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GUIDELINES ON ARBITRATION PROCEEDINGS BEFORE THE BOARD OF APPEAL OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

adopted on 01-06-2021

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I. Introduction

1. *The following guidelines are addressed to parties to arbitration proceedings before the Board of Appeal of the European Union Agency for Railways (hereinafter “the Guidelines”) as adopted by the Board of Appeal of the European Union Agency for Railways¹ (hereinafter “the BoA”).*
2. *These Guidelines are adopted in line with Article 38 of Commission Implementing Regulation (EU) 2018/867 of 13 June 2018 laying down the rules of procedure of the Board(s) of Appeal of the European Union Agency for Railways² (hereinafter “the RoP”).*
3. *The Guidelines are non-binding and their aim is to provide assistance to the parties in arbitration proceedings. The Guidelines complement the BoA’s Rules of Procedure and are not intended to substitute them. The Guidelines are subject to the principles of the RoP and make reference to their respective articles. In addition, the Guidelines may contain complementary practical information.*
4. *In order to ensure the smooth, reliable and cost effective running of arbitration proceedings, parties are requested to read carefully these Guidelines and follow them fully.. The latest version of the Guidelines is available on the BoA’s section of the website¹ of the European Union Agency for Railways (hereinafter “the Agency”).*

II. Procedure

1.1. Request for arbitration under Safety and Interoperability Directives

5. *In the event of a disagreement between the Agency and a national safety authority or authorities pursuant to Article 21(7) and Article 24 of Directive (EU) 2016/797 and Article 10(7) and Article 17(5) and (6) of Directive (EU) 2016/798, the Board of Appeal assigned to the matter shall act as an arbitrator upon request of the national safety authority or authorities concerned. In such a case, the Board of Appeal shall decide whether to uphold the Agency's position.*

1.2. Request for ERTMS arbitration

6. *1. The Agency shall notify the Registrar of a coordination process in accordance with Article 30(2) of*

¹ https://www.era.europa.eu/agency/board-appeal_en

² OJ L 149/3 14.06.2018

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Regulation(EU) 2016/796, and of the parties and deadlines involved.

7. *2. In the absence of a mutually acceptable solution after 1 month of coordination the Registrar shall refer the proceedings to the Board of Appeal for arbitration, and inform the parties involved thereof.*

1.3. Lodging arbitration requests and other documents

8. *All procedural documents, such as the request for arbitration as well as any other correspondence sent to the Board of Appeal, shall be filed at the Registrar of the BoA³.*

1.4. Arbitration Form

9. *To facilitate the filling of arbitration requests, the Board of Appeal provides a template Arbitration Request Form (hereinafter “the ARF”) on its website (https://www.era.europa.eu/agency/board-aRegappeal_en). Having all appropriate elements in the arbitration request contributes to ensure to a smooth and efficient conduct of proceedings. the arbitration request is complete. . Therefore, the use of this form is strongly recommended. The form should be submitted duly signed and should include supporting documents as complete as possible.*
10. *The aim is to support and expedite the handling of the arbitration request Failure to send the complete information might render the arbitration request inadmissible or delay its handling.*
11. *In order to ensure the completeness of the form, the parties requesting the arbitration (national safety authority or authorities concerned) are advised to page number all supporting documents attached to the form. This includes as well the case concerned,, the certificate of incorporation and the power of attorney/representation, etc. All of these documents shall be submitted to the Registry within the deadline in Article 9 (1) of the RoP. The parties are advised to indicate when transmitting the arbitration request the total number of pages sent.*
12. *In cases the parties do not make use of the proposed template ARF, it is strongly advised to include all the elements found in the ARF , including the list of annexes, list of evidence and supporting documents.*
13. *The content of the request should be detailed enough to allow the BOA to understand what is requested including information that identifies the case file, the facts concerned, the arguments to support them.*
14. *In addition, the request should include adequate information on the process that took place including the negotiation phase and previous efforts for mutual agreement between the NSA/s and the Agency.*
15. *The ARF shall be signed and the name of the undersigning person shall be indicated together with the date.*

³ *BoARegistrar @ era.europa.eu*

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1.5. Communication by electronic mail

16. *The BoA uses electronic mail for submission of arbitration requests (hereinafter “email”). The arbitration request should indicate the communication details and explicitly specify the email address that the Registry may use for that purpose in order to ensure smooth reception of documents.*
17. *For the sake of a proper conduct of the proceedings, which are adversarial by nature, the BoA invites the parties to take account of the following: (a) after confirming email address for communications, the Registrar will acknowledge receipt of the communication in the same way; (b) parties are reminded that they bear the risk that their communication arrives at the BoA in due time.*
18. *When sending procedural documents by email the following additional requirements shall be taken into account: In order to ensure the integrity of the document, only a copy of the signed original will be accepted. In some cases, for instance, in the event of doubt as to the authenticity of a document, the BoA might request a paper copy to be submitted. Documents sent by email shall be sent in a PDF format (images and text) using Adobe Acrobat Reader software. Please note that email communications from the Registry will be transmitted in PDF format. The recipient’s device shall therefore be equipped with software that is able to read that format.*
19. *In order to an email including its attachments to be received by the Registry, it must be less than 10MB in size.*
20. *Any message above this size must be split and sent in several parts. In case of such split of transmissions, each individual transmission should include:*
 - › *in the subject matter of the mail with the arbitration information, if available the contested case number,*
 - › *the title of the submission (request, procedural document, etc),*
 - › *the total number of emails,*
 - › *their sequence number*
 - › *the page numbers of the submitted sheets*
e.g ‘email n°.1 out of 3 containing pages 1-20 of the arbitration request containing Annex A and B’
21. *Where the Registry sends documents by email, recipients are requested to promptly acknowledge*

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receipt of those documents.

1.6. Power of Attorney/Representation

- ^{22.} In relation to Article 9(2(b)) of the RoP, parties who have appointed a representative are reminded to ensure that the power of attorney/representation is signed by a person entitled to act on behalf of the party and that the power of attorney/representation shall be submitted to the Registry together with the arbitration request*

1.7. Arbitration case costs

- ^{23.} Each party participating in arbitration proceedings bears its own costs.*

1.8. Decision of the BoA

- ^{24.} The Board of Appeal shall decide whether to confirm or not the Agency's draft decision **within one month** of the request of the national safety authority or authorities.*

III. Miscellaneous Provisions

1.9. Languages

- ^{25.} Concerning Article 23 of the RoP, the informal working language of the BoA is English. For the sake of efficient and expeditious arbitration proceedings, parties are invited where possible to submit arbitration requests in English.*

Done in Valenciennes, 01-06-2021

For the Board of Appeal

Mr Marcel Veslype
Chairman