

Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation) (repealed)

## CHAPTER 5

### INTERNAL STRUCTURE AND OPERATION

#### *Article 22*

##### **Legal status**

- 1 The Agency shall be a body of the Community. It shall have 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.

#### *Article 23*

##### **Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and its staff.

#### *Article 24*

##### **Staff**

- 1 The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for purposes of the application of those Staff Regulations and Conditions of Employment shall apply to the staff of the Agency.
- 2 Without prejudice to Article 26, the powers conferred on the appointing authority and on the contracting authority by the said Staff Regulations and Conditions of Employment shall be exercised by the Agency in respect of its own staff.
- 3 Without prejudice to Article 26(1), the Agency's staff shall consist of:
  - temporary employees recruited by the Agency for a maximum of five years from among professionals from the sector on the basis of their qualifications and experience in the field of railway safety and interoperability;
  - officials assigned or seconded by the Commission or Member States for a maximum of five years; and
  - other servants, as defined in the Conditions of Employment of Other Servants of the European Communities, to carry out implementing or secretarial tasks.

4 The experts who participate in the working parties organised by the Agency shall not belong to the Agency's staff. Their travel and subsistence expenses, based on rules and scales adopted by the Administrative Board, shall be met by the Agency.

#### *Article 25*

### **Creation and powers of the Administrative Board**

1 An Administrative Board is hereby set up.

2 The Administrative Board shall:

- a appoint the Executive Director pursuant to Article 31;
- b adopt, by 30 April each year, the general report of the Agency for the previous year and forward it to the Member States, the European Parliament, the Council and the Commission;
- c adopt, by 31 October each year, and taking the opinion of the Commission into account, the work programme of the Agency for the coming year and forward it to the Member States, the European Parliament, the Council and the Commission. This work programme shall be adopted without prejudice to the annual Community budgetary procedure. If the Commission expresses, within 15 days from the date of adoption of the work programme, its disagreement with the programme, the Administrative Board shall re-examine the programme and adopt it, possibly amended, on a second reading either with a two-thirds majority, including the Commission representatives, or by unanimity of the representatives of the Member States;
- d exercise its functions in relation to the Agency's budget, pursuant to Chapter 6;
- e establish procedures for decision-making by the Executive Director,
- f define a policy for the visits to be carried out pursuant to Article 33;
- g exercise disciplinary authority over the Executive Director and the Heads of Unit referred to in Article 30(3);
- h establish its rules of procedure.

#### *Article 26*

### **Composition of the Administrative Board**

1 The Administrative Board shall be composed of one representative of each Member State and four representatives of the Commission, as well as of six representatives, without the right to vote, the latter representing at European level the following groups:

- railway undertakings
- infrastructure managers
- railway industry
- worker unions
- passengers
- freight customers,

and appointed by the Commission from a shortlist of three names submitted by their respective European organisations.

Board members shall be appointed on the basis of their degree of relevant experience and expertise.

2 Each Member State and the Commission shall appoint their members of the Administrative Board as well as an alternate.

3 The term of office shall be five years and may be renewed once.

4 When appropriate, the participation of representatives of third countries and the conditions thereof shall be established in the arrangements referred to in Article 36(2).

#### *Article 27*

### **Chairperson of the Administrative Board**

1 The Administrative Board shall elect a Chairperson 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/her duties.

2 The term of office of the Chairperson and Deputy Chairperson shall be three years and may be renewed once. If, however, their membership of the Administrative Board ends at any time during their term of office as Chairperson or Deputy Chairperson, then their term of office shall automatically expire on that date also.

#### *Article 28*

### **Meetings**

1 Meetings of the Administrative Board shall be convened by its Chairperson. The Executive Director of the Agency shall participate in the meetings.

2 The Administrative Board shall meet at least twice a year. It shall also meet at the instance of the Chairperson, at the request of the Commission, at the request of the majority of its members or of one-third of the Member States' representatives on the Board.

#### *Article 29*

### **Voting**

Unless stated otherwise, the Administrative Board shall take its decisions by a two-thirds majority of its members entitled to vote. Each member entitled to vote shall have one vote.

