# 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 (Text with EEA relevance)

## REGULATION (EU) 2016/796 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

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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)],

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[(4)] and Directive 2008/57/EC of the European Parliament and of the Council[(5)] 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.

(3) Regulation (EC) No 881/2004 of the European Parliament and of the Council[(6)] 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

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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.

(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) 2016/797 of the European Parliament and of the Council[(7)] provides for the drafting and revision of technical specifications for interoperability ('TSIs'), while Directive (EU) 2016/798 of the European Parliament and of the Council[(8)] 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.

(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) 2016/798 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) 2016/797 is to provide for this.

(9) It is essential that Directive (EU) 2016/797 and Directive (EU) 2016/798 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.

(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

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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) 2016/797 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.

(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) 2016/798 and Directive (EU) 2016/797 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