

## **PAPER ON POLICY FOR VISITS TO MEMBER STATES**

### **Executive Summary**

Please find attached a draft paper on the Policy for Visits to Member States in accordance with article 33 of Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (hereafter 'the Regulation').

It sets out a horizontal policy and procedures for visits to Member States which have to be carried out in the context of several of ERA's tasks.

## **Explanatory note to the Members of the ERA Administrative Board concerning the Policy for visits to Member States**

### **Context**

In accordance with article 33 of the Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (hereafter 'the Regulation'), the Agency has the right to visit Member States.

The provisions of article 33 are as follows:

#### *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.*

The concept "Visit" here means a formal visit to the Member State, which the Agency can ask for in connection with the performance of the tasks specified in the article 33(1).

Notwithstanding the above, the Agency may visit the authorities or the organisations in a Member State as part of its work, if the authorities or the organisations invite or agree to discuss or demonstrate special matters for the Agency at a meeting, seminar, workshop, etc. in the Member State.

In such a case it is a normal mission and not a visit according to article 33 and it shall follow the normal rules for Agency missions.

As foreseen in article 33(1) the Administrative Board shall define a policy for visits to the Member States.

A proposal introducing this policy is described below:

The nature of such a policy should be horizontal e.g. it should try to address all general circumstances and situations where the Agency may need to visit Member States in order to execute its tasks.

On the basis of the experience gained, it might however be necessary to revise or further specify the procedures for particular types of visits.

**Background to the proposal for a policy to visits to Member States  
concerning the tasks related to articles 8, 9, 10, 13 and 15 of the  
Regulation (EC) No 881/2004**

**The legal preconditions for a visit to a Member State**

According to article 33(1) of the Regulation, the Agency may carry out visits to the Member States in connection with the tasks described below:

***i. Article 8 of the Regulation***

In relation to a request from the European Commission for a technical examination of new national safety rules submitted to the Commission in accordance with article 8 of the Railway Safety Directive 2004/49/EC. It is assumed that in principle an amendment to an existing national safety rule is a new rule; therefore visits to Member States in connection with the examination of an amendment to an existing rule will be possible.

***ii. Article 9 of the Regulation***

As a necessary part of the Agency's task in connection with the collection of relevant data on railway safety from the Member States, the monitoring of the safety indicators and the preparation of the report on safety performance, which shall be submitted every two years.

***iii. Article 10 of the Regulation***

As a necessary part of the work involving the preparation of the technical opinions referred to in article 10 of the Regulation. The technical opinion must be based on a request from a national regulatory body as referred to in article 30 of Directive 2001/14/EC concerning the safety-related aspects of matters drawn to their attention, or a request from the committees provided for in article 35 of Directive 2001/14/EC (DERC) and in article 11 point (a) of Directive 91/440/EEC concerning the safety-related aspects within their respective areas of competence.

***iv. Article 13 of the Regulation***

The Agency may only ask to carry out a visit to a Member State when the visit is a necessary part of monitoring the quality of the work of notified bodies as requested by the Commission.

***v. Article 15 of the Regulation***

In the case of a request by the Commission, when a visit is a necessary part of the Agency's work to examine the interoperability aspects of a railway infrastructure project for which Community financial support has been requested.

**Co-operation between ERA and Member States**

The Regulation establishing ERA provides the legal basis and scope of visits to Member States, and as indicated in article 33(1): "*.....The national authorities of the Member States shall facilitate the work of the Agency's staff.....*" The overall objective is that, when it is necessary for ERA to visit Member States in order to carry out its tasks, such visits require the mutual agreement and co-operation between ERA and the Member States.

## Conditions for a visit

The Agency will carry out visits to Member States as necessary for the performance of its tasks as defined in articles 8, 9, 10, 13 and 15 of the Regulation.

The visits are carried out following a decision by the Executive Director.

Before a decision on a visit is taken, two aspects should be examined:

- a) the expected information from a visit must be an important and necessary part of the preparation and documentation of a technical opinion or for the monitoring of safety performance, and
- b) the information may not be obtained by normal communication or similar between the Member State and the Agency.

The reason for a visit might be:

- o At the direct request of the Commission for the Agency to investigate a matter which, among other activities, includes a visit to the Member State.
- o The Agency has asked the Member State more than once for information within a reasonable time limit but with no result.
- o The Agency has asked the Member State more than once for information but has not received appropriate information. It must be justified, that a visit is the only solution to clarify misunderstandings.
- o The Agency has asked the Member State more than once for information and has received information, which seems to be inaccurate, or the Agency has serious doubts about the validity of the information. It must be justified, that a visit is the only solution to check up on the information.
- o The information required from a Member State is of a nature, which cannot be sent to the Agency by fax, letter, package, e-mail or similar.
- o A visit will be the most appropriate solution to obtain the right information in the quickest and most efficient way. There may be situations where the Member State proposes a visit from the Agency as the easiest and best way to hand over documentation.
- o For instance, it might be the documentation for a system, which is of a considerable quantity and would require many resources to copy. Also it might not be possible for the Agency to decide in advance, what documentation is relevant.
- o Another example might be the demonstration of a function, system or suchlike, which cannot be described clearly by texts, photos, videos or similar.

