

European Union Agency for Railways. 4th Railway Package

2013/0014(COD) - 15/12/2015 - Council position

The Council adopted its position in first reading with a view to the adoption of the regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004.

The proposal is part of the fourth railway package, which consists of six legislative proposals aimed at removing the remaining barriers to the completion of the Single European Railway Area. It aims to amend the existing regulatory framework in order to define the new tasks in the field of interoperability and safety to be carried out by the European Railway 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;
- 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 the [Directive on rail safety](#) and the [Directive on interoperability](#), 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.

The main points introduced in the Council position are as follows:

Issuing of safety certificates and vehicle authorisations: the Council position introduces more flexibility in the respective responsibilities of the national safety authorities and the Agency in the safety certification and vehicle authorisation processes. It provides for additional safeguards granted to the national safety authorities in specific circumstances.

Under the Council's position, a dual system of vehicle authorisations and safety certifications is set up, where: (i) the Agency acts as a one-stop-shop for authorising vehicles intended for cross-border operations and for issuing safety certificates to railway undertakings involved in cross-border traffic, (ii) national safety authorities keep an important role in carrying out the necessary assessments.

For vehicles and railway undertakings involved in national transport only, it remains possible to submit a request for authorisation or certification either to the Agency or to the national safety authority. However, in both cases, the procedure and the decision criteria remain the same.

In addition, the Council's position provides for the establishment and management by the Agency of an information and communications system with one-stop shop functions.

Role of the Agency for the authorisation of placing in service of the European signalling system (ERTMS): the Council position states that the national safety authorities should continue to authorise the placing in service of ERTMS systems. Before any call for tenders relating to ERTMS trackside equipment, the Agency should check that the technical solutions envisaged are fully compliant with the relevant TSIs and are therefore fully interoperable.

Fees and charges for safety certificates and vehicle authorisations: the Council's position sets out in the Regulation the principles governing the calculation of the fees and charges to be applied by the Agency to applicants for the issuing of authorisations and certifications. These fees and charges should take into account the actual costs incurred by the national safety authorities in carrying out their relevant tasks when issuing safety certificates and vehicle authorisations. They shall be set in a transparent, fair and uniform manner in cooperation with Member States, shall not jeopardize the competitiveness of the European railway sector, and shall not lead to unnecessary financial burden on applicants.

The text clarifies that fees and charges shall also be levied for the issuing of decisions for approval of ERTMS. It also provides that measures in relation to the calculation of fees and charges shall be established by means of implementing acts.

Liability of the Agency and cooperation with national judicial authorities: 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.

The Council's position introduces a new Article on the cooperation with national judicial authorities. It also clarifies that the immunity of the Executive Director (and of the Agency staff) could be waived, if necessary, 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,

Cooperation of the Agency with national safety authorities: the Council's position lays down that the Agency and the national safety authorities shall conclude cooperation agreements in the context of vehicle authorisations and safety certificates to facilitate the practical implementation of the new certification and authorisation system. Under this approach, the Agency will be able to subcontract certain certification and authorisation tasks to the national safety authorities.

In particular, for networks isolated from the rest of the Union's rail system, cooperation arrangements may be introduced to include the possibility for contracting tasks to the relevant national safety authorities when it is necessary to ensure efficient and proportionate allocation of certification and authorisation.

Appeal and arbitration procedures/conflict of interest rules: the Council's text: (i) reflects the possibility given to the applicant of referring the matter to a national court in case of disagreement with the measure taken by the national safety authority; (ii) introduces new provisions on arbitration procedures to guarantee the possibility for a national safety authority to lodge an appeal against a decision taken by the Agency in case of disagreement.

In addition, the Council's text lays down detailed rules concerning the functioning of the Board of Appeal, including rules on: (i) the independence of its members from the parties involved in an appeal or arbitration, (ii) the prevention and management of conflicts of interests of the Agency staff at all levels and (iii) the inclusion of a 3-month time limit for an appeal procedure in order to ensure that appeal cases do not create obstacles or delays.

New governance rules: The Council provides for: (i) the appointment of two representatives of the Commission within the Management Board (as against four in the Commission proposal); (ii) a new obligation for the Commission to propose a list of at least three candidates for the appointment of the Executive Director; (iii) the option for one-third of the Management Board to remove the Executive Director.

European standards in relation to spare parts: the Agency shall: (i) issue detailed guidance concerning standards for the relevant European standardisation bodies to complement the mandate given to them by the Commission; (ii) contribute to the identification of potential interchangeable spare parts to be standardised, including main interfaces to such spare parts and shall present to the Commission appropriate recommendations.

Languages: the Council's position provides that, at the request of a member of the Management Board, the decision on languages shall be taken by unanimity, in line with the current practices deriving from the application of the existing Regulation (EC) n° 881/2004.