifications and a plan to establish the one-stop shop. The one-stop shop shall be developed without prejudice to the intellectual property rights and the required confidentiality level, and taking into consideration, if appropriate, the IT applications and registers already set up by the Agency, such as those referred to in Article 37.

3. The one-stop shop shall be operational by …*.

4. The Agency shall monitor the applications submitted through the one-stop shop, in particular by using the early-warning system referred to in point (d) of paragraph 1. If different applications requesting similar authorisations or single safety certificates are detected, the Agency shall ensure appropriate follow-up, such as:

   (a) informing applicant(s) that there is another or similar request for authorisation or certification;

   (b) coordinating with the relevant national safety authority in order to ensure consistency of decisions to be taken by national safety authorities and the Agency. If no mutually acceptable solution can be found within one month of the beginning of the coordination process, the matter shall be referred for arbitration to the Board of Appeal referred to in Articles 55, 61 and 62.

* OJ: Please insert date: three years after the entry into force of this Regulation.

CHAPTER 3
TASKS OF THE AGENCY
RELATING TO RAILWAY SAFETY

Article 13

Technical support – recommendations on railway safety

1. The Agency shall address recommendations to the Commission on the CSIs, CSMs and CSTs provided for in Articles 5, 6 and 7 of Directive (EU) 2015/…* The Agency shall also address recommendations on periodic revision of CSIs, CSMs and CSTs to the Commission.

2. The Agency shall address 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.

3. The Agency shall issue guidelines in order to assist national safety authorities with regard to supervision of railway undertakings, infrastructure managers and other actors, in accordance with Article 17 of Directive (EU) 2015/…*.

4. The Agency may address recommendations to the Commission on the CSMs covering any elements of the safety management system which need to be harmonised at Union level, in accordance with Article 9(7) of Directive (EU) 2015/…*.

* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

5. The Agency may issue guidelines and other non-binding documents to facilitate the implementation of railway safety legislation, including the provision of assistance to Member States in identifying national rules that can be repealed further to the adoption and/or revision of CSMs and guidelines for the adoption of new national rules or the amendment of existing national rules. The Agency may also issue guidelines on railway safety and safety certification, including lists of examples of good practice, in particular for cross-border transport and infrastructure.

Article 14

Single 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 18 of Directive (EU) 2015/…*.

The Agency shall restrict or revoke single safety certificates and cooperate with national safety authorities in that respect in accordance with Article 17 of Directive (EU) 2015/…*.

Article 15

Maintenance of vehicles

1. The Agency shall assist the Commission with regard to the system of certification of entities in charge of maintenance in accordance with Article 14(7) of Directive (EU) 2015/…*.

* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

2. The Agency shall address recommendations to the Commission for the purposes of Article 14(8) of Directive (EU) 2015/…*.

3. The Agency shall analyse any alternative measures decided in accordance with Article 15 of Directive (EU) 2015/…* and shall include the outcome of its analysis in the report referred to in Article 35(4) of this Regulation.

4. The Agency shall support and, upon request, coordinate the national safety authorities in the supervision of entities in charge of maintenance as referred to in point (c) of Article 17(1) of Directive (EU) 2015/…*.

Article 16

Cooperation with national investigating bodies

The Agency shall cooperate with national investigating bodies in accordance with Article 20(3), Article 22(1), (2), (5) and (7) and Article 26 of Directive (EU) 2015/…*.

* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

Article 17

Transport of dangerous goods by rail

The Agency shall follow developments in the legislation dealing with the transport of dangerous goods by rail within the meaning of Directive 2008/68/EC of the European Parliament and of the Council[1] and shall, together with the Commission, ensure that such developments are consistent with the legislation dealing with rail safety and interoperability, in particular the essential requirements. To that end, the Agency shall assist the Commission and may issue recommendations at the Commission's request or on its own initiative.

Article 18

Exchange of information on safety-related accidents

The Agency shall encourage, the exchange of information on safety-related accidents, incidents and near misses, taking into account the experience of the railway actors referred to in Article 4 of Directive (EU) 2015/…[*]. That exchange of information shall lead to the development of good practices at Member State level.

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

[*] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

CHAPTER 4
TASKS OF THE AGENCY RELATING TO INTEROPERABILITY

Article 19

Technical support in the field of railway interoperability

1. The Agency shall:

(a) address recommendations to the Commission on the TSIs and their revision, in accordance with Article 5 of Directive (EU) 2015/…*;

(b) address recommendations to the Commission on the templates for the 'EC' declaration of verification and for documents of the technical file that has to accompany it for the purposes of Article 15(9) of Directive (EU) 2015/…*;

(c) address recommendations to the Commission on specifications for registers and their revision for the purposes of Articles 47, 48 and 49 of Directive (EU) 2015/…*;

(d) issue opinions which constitute acceptable means of compliance concerning deficiencies in TSIs, in accordance with Article 6(4) of Directive (EU) 2015/…*, and provide those opinions to the Commission;

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

(e) at the request of the Commission, issue opinions to it regarding requests by Member States for non-application of TSIs, in accordance with Article 7 of Directive (EU) 2015/…*;

(f) issue technical documents, in accordance with Article 4(8) of Directive (EU) 2015/…*;

(g) issue a decision for approval before any call for tenders relating to ERTMS trackside equipment in order to ensure harmonised implementation of the ERTMS in the Union pursuant to Article 19 of Directive (EU) 2015/…*;

(h) issue recommendations to the Commission regarding the training and certification of on-board staff with safety-critical tasks;

(i) issue detailed guidance concerning standards for the relevant European standardisation bodies to complement the mandate given to them by the Commission;

(j) address recommendations to the Commission relating to the working conditions of all staff carrying out safety-critical tasks;

(k) address recommendations to the Commission in relation to harmonised standards to be developed by European standardisation bodies and standards relating to interchangeable spare parts which may improve the level of safety and interoperability of the Union rail system;

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

(l) address, where appropriate, recommendations to the Commission in relation to safety-critical components.

2. In drafting recommendations as referred to in points (a), (b), (c), (h), (k) and (l) of paragraph 1, the Agency shall:

(a) ensure that the TSIs and the specifications for registers are adapted to technical progress, market trends and social requirements;

(b) ensure that the development and updating of the TSIs and the development of any European standards which prove necessary for interoperability are coordinated, and maintain relevant contacts with European standardisation bodies;

(c) participate, where appropriate, as an observer in the relevant working groups established by recognised 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 repealed further to the adoption or revision of TSIs.

4. In cases of non-compliance of interoperability constituents with essential requirements, the Agency shall assist the Commission in accordance with Article 11 of Directive (EU) 2015/…*.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

Article 20

Authorisations for the placing on the market of vehicles

The Agency shall issue authorisations for the placing on the market of railway vehicles, and shall be empowered to renew, amend, suspend and revoke authorisations issued by it. For that purpose, the Agency shall cooperate with national safety authorities in accordance with Article 21 of Directive (EU) 2015/…*.

