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GUIDELINES TO PARTIES TO APPEAL PROCEEDINGS BEFORE THE BOARD OF APPEAL OF THE EUROPEAN UNION AGENCY FOR RAILWAYS

adopted on 23-10-2019

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I. Introduction

- 1. The following guidelines are addressed to parties to appeal 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 their appeal 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 appeal 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. BoA’s jurisdiction

- 5. An appeal may be brought only against decisions the Agency has adopted pursuant to Articles 14, 20, 21 22 of Regulation (EU) 2016/796 of the European Parliament and Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 or failure to act within the applicable limits.*
- 6. The BoA is not empowered to undo the legality of the regulatory provisions on which basis these decisions have been adopted. The BoA shall apply Regulations, validly adopted by the Union legislator, until they are abrogated or the European Union judicature establishes their invalidity or inapplicability. If the appellant wants to question the legality of applicable provisions it shall take the matter to the Union Courts.*

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

² OJ L 149/3 14.06.2018

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1.2. Lodging appeals and other documents

7. *All procedural documents, such as the appeal, the defence as well as any other correspondence sent to the BoA, shall be lodged at the Registry of the BoA³. In this way, a smooth and efficient conduct of the proceedings can be ensured.*

1.3. Appeal Form

8. *To facilitate the lodging of appeals, the Agency provides a complete template Appeal Form (hereinafter “the AF”) on its website⁴. The correct completion of the AF ensures that the appeal meets the formal requirements. Therefore, the use of the AF is strongly recommended. The AF should be submitted duly signed including the supporting documentation as complete as possible.*
9. *The aim is to support and expedite the handling of the appeal. Failure to send the complete information might render the appeal inadmissible or delay its handling.*
10. *In order to ensure the completeness of the form received by the Agency, the appellant is advised to page number all supporting documents attached to the AF. This includes as well the contested decision, the certificate of incorporation (for legal persons only), 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 appellant is advised to indicate when transmitting the appeal the total number of pages sent.*
11. *In cases the appellant does not make use of the proposed template AF, it is strongly advised to include all the elements found in the AF in its own document as well as the list of annexes, list of evidence and supporting documents.*
12. *The appellant shall indicate the contested decision specifying whether it is contested in whole or in part. In the latter case, the contested part shall be specified. Furthermore, the appellant shall indicate the requested remedy such as amendment or cancellation of the contested decision indicating the scope of the requested amendment or cancelation.*
13. *The AF shall be signed and the name of the undersigning person shall be indicated together with the date.*

³ [BoAregistrar @ era.europa.eu](mailto:BoAregistrar@era.europa.eu)

⁴ https://www.era.europa.eu/agency/board-aRegppeal_en

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1.4. Communication by electronic mail

14. *The BoA uses electronic mail for appeal submissions (hereinafter “email”). The appellant shall indicate on the AF the communication details and explicitly specify the email address that the Registry may use for that purpose to ensure smooth reception.*
15. *However, 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.*
16. *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.*
17. *In order to an email including its attachments to be received by the Registry, it must be less than 10MB in size.*
18. *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 the appeal information and ,if available, the contested decision number,*
 - › *the title of the submission (appeal, defence, 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 appeal or containing Annex A and B).*
19. *Where the Registry sends documents by email, recipients are requested to promptly acknowledge receipt of those documents.*

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1.5. Power of Attorney/Representation

- 20. 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 appeal.*

1.6. Payment of appeal costs

- 21. No payment of appeal fees are necessary for the submission of the appeal.*
- 22. However, note that according to Article 7 of the Commission Implementing Regulation (EU) 2018/764 of 2 May 2018 on the fees and charges payable to the European Union Agency for Railways and their conditions of payment:*
- 23. 'Appeal and fees for appeal :*
- 1. The Agency shall levy a fee in respect of any appeal which is dismissed or withdrawn.*
 - 2. The appeal fee shall be EUR 10 000 or equal to the amount of the fee charged for the decision appealed against, whichever is lower.*
 - 3. The Registrar of the Board of Appeal shall inform the appellant of the conditions of payment. The appellant shall have 30 calendar days for payment from the date of notification of the invoice.'*

1.7. Inadmissibility of appeals

- 24. Appeals shall comply with all mandatory requirements set out in Article 9 of the fRoP.*
- 25. With regard to Article 11 of the RoP, appeals are, for example, manifestly inadmissible on formal grounds:*
- (a) if they are not submitted within the deadline of two months (Article 9(1) of the RoP);*
 - (b) if they are submitted within the deadline of two months, but they are not meeting the requirements set out in Article 9(2) and the required information has not been delivered in accordance with Article 9(3) (Article 11(a) RoP).*

1.8. Written submissions

- 26. Concerning Article 25 of the RoP, parties to the appeal are invited not to lodge further submissions on decisive aspects of the proceedings or of documentation until the BoA has decided whether the proper*

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assessment of the appeal requires further submissions.

27. *The BoA is aware that parties may perceive a need to lodge further submissions without awaiting the BoA's request to that effect. However, receiving ad hoc submissions may considerably delay and prolong the procedure, and it is therefore at odds with the interest of a smooth and efficient procedure.*
28. *The BoA will not therefore guarantee that such ad hoc submissions will be considered admissible. It will take its decision on a case-by-case basis.*
29. *On the writ of appeal, the party concerned is invited to take into account that vague or general appeals may render it difficult to the BoA to perform properly its functions, in the worst case, the BoA may consider the appeal inadmissible or manifestly unfounded.*
30. *Appellants are therefore invited to submit clearly drafted, concise and preferably brief appeals.*
31. *It is for the appellant to carry the burden of proof for any contentions it makes.*

1.9. Oral presentations

32. *In relation to Article 25.2 (b) RoP, if the BoA does not deem an oral procedure necessary, it will expect the party requesting one, to have good reasons to do so.*
33. *The purpose of the oral procedure is not to repeat arguments set out in the written pleadings.*
34. *In case that a party is aware that there will be numerous attendance from its side to the oral procedure, it is invited to inform the Registry in due time so that the adequate logistical measures may be taken.*

1.10. Findings of the BoA and appeal fees

35. *Articles 32 and 33 of the RoP provide that where the BoA finds that the appeal is admissible and that the grounds for appeal are founded, it shall remit the case to the Agency.*
36. *The Agency shall take a final reasoned decision in conformity with the findings of the Board of Appeal. That provision shall be interpreted as envisaging decisions on substance and does not apply to procedural issues that arise during the appeal proceedings.*
37. *In cases where the BoA has confirmed the decision of the Agency, an invoice shall be addressed to the appellant in accordance with the Commission Implementing Regulation (EU) 2018/764.*

III. Miscellaneous Provisions

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1.11. Languages

- ^{38.} *Concerning Article 23 of the RoP, the informal working language of the BoA is English. For the sake of efficient and expeditious appeal proceedings, parties are invited where possible to submit the appeal form or their own appeal documents in appeal proceedings in English.*

Done in Lille, 23 October 2019

For the Board of Appeal

Marcel Veslype
The Chairperson