

Sectoral paper – CER, EIM, ERFA, NB-RAIL, UIP, UITP, UNIFE

# On revising Regulation (EU) 2016/796

## Introduction

The European Union Agency for Railways (ERA) celebrated its 20<sup>th</sup> anniversary last year. Founded as the European Railway Agency in 2004, its goal then was to “contribute, on technical matters, to the implementation of the Community legislation” and its powers were limited to addressing recommendations and issuing opinions to the Commission. Following the adoption of the fourth railway package (4RP) in 2016, ERA’s role was transformed into the system authority for ERTMS and the European authorising entity in charge of issuing safety certificates (SSC), vehicle authorisations (VA), technical documents, audit reports, in addition to policy recommendations and opinions.

Transitioning from a technical agency to a European authority, it has unfortunately faced years of budgetary constraint. In its *Paper on ERA workload forecast and future needs* the ERA Management Board has expressed that “important aspects of the Agency’s mandate cannot be delivered due to lack of resources”. When it comes to human resources, it is the sector’s experience that ERA is faced with an internal competition over the same limited pool of technical expertise to cover, on the one hand, the policy support for the key rail interoperability and safety objectives and, on the other hand, the time-bound delivery of VAs, Trackside Approvals (TAs). Conformity to types (CTTs) and SSCs.

Understandably, facing this structural shortage, ERA’s management has prioritised the delivery of its authority tasks. This has come at the cost of important aspects of ERA’s policy mandate such as eliminating barriers and fostering much-needed innovation in the rail sector. Should this situation go on, there is a real risk of ERA becoming a bottleneck and negatively impacting on the competitiveness of rail operations in Europe rather than a catalyst for a successful modal shift. The internal competition for resources is only exacerbated when new and urgent requests are given to ERA, for example to support the Commission or Member States, resulting in the need for frequent review of the ERA Single Programming Document.

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The Director of Land Transport at DG MOVE has indicated the desire to revise **Regulation (EU) 2016/796** (ERA Regulation) to address these issues. However, the scope of the revision needs to be limited to strengthening ERA’s ability to assist on safety issues, streamlining the registers, assisting in rail digitalisation, and clarifying ERA’s role in relation to candidate countries.

As discussed and requested during the 49<sup>th</sup> and 50<sup>th</sup> meetings of the Network of Representative Bodies, the sector has collected input for a potential revision of the ERA Regulation. With this paper, **CER, EIM, ERFA, NB-RAIL, UIP, UITP and UNIFE** proposes the following amendments via an **Amending Act** to address these problems.

1. Formalising the work ERA has engaged in that is not included in the ERA Regulation by updating the registers and enabling their digitalisation, and by managing the cooperation between the assessment bodies (AsBos) and the entities in charge of maintenance – certification bodies (ECM-CB).
2. Clarifying ERA’s role in supporting National Safety Authorities’ (NSA), candidate and third countries’ authority tasks, such as:
  - assisting Member States on safety issues,
  - giving ERA a supportive role in enabling NSAs’ cross-border cooperation, and
  - providing guidance to candidate third countries in implementing authorisation/certification tasks based on the EU framework.
3. Putting the ERA Regulation in the context of the current political and market developments:
  - ensuring the attainment of decarbonisation efforts by fostering a modal shift to rail
  - allowing for resource/information sharing between Union agencies to increase ERA’s expertise in the short term.

- Recommendations for the improved efficiency of recommendation drafting, adoption and assessment
4. Including a statement by the Parliament and Council on the need for an increased budget for ERA.

## Proposed amendments formalising ERA's existing work

The first set of amendments concern formalising (i.e., including explicitly in the Regulation) the work that ERA *already* does. This serves a two-fold purpose: on the one hand, it makes clear what activities need to be funded, and on the other hand, it ensures legal clarity and gives the sector reassurance that the activities will continue to be carried out. The latter, in turn, will make the sector more attractive as an investment goal.

(Additions or changes to the original text are highlighted in **bold**)

### Article 18 *Exchange of information on safety-related accidents*

"The Agency shall encourage, the exchange of information on safety-related accidents, incidents and near misses, taking into account the experience of the railway actors referred to in Article 4 of Directive (EU) 2016/798. That exchange of information shall lead to the development of good practices at Member State level.