Article 21

Authorisations for the placing on the market of vehicle types

The Agency shall issue authorisations for the placing on the market of vehicle types, and shall be empowered to renew, amend, suspend and revoke authorisations issued by it, in accordance with Article 24 of Directive (EU) 2015/…*.

Article 22

Placing in service of trackside control-command and signalling subsystems

The Agency shall, before any call for tenders relating to ERTMS trackside equipment, check that the technical solutions are fully compliant with the relevant TSIs and are therefore fully interoperable, and take a decision for approval in accordance with Article 19 of Directive (EU) 2015/…*.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

Article 23

Telematics applications

1. The Agency shall act as the system authority to ensure the coordinated development of telematics applications in the Union, in accordance with relevant TSIs. To that 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 specifications for telematics applications. To that end, the Agency shall set up, maintain and update a register of requests for changes to such specifications and their status, accompanied by the relevant justifications.

3. The Agency shall develop and maintain the technical tools for managing the different versions of specifications for telematics applications and endeavour to ensure backward compatibility.

4. The Agency shall assist the Commission in the monitoring of deployment of specifications for telematics applications in accordance with relevant TSIs.

Article 24

Support for notified conformity assessment bodies

1. The Agency shall support the activities of notified conformity assessment bodies as referred to in Article 30 of Directive (EU) 2015/…*. That support shall include, in particular, the issue of drafting guidelines for assessing the conformity or suitability for use of an interoperability constituent as referred to in Article 9 of Directive (EU) 2015/…* and of guidelines for the 'EC' verification procedure referred to in Articles 10 and 15 of Directive (EU) 2015/…*.

2. The Agency may facilitate cooperation between notified conformity assessment bodies, in accordance with Article 44 of Directive (EU) 2015/…*, and may, in particular, act as the technical secretariat for their coordination group.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

CHAPTER 5
TASKS OF THE AGENCY
RELATING TO NATIONAL RULES

Article 25

Examination of draft national rules

1. The Agency shall, within two months of receipt thereof, examine the draft national rules submitted to it in accordance with Article 8(4) of Directive (EU) 2015/…[*] and Article 14(5) of Directive (EU) 2015/…[**]. If translation is necessary or the draft national rule is long or complex the Agency may extend this time period by up to three additional months, subject to the consent of the Member State. However, in exceptional circumstances, the Agency and the Member State concerned may mutually agree to further extend that period.

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

[*] OJ: Please insert the number of the Directive in document 2013/0016 (COD).
[**] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

2. Where, after the examination referred to in paragraph 1, the Agency considers that the draft national rules enable the essential requirements for railway 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 operations between Member States, the Agency shall inform the Commission and the Member State concerned of its positive assessment. In that case, the Commission may validate the rules in the IT system referred to in Article 27. Where the Agency within two months of receipt of the draft national rule or within the extended time period agreed in accordance with paragraph 1 does not inform the Commission and the Member State concerned of its assessment, the Member State may proceed with the introduction of the rule without prejudice to Article 26.

3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask it to state its position regarding that assessment. If, following that exchange of views with the Member State concerned, the Agency maintains its negative assessment, the Agency shall within a maximum period of one month:

   (a) issue an opinion addressed to the Member State concerned, stating the reasons why the national rule or rules in question should not enter into force and/or be applied; and

   (b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should not enter into force and/or be applied.

This shall not prejudice the right of a Member State to adopt a new national rule in accordance with point (c) of Article 8(3) of Directive (EU) 2015/…[*] or with point (b) of Article 14(4) of Directive (EU) 2015/…[**].

4. The Member State concerned shall inform the Commission of its position on the opinion referred to in paragraph 3 within two months, including its reasons in the event of disagreement.

Where the reasons provided are deemed not to be sufficient, or in the absence of such information, and the Member State adopts the national rule in question without paying sufficient heed to the opinion referred to in paragraph 3, the Commission may adopt, by way of implementing acts, a decision addressed to the Member State concerned, requesting it to modify or repeal that rule. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 81(2).

Article 26

Examination of existing national rules

1. The Agency shall, within two months of receipt thereof, examine the national rules notified in accordance with Article 14(6) of Directive (EU) 2015/…[**] and Article 8(6) of Directive (EU) 2015/…[*]. If translation is necessary or the national rule is long or complex the Agency may extend this time period by up to three additional months, subject to the consent of the Member State. However, in exceptional circumstances, the Agency and the Member State concerned may mutually agree to further extend that time period.

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[*] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

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

2. Where, after the examination referred to in paragraph 1, the Agency considers that the national rules enable the essential requirements for railway 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 operations between Member States, the Agency shall inform the Commission and the Member State concerned of its positive assessment. In that case, the Commission may validate the rules in the IT system referred to in Article 27. Where the Agency does not inform the Commission and the Member State concerned within two months of receipt of the national rules, or within the extended time period agreed in accordance with paragraph 1, the rule shall remain valid.

3. Where the examination referred to in paragraph 1 leads to a negative assessment, the Agency shall inform the Member State concerned and ask it to state its position regarding that assessment. If, following that exchange of views with the Member State concerned, the Agency maintains its negative assessment, the Agency shall within a maximum period of one month:

   (a) issue an opinion addressed to the Member State concerned, stating that the national rule or rules in question has or have been the subject of a negative assessment and the reasons why the rule or rules in question should be modified or repealed; and

   (b) inform the Commission of its negative assessment, stating the reasons why the national rule or rules in question should be modified or repealed.

4. The Member State concerned shall inform the Commission of its position on the opinion referred to in paragraph 3 within two months, including its reasons in the event of disagreement. Where the reasons provided are deemed not to be sufficient, or in the absence of such information, the Commission may adopt, by way of implementing acts, a decision addressed to the Member State concerned, requesting it to modify or repeal the national rule in question. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 81(2).

5. By way of derogation from paragraphs 3 and 4, in the case of urgent preventive measures, where the examination referred to in paragraph 1 leads to a negative assessment and if the Member State concerned has not amended or repealed the national rule in question within two months of receipt of the opinion of the Agency, the Commission may adopt a decision, by way of implementing acts, requesting the Member State to amend or repeal that rule. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 81 (2).

   In the case of a positive assessment by the Agency and if the national rule in question has an impact on more than one Member State, the Commission, working in cooperation with the Agency and Member States, shall take the appropriate measures, including the revision of CSMs and TSIs where necessary.

6. The procedure referred to in paragraphs 2, 3 and 4 shall apply, *mutatis mutandis*, in cases where the Agency becomes aware of any national rule, whether or not notified, that is redundant, in conflict with the CSMs, CSTs, TSIs or any other Union legislation in the railway field or creates an unjustified barrier to the single railway market.

Article 27

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 as referred to in Articles 25 and 26 and acceptable national means of compliance referred to in point 34 of Article 2 of Directive (EU) 2015/…[*]. The Agency shall make them accessible to stakeholders for the purposes of consultation, where appropriate.

