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REPORT FROM THE COMMISSION

**on the progress made in preparing for the European Union Agency for Railways
enhanced role under Directive (EU) 2016/797 on the interoperability of the rail system
within the European Union**

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1. INTRODUCTION

The Fourth Railway Package technical pillar was adopted by the European Parliament and the Council in May 2016 and includes:

- 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 881/2004¹ ('the Agency Regulation');
- Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union² ('the Interoperability Directive');
- Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety³ ('the Safety Directive').

With the entry into force of the Fourth Railway Package technical pillar, the role of the European Union Agency for Railways ('the Agency') has been substantially extended. As of 16 June 2019 the Agency will become the EU authority responsible for issuing authorisations for placing railway vehicles on the market of and issuing single safety certificates for railway undertakings. The Agency will also become the system authority for the European Railway Traffic Management System (ERTMS), including the approval of ERTMS trackside projects.

Effective implementation of the Fourth Railway Package technical pillar requires, on the one hand, the legislative framework being completed both in terms of Member States transposing the package into national law and the Commission adopting the required delegated and implementing acts, and on the other, the Agency having in place the necessary human resources, internal procedures and arrangements with all 26 national safety authorities (NSAs).

The full benefits of the Fourth Railway Package can only be achieved if it is implemented in full across the EU. It is crucial that all those involved parties in the railway sector commit to and cooperate in removing the remaining administrative and technical barriers. Particular focus should be given to establishing a common approach to safety and interoperability rules.

This report describes the progress made in preparation for the Agency's strengthened role as requested by Article 53(1) of the Interoperability Directive.

¹ OJ L 138, 26.5.2016, p. 1

² OJ L 138, 26.5.2016, p. 44

³ OJ L 138, 26.5.2016, p. 102

2. PROGRESS MADE IN PREPARING FOR THE EUROPEAN UNION AGENCY FOR RAILWAYS' ENHANCED ROLE

2.1. Transposition by EU Member States

According to Article 33 of the Safety Directive and Article 57 of the Interoperability Directive, all Member States must enforce the laws, regulations and administrative provisions required to comply with the provisions of the Fourth Railway Package technical pillar by 16 June 2019. The Fourth Railway Package allows Member States in justified cases to extend the transposition period by 1 year, i. e. until 16 June 2020. Member States that require an extension have until 16 December 2018 to notify the Agency and the Commission and present the reasons for such an extension.

The Commission is closely following up on Member States' progress in drafting and adopting national legislation, and is holding regular discussions with them. In particular the Commission is providing Member States with guidance on how to organise the transition period between the old and the new regime. While indications are positive it is however, too early to confirm that a large number of Member States will transpose the Fourth Railway Package technical pillar by 16 June 2019.

2.2. Development of delegated and implementing acts

The Fourth Railway Package technical pillar requires the Commission to adopt considerable numbers of delegated or implementing acts to complete the technical pillar's legislative framework.

Moreover, revisions to technical specifications for interoperability (TSIs) in relation to the new requirements established by the Fourth Railway Package, as well as to the Commission Implementing Decision on the European register of authorised types of vehicles, are necessary and expected to be voted on by the Railway Interoperability and Safety Committee in January 2019. Commission implementing decisions setting out specifications for the European vehicle register and register of infrastructure will be adopted over the course of 2018 and 2019, respectively.

The list of acts adopted/to be adopted is provided in the Annex to this report.

Transition clauses ensure that there will be no duplication of procedures or re-assessment of applications that were submitted to the NSAs but which will be completed by the Agency after 16 June 2019.

2.3. Cleaning-up of national rules

The Fourth Railway Package technical pillar will improve interoperability and safety in Europe not only through the Agency's strengthened roles and further harmonisation of technical specifications. An essential prerequisite for implementation of the Fourth Railway Package is the reduction of the significant number of overlapping and non-transparent national rules. For years railway undertakings and manufacturers of rail products have been suffering from the insufficient transparency and multiplicity of rules in the European railway area.

