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## DECISION n° 145

### *of the Management Board of the European Union Agency for Railways amending the “Arrangements to be applied by the Agency for Public Access to Documents”*

#### **THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR RAILWAYS,**

Having regard to the Regulation (EU) N° 2016/796 of the European Parliament and the Council of 11 May 2016 on the European Union Agency for Railways<sup>1</sup> (hereinafter referred to as "the Agency") and repealing Regulation (EC) No 881/2004 (hereinafter called “the Regulation”), and in particular to Article 77 thereof,

Considering that Regulation (EC) n° 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereafter referred to as “Regulation (EC) n° 1049/2001”), shall apply to the documents held by the Agency;

Considering that Article 77 of the Agency Regulation sets out measures to be taken by the Agency in order to assure transparency for the access to documents;

Whereas,

- (1) According to the Agency Regulation, the Management Board shall adopt practical measures for implementing Regulation (EC) n° 1049/2001 by 16 June 2017;
- (2) The ‘Arrangements to be applied by the Agency for Public Access to Documents’ adopted for the implementation of Regulation (EC) No 1049/2001 should be amended to take into account the new transparency provisions for access to documents;

#### **HAS DECIDED AS FOLLOWS:**

##### ***Article 1***

The ‘Arrangements to be applied by the Agency for Public Access to Documents’ are hereby amended as follows:

- 1) Article 2 ‘Applications for access to Agency documents’ a point 7 is added: ‘The Executive Director shall report to the Management Board annually the list of all requests, their date as well as the decision taken in each case.’
- 2) Article 5.2 is replaced by the following: ‘If, after that examination, it is clear that access to the document must be refused under one of the exceptions provided for by Article 4 of Regulation (EC) n° 1049/2001, the Agency shall send a negative answer to the applicant without consultation of the third-party author.’

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<sup>1</sup> OJ L 138 26.5.2016, p. 1-43

- 3) An Article 5a 'Request for an opinion by the European Commission', is added: 'The Agency shall request the opinion of the European Commission in writing prior to taking a decision to refuse or to grant full or partial access of the requested document on whether the disclosure would undermine the protection of court proceedings or the purpose of inspections, investigations and audits - including infringement procedures and EU pilot- and whether there is an overriding public interest in disclosure.'
- 4) Article 7 "Measures facilitating access to documents" paragraph 2, point (a) reference to 'Article 19' is replaced by 'Article 37' ;
- 5) Article 7 "Measures facilitating access to documents", paragraph 2 (b) the reference 'Administrative Board' is replaced by 'Management Board'.
- 6) Article 7 "Measures facilitating access to documents", paragraph 2 (i), 'Articles 4 and 5 of the Regulation' shall be replaced by 'Articles 6 and 7 of the Regulation';
- 7) Article 8 "Documents directly accessible to the public" is amended to read as follows:
  1. The Agency shall publish on its website the following documents:
    - a) Recommendations addressed by the Agency
    - b) Management Board documents
    - c) Opinions issued by the Agency Studies conducted by the Agency
    - d) Reports issued by the Agency
    - e) Outcomes of impact assessments conducted by the Agency
  2. The following documents shall be made directly accessible by electronic means:
    - a) The present Decision;
    - b) Declaration of interests of the members of the Agency's management and administrative structure listed in Article 46 of the Agency Regulation;
    - c) Management Board summary of decisions;
    - d) Vacancies;
    - e) Adopted budget;
    - f) Adopted Programming Document and Annual Report;
    - g) Documents related to the consultation of social partners, rail freight customers and passengers organisations, as provided for in Articles 6 and 7 of the Regulation;
    - h) All press releases or publications made by the Agency;
  3. The Executive Director may decide to add documents to the list of documents in paragraph 2 as appropriate.
  4. Before publishing the documents referred to in the present Article, the Agency, with the information available at that moment, shall check, including by seeking the opinion of the Commission, whether the documents to be published are protected by one of the reasons referred to in Regulation(EC) No 1049/2001. If this is the case the document shall not be published on its website. The Agency shall publish the document once is no longer protected by one of the reasons established in that Regulation.
- 8) Article 9 paragraph 1 is amended to read as follows:

"Article 9- Internal organisation

  1. The Executive Director shall ensure coordination and uniform implementation of these rules by the Agency staff. To this end, he shall provide all the necessary advice, guidelines and internal procedures which may include provisions on conflicts of interests and delegations within the Agency. In case

there is a potential conflict of interest with the Executive Director, where appropriate, delegation for a decision on access may be given to a Head of another EU Agency.”

9) Article 10 is replaced by the following:

“Article 10 Entry into force

This decision shall take effect on the day following that of its adoption.”

### **Article 2**

The consolidated version of the “Arrangements to be applied by the Agency for Public Access to Documents” is adopted as set out in Annex 1.

### **Article 3**

The present decision shall enter into force on the day following that of its adoption. It will be published on the Agency website.

Done at Lille on 29-11-2016  
For the Management Board

The Chairperson  
Mats ANDERSSON

Annex: Arrangements to be applied by the Agency for public access to documents (Consolidated version)