2. Member States shall notify national rules as referred to in Articles 25(1) and 26(1) to the Agency and to the Commission through the IT system referred to in paragraph 1 of this Article. The Agency shall publish those rules in that IT system, including the status of their examination and, when completed, the positive or negative outcome of the assessment, and use that IT system for the purposes of informing the Commission in accordance with Articles 25 and 26.

3. The Agency shall carry out a technical examination of the existing national rules referred to in the available national legislation, which, as of …[**] are listed in its reference document database. The Agency shall classify notified national rules in accordance with Article 14(10) of Directive (EU) 2015/…[*]. To that end, it shall use the system referred to in paragraph 1 of this Article.

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the date of entry into force of this Regulation.

4. The Agency shall classify notified national rules in accordance with Article 8 of, and Annex I to, Directive (EU) 2015/…*, taking into account the development of Union legislation. To that 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 paragraph 1 of this Article to publish the rule management tool.

CHAPTER 6
TASKS OF THE AGENCY RELATING TO THE EUROPEAN RAIL TRAFFIC MANAGEMENT SYSTEM (ERTMS)

Article 28

System authority for the ERTMS

1. The Agency shall act as the system authority to ensure the coordinated development of the ERTMS within the Union, in accordance with relevant TSIs. To that 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 that end, the Agency shall set up, maintain and update a register of requests for changes to ERTMS specifications and their status, accompanied by the relevant justifications.

* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

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(10) of Directive (EU) 2015/…*, the Agency shall ensure that successive versions of ERTMS equipment are technically compatible with earlier versions.

6. The Agency shall draw up and disseminate relevant application guidelines for stakeholders and explanatory documentation relating to the technical specifications for the ERTMS.

Article 29

ERTMS group of notified conformity assessment bodies

1. The Agency shall set up and chair an ERTMS group of notified conformity assessment bodies as referred to in Article 30(7) of Directive (EU) 2015/…*.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

The group shall check the consistency of application of the procedure for assessing the conformity or suitability for use of an interoperability constituent as referred to in Article 9 of Directive (EU) 2015/…* and of the 'EC' procedures for verification referred to in Article 10 of Directive (EU) 2015/…* and carried out by notified conformity assessment bodies.

2. The Agency shall report every year to the Commission on the activities of the group referred to in paragraph 1, including by means of statistics on attendance of notified conformity assessment bodies' representatives in the 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 shall submit to the Commission, every two years, a report including, where appropriate, recommendations for any improvements.

Article 30

Compatibility between ERTMS on-board and trackside subsystems

1. The Agency shall decide to:

(a) without prejudice to Article 21(5) of Directive (EU) 2015/…*, and before issuing an authorisation for the placing on the market of a vehicle equipped with an ERTMS on-board subsystem, advise applicants at their request, on the technical compatibility between ERTMS on-board and trackside subsystems;

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

(b) without prejudice to Article 17 of Directive (EU) 2015/…*, and after issuing an authorisation for the placing on the market of a vehicle equipped with an ERTMS on-board subsystem, advise railway undertakings at their request, before they use a vehicle equipped with an ERTMS on-board subsystem, on the operational compatibility between ERTMS on-board and trackside subsystems.

For the purposes of this paragraph, the Agency shall cooperate with the relevant national safety authorities.

2. Where, before an authorisation is issued by the national safety authority, the Agency becomes aware or is informed by the applicant through the one-stop shop in accordance with Article 19(6) of Directive (EU) 2015/…**. that a project design or specification was changed after the Agency had issued an approval in accordance with Article 19 of Directive (EU) 2015/…** and that there is a risk of a lack of technical and operational compatibility between the ERTMS trackside subsystem and vehicles fitted with ERTMS, it shall cooperate with the parties involved, including the applicant and the relevant national safety authority, in order to find a mutually acceptable solution. If no mutually acceptable solution can be found within one month of the beginning of the coordination process, the matter shall be referred to the Board of Appeal for arbitration.

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* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

** OJ: Please insert the number of the Directive in document 2013/0015 (COD).

3. Where the Agency finds after an authorisation is issued by the national safety authority that there is a risk of a lack of technical or operational compatibility between the relevant networks and vehicles fitted with ERTMS equipment, the national safety authority and the Agency shall cooperate with all parties involved in order to find, without delay, a mutually acceptable solution. The Agency shall inform the Commission about such cases.

Article 31

Supporting ERTMS deployment and ERTMS projects

1. The Agency shall assist the Commission in monitoring the deployment of the ERTMS in accordance with the European 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 913/2010 of the European Parliament and of the Council[1].

2. The Agency shall ensure technical follow-up of Union-funded projects for the deployment of the ERTMS, including, where applicable and without causing undue delay to the process, analysis of tendering documents at the time of the call for tenders. The Agency shall also, if necessary, assist the beneficiaries of those Union funds to ensure that the technical solutions implemented within projects are fully compliant with the TSIs relating to control-command and signalling and are therefore fully interoperable.

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

Article 32

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 Council[1].

2. The Agency shall inform Member States and the Commission in cases of non-conformity with the requirements of Regulation (EC) No 765/2008 in relation to the accreditation of ERTMS laboratories.

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

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

CHAPTER 7
TASKS OF THE AGENCY RELATING TO MONITORING THE SINGLE EUROPEAN RAILWAY AREA

Article 33

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 relating to railway safety and interoperability; and

   (b) the effectiveness of the monitoring by national safety authorities of safety management systems of actors as referred to in Article 17 of Directive (EU) 2015/…*.

* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

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 in the audit team of qualified auditors from national safety authorities that are not subject to the actual audit. 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 that it take appropriate steps within a mutually agreed time-limit, taking into account the seriousness of the deficiency. The Member State concerned shall be kept informed by the Agency about such a recommendation.

5. Where a national safety authority disagrees with the Agency's recommendations referred to in paragraph 4, or does not take the appropriate steps referred to in paragraph 4, or where no answer is given by a national safety authority in response to the Agency's recommendations within three months of receipt thereof, the Agency shall inform the Commission.

6. The Commission shall inform the Member State concerned of the issue and ask it to state its position regarding the recommendation referred to in paragraph 4. Where the answers provided are deemed not to be sufficient or, where no answer is given by the Member State within three months of the Commission's request, the Commission may within six months take appropriate action concerning the steps to be taken as a result of the audit, where relevant.

7. The Agency shall be entitled to conduct pre-announced inspections of national safety authorities, to verify specific areas of their activities and operation, and in particular to review documents, processes and records relating to their tasks as referred to in Directive (EU) 2015/…*. 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 concerned and the 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.

* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

Article 34

Monitoring of notified conformity assessment bodies

1. For the purposes of Article 41 of Directive (EU) 2015/…*, the Agency shall support the Commission in monitoring the notified conformity assessment bodies through the provision of assistance to accreditation bodies and to the relevant national authorities, and through audits and inspections, as provided for in paragraphs 2 to 6.

2. The Agency shall support harmonised accreditation of notified conformity assessment bodies, in particular by giving the accreditation bodies appropriate guidance on evaluation criteria and procedures to assess whether notified bodies meet the requirements referred to in Chapter VI of Directive (EU) 2015/…*, via the European accreditation infrastructure recognised pursuant to Article 14 of Regulation (EC) No 765/2008.

