Commission Implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment (Text with EEA relevance)

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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 80 thereof,

Whereas:

(1) The revenue of the European Union Agency for Railways ('the Agency') consists of a contribution from the Union and the fees and charges paid by applicants for the processing of applications for certificates, authorisations and decisions for approval, handling of appeals and other services provided by the Agency in accordance with Article 64 of Regulation (EU) 2016/796.

(2) The fees and charges payable to the Agency should be set in a transparent, fair and uniform manner, in particular with the objective of simplification. They should not result in the imposition of unnecessary financial burden on enterprises and should not jeopardise the competitiveness of the European railway sector.

(3) The calculation of fees and charges should take account of the cost of staff and external experts involved in the processing of applications, where relevant. Account should equally be taken of the costs of supporting services and activities related to the processing of applications, as well as any other operational costs in order to provide those services. These costs should be related and proportionate to the relevant activities and they should be non-discriminatory.

(4) The fees and charges levied by the Agency should cover the full costs of the services rendered by the Agency.

(5) The time spent by the Agency to provide those services should be invoiced at an hourly rate, until the maturity of the system allows for a regime of fixed rates. The fees and charges of the Agency should be set at such a level as to avoid a deficit or a significant accumulation of surplus, in accordance with Regulation (EU) 2016/796.

(6) The amounts payable should not depend on where the applicant is established, or the language used for the application. Therefore, the travel and translation costs incurred in relation to the part of the application processed by the Agency should be aggregated and divided among all applications.

(7) Fees and charges should be established to meet the specific needs of small and medium-sized enterprises. Undertakings should have the possibility to split payment into several instalments if needed.

(8) Applicants have been secured the right to appeal within the Regulation (EU) 2016/796 and should be able to seek relief and exercise this right against decisions of the Agency. The payment of the fees and charges for an appeal against decisions of the Agency should therefore not be a prerequisite for an appeal to be admissible. Fees and charges should only be levied for the processing of appeals in cases where the appeal is dismissed.

(9) In line with good project management, the applicant should have the possibility to request an estimate. The applicant should be informed, as far as possible, of the likely amount to be paid and the way in which payment should be made. Time limits for the payment of fees and charges should be established.

(10) Information on the fees and charges established in this Regulation should be publicly available. Any future revisions of the fees levied by the Agency should be based on a transparent evaluation of the costs of the Agency and the relevant costs resulting from the tasks carried out by the NSAs.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Committee in line with Article 81 of Regulation (EU) 2016/796,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1 This Regulation lays down the fees and charges payable to the European Union Agency for Railways (‘the Agency’) for the processing of applications pursuant to Articles 14, 20, 21 and 22 of Regulation (EU) 2016/796 as well as for the provision of other services in accordance with the objectives for which the Agency has been established. It also specifies the method to be used for calculating those fees and charges and conditions for payment.

2 This Regulation also establishes procedures to ensure transparency, non-discrimination and other basic principles of European law in relation to the costs of the national safety authorities (‘NSAs’) for processing the national part of the applications for which the Agency is responsible pursuant to Articles 14, 20, and 21 of Regulation (EU) 2016/796.

3 This Regulation shall not apply to the fees and charges levied in relation to the following activities of the NSAs:

a processing of applications for single safety certificates pursuant to Article 10(8) of Directive (EU) 2016/798[(2)] and the related pre-engagement process provided for in Commission Implementing Regulation (EU) 2018/763[(3)],

b processing of applications for vehicle authorisations for placing on the market or type authorisations of vehicles pursuant to Articles 21(8) and 24(1) of Directive (EU) 2016/797[(4)] and the related pre-engagement process provided for in Commission Implementing Regulation (EU) 2018/545[(5)];

c issuing an opinion on the request for ERTMS track-side equipment approval in accordance with the last sub paragraph of Article 19(3) of Directive (EU) 2016/797;

d delivering temporary authorisations for on-site tests pursuant to Article 21(3) and (5) of Directive (EU) 2016/797.

Article 2

Types of fees and charges

1 The Agency shall levy fees for the processing of applications, including for the issuing of estimates and where an application is withdrawn by the applicant, or where the Agency amends a decision. The Agency may also levy fees where it revokes an earlier decision due to non-compliance of the holder of an authorisation or certification.

2 The applications referred to in paragraph 1 shall cover:

a vehicle authorisations for placing on the market and vehicle type authorisations in accordance with Article 20 and 21 of Regulation (EU) 2016/796;

b single safety certificates in accordance with Article 14 of Regulation (EU) 2016/796;

c decisions for approval of the interoperability compliance of an ERTMS track-side equipment solution with the relevant TSI in accordance with Article 22 of Regulation (EU) 2016/796;

d appeals referred to in Article 58 of Regulation (EU) 2016/796, in accordance with Article 7 of this Regulation.

3 The Agency shall levy charges for the provision of services other than those referred to in paragraph 1, requested by an applicant or any other person. In particular, it shall levy charges for the pre-engagement process provided for in Regulation (EU) 2018/545 and in Implementing Regulation (EU) 2018/763.

4 The Agency shall publish a list of services on its website.

Article 3

Calculation of fees and charges

1 The amount of fees and charges shall be the total of the following:

a the number of hours spent by Agency staff and external experts, on the processing of the application multiplied by the hourly rate of the Agency; and

b the relevant costs of the NSAs resulting from the processing of the national part of the application.

2 The Agency shall apply an hourly rate of EUR 130 for the purposes of paragraph 1(a).

Article 4

Estimates of fees and charges

1 The Agency shall, at the request of the applicant, issue a non-binding estimate of the amount of the fees and charges related to the application or request for services and provide information on when the invoices will be issued.

The NSAs which are involved in the processing of an application shall provide a non-binding estimate of their costs as referred to in Article 3(1)(b) to the Agency to be included in the estimate issued by the Agency.

2 During the processing of an application, the Agency and the NSAs shall monitor their costs. At the request of the applicant, when costs risk exceeding the estimate by more than 15 %, the Agency shall inform the applicant thereof.

3 Where the processing of an application or a service lasts longer than one year, the applicant may request a new estimate.

4 Where the issuing of estimates and any review thereof is requested, the deadlines set by Article 19(4) and Article 21(6) of Directive (EU) 2016/797 and Article 10(6) of Directive (EU) 2016/798 may be suspended for a maximum of 10 working days.

Article 5

Conditions of payment

1 The Agency shall issue an invoice for the fees and charges due, within 30 calendar days of the date:

a of the decision of the Agency or Board of Appeal; or

b when the service rendered ended; or

c of withdrawal of an application; or

d of any other event leading to cessation of processing of an application.

2 The invoice shall detail:

a the number of hour spent by the Agency; and

b where relevant, the costs charged per NSA responsible. These shall be specified in relation to task and time spent or in form of fixed rates applied to the processing of the national part of the application.

3 The NSAs shall provide the Agency with a statement of costs for their contribution to be included in the invoice issued by the Agency, at the latest when the Agency requests it. The statement of costs shall detail how these costs have been calculated.

4 Payment of the fees and charges shall be denominated and payable in euro.

5 The Agency shall notify applicants of the decision and issue the invoice via the one-stop shop referred to in Article 12 of Regulation (EU) 2016/796.

6 The Agency may invoice interim amounts every 6 months.

7 Payment of the fees and charges shall be made by means of transfer to the Agency's bank account indicated for that purpose.