In order to quickly improve the functioning of the European railway area, the Agency is cooperating with the NSAs in removing over 14 000 obsolete or redundant national rules. This includes the elimination of unnecessary procedural steps that could hamper

unhindered access of rail services to the infrastructure. According to the Agency's recent figures considerable progress has been achieved and national rules concerning in particular railway rolling stock have been reduced to less than 10% of the original amount.

2.4. Development of Agency's preparedness

The new Agency Regulation has introduced many important modifications which strengthen the role to be played by the Agency and provide it with necessary instruments to achieve this objective. Those modifications concern the governance of the Agency, its resources, capacities and capabilities as well as IT tools and various other skills.

a) Governance

The most important modification in the governance field is the introduction of a charging regime for issuing certificates, authorisations and approvals, as well as an appeal procedure allowing the parties affected by decisions made by the Agency to seek the necessary remedies. The Commission adopted implementing acts on the rules on the functioning of the Board of Appeal of the Agency as well as the levels and principles applicable to fees and charges to be levied by the Agency.

The Agency's Board of Appeal will offer an independent and impartial appeal mechanism. Aiming to be fully operational by 16 June 2019 a process for selecting board members is ongoing, which involves both the Commission and the Agency's Management Board, the latter tasked with formally appointing the members and the chairperson.

To ensure an impartial and efficient service the Agency will charge applicants the full costs of services provided, including a compensation for the costs generated by NSAs for their contribution to the assessment of applications in relation to the relevant national rules. Due to the transition uncertainties, explained in section 3 of this report, the regime will be initially based on variable rates depending on the time spent with each application. However, a revision clause invites to an evaluation of the system with the aim to introduce in the future fixed rates, at least for parts of fees and charges.

b) Resources, capacity and capabilities

For the purpose of establishing the Agency's working methods, resources and planning, the present report is based on the assumption that most EU Member States will meet the transposition deadline of 16 June 2019.

Once the transposition deadline is reached, a substantial increase in workload is to be expected which is likely to further increase over time. The Agency and the NSAs with input from other bodies in the rail sector are making the greatest possible effort in their respective sphere of responsibility to predict the future development of the Agency's workload. However due to the choices offered to the railway sector under the Fourth Railway Package it must be accepted that the real change in workload arising from authorisation and certification work remains difficult to quantify ex ante, as well as concerning its impact and timing. Beyond the new tasks of authorisation and certification, the Agency's capability to deliver on other core statutory tasks, such as technical assistance and policy recommendations to the Commission must be maintained.

To monitor the railway sector's preparedness to deliver on the Fourth Railway Package technical pillar a steering group has been established under the responsibility of the

Agency's Management Board. It consists of the management staff of some NSAs, representatives of the sector's most concerned associations, a European Aviation Safety Agency representative, and the Agency's executive director as well as a Commission representative.

Furthermore, introducing fee-based activities will require the establishment of a resources system and internal procedures within the Agency to ensure statutory and fee-based tasks are identified and tracked, covering the necessary financial and human resources.

The Agency is adapting its organisational structure to improve the efficiency of its internal resources and to create a clear separation between the different tasks. The new structure is planned to introduce a division between fee-generating and advisory functions. There will be an element of flexibility to adapt staff allocation with the relevant internal and external expertise, if workload required so.

Within the number of posts planned in the Agency's budget for 2018 and draft budget for 2019, the Agency has identified about 24 posts which are considered necessary for it to assume its new role and responsibilities. In light of the risks the Agency is facing from external factors inherent to the transition, attracting the necessary human resources with adequate qualifications for the tasks in a timely manner is an essential precondition. Substantial recruitment efforts are underway to cover all vacancies over the course of 2018.

c) IT Tools and various skills

The work on a joint IT tool to submit applications to the Agency or a NSA has started. The new legal framework requires an information and communication system to be developed with a virtual one-stop shop (OSS) functionality that will support applicants, the Agency and NSAs in accomplishing their tasks related to single safety certifications, vehicle authorisations and approvals of ERTMS trackside projects. The basic functional and technical specifications of the OSS were adopted by the Agency's Management Board in September 2017. A first release incorporating all the required functions is planned to be launched in July 2018 and will be used for the shadow running that the Agency has agreed to carry out with the NSAs. The full functionality of the OSS should be available in February 2019 allowing the applicants for vehicle authorisation to submit first applications. A final version will accommodate the feedback received during the shadow running and learning cases and will implement all the remaining secondary functions. This is scheduled to become available by 16 June 2019.