3. In the case of notified conformity assessment bodies which are not accredited in accordance with Article 27 of Directive (EU) 2015/…*, the Agency may audit their capacity to meet the requirements laid down in Article 30 of Directive (EU) 2015/…*. The procedure for performing audits shall be adopted by the Management Board.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

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 those 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 mutually agreed time-limit, taking into account the seriousness of the deficiency.

5. Where a Member State disagrees with the recommendation referred to in paragraph 4 or does not take the appropriate steps referred to in paragraph 4, or where no answer is given by a notified body in response to the Agency's recommendation within three months of receipt thereof, the Agency shall inform the Commission. The Commission shall inform the Member State concerned about the issue and ask it to state its position regarding the recommendation. Where the answers provided are deemed not to be sufficient or where no answer is given by the Member State within three months of receipt of the Commission's request, the Commission may adopt a decision within a period of six months.

6. The Agency shall be entitled to conduct pre-announced or unannounced inspections of notified conformity assessment bodies, to verify specific areas of their activities and operation, and in particular to review documents, certificates and records relating to their tasks as referred to in Article 41 of Directive (EU) 2015/…*. 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 concerned. The inspections may be conducted on an ad hoc basis or in accordance with the 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 35

Monitoring progress of railway safety and interoperability

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 Union rail system.

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

2. The Agency shall monitor the overall safety performance of the Union rail system. The Agency may in particular seek the assistance of the bodies referred to in Article 38, including assistance in the form of the collection of data and access to the results of the peer review in accordance with Article 22(7) of Directive (EU) 2015/…[*]. 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 CSIs 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 Union rail system, in particular by facilitating coordination between railway undertakings and infrastructure managers, or between infrastructure managers.

4. The Agency shall monitor progress on the safety and interoperability of the Union rail system. Every two years it shall present to the Commission, and publish, a report on progress on safety and interoperability 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 Union legislation on railway safety and interoperability in a given Member State.

6. The Agency shall, at the request of a Member State or the Commission, provide an overview of the safety and interoperability level of the Union rail system and establish a dedicated tool for that purpose, in accordance with Article 53(2) of Directive (EU) 2015/…[**].

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[*] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

CHAPTER 8
OTHER TASKS OF THE AGENCY

Article 36

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[1].

2. The Commission may request the Agency to perform other tasks relating to railway staff in accordance with Directive 2007/59/EC and to issue recommendations relating to railway staff entrusted with safety tasks not covered by Directive 2007/59/EC.

3. The Agency shall consult the national authorities competent with regard to railway staff issues concerning 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.

[1] Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p. 51).

Article 37

Registers and their accessibility

1. The Agency shall set up and maintain, where relevant in cooperation with the competent national actors:

   (a) the European Vehicle Register in accordance with Article 47 of Directive (EU) 2015/…[*];

   (b) the European register of authorised vehicle types in accordance with Article 48 of Directive (EU) 2015/…[*].

2. The Agency shall act as the system authority for all registers and databases referred to in Directive (EU) 2015/…[*], Directive (EU) 2015/…[**] and Directive 2007/59/EC. Its actions in that capacity shall include, in particular:

   (a) developing and maintaining specifications of the registers;

   (b) coordinating developments in the Member States in relation to the registers;

   (c) providing guidance on the registers to relevant stakeholders;

   (d) addressing recommendations to the Commission regarding improvements to the specifications of existing registers, where necessary including simplification and deletion of redundant information, and any need to set up new ones, subject to a cost-benefit analysis.

[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

3. The Agency shall make the following documents and registers provided for in Directive (EU) 2015/…[*] and Directive (EU) 2015/…[**] 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 of the European Parliament and of the Council[1];

(d) the single safety certificates issued in accordance with Article 10 of Directive (EU) 2015/…[**];

(e) the investigation reports sent to the Agency in accordance with Article 24 of Directive (EU) 2015/…[**];

(f) the national rules notified to the Commission in accordance with Article 8 of Directive (EU) 2015/…[**] and Article 14 of Directive (EU) 2015/…[*];

(g) the vehicle registers referred to in Article 47 of Directive (EU) 2015/…[*], including via the links to relevant national registers;

(h) the infrastructure registers, including via the links to relevant national registers;

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

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

(i) the registers relating to entities in charge of maintenance and their certification bodies;

(j) the European register of authorised types of vehicles in accordance with Article 48 of Directive (EU) 2015/…[*];

(k) the register of requests for changes and planned changes to the ERTMS specifications, in accordance with Article 28(2) of this Regulation;

(l) the register of requests for changes and planned changes to the TSIs for telematics applications for passengers ('TAPs') and telematics applications for freight ('TAFs'), in accordance with Article 23(2) of this Regulation;

(m) the register of vehicle keeper markings kept by the Agency in accordance with the TSI on operation and traffic management;

(n) the quality reports issued in accordance with Article 28(2) of Regulation (EC) No 1371/2007 of the European Parliament and of the Council[1].

4. The practical arrangements for sending the documents referred to in paragraph 3 shall be discussed and agreed by the Commission and the Member States on the basis of a draft prepared by the Agency.

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

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

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

6. The national authorities responsible for issuing the licences referred to in point (c) of paragraph 3 of this Article shall notify the Agency of each individual decision to issue, renew, amend or revoke those licenses, in accordance with Directive 2012/34/EU.

The national safety authorities responsible for issuing the single safety certificates referred to in point (d) of paragraph 3 of this Article shall notify the Agency, in accordance with Article 10(16) of Directive (EU) 2015/…*, of each individual decision to issue, renew, amend, restrict or revoke those certificates.

7. 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 38

Cooperation among 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 (EU) 2015/…*. The Agency shall provide the network with a secretariat.

2. The Agency shall support the investigating bodies in accordance with Article 22(7) of Directive (EU) 2015/…*. To facilitate cooperation among the investigating bodies, the Agency shall provide a secretariat which shall be organised separately from the functions within the Agency relating to safety certification of railway undertakings and authorisations to place vehicles on the market.

* OJ: Please insert the number of the Directive in document 2013/0016 (COD).

3. The objectives of the cooperation between the bodies referred to in paragraph 1 and 2 shall be, in particular:

(a) exchange of information relating to railway safety and interoperability;

(b) promotion of good practices and dissemination of relevant knowledge;

(c) provision to the Agency of data on railway safety, in particular data relating to CSIs.

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

4. The Agency may establish a network of representative bodies from the railway sector acting at Union level. The list of those bodies shall be defined by the Commission. The Agency may provide the network with a secretariat. The tasks of the network shall be, in particular:

(a) exchange of information relating to railway safety and interoperability;

(b) promotion of good practices and dissemination of relevant knowledge;

(c) provision to the Agency of data on railway safety and interoperability.

5. The networks and bodies referred to in paragraphs 1, 2 and 4 of this Article may comment on the draft opinions referred to in Article 10(2).

