Commission Implementing Regulation (EU) 2018/867 of 13 June 2018 laying down the rules of procedure of the Board(s) of Appeal of the European Union Agency for Railways (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2018/867

of 13 June 2018

laying down the rules of procedure of the Board(s) of Appeal of the European Union Agency for Railways

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004[(1)], and in particular Article 55(5),

Whereas:

(1) Regulation (EU) 2016/796 empowers the Management Board of the European Union Agency for Railways ('the Agency') to establish one or more Boards of Appeal which are to be in charge of the appeals and arbitration procedures referred to in Articles 58 and 61 of that Regulation.

(2) As Regulation (EU) 2016/796 lays down only essential principles on the processing of appeals, rules of procedure of the Board of Appeal including the voting rules, the procedures for filing an appeal and the conditions for the reimbursement of expenses of their members need to be established. On a proposal made by the Agency, and after consulting the Agency's Management Board, the Commission should establish the rules of procedure of the Board of Appeal.

(3) At least one Board of Appeal should be established as a permanent body by the Agency's Management Board, to ensure consistency and coherence in decision-making and to reduce the administrative workload and time-consuming appointment of members each time there is an appeal or arbitration request and to draw on the individual and collective expertise of its members.

(4) The Agency's Management Board may establish the Board(s) of Appeal with three or five members and the respective number of alternates, in accordance with Article 55(4) of Regulation (EU) 2016/796.

(5) To ensure that the Board of Appeal can operate smoothly and efficiently, one of the members should be appointed as the Chairperson of the Board of Appeal. It is essential that the Chairperson ensures the quality and consistency of the decisions of the Board of Appeal.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/867. (See end of Document for details)*

(6) The Board of Appeal should also be assisted in the exercise of its duties by a Registrar and Rapporteur. Their appointment, roles and tasks should be clearly determined. A rapporteur should be designated for each proceeding and the services of the Registrar should be shared by all Boards of Appeal.

(7) The possibility to have specific administrative guidance issued by the Board of Appeal should be envisaged to complement these rules of procedure with practical arrangements.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 81(1) of Regulation (EU) 2016/796,

HAS ADOPTED THIS REGULATION:

CHAPTER I

ESTABLISHMENT AND ORGANISATION

Article 1

Establishment

1 The rules laid down in this Regulation for the Board of Appeal shall apply to each Board of Appeal established by decision of the Management Board of the Agency. All such Boards are collectively referred to hereafter as ‘the Board of Appeal’.

2 To ensure delivery of findings within the prescribed deadlines, quality and consistency of jurisprudence, one Board of Appeal established in accordance with Article 55 of Regulation (EU) 2016/796 shall be permanent.

Article 2

Members

1 The Chairperson, other members and alternates that constitute a Board of Appeal are hereafter referred to as its ‘members’ if not otherwise indicated.

2 The term of office of all members shall start and end on the dates fixed in the appointment decision. The date fixed may be considered in relation to a function or ending of proceedings. In accordance with Article 56(1) of Regulation (EU) 2016/796 the term of office of a member of a Board of Appeal shall not exceed 4 years and can be renewed once.

3 Technical, legal and procedural expertise and/or experience shall be ensured in each Board of Appeal established.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/867. (See end of Document for details)*

Article 3

Replacement

1 Any member of a Board of Appeal who is or risks becoming unavailable to execute their function shall inform the Chairperson thereof, without undue delay.

2 In cases where the Chairperson is unavailable, the Board of Appeal shall decide which of its remaining members shall act as Chairperson.

3 The Chairperson shall appoint one of the alternates as member.

4 Appointments for replacement referred to in paragraph 2 and 3 shall last as long as the replaced member or Chairperson remains prevented from acting and at least until the end of any open appeal or arbitration proceeding.

5 Should unavailability become permanent or last longer than 12 months the Agency's Management Board shall appoint a new member or Chairperson as well as alternate, as appropriate.

Article 4

Role of the Chairperson

1 The Chairperson of a Board of Appeal shall preside over the appeal and arbitration proceedings.

2 The Chairperson shall ensure the quality and consistency of decisions by a Board of Appeal.

3 The Chairperson shall designate a rapporteur from among the members of the Board of Appeal for each proceeding.

4 The Chairperson together with the Registrar shall ensure the proper implementation of the rules of procedure laid down by this Regulation.