Other IT tools currently run by the Agency need to be updated by means of cooperation between the Commission, the Agency and Member States to improve efficient communication and delivery of key information among all the players responsible for safe and interoperable railways. In future it will be the responsibility of a railway undertaking to check before use, that a vehicle has been authorised to be placed on the market and that it is compatible with the route on which it is intended to operate. To accomplish that task railway undertakings will search information contained in vehicle and infrastructure registers.

The specifications for the register for infrastructure (RINF) will be updated by June 2019 with an improved set of infrastructure parameters that allow the technical compatibility between a vehicle and a route to be checked in accordance with Article 23 of the

Interoperability Directive and the Commission Implementing Decision setting out RINF specifications. Once updated, it will be for the Member States to populate RINF accordingly.

Moreover, the registers for vehicle authorisations and for vehicles types will need to be adapted. In December 2017 the Agency issued a recommendation on the specification for the European vehicle register referred to in Article 47 of the Interoperability Directive. A recommendation on revising the European register of authorised types of vehicles referred to in Article 48 of the Interoperability Directive will be issued later in 2018.

In order to ensure a seamless transition and to acquire the necessary expertise, the Agency started to work with NSAs in June 2017 on vehicle authorisation and safety certification ‘learning cases’. In late 2018 it will introduce shadow running to test procedures and systems. In this way the Agency will build up experience and develop internal working methods while familiarising itself with applications and projects that may continue after 16 June 2019 and will therefore come within the Agency's responsibility.

As of mid-2018 the Agency will start, if the applicants and the NSAs agree, to pre-engage with applicants whose safety certificates expire after 16 June 2019.

To support applicants in applying the new rules, the Agency is drafting the application guides for vehicle authorisation and safety certification. Preparatory works for these started in 2017. A first version of the application guide on vehicle authorisation will be ready by the end of July 2018 to be used for the shadow running. The application guide on the single safety certificate will take into account the common safety methods and will provide any additional information that is considered necessary relating, among other things, to safety culture and human and organisational factors. Updated versions of the application guides taking into account the results of the shadow running and learning cases will be issued well before 16 June 2019.

In order to establish procedures for ERTMS trackside approval, the Commission and the Agency have engaged in discussions with the railway sector. Four learning cases were managed in 2017. On that basis the Commission has adopted a recommendation for ERTMS trackside approvals. Over the course of 2018 more EU Member States are expected to get involved in this exercise, which will enable the Agency to develop the internal guidelines for the ERTMS trackside approval process. The establishment of the Agency as system authority for monitoring the interoperability of ERTMS solutions for rail infrastructure, as part of the Fourth Railway Package, is likely to significantly accelerate the harmonisation of ERTMS deployment.

In 2016 the Agency and NSAs agreed on a position paper concerning the establishment of a pool of experts. By mid-2018 NSAs should have nominated their experts so that the Agency can finalise their training on the requirements for cooperation before 16 June 2019. If there are gaps identified in certain areas of expertise, the procedure to identify non-NSA experts for inclusion in the pool of experts will be set up. The mechanisms for cooperation within the pool of experts will be further tested during the shadow running.

2.5. Progress on cooperation agreements between the Agency and NSAs

The Agency Regulation requires the Agency and all NSAs to conclude cooperation agreements concerning the implementation of the safety certification and vehicle

authorisation tasks based on guidelines and a list of main elements defined by the Agency's Management Board.