## **Description of the policy for visits to the Member States**

The visits shall be carried out following a decision by the Executive Director of the Agency after the above mentioned criteria have been met and in line with the policy established by the Administrative Board.

A policy for visits to the Member States based on the requirements stated in article 33 of the Regulation and on the principle “who gives information about what and when” should then include the following procedures:

### ***Information - who***

In accordance with article 33(2) of the Regulation “.....*The Agency shall inform the Member States concerned of the planned visits.....*”.

The best way to meet this formal requirement is to inform the Permanent Representation to the EU of the Member State involved. (However, this should only be done for the initial contact. It is not suggested that all communication must go via the Permanent Representation. Once the correct contact point in the Member State has been established, there should be direct communication.)

Depending on the type of visit, it may also be necessary to inform other parties involved, e.g. the national safety authority. But in line with Article 33, it is necessary that the Member State should inform any local authorities concerned.

The responsible directorate in the Commission shall be sent copies of all correspondence concerning the visit.

### ***Information - what***

Article 33(2) stipulates that the information should indicate “.....*the names of the delegated officials, and the date on which the visit is to start.....specifying the purpose and the aims of their visit.....*” In practical terms this should include:

- A copy of the Executive Director’s decision.
- The names of the persons involved and of the lead person together with their contact details.
- A request for a contact point in the Member State.
- A work schedule setting out the purpose and aim together with a more detailed list of tasks and, where appropriate, indicating a timetable.
- ERA may also request the Member State to supply relevant information relating to the purpose of the visit.

### ***Information - when***

As a general rule, information about a planned visit should be sent by ERA to the Member State not later than 30 days before the visit. However, as in most cases, the Agency has a time limit of two months to issue a technical opinion; it may be difficult to meet this requirement of 30 days advance notification.

This communication should include the information specified above. If it is necessary more detailed information should be sent no later than 15 days before the visit, to the relevant contact point. Such information could include arrival and departure times, hotel information, possible local transportation needs etc.

In the case of changes to the schedule, these should be communicated as soon as possible, but not later than the commencement of the visit.

### ***Information - mode***

The fastest mode to send and receive information is by electronic means (e-mail) with an electronic signature. This should, as far as possible, be the standard mode of communication. Where necessary or required, this can be followed by a paper original (fax or post).

### ***Authorisation***

Article 33(2) also stipulates that: *".....the Agency officials delegated to carry out such visits shall do so on presentation of a decision from the Executive Director of the Agency specifying the purpose and the aims of their visit....."*

A draft for a standard decision is attached as Annex 1.

### ***Reporting***

Article 33(3) sets out that: *".....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....."*. This is a straightforward requirement. As a general rule such reports should be made available not later than 20 working days after the end of the visit.

### ***Confidentiality***

It is to be noted that some reports, in whole or in part, may be bound by confidentiality and these reports or part of them must be treated in accordance with the "Arrangements to be applied by the Agency for public access to documents", adopted by the Administrative board on 28<sup>th</sup> October 2004.

### ***Travel and accommodation***

ERA will arrange all travel and accommodation for its staff, in accordance with rules for missions. ERA may request advice from the Member State concerned about the most practical arrangements.

### ***Costs associated with visits to Member States***

The main principle should be that each party pays its own costs. ERA will meet any necessary costs for translation work and reimburse its staff for all travel to and from the place of visit, and all accommodation in accordance with the rules for missions.

The Member State shall provide meeting rooms with the necessary equipment for presentations and other facilities.

The necessity for local transport in order to carry out the task at the place of visit should be facilitated by the host Member State (or organisation). Depending on the task, this could include the provision of a car or minibus for transport within the area or to and from the hotel or airport/station.

## Policy for Visits to Member States

**In accordance** with Article 33(1) of Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (hereafter 'the Agency Regulation'), which lays down the obligation for the Administrative Board to define a Policy for the visits to be carried out by the Agency;

**With respect to** Article 33 of the above Regulation, which sets out the aim and framework policy for such visits, and

**Bearing in mind** Article 33(1) of the above Regulation, which sets out the prerequisite for co-operation between ERA and Member States in this respect,

**The following Policy has been decided** by the Administrative board of the Agency on the 9<sup>th</sup> of March 2006 at Lille, for visits to Member States;

### ***Scope of this Decision***

In accordance with Article 33 (1) of the Agency Regulation, visits to the Member States are defined as official visits to Member States authorities which are carried out by the Agency's staff in order to perform the tasks entrusted to the Agency by Articles 8, 9, 10, 13 and 15 of the Agency Regulation.