6. The Agency may establish other networks with bodies or authorities having responsibility for a part of the Union rail system.

7. The Commission may participate in the meetings of networks referred to in this Article.

Article 39

Communication and dissemination

The Agency shall communicate and disseminate to relevant stakeholders information relating to the Union framework of railway law and the 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 40

Research and promotion of innovation

1. The Agency shall contribute, at the Commission's request or on its own initiative subject to the procedure referred to in Article 52(4), to railway research activities at Union level, including by providing support to relevant Commission services and representative bodies. Such contributions shall be without prejudice to other research activities at Union level.

2. The Commission may entrust the Agency with the task of promoting innovation aimed at improving railway safety and interoperability, particularly the use of new information technologies, timetable information and tracking and tracing systems.

Article 41

Assistance to the Commission

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 Union rail system.

Such assistance may include providing technical advice in matters requiring specific knowledge and collecting information through the networks referred to in Article 38.

Article 42

Assistance with the assessment of rail projects

Without prejudice to the derogations provided for by Article 7 of Directive (EU) 2015/…*, the Agency shall, at the Commission's request, examine, from the point of view of railway safety and interoperability, any project involving the design, construction, renewal or upgrading of any subsystem in respect of which an application for Union financial support has been submitted.

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

* OJ: Please insert the number of the Directive in document 2013/0015 (COD).

Article 43

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 38, the Agency shall engage in training and other appropriate activities concerning the application and explanation of railway safety and interoperability legislation and related products of the Agency such as registers, implementation guides and 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 Agency's programming document. The costs of such assistance shall be borne by the requesting parties unless otherwise agreed.

Article 44

International relations

1. In so far as is necessary in order to achieve the objectives set out in this Regulation, and without prejudice to the respective competences of the Member States, the institutions of the Union and the European External Action Service, the Agency may strengthen coordination with international organisations 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 Union railways legislation and standards.

2. The arrangements referred to in paragraph 1 shall not create legal obligations incumbent on the Union and its Member States, nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with the supervisory authorities, international organisations and the administrations of third countries referred to in paragraph 1. Such bilateral or multilateral arrangements and cooperation shall be subject to prior discussion with the Commission and periodical reporting to it. The Management Board shall be duly informed of those bilateral or multilateral 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. That strategy shall be included in the programming document of the Agency, with a specification of associated resources.

Article 45

Coordination regarding spare parts

The Agency shall contribute to the identification of potential interchangeable spare parts to be standardised, including main interfaces to such spare parts. To that end, the Agency may establish a working party to coordinate the activities of relevant stakeholders and may establish contacts with the European standardisation bodies. The Agency shall present to the Commission appropriate recommendations.

CHAPTER 9
ORGANISATION OF THE AGENCY

Article 46

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 51;

(b) an Executive Board, which shall exercise the functions set out in Article 53;

(c) an Executive Director, who shall exercise the duties set out in Article 54;

(d) one or more Boards of Appeal, which shall exercise the functions set out in Articles 58 to 62.

Article 47

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 a right to vote, representing, at European level, the following stakeholders:

   (a) railway undertakings;

(b) infrastructure managers;

(c) the railway industry;

(d) trade-union organisations;

(e) passengers;

(f) freight customers.

For each of those stakeholders, 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 on the Management Board, in order to ensure continuity of the Management Board's work. All parties shall aim to achieve a balanced gender representation on the Management Board.

3. Member States and the Commission shall appoint members of the Management Board and their respective alternates who shall replace the members in their absence.

4. The term of office of the members shall be four years and may be renewed.

5. Where appropriate, the participation of representatives of third countries and the conditions of such participation shall be established in the arrangements referred to in Article 75.

Article 48

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 or 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 also expire on that date.

Article 49

Meetings

1. Meetings of the Management Board shall be conducted in accordance with its rules of procedure and convened by its chairperson. The Executive Director of the Agency shall participate in the meetings, except when his or her participation may lead to a conflict of interests, as decided by the chairperson, or when the Management Board is to take a decision relating to Article 70, in accordance with point (i) of Article 51(1).

   The Management Board may invite any person whose opinion may 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 or at the request of the Commission, of a majority of its members, or of one-third of the Member States' representatives on the Board.

3. When a matter of confidentiality or a conflict of interest arises, the Management Board may decide to examine specific items on its agenda without the members concerned being present. This does not affect the right of the Member States and of the Commission to be represented by an alternate or by any other person. Detailed rules for the application of this provision shall be laid down in the Management Board's rules of procedure.

Article 50

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 51

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 49, 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 in relation to visits, audits and inspections pursuant to Articles 11, 33 and 34;

(f) establish its rules of procedure;

(g) adopt and update the communication and dissemination plans referred to in Article 39;

(h) subject to paragraph 2, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union ('Staff Regulations' and the 'Conditions of Employment of Other Servants') laid down in Regulation (EEC, Euratom, ECSC) No 259/68[1] on the appointing authority and on the authority empowered to conclude contracts of employment;

(i) take duly reasoned decisions in relation to waiver of immunity in accordance with Article 17 of Protocol No 7 on the privileges and immunities of the European Union;

[1] OJ L 56, 4.3.1968, p. 1.

(j) submit to the Commission, for its agreement, rules for the implementation of 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, where appropriate, extend his or her term of office or remove him or her from the office, by a two-thirds majority of its members entitled to vote, in accordance with Article 68;

(l) appoint the members of the Executive Board, by a two-third majority of its members entitled to vote, in accordance with Article 53;

(m) adopt a mandate for the tasks of the Executive Board referred to in Article 53;

(n) adopt decisions relating to the arrangements referred to in Article 75(2);

(o) 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 55 and 56(4);

(p) adopt a decision laying down rules on the secondment to the Agency of national experts, in accordance with Article 69;

(q) adopt an anti-fraud strategy proportionate to the risks of fraud, having regard to a cost-benefit analysis of the measures to be implemented;

(r) 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;

(s) adopt rules for the prevention and management of conflicts of interest in respect of members of the Management Board and of the Boards of Appeal, and of participants in working parties and groups referred to in Article 5(2) and other staff not covered by the Staff Regulations. Such rules shall include provisions on declarations of interest and, where appropriate, post-employment;

(t) adopt guidelines and the list of the main elements to be included in the cooperation agreements to be concluded between the Agency and the national safety authorities, taking into account the provisions of Article 76;

(u) adopt a framework model for the financial apportionment of the fees and charges payable by applicants as referred to in Article 76(2), for the purposes of Articles 14, 20 and 21;

(v) establish procedures for cooperation by the Agency and its staff in national judicial proceedings;

(w) adopt rules of procedure of working parties and groups, and scales relating to travel and subsistence expenses of their members as referred to in Article 5(5) and (9);

(x) appoint an observer from amongst its members to follow the selection procedure applied by the Commission for the appointment of the Executive Director;

(y) adopt appropriate rules for the implementation of Regulation No 1[1], in accordance with the voting rules defined in Article 74(1).

[1] Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community (OJ 17, 6.10.1958, p. 385).

