

Making the railway system
work better for society.

DECISION n° 289

of the Management Board of the European Union Agency for Railways on the Delegation of decision-making by the Management Board

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

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) No. 881/2004¹, and in particular Articles 46 to 54 thereof,

Having regard to Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council²,

Having regard to DECISION n°206 of the Management Board of the European Union Agency for Railways adopting the new ERA Financial Regulation³, and in particular Title III, Chapter 1, Article 32 of the Annex thereof;

Whereas:

- (1) Article 51(1)(b) of ERA Regulation prescribes that the Management Board (hereinafter also referred to as “MB”) adopts each year, by a two-thirds majority of its members entitled to vote, after having received the opinion of the Commission and in accordance with Article 52, the programming document of the Agency (hereinafter also referred to as “SPD”, including the annual and multi-annual work programme).*
- (2) Title III Chapter 1 Article 32 (3) of the ERA Financial Regulation defines that any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial work programme, in accordance with the provisions of the constituent act.*

¹ OJ L 138 26.5.2016, p. 1-43, hereinafter referred to as “ERA Regulation”

² OJ L 122, 10.5.2019, p. 1–38

³https://www.era.europa.eu/sites/default/files/agency/docs/decision/decision_n206_adopting_the_era_new_financial_regulation_en.pdf **Erreur ! Référence de lien hypertexte non valide.**

- (3) *The same paragraph of the ERA Financial Regulation provides that the Management Board may adopt a decision delegating powers to make non-substantial amendments to the annual work programme to the Executive Director of the Agency: “The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the authorising officer of the Agency.”*
- (4) *ERA submitted a discussion paper to the Management Board and the Executive Board, including the description of the need, the legal basis for ERA, the legal basis and the solutions identified by other EU agencies, together with a proposal of criteria to distinguish between the substantial and non-substantial amendments.*
- (5) *An exchange of views has taken place between the members of the Management Board, Executive Board (hereinafter referred to as “EB”), the European Commission and ERA, including during MB meetings n° 57-58 and EB meeting n° 26.*
- (6) *ERA prepared an Explanatory note, including a simulation of the application of the proposed criteria for distinguishing between substantial and non-substantial amendments on a sample of changes related to work programme 2021, as well as a simulation of the proposed thresholds for a sample of existing projects and services.*
- (7) *The EB and MB members requests and suggestions have been addressed by means of a comment sheet and have been to the largest extent taken into account in the text of the decision. It is clarified that the proposed thresholds are applied at the level of granularity of ERA individual projects and services, while in the assessment of the thresholds, any consecutive changes are cumulated without being compensated by each other. Transfers between budget lines and titles (and the applicable thresholds thereof) and establishment plan changes are regulated by the thresholds of ERA FR. Public procurements are regulated by the applicable EU public procurement rules. Such rules supersede any change stemming from the current decision.*
- (8) *Requests from MB members on the inclusion of a safeguard clause (suspension of delegation) and reporting requirement were taken into account and given due regard in the text of the decision.*
- (9) *The request to apply the decision for an initial period of one year in order to allow for a proper return of experience and analysis, was taken into account.*

HAS ADOPTED THIS DECISION:***Article 1 - Delegation to the Executive Director***

1. The Management Board confers the powers on the Executive Director of the Agency to make non-substantial amendments to the annual work programme.
2. Any non-substantial amendment shall be formalised in an Executive Director decision. The annual work programme shall be amended accordingly to the decision taken, and the changes as a result of a non-substantial amendment shall be duly tracked and recorded.
3. Notwithstanding the power to make a non-substantial amendment decision is conferred on the Executive Director as per Article 1(1), the Executive Director may at any time defer the decision to the Management Board. Consequently, the Executive Director may always seek the MB’s approval of an amendment, should the sensitivity of the subject matter require so, and/or the discussion and the decision would be better suited at MB level, and/or be linked to *force majeure*.

Article 2 - Definitions and scope of application

1. As the general rule, amendments of the multiannual work programme and any change that significantly affects the nature of the activities / objectives of the work programme is always substantial and requires a modifying decision adopted following the same procedure as the initial decision.
2. Non-substantial changes neither do significantly affect the nature of the annual work programme activities, nor its objectives.
3. The Management Board provides the following set of criteria to be applied when an amendment is deemed substantial or non-substantial:

