

Moving Europe towards a sustainable and
safe railway system without frontiers.

DECISION n° 317

of the Management Board of the European Union Agency for Railways on delegating powers to the Executive Director to adopt non-substantial amendments to the Single Programming Document and repealing Decision n° 289

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

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.*
- (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.*

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.**

- (4) *The Agency applies the provisions of ERA Financial Regulations article 26 in regard to budget transfers, including the relevant thresholds.*
- (5) *MB Decision n°289 was adopted with a request to apply the decision for an initial period of one year in order to allow for a proper return of experience and analysis.*
- (6) *It would be necessary to amend the MB Decision n°289 following this experience and analysis.*

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, KPIs 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> 	<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, KPIs 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>

Substantial	Non-substantial
<ul style="list-style-type: none"> • <i>termination / withdrawal of a whole activity (i.e. project/service), incl. as a consequence of force majeure</i> • <i>changes in the FTE envelope of ERA projects/services due to the termination / commencement of an activity</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>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>changing a project/service's assignment to strategic statement(s)</i> • <i>postponement of a project/service with sufficient justification, and this reason is beyond ERA's sphere of influence (e.g. force majeure⁴), or by less than 6 months</i> • <i>integrating the results of other MB decisions, if required</i> • <i>adding a new activity (project/service) to the annual work programme that has already been envisaged by the multiannual programming for subsequent years, incl. the Strengthening Action Plan</i> • <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 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

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 – Repeals

Decision n°289 of the Management Board of the European Union Agency for Railways on the Delegation of decision-making by the Management Board (concerning delegation of powers to the Executive Director for non-substantial changes to the annual work programme) is hereby repealed.

Article 6 – Entry into force

1. This Decision shall enter into force on the day of its adoption.
2. The Management Board will take into account the relevant return of experience and analysis from the application of this Decision and may decide to review the Decision accordingly.

For the Management Board,

The Chairwoman
Clio LIÉGEOIS