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 laying down the conditions under which that delegation of powers may be suspended. The Executive Director shall be authorised to subdelegate those powers. The Executive Director shall inform the Management Board of such subdelegations.

In application of the first 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 subdelegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director. The delegate shall report to the Management Board on the exercise of such a delegation.

Article 52

Programming document

1. The Management Board 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 shall forward it to the Member States, the European Parliament, the Council and the Commission and to the networks referred to in Article 38. The annual work programme shall lay down the actions that the Agency is to 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.

2. The programming document shall become definitive after final adoption of the Union 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 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 impact-assessment procedure provided for in Article 8(2).

4. The Management Board shall, if necessary, amend the adopted programming document when a new task is assigned to the Agency. The inclusion of such a new task shall be subject to an analysis of the human and budgetary resources implications in accordance with Article 8(2), and may be subject to a decision to postpone other tasks.

5. The Agency's 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 the multiannual budget and staff. The European Parliament shall be consulted on the draft multi-annual work programme.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, in particular to address the outcome of the evaluation and review referred to in Article 82.

Article 53

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, on grounds 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, the Executive Board shall ensure adequate follow-up to the findings and recommendations stemming from investigations by OLAF and the various internal or external audit reports and evaluations, including by means of appropriate actions of the Executive Director.

   Without prejudice to the responsibilities of the Executive Director, as set out in Article 54, the Executive Board shall assist and advise the Executive Director in the implementation of decisions of the Management Board, with a view to reinforcing supervision of administrative and budgetary management.

3. The Executive Board shall be composed of the following members:

   (a) the chairperson of the Management Board;

(b) four of the other representatives of Member States on the Management Board; and

(c) one of the representatives of the Commission on the Management Board.

The chairperson of the Management Board shall act as the chairperson of the Executive Board.

The four representatives of the Member States, and their alternates, shall be appointed by the Management Board on the basis of their relevant competence and experience. When appointing them, the Management Board shall aim to achieve a balanced gender representation on the Executive Board.

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 that it is to be shorter.

5. The Executive Board shall meet at least once every three months and, where possible, not less than two weeks prior to the meeting of 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 procedure of the Executive Board, shall be periodically informed of the work of the Executive Board, and shall have access to its documents.

Article 54

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 or her duties. The Executive Director shall be accountable to the Management Board for his or 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. Upon being requested to do so by the European Parliament or the Council, the Executive Director shall report on the performance of his or her duties to the institution concerned.

4. The Executive Director shall be the legal representative of the Agency and 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;

(e) preparing the consolidated annual report on the Agency's activities, including the declaration of the authorising officer stating whether he or she has a reasonable assurance in accordance with point (b) of Article 47(1) of Commission Delegated Regulation (EU) No 1271/2013 and point (a) of Article 51(1) of this Regulation, and presenting it to the Management Board for assessment and adoption;

(f) taking the necessary steps, in particular the issuing of internal administrative instructions and the publication of orders, to ensure that the Agency operates in accordance with this Regulation;

(g) establishing an effective monitoring system enabling the Agency's results to be compared with its operational objectives and establishing a regular assessment system corresponding to recognised professional standards;

(h) preparing on a yearly basis a draft general report on the basis of the monitoring and assessment systems referred to in point (g), and submitting it to the Management Board;

(i) preparing the Agency's draft statement of estimates of the revenue and expenditure of the Agency pursuant to Article 64 and implementing the budget pursuant to Article 65;

(j) taking the necessary steps to follow the work of the networks of national safety authorities, investigating bodies and representative bodies referred to in Article 38;

(k) 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;

(l) protecting the financial interests of the Union by the application of measures to prevent fraud, corruption and any other illegal activities, by effective checks and, where irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by the imposition of effective, proportionate and dissuasive administrative and financial penalties;

(m) preparing an anti-fraud strategy of the Agency and presenting it to the Management Board for approval;

(n) preparing the Agency's draft financial regulation for adoption by the Management Board under Article 66, and its implementing rules;

(o) concluding, on behalf of the Agency, cooperation agreements with national safety authorities in accordance with Article 76.

Article 55

Establishment and composition of the Boards of Appeal

1. By 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 58 and 61.

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 where any conflicts of interest arise.

3. The establishment and composition of Boards of Appeal shall be decided on a case-by-case basis. Alternatively, a Board of Appeal may be established as a permanent body for a maximum period of four years. In both cases, the following procedure applies:

   (a) the Commission shall draw up a list of qualified experts based on 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 in point (a). Where the Board of Appeal is not established as a permanent body, the Management Board shall take into account the nature and content of the appeal or arbitration, and avoid any conflict of interest in accordance with Article 57.

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 point (a) of paragraph 3.

5. On a proposal by the Agency, and after consulting the Management Board, the Commission shall establish the rules of procedure of the Boards of Appeal, including the voting rules the procedures for filing an appeal and the conditions for reimbursement of expenses of their members. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 81(3).

6. The Boards of Appeal may request the opinion of experts from the Member States concerned, in particular with a view to clarifying the national legislation concerned, during the initial examination phase of the procedure.

Article 56

Members of the Boards of Appeal

1. In the case of a permanent Board of Appeal, the term of office of its members and alternates shall be limited to 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. Members of Boards of Appeal shall be independent from all parties involved in the appeal or arbitration and may not perform any other duties within the Agency. In their deliberations and decisions they shall not be bound by any instructions and shall be free from any conflict of interest.

3. Members of Boards 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.

4. Members of Boards 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.

5. Members of Boards 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 57

Exclusion and objection

1. Members of Boards of Appeal 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 taking of the decision appealed against.

2. Where a member of a Board of Appeal considers that it is not appropriate for him or her or any other member to take part in any appeal or arbitration proceeding, on any of the grounds referred to in paragraph 1 or for any other reason, that member shall inform the Board of Appeal, which shall decide on the exclusion of the person concerned on the basis of the rules adopted by the Management Board pursuant to point (s) of Article 51(1).

3. Any party to the appeal or arbitration proceedings may object, in accordance with the rules of procedure established pursuant to Article 55(5), to any member of the Board of Appeal on any of the grounds referred to in paragraph 1 of this Article, or if that member is suspected of partiality. No objection may be based on the nationality of the member concerned.

4. An objection under paragraph 3 shall only be admissible if it is made prior to the start of proceedings before the Board of Appeal, or, where the information constituting the grounds for the objection becomes known after the proceedings have started, within the deadlines laid down in the Board of Appeal's rules of procedure. The Board of Appeal member concerned shall be notified of the objection and shall state whether he or she agrees to be excluded. If he or she does not agree, the Board of Appeal shall take a decision within the deadlines laid down in its rules of procedure or, where there is no response, after expiry of the deadline set for issuing a response.

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

Article 58

Appeals against decisions and failures to act

1. An appeal may be brought before a Board of Appeal against a decision taken by the Agency pursuant to Articles 14, 20, 21 and 22 or if the Agency fails to act within the applicable time-limits, following completion of the inlerlocutory revision referred to in Article 60.

2. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. However, upon request by the parties involved, the Board of Appeal may decide that the appeal in question is to have suspensory effect, if it considers that circumstances, such as impact on safety, so permit. In such a case, the Board of Appeal shall provide a statement of reasons for its decision.

Article 59

Persons entitled to appeal, time-limit and form

1. Any natural or legal person may appeal against a decision of the Agency addressed to that person, or of direct and individual concern to that person, pursuant to Articles 14, 20 and 21, or if the Agency fails to act within the applicable time-limits.

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 55(5) within two months of 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 the knowledge of that person.

Appeals regarding a failure to act shall be filed at the Agency in writing within two months of the expiry of the time-limit set out in the relevant Article.

Article 60

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 58(1). This shall not apply where the decision appealed against 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 refer the appeal to one of the Boards of Appeal.

Article 61

Arbitration procedure

In the event of a disagreement between the Agency and a national safety authority or authorities pursuant to Article 21(7) and Article 24 of Directive (EU) 2015/…[*] and Article 10(7) and Article 17(5) and (6) of Directive (EU) 2015/…[**], the Board of Appeal assigned to the matter shall act as an arbitrator upon request of the national safety authority or authorities concerned. In such a case, the Board of Appeal shall decide whether to uphold the Agency's position.

[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

Article 62

Examination and decisions on appeals and arbitration

1. The Board of Appeal shall decide within three months of the appeal being filed whether to grant or refuse that appeal. When examining an appeal or acting as arbitrator, the Board of Appeal shall act within the deadlines laid down in its 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 representations.

2. As regards arbitration, the Agency shall take its final decision in accordance with the procedures referred to in Article 21(7) of Directive (EU) 2015/…[*] and Article 10(7) of Directive (EU) 2015/…[**].

3. Where the Board of Appeal finds that the grounds for appeal are founded, it shall remit the case to the Agency. The Agency shall take its final decision in compliance with the findings of the Board of Appeal and shall provide a statement of reasons for that decision. The Agency shall inform the parties to the appeal proceedings accordingly.

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

Article 63

Actions before the Court of Justice of the European Union

1. Actions for the annulment of Agency decisions taken pursuant to Articles 14, 20 and 21, or for failure to act within the applicable 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 58 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 64

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 in Article 75;

(c) the fees paid by applicants for, and holders of, certificates and authorisations issued by the Agency in accordance with Articles 14, 20 and 21;

(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 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 kept in balance.

5. Each year, the Management Board, on the basis of a draft drawn up by the Executive Director in accordance with the principle of activity-based budgeting, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year. That 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 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 European Parliament and the Council in accordance with Article 314 TFEU, 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 European Parliament and the Council shall authorise the appropriations for the contribution to the Agency. The European Parliament and the Council 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, Article 203 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[1] shall apply.

Article 65

Implementation and control of the budget

1. The Executive Director shall implement the budget of the Agency.

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

2. By 1 March 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.

3. By 31 March 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 those accounts in accordance with Article 287 TFEU. 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, pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the accounting officer shall draw up the Agency's final accounts. The Executive Director shall submit them to the Management Board for its opinion.

5. The Management Board shall deliver an opinion on the Agency's final accounts.

6. The accounting officer shall, by 1 July 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 of the Agency shall be published.

8. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September following each financial year. He or she shall also send that 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 Regulation (EU, Euratom) No 966/2012.

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 66

Financial rules

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) No1271/2013 unless such a departure is specifically required for the Agency's operation and the Commission has given its prior consent thereto.

CHAPTER 11

STAFF

Article 67

General provisions

1. The Staff Regulations and the Conditions of Employment of Other Servants, and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations, shall apply to the staff of the Agency.

2. Without prejudice to point (j) of Article 51(1) of this Regulation, implementing rules adopted by the Commission to give effect to the Staff Regulations and the Conditions of Employment of Other Servants, 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, inter alia through training and prevention strategies, to organise its services in such a way as to avoid any conflict of interest.

Article 68

Executive Director

1. The Executive Director shall be engaged as a temporary agent of the Agency under point (a) of Article 2 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, and 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 point (x) of Article 51(1) shall report on the procedure.

For the purposes of concluding the contract of engagement of the Executive Director, the Agency shall be represented by the chair of the Management Board.

Before being appointed, 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 put by its members.

3. The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment of the performance of the Executive Director and of the Agency's future tasks and challenges.

4. The Management Board, acting on a proposal from the Commission taking 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 of its intention to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the European Parliament and to 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 such an extension of term of office.

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

Article 69

Seconded national experts and other staff

The Agency may make use of seconded national experts or other staff who are not employed by the Agency under the Staff Regulations and the Conditions of Employment of Other Servants.

Without prejudice to the rules laid down in 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, including rules on the prevention and management of conflicts of interest and on relevant restrictions for cases in which national experts' independence and impartiality could be undermined.

CHAPTER 12
GENERAL PROVISIONS

Article 70

Privileges and immunities

Protocol No 7 on the privileges and immunities of the European Union shall apply to the Agency and its staff.

Article 71

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 that 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 for in a written agreement, an agreement between the Agency and the host Member State on all these elements shall be concluded, in accordance with the legal order of the host Member State, and after the approval of the Management Board, no later than …*. That agreement may take the form of a headquarters agreement.

2. The host Member pate shall provide the best possible conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

* OJ: Please insert date: one year after the entry into force of this Regulation.

Article 72

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 adjudicate 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 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.

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

Article 73

Cooperation with national judicial authorities

In the case of national judicial proceedings involving the Agency by reason of the Agency having exercised its tasks in accordance with Article 19 and Article 21(6) of Directive (EU) 2015/…[*] and 10(6) of Directive (EU) 2015/…[**], 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 point (v) of Article 51(1).

Article 74

Language arrangements

1. Regulation No 1 shall apply to the Agency. If necessary, the Management Board shall adopt appropriate rules for the implementation of that Regulation.

   At the request of a member of the Management Board, the decision in that regard 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.

[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

Article 75

Participation by third countries in the work of the Agency

1. Without prejudice to Article 44, 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 law, or equivalent national measures, in the field covered by this Regulation, in accordance with the procedure laid down in Article 218 TFEU.

2. In accordance with the relevant provisions of the agreements referred to in paragraph 1, arrangements shall be made between the Agency and the third countries concerned, setting out detailed rules for participation by those third countries in the work of the Agency, in particular the nature and extent of such participation. Those arrangements shall include provisions on financial contributions and staff. They may provide for representation of the third countries concerned, without the right to vote, on the Management Board.

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

Article 76

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 14, 20 and 21, taking into account point (t) of Article 51(1).

2. The cooperation agreements may be specific or framework agreements, and may involve one or more national safety authorities. They shall contain a specified description of tasks and conditions for deliverables, lay down the time-limits applying to their delivery, and determine the manner in which the fees payable by applicants are to be apportioned as between the Agency and the national safety authorities. Such apportionment shall take into account the framework model referred to in point (u) of Article 51(1).

3. The cooperation agreements may also include specific cooperation arrangements in the case of networks requiring specific expertise for geographical or historical reasons, with a view to reducing administrative burdens and costs to the applicant. Where such networks are isolated from the rest of the Union rail system, such specific cooperation arrangements may include the possibility of contracting tasks to the relevant national safety authorities when this is necessary in order to ensure efficient and proportionate allocation of resources.

4. In the case of those Member States whose rail networks have a track gauge that is different from that of the main rail network within the Union and share identical technical and operational requirements with neighbouring third countries, a multilateral cooperation agreement shall involve all the national safety authorities concerned in those Member States as provided for in Article 21(15) of Directive (EU) 2015/…[*] and Article 11(3) of Directive (EU) 2015/…[**].

5. The cooperation agreements shall be in place before the Agency carries out its tasks in accordance with Article 83(4).

6. The Agency may conclude cooperation agreements with other national authorities and competent bodies in relation to the implementation of Articles 14, 20 and 21.

7. The cooperation agreements shall be without prejudice to the overall responsibility of the Agency for the performance of its tasks as provided for in Articles 14, 20 and 21.

8. The Agency and the national safety authorities may work together and share best practices in relation to the implementation of Directive (EU) 2015/…[*] and of Directive (EU) 2015/…[**].

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[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

Article 77

Transparency

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

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

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

2. The Agency shall publish its recommendations, opinions, studies, reports and outcomes of impact assessments on its website, without prejudice to paragraph 1 and after all confidential material has been removed therefrom.

3. The Agency shall make public the declarations of interests of the members of the Agency's management and administrative structure listed in Article 46.

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

* OJ: Please insert date: one year after entry into force of this Regulation.

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

4. The Management Board shall adopt measures to ensure that the Agency provides efficient, user-friendly and easily accessible information on its website about railway interoperability and safety processes and about other relevant railway documents.

Article 78

Security rules for protecting classified or sensitive information

The Agency shall apply the principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in Commission Decision (EU, Euratom) 2015/444 [2]. This shall cover, inter alia, provisions for exchanging, processing and storing such information.

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

[2] Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

Article 79

Combating fraud

1. In order to facilitate the fight against fraud, corruption and other unlawful activities under Regulation (EC) No 1073/1999, the Agency shall by …[*] accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by OLAF and adopt the appropriate provisions applicable to all employees of the Agency, using the template set out in the Annex to that Agreement.

2. The 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 (EU) No 883/2013 and in Council Regulation (Euratom, EC) No 2185/96[1], with a view to establishing whether there has been any fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or contract funded by the Agency.

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

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[*] OJ: Please insert date: six months after the entry into force of this Regulation.

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

CHAPTER 13
FINAL PROVISIONS

Article 80

Implementing acts relating to fees and charges

1. The Commission shall adopt, on the basis of the principles set out in paragraphs 2 and 3, implementing acts specifying:

   (a) the fees and charges payable to the Agency, in particular in application of Articles 14, 20, 21 and 22; and

   (b) the conditions of payment.

   Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 81(3).

2. Fees and charges shall be levied for:

   (a) the issuing and renewal of authorisations for the placing on the market of vehicles and types of vehicles;

   (b) the issuing and renewal of single safety certificates;

   (c) the provision of services; the fees and charges payable in this regard shall reflect the actual cost of each individual provision;

(d) the issuing of decisions for approval in accordance with Article 19 of Directive (EU) 2015/…[*].

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 the imposition of unnecessary financial burdens on applicants. The specific needs of small and medium-sized enterprises, including the possibility of splitting payments into several instalments and phases, shall be taken into account, as appropriate.

The fee for issuing the decision for approval shall be set in a proportionate manner, taking into account the different stages of the authorisation process for ERTMS trackside projects and the workload required for each of the stages. The apportionment of the fees shall be clearly identified in the accounts.

Reasonable deadlines shall be set for the payment of fees and charges, taking due account of the deadlines for the procedures provided for in Articles 19 and 21 of Directive (EU) 2015/…[*] and Article 10 of Directive (EU) 2015/…[**].

[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[**] OJ: Please insert the number of the Directive in document 2013/0016 (COD).

3. 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 provided, including the relevant costs resulting from the tasks assigned to the national safety authorities in accordance with Article 76(2) and (3). All expenditure of the Agency attributed to staff involved in the activities referred to in paragraph 2 of this Article, including the employer's pro-rata contribution to the pension scheme, shall in particular be reflected in that cost. Should a significant imbalance resulting from the provision of the services covered by fees and charges become recurrent, the level of those fees and charges shall be revised. Those fees and charges shall be assigned revenues for the Agency.

When setting the levels of fees and charges, the Commission shall take into account:

(a) the area of operation of certificates;

(b) the area of use of authorisations; and

(c) the type and extent of railway operations.

Article 81

Committee procedure

1. The Commission shall be assisted by the committee established by Article 51 of Directive (EU)2015/…[*]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

[*] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

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 82

Evaluation and review

1. No later than …* 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 all relevant work by the Court of Auditors as well as the views and recommendations of relevant stakeholders, including national safety authorities, representatives of the railway sector, social partners and consumer organisations. The evaluation shall address, in particular, any need to amend the mandate of the Agency and the financial implications of any such amendment.

2. By …**, the Commission, in order to identify whether improvements are needed, shall assess the functioning of the dual system for vehicle authorisation and safety certification, the one-stop shop related thereto and the harmonised implementation of ERTMS in the Union.

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* OJ: Please insert date: four years after the entry into force of this Regulation.

** OJ: Please insert date: seven years after the entry into force of this Regulation.

3. The Commission shall forward the evaluation report together with its conclusions thereon to the European Parliament, the Council and the Management Board. The findings of the evaluation shall be made public.

4. 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 83

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, employment contracts, financial commitments and liabilities.

2. By way of derogation from Article 47, the members of the Administrative Board appointed under Regulation (EC) No 881/2004 before …* shall remain in office as members of the Management Board until the expiry date of their term of office, without prejudice to the right of each Member State to appoint a new representative.

   By way of derogation from Article 54, the Executive Director appointed in accordance with Regulation (EC) No 881/2004 shall remain in office until the expiry date of his or her term of office.

3. By way of derogation from Article 67, all employment contracts in force on …* shall be honoured until their expiry date.

* OJ: Please insert the date of entry into force of this Regulation.

4. The Agency shall carry out the certification and authorisation tasks pursuant to Articles 14, 20 and 21 and the tasks referred to in Article 22 until …[*], subject to Article 54(4) of Directive (EU) 2015/…[**] and Article 31(3) of Directive (EU) 2015/…[***].

Article 84

Repeal

Regulation (EC) No 881/2004 is hereby repealed.

Article 85

Entry into force

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

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*

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[*] OJ: Please insert date: three years after the entry into force of this Regulation.

[**] OJ: Please insert the number of the Directive in document 2013/0015 (COD).

[***] OJ: Please insert the number of the Directive in document 2013/0016 (COD).