#### *Article 30*

### **Functions and powers of the Executive Director**

1 The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties, without prejudice to the respective competences of the Commission and the Administrative Board.

2 The Executive Director shall:

- a prepare the work programme and, after consultation of the Commission, submit it to the Administrative Board;

- b make the necessary arrangements for implementation of the work programme and, as far as possible, respond to requests for assistance from the Commission in relation to the tasks of the Agency in accordance with this Regulation;
  - c take the necessary steps, in particular the adoption of internal administrative instructions and the publication of orders, to ensure that the Agency operates in accordance with this Regulation;
  - d establish an effective monitoring system in order to compare the Agency's results with its operational objectives and establish a regular assessment system corresponding to recognised professional standards. On this basis the Executive Director shall prepare each year a draft general report and submit it to the Administrative Board;
  - e exercise the powers laid down in Article 24(2) in respect of the Agency staff;
  - f prepare a draft statement of estimates of the revenue and expenditure of the Agency pursuant to Article 38 and implement the budget pursuant to Article 39.
- 3 The Executive Director may be assisted by one or more Heads of Unit. If the Executive Director is absent or unable to attend to his/her duties, one of the Heads of Unit shall take his/her place.

#### *Article 31*

### **Appointments of the Agency staff**

1 The Executive Director shall be appointed by the Administrative Board on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to the railway sector. The Administrative Board shall take its decision by a four-fifths majority of all members entitled to vote. The Commission may propose a candidate or candidates.

Power to dismiss the Executive Director shall lie with the Administrative Board, according to the same procedure.

2 The Executive Director shall appoint the other members of the Agency's staff in accordance with Article 24.

3 The term of office of the Executive Director shall be five years. This term of office is renewable once.

#### *Article 32*

### **Hearing of the Executive Director**

Each year the Executive Director shall present to the European Parliament a general report on the Agency's activities. The European Parliament or the Council may also ask at any time for a hearing of the Executive Director on any subject related to the Agency's activities.

#### *Article 33*

### **Visits to Member States**

1 In order to perform the tasks entrusted to it by Articles 8,9,10,13 and 15, the Agency may carry out visits to the Member States in accordance with the policy defined by the

Administrative Board. The national authorities of the Member States shall facilitate the work of the Agency's staff.

2 The Agency shall inform the Member State concerned of the planned visit, the names of the delegated Agency officials, and the date on which the visit is to start. The Agency officials delegated to carry out such visits shall do so on presentation of a decision from the Executive Director specifying the purpose and the aims of their visit.

3 At the end of each visit, the Agency shall draw up a report and send it to the Commission and to the Member State concerned.

#### *Article 34*

#### **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 Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

3 In the case 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 course of performance of their duties.

4 The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for the damage 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 Conditions of Employment applicable to them.

#### *Article 35*

#### **Languages**

1 The Administrative Board shall decide on the linguistic arrangements for the Agency. At the request of a Member of the Administrative Board, this decision shall be taken by unanimity.

The Member States may address the Agency in the Community language of their choice.

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.

#### *Article 36*

#### **Participation by third countries**

1 The Agency shall be open to participation by European countries which have concluded agreements with the Community, whereby the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation.

2 In accordance with the relevant provisions of the abovementioned agreements, arrangements shall be made which shall specify the detailed rules for participation by these

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countries in the work of the Agency, in particular the nature and extent of such participation. These arrangements shall include, inter alia, provisions on financial contributions and staff. They may provide for representation, without vote, on the Administrative Board.

#### *Article 37*

### **Transparency**

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<sup>(1)</sup> shall apply to the documents held by the Agency.

The Administrative Board shall adopt the practical measures for implementation of Regulation (EC) No 1049/2001 by ...<sup>(2)</sup>

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 Communities, under Articles 195 and 230 of the Treaty respectively.

- (1) [OJ L 145, 31.5.2001, p. 43.](#)
- (2) Six months after the entry into force of this Regulation.