



EUROPEAN
COMMISSION

Brussels, **XXX**
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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

**on the fees and charges payable to the European Union Agency for Railways and their
conditions of payment**

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

on the fees and charges payable to the European Union Agency for Railways and their conditions of payment

(Text with EEA relevance)

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) n°881/2004¹, 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 (EC) 2016/796.
- (2) The fees and charges payable to the Agency should be set in a transparent, fair and uniform manner. They should not result in the imposition of unnecessary financial burden on companies and should not jeopardise the competitiveness of the European railway sector.
- (3) The fees and charges should be based on the Agency's forecasts concerning its workload and related costs. They should be set at such a level as to ensure that the full costs of the services provided, including tasks carried out by the national safety authorities (NSAs) under cooperation agreements with the Agency, are covered. At the same time, the fees and charges should be set at such a level as to avoid a deficit or a significant accumulation of surplus, in accordance with Regulation (EU) No 1271/2013².
- (4) 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 related to the certificates, authorisations and decisions for approval should be aggregated and uniformly divided among all applications.
- (5) Fees and charges should be established on a basis which takes due account of the ability of undertakings to pay, as well as the specific needs of small and medium-sized

¹ 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 (OJ L 138, 26.5.2016, p.1)

² Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework Financial Regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013 p. 42)

enterprises. Undertakings should have the possibility to split payment into several instalments if needed.

- (6) The amount of fees and charges levied by the Agency should be equal to the real costs of the service provided/proportional to the workload involved in the services provided, including the relevant costs the tasks carried out by the national safety authorities when processing the national part of an application. To that end, the time spent by the Agency to provide those services shall be invoiced at an hourly rate.
- (7) Applicants should be able to exercise their right to appeal against decisions of the Agency and seek relief. 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. .
- (8) The applicant should have the possibility to request an estimate of the amount to be paid for certifications, authorisations and decisions for approval. The applicant should be informed, as far as possible, of the likely amount to be paid and the way in which payment must be made. Time-limits for the payment of fees and charges should be established
- (9) In line with the Joint Statement of the European Parliament, the Council of the EU and the European Commission of 19 July 2012 on decentralised agencies, for bodies for which the revenue is constituted by fees and charges in addition to the Union contribution, fees should be set at a level that avoids a deficit or a significant accumulation of surplus, and should be revised when this is not the case. Therefore, the fees set out in this Regulation should be based on an evaluation of the Agency's estimations and forecasts as regards its workload and related costs, and on the costs of the work assigned to the national safety authorities of the Member States.
- (10) Information on the fees established in this Regulation should be publicly available. Any future revisions of the fees levied by the Agency should be based on a transparent and independent evaluation of the costs of the Agency and the costs of the tasks carried out by the national safety authorities.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 21 of Council Directive 96/48/EC³.

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"). It also specifies the method to be used for calculating those fees and charges and conditions for payment.
2. This Regulation also establishes the method for calculating the costs to be charged by the national safety authorities ("NSAs") to the Agency for services provided in connection with applications for which the Agency is responsible pursuant to Articles 14, 20, 21 and 22 of Regulation (EU) 2016/796.

³ Council Directive 96/48/EC of 23 July 1996 on the interoperability of the trans-European high-speed rail system (OJ L 235, 17.9.1996, p. 6).

3. This Regulation shall not apply to the fees and charges payable to the NSAs for:
- (a) processing of applications for single safety certificates pursuant to Article 10(8) of Directive (EU) 2016/798⁴,
 - (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) 2016/797⁵ ;
 - (c) issuing an opinion on the request for ERTMS track-side equipment approval in accordance with Article 19 (3) of Directive (EU) 2016/797, either to the applicant before the submission of the request to the Agency.
 - (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:
- (a) applications for vehicle authorisations for placing on the market and vehicle type authorisations in accordance with Article 20 and 21 of Regulation (EU) 2016/796;
 - (b) applications for single safety certificates in accordance with Article 14 of Regulation (EU) 2016/796;
 - (c) applications for decisions for approval of the compliance of an ERTMS tender 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;
2. The Agency shall levy charges for the pre-engagement process provided for in Regulation [*the implementing act referred to in Article 21(9) of Directive (EU) 2016/797*]⁶ and in Regulation [*the delegated act referred to in Article 6(1)(f) of Directive (EU) 2016/798*]⁷.

It shall also levy charges for the provision of services other than those referred to in paragraph 1, at the request of the applicant or any other person, including training and publications

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

⁴ Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, p.102)

⁵ 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 Union (OJ L 138, 26.5.2016, p.44)

⁶ Commission Implementing Regulation XX

⁷ Commission Delegated Regulation XXX

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 determined in accordance with paragraph 2; and
 - (b) the number of hours spent by the NSA on the processing of the national part of the application, multiplied by the hourly rate of the NSA, or an aggregated fixed rate applied by the NSA for this task, as applicable.
2. In accordance with Article 80(3) the rates referred to in paragraph 1 shall be determined on the basis of the following cost elements:
 - (a) the cost of staff and the cost of external experts involved in the processing of applications;
 - (b) the costs of supporting services and activities related to the processing of applications;
 - (c) any other operational costs that the Agency or the NSAs may incur in order to provide those services, including depreciation of facilities and IT tools and licenses, costs for travel of the Agency or NSAs staff and of the external experts, translation and staff training related to single safety certification, vehicle authorisations, and decisions for approval by the department in charge of the application.