**The Agency shall set up and maintain an Information Sharing System (ISS) tool for sharing data and information related to railway safety within the Union."**

**Justification:** The budget for the development and deployment of the Safety Information Sharing System as part of the CSM ASLP has been a sticking point for many years, resulting in the ISS being put on hold. Despite the Commission and ERA agreeing that the ISS is an important tool to increase safety in the single European railway area, its development has been put on hold due to a lack of resources. Formally including a mandate to develop the ISS in Article 18 would facilitate ERA in securing the necessary budget and resources to develop and maintain such a system.

### Article 12(1)(c) *One-stop shop*

"a common information-exchange platform, providing the Agency and national safety authorities with information about requests for approvals by the Agency in accordance with Article 19 of Directive (EU) 2016/797 and applications for authorisations of trackside control-command and signalling subsystems involving European Train Control System (ETCS) and/or **Railway Mobile Radio (RMR)**, Global System for Mobile Communications – Railway (GSM-R) **and Future Railway Mobile Communication System (FRMCS)** equipment, the stages of these procedures and their outcome, and, where applicable, the requests and decisions of the Board of Appeal;"

### Article 28(1) *System authority for the ERTMS*

"The Agency shall act as the system authority to ensure the coordinated development **and the efficient deployment** of the ERTMS within the Union, in accordance with relevant TSIs. To that end, the Agency shall maintain, monitor and manage the corresponding subsystem requirements, including the technical specifications for ETCS and **RMR (GSM-R and FRMCS) and automatic train operation."**

**Justification:** The updated definition of ERTMS, now including FRMCS and ATO, must be included as part of ERA's scope as ERTMS System Authority. As GSM-R was included in the 2016 version of the Regulation, the role of FRMCS as the successor to GSM-R should equally be explicitly mentioned. It is essential that ERA holds the necessary competences and resources for these technologies.

#### **Article 37(2)(d) Registers and their accessibility**

“addressing recommendations to the Commission regarding improvements to the specifications of existing registers, where necessary including simplification and deletion of redundant information, **automation and full digitalisation**, and any need to set up new ones, subject to a cost-benefit analysis.”

**Justification:** Improving automation and digitalisation of ERA's registers and 4RP processes has been a shared objective since the introduction of the 4RP. However, persistent budget constraints have limited ERA's room for manoeuvre to implement significant digitalisation improvements. Formalising this objective aims to secure the necessary budget to allow ERA to introduce a step-change in its IT infrastructure which in turn will speed up the authorisation/certification process, increase efficiency and reduce the staff resources required for these tasks.

#### **Article 24 Support for ~~notified~~ conformity assessment bodies**

**“3. The Agency may facilitate cooperation between assessment bodies and may, in particular, manage such a cooperation.**

**4. The Agency may facilitate cooperation between entities in charge of maintenance – certification bodies and may, in particular, manage such a cooperation.”**

**Justification:** While the first two paragraphs of the Article state that ERA shall support the activities of notified conformity assessment bodies (NoBo) and may facilitate the cooperation between them, it is also already supporting the cooperation between assessment bodies (AsBo) and entities in charge of maintenance – certification bodies (ECM-CB). Therefore, it is appropriate to formalise this role by including it in the Regulation.

#### **Recital:**

**“The growing prevalence and sophistication of cybersecurity threats demand the recruitment of specialised personnel to ensure the resilience and integrity of the Agency’s digital infrastructure. Accordingly, the Agency’s establishment plan and policy should be adjusted to reflect these increased budgetary and staffing requirements, ensuring its ability to effectively fulfil its mandate in light of these developments. The Commission should take special consideration of digitalisation and cybersecurity advancements in its evaluation of the Agency’s impact, effectiveness and efficiency.”**

#### **Art 37(2)(e) Registers and their accessibility – new**

**“Implementing robust cybersecurity protocols protecting digital assets and sensitive information contained in the registers.”**

**Justification:** Cybersecurity competence at ERA is a necessity given the growing prevalence and sophistication of cybersecurity threats and ERA's role as system authority for all registers referred to in Article 37. Increased competence in this area would also be an asset in related optimisation and policy tasks on digitalisation and cybersecurity.

## Supporting EU Member States, candidate and third countries

Although the benefits of harmonisation and cross-border cooperation between Member States has been proven, barriers are still present, in particular for cross-border operations in border regions. Furthermore, the ERA Regulation states that ERA shall take full account of the enlargement process, and we propose to expand on this explicitly to allowing ERA to help set up authority processes based on the EU legal framework.

### **Article 20** *Authorisations for the placing on the market of vehicles*

"The Agency shall issue authorisations for the placing on the market of railway vehicles, and shall be empowered to renew, amend, suspend and revoke authorisations