Beside these official visits, the Agency may visit or meet authorities of Member States as part of its activities if both parties wish to do so. This kind of visit is outside the scope of this Decision.

### ***Conditions for a visit***

The Agency will carry out visits to Member States as necessary for the performance of its tasks as defined in Articles 8, 9, 10, 13 and 15 of the Agency Regulation. The visits are carried out following a Decision by the Executive Director. Before a decision on a visit is taken, two aspects should be examined:

- a) the expected information gained from a visit must be an important and necessary part of the preparation of a document referred to tasks according to Articles 8, 9, 10, 13 and 15 of the Agency Regulation.
- b) the information may not be obtained by other means of communication between the Member State and the Agency.

### ***Information – who***

ERA shall send a letter informing the authorities of the Member State concerned about the planned visit. A copy will be sent to the Permanent Representation to the European Union of the Member State and to the Commission. If the national authorities concerned are not known, the letter shall be addressed to the Permanent Representation to the European Union of the Member State asking for the communication of the appropriate contact point.

### ***Information – what***

The information ERA shall send to the Member State includes:

- A copy of the Executive Director's decision.
- The names of the persons involved and of the lead person together with their contact details.
- A work schedule setting out the purpose of the visit together with a more detailed list of tasks and, where appropriate, a time table.
- ERA may also request the Member State to supply relevant information relating to the purpose of the visit.

The information the Member State shall provide for ERA includes:

- The contact details for the Member State representatives, the lead person and the contact point.
- Comments on the work schedule and the detailed lists of tasks as provided by ERA.
- Relevant documentation requested by ERA.

### ***Information – when***

As a general rule, information about a planned visit shall be communicated by electronic means by the Agency, (ERA), to the Member State not later than 30 days before the visit. If requested, a copy of the e-mail can be sent by fax or post.

Where necessary, more detailed information should be sent no later than 15 days before the visit (such information could include arrival and departure times, hotel information, possible local transportation needs etc.).

In the case of changes to the schedule, these should be communicated as soon as possible, but not later than the commencement of the visit.

Under exceptional circumstances, e.g. urgent requests by the Commission, it may not be possible to give the above periods of notice.

### ***Authorisation***

Any ERA staff delegated to carry out visits will be issued with the decision from the Executive Director of the Agency, indicating the commencement of the visit and the main purpose and the aims of the visit.

### ***Reporting***

In accordance with this policy, a report of a visit to a Member State will be communicated to the Member State and to the Commission no later than 20 working days after the end of the visit.

### ***Confidentiality***

Where required or deemed necessary in accordance with the "Arrangements to be applied by the Agency for public access to documents", adopted by the

Administrative board on 28<sup>th</sup> October 2004, concerning the implementation of the rules on access to documents, reports may be confidential, in whole or in part.

***Travel and accommodation***

ERA will arrange all travel and accommodation for its staff, in accordance with rules for missions. Where necessary, ERA may request advice from the Member State concerned about the most practical arrangements. The necessity for local transport in order to carry out the task at the place of visit should be facilitated by the host Member State (or organisation). Depending on the task, this could include the provision of a car or minibus for transport within the area or to and from the hotel or airport/station.

***Provision of meeting rooms***

The Member State shall provide meeting rooms with the necessary equipment for presentations and if necessary, other facilities.

***Costs associated with visits to Member States***

Each party pays its own costs. ERA will meet any necessary costs for translation work and reimburse its staff for all travel to and from the place of visit, all accommodation and subsistence, in accordance with the ERA rules for missions.

**Signed on 9 March 2006**

**Chairman of the Administrative  
Board**

**Executive Director**

**Mr Reino Lampinen**

**Mr Marcel Verslype**

## **Annex 1**

**Decision N° xx**

**To whom it may concern,**

### **Visit in [Member State], concerning [purpose and aim for the visit]**

The following person(s) [Name and ERA staff no] is (are) authorised in accordance with the agreed policy for visits to Member States as decided by the Administrative Board of ERA, to carry out a visit on/between [date(s)] to [Member State and the place] in order to carry out the following tasks:

1 [specified tasks]

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in accordance with article 33 of the Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency for the purpose of [specification of the purpose].

Your co-operation in facilitating the authorised staff to carry out the above task(s) is kindly requested in conformity with Article 33(1) of Regulation (EC) No 881/2004.

Valenciennes, xx xxxxx 2006

Executive Director of ERA  
[stamp]

cc:

[Work schedule, timetable .....]