The costs referred to in sub paragraph (c) shall be proportionate, aggregated, and equally divided among all applications.
3. In accordance with the method described in paragraph 2 the Agency shall apply an hourly rate of 130 euros.

Article 4

Estimates of fees and charges

1. The Agency shall, at the request of the applicant, issue an 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 the estimate of their costs as referred to in Article 3 (1) (c) 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 verify their estimates at least every two months. Where the costs incurred exceed the estimate by more than 15 %, the Agency and the NSA, as appropriate, shall update their estimates. The Agency shall provide the applicant with the updated estimate and give reasons for exceeding the initial estimate without delay.
3. Where the processing of an application lasts longer than one year, the applicant may request Agency shall provide the applicant, with a new estimate.

4. The issuing of estimates and any review thereof shall have no impact on 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.

Article 5

Conditions of payment

1. The Agency shall issue an invoice establishing the fees or charges in accordance with Article 2, within 15 days of the Agency decision on an application or a decision by the Board of Appeal

For this purpose and where relevant, the NSAs shall provide the Agency with a statement of costs for their contribution to be included in the invoice issued by the Agency.

2. Payment of the fees and charges shall be denominated and payable in euro.
3. 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.
4. Where the processing of an application lasts longer than a year, the Agency may invoice interim amounts in accordance with paragraph 1. The Agency shall issue an interim invoice at the request of the applicant.

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

5. Applicants shall ensure that the Agency receives payment of the amounts due, including any bank charges related to that payment, within 30 calendar days from the date of notification of the invoice.
6. Where the applicant is a small or medium-sized enterprise, the Agency shall accept requests for a reasonable extension of the time limit for payment and payment by instalments. The time-limit shall not exceed 60 days from the original due date.

For the purposes of this Regulation, small or medium-sized enterprise means an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million.

Article 6

Failure to pay

1. Where the Agency has not received the payment within the periods laid down in Article 5(5) and (6), it may charge interest for each additional calendar day until the payment is received and shall apply the recovery rules provided for in Article 80 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁸.
2. The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal

⁸ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1–96)

of the European Union, in force on the first calendar day of the month in which the due date falls, increased by eight percentage points.

3. The agency may suspend the validity of decisions issued in accordance with Articles 14, 20, 21 and 22 of Regulation (EU) 2016/796 until the fee relevant for the processing of the applications have been paid.

Article 7

Fees for appeals

1. The Agency shall levy a fee in respect of any appeal which is dismissed or withdrawn.
2. The fees for the appeal shall be 10 000 euro or equal to the amount charged for the decision appealed against whichever is lower.
3. The Agency shall notify appellants of the invoice via the One Stop Shop referred to in Article 12 of Regulation (EU) 2016/796.
4. Payment of the fees and charges shall be made by means of transfer to the bank account of the Agency.
5. Appellants shall ensure that the Agency receives payment of the amounts established in the invoice, including any bank charges related to that payment, within 30 calendar days from the date of notification of the invoice.

Article 8

Publication and revision of the rates

1. The Agency shall publish its hourly rate referred to in Article 4, on its website.
2. The Agency shall publish the hourly rate or the fixed rate of the NSAs referred to in Article 4 and a link to that information on its website.
3. Where the NSA applies a fixed rate as referred to in Article 4(2), it shall specify to which authorisation and certification cases the fixed rate will apply.
4. The Agency shall include in the annual report referred to in Article 51(1)(a) of Regulation (EU) 2016/796 information on the elements serving as a basis for the hourly rate, the financial results and the forecasts.
5. The Commission shall, on the basis of the financial results and forecasts of the Agency, revise the range of the hourly rate, if necessary.

Article 9

Evaluation and Revision

In the light of the information provided by the Agency in its annual report referred to in Article 8, this Regulation shall be reviewed by 16th June 2022 in view of the progressive introduction of fixed fees.

Article 10

Transitional provisions

In the cases referred to in Article 55(4) of [*the implementing act referred to in Article 21(9) of Directive (EU) 2016/797*] and in Article 15(4) of [*the delegated act referred to in Article 6(1)(f) of Directive (EU) 2016/798*], the fees payable to the Agency shall not cover work done before the submission of the application to the Agency.

Article 11

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 16 June 2019 in the Member States that have not notified the Agency and the Commission in accordance with Article 33(2) of Directive (EU) 2016/798 that they have extended the period for transposition of that Directive.

It shall apply in all Member States from 16 June 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Jean-Claude JUNCKER