The guidelines and a list of the main elements were adopted by the Agency's Management Board in June 2018. The Agency will conduct negotiations on cooperation agreements with individual NSAs with a view to concluding them before taking up its new responsibilities.

3. ASSESSMENT OF THE TRANSITION UNCERTAINTIES

The transition from a purely advisory agency with statutory tasks offering technical recommendations to the Commission and Member States to a revenue-generating authorising/certifying entity in an essentially unpredictable environment creates several inherent challenges which the Agency and the Commission are making huge efforts to overcome. A particular source of uncertainty is the lack of predictability of the number of applications the Agency is expected to receive as of mid-2019 and beyond and as a consequence the revenue it will generate. In anticipating these risks a careful analysis of the needs for the Agency's transition budget is required.

The transition period of 2019-2020 is marked by another layer of uncertainty concerning the transposition of the provisions of the Fourth Railway Package technical pillar by all EU Member States by 16 June 2019, as there is the option offered to them to request an extension of the transposition by 12 months. This makes it harder to predict the workload for the Agency; it is envisaged that there will be limited number of applications followed by possible peak of applications in the consecutive periods due to the extension of transposition deadline brought about under the Fourth Railway Package technical pillar. Member States have until 16 December 2018 to notify the Commission and the Agency of any extension of the transposition period beyond 16 June 2019.

The timely conclusion of the cooperation agreements, including the distribution of tasks and revenue, is an absolute necessity for the Agency to fully comply with its new set of tasks as the authorising and certifying entity. Failure to conclude such agreements, or any delay may negatively impact the Agency's ability to fulfil its respective obligations. The Agency holds full responsibility for its own contribution, as well as for the entire authorisation or certification process, including assessments of national rules by NSAs. The Agency works in close cooperation with the network of NSAs to reduce the risk of late conclusion of cooperation agreements.

Given the nature of the Agency's activities due diligence and close monitoring of developments in Member States as well as in the railway sector will be required to reduce transition uncertainties to an acceptable minimum.

4. CONCLUSIONS

The railway sector requires the Fourth Railway Package technical pillar to be urgently implemented as it introduces a system of truly transparent and impartial railway rules at EU level by removing unnecessary national obstacles.

The Commission and the Agency have respectively taken regulatory and organisational steps to ensure that the Agency has a strengthened role as of 16 June 2019. The Agency is stepping up its effort to boost its capacity to meet the required targets set for its new

role by 16 June 2019. The Commission is actively monitoring the Agency's preparedness through its membership of the Agency's Executive Board and Management Board and the close and regular cooperation between the two institutions.

However, much of the success of the Fourth Railway Package technical pillar depends on the timely and complete transposition by Member States and the provision of both the required quality and quantity of the expertise and deliverables for which the NSAs bear responsibility.

The Agency has to maintain its ability to deliver on other core statutory tasks while it prepares for the new tasks. In particular, specialised staff with a high level of expertise and language skills is key. Staff employed in 2018/2019 will have to remain subsidy-funded until fees and charges are generated from certification and authorisation activities later in 2019 and beyond.

A necessary precondition for the Agency to successfully assume its new role and responsibilities is open, effective, committed and sincere cooperation with NSAs in line with the Fourth Railway Package's mandate. Any serious delay in concluding cooperation agreements and actually delivering input to the Agency's authorisation and certification decisions could lead to formal proceedings against individual Member States for not applying EU law and for the infringement of the principle of sincere cooperation.

The risk of excessive workload to deliver approvals of ERTMS trackside projects calls for more commitment from Member States and infrastructure managers to better forecast trackside procurement for both ERTMS European Deployment Plan commitments and other ERTMS infrastructure projects. The Commission and the European ERTMS Coordinator cooperate in a transparent and predictable manner in improving ERTMS deployment.

The Commission invites Member States and NSAs to consolidate their efforts to make the single European railway area a reality. The Commission hopes that possible extensions of transposition deadlines will only be requested as a matter of exception, and on the basis of realistic, objective justification.