5 In case the Agency's Management Board has appointed more than one Board of Appeal, their Chairpersons shall collectively establish a methodology for the distribution of proceedings and inform the Registrar thereof.

Article 5

Role of the Rapporteur

1 The rapporteur shall carry out a preliminary examination of the appeal and present the results of that examination to the other members of the Board of Appeal.

2 The rapporteur shall prepare a draft of the findings of the Board of Appeal.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/867. (See end of Document for details)*

Article 6

Seat of the Board of Appeal

The seat of the Board of Appeal shall be at the seat of the Agency.

Article 7

The Registrar

1 The Board of Appeal shall be assisted in the exercise of its duties by one Registrar.

2 The Registrar shall:

a register all proceedings with a number and inform the Board of Appeal and all parties thereof;

b be responsible for the receipt, transmission and safe storage of all documents relevant to appeal and arbitration proceedings, for communicating with the parties, and for any other administrative tasks relating to the proceedings;

c inform the parties of the member composition that will hear the case, and of any changes to that composition without undue delay;

d inform the parties to the appeal about their right to object in accordance with Article 57(3) of Regulation (EU) 2016/796 to a member participating in the appeal procedure;

e ensure that an announcement of the appeal is published on the Agency's website, indicating at least the date of registration, the names and contacts of the parties, the language of proceedings and the contested decision;

f check that all time-limits and other formal conditions for filing appeals are respected and notify the Board of Appeal thereof;

g keep the minutes of the hearings, the examination of witnesses or experts and the deliberations of the Board of Appeal;

h keep an archive of all decisions on appeal and arbitration proceedings issued by the Board of Appeal;

i include the requests and the findings of the Board of Appeal in the information and communications system referred to in Article 12 of Regulation (EU) 2016/796 (‘one-stop-shop’).

Article 8

Appointment and responsibilities of the Registrar

1 The Registrar shall be appointed from among the Agency staff by the Board of Appeal on a proposal by the Agency. In case of more than one Board of Appeal by consensus.

2 The Registrar may not participate in any tasks or proceedings of the Agency relating to decisions which may be the subject of appeals under Article 60 of Regulation (EU) 2016/796.

3 The Registrar shall exercise its duties under the supervision and instructions of the Chairperson of the Board of Appeal.

4 The Registrar may be assisted by staff to which this Article shall also apply.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2018/867. (See end of Document for details)*

CHAPTER II

APPEAL

Article 9

Filing and notification of an Appeal

1 An appeal shall be filed with the Board of Appeal through the Registrar in the electronic format provided for appeals within 2 months of the dates referred to in Article 59(2) of Regulation (EU) 2016/796.

2 The Appeal shall contain, as applicable:

a the name and address of the appellant;

b where the appellant has appointed a representative, the name and address of the representative of the appellant;

c an address for receiving mail in electronic format;

d where the appellant is a legal person, it shall provide the Registrar with the instrument or instruments constituting and regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law;

e the reference to the decision which is being contested and the remedy sought by the appellant;

f the arguments relied on;

g where appropriate, the nature of any evidence in support and a statement explaining the facts for which the evidence is offered in support;

h where appropriate, an application for confidential treatment of documents or parts thereof;

i where the appellant is not the person to which the contested decision has been addressed, the reasons for being directly or indirectly concerned by the decision and evidence as to the date her/he first got knowledge of the decision.

3 If the appeal does not contain the information listed in paragraph 2, the Registrar shall prescribe a period of not more than 10 working days within which the appellant has to deliver. The Registrar shall fix such period only once. During that period, time shall not run for the purposes of calculating the time-limit set out in Articles 58 and 62 of Regulation (EU) 2016/796.

4 The Registrar shall notify the appeal to the Board of Appeal, the Agency and any other identifiable party involved within 1 working day from filling of the appeal.

Article 10

Confidentiality

1 Any application for confidential treatment shall identify the words, particulars, figures or passages for which confidentiality is claimed and state the specific reasons. Failure to provide such information may result in the application being rejected by the Board of Appeal.

2 The Chairperson shall decide whether information indicated in an application pursuant to Article 9(2)(h) is to be regarded as confidential and shall ensure that any information which is regarded as confidential is not published.