Substantial	Non-substantial
<ul style="list-style-type: none"> • <i>approval of SPD draft, adoption</i> • <i>amendment of the multiannual work programme</i> • <i>approval of strategies or policies referred to in the SPD (e.g. Section II 2.4, Annex VI, X, XII of the SPD 2023)</i> • <i>major change in the strategic statements, outcome indicators or accountability ceiling</i> • <i>commencement of a completely new activity (i.e. project/service), esp. if founding regulation does not foresee it; major revision of the list of projects/services</i> • <i>amendment of an output indicator and/or target by making it significantly “easier” (i.e. the Agency needs to deliver less, slower, etc.)</i> • <i>adding a new output indicator and/or target that entails tasks previously not foreseen by the SPD</i> • <i>termination / withdrawal of a whole activity (i.e. project/service), incl. as a consequence of force majeure</i> • <i>changes of more than 30%⁴ in the FTE envelope of ERA projects/services</i> • <i>changes of more than 30%⁵ in the budget envelope of ERA projects/services</i> • <i>postponement of a project/service for a reason within ERA’s sphere of influence by more than 6 months or to a subsequent year’s work programme</i> • <i>completely new budget item (budget line)</i> • <i>amendment of the overall financial and human resource planning with a direct connection to or impact on the EU budgetary procedure</i> 	<ul style="list-style-type: none"> • <i>any change of editorial nature</i> • <i>minor amendments of the annexes (e.g. editorial changes, filling “p.m.”-s, corrections, addition of data that became available later)</i> • <i>minor change in a strategic statement’s wording outcome indicators or accountability ceiling that does not affect the overall reading</i> • <i>rewording, deletion or minor revision of a project/service, an output indicator and/or target that does not impact the project/service’s delivery</i> • <i>amendment of an output indicator and/or target in the “stricter” direction (i.e. the Agency needs to deliver more, earlier, etc.)</i> • <i>adding a new output indicator and/or target that is in line with the existing ones</i> • <i>changing a project/service’s assignment to strategic statement(s)</i> • <i>changes of less than or equal to 30%⁶ in the FTE envelope of ERA projects/services</i> • <i>changes of less than or equal to 30%⁷ in the budget envelope of ERA projects/services</i> • <i>postponement of a project/service with sufficient justification, and this reason is beyond ERA’s sphere of influence (e.g. force majeure⁸), or by less than 6 months</i> • <i>small or negligible budget impact (i.e. under the thresholds defined in the ERA Financial Regulation)</i> • <i>integrating the results of other MB decisions</i> • <i>adding a new activity (project/service) to the annual work programme that has already</i>

⁴ The threshold is to be read as annually cumulative; consecutive changes cannot compensate each other and do count separately in the overall cumulative calculation

⁵ Idem

⁶ Idem

⁷ Idem

⁸ The MB shall be informed without delay about the occurrence, potential implications and developments connected to a force majeure event or circumstance that has an impact on project/service delivery

Substantial	Non-substantial
	<p><i>been envisaged by the multiannual programming for subsequent years</i></p> <ul style="list-style-type: none"> <i>changes in the annual work programme only to reflect provisions of an adopted MB decision or consensual MB request</i>

Article 3 – Reporting to the Management Board and to the Executive Board

1. The Executive Director shall inform the Management Board on all the decisions on non-substantial amendments in the context of the Management Board meetings in the form of a table summarising all the non-substantial amendments undertaken in the preceding period (i.e. since the previous MB meeting) under the recurring agenda point “Report from the Executive Director”.
2. This list of non-substantial amendment decisions shall include the following information: decision title, number, date, criteria applied (delegation basis), justification.
3. This item will also be submitted for the Executive Board meetings in preparation of the Management Board meetings.

Article 4 – Suspension and amendment of delegation

1. The Management Board retains the ultimate control of the delegation provided for by Article 1.
2. The Management Board may adopt decisions that overrule decisions of the Executive Director under the delegation provided for by Article 1, at the request of a member of the Management Board.
3. The Management Board may decide to suspend or amend the delegation of powers to the Executive Director granted by this Decision before its duration expires. Any such decision shall be taken by the Management Board in accordance with the following provisions:
 - a. before deciding, the Management Board shall carefully consider any possible impact on the functioning of the Agency;
 - b. it shall be taken by absolute majority of Management Board members with a right to vote;
 - c. it shall be communicated to the Executive Director in writing and shall clearly define the subject and any conditions thereto;
4. The Management Board retains the right to adopt non-substantial amendments to the annual work programme on its own initiative, and such a decision always supersedes the Executive Director’s decision on the same subject matter, regardless of which decision is made first.

Article 5 - Entry into force

1. This Decision shall enter into force on the day of its adoption.
2. It is valid for one year from the date of its adoption.
3. Before the expiration date, the Management Board will take into account a proper return of experience and analysis from the application of this Decision for that initial period, and may decide to extend the Decision with the same content or to bring changes.

For the Management Board,

The Chairwoman
Clio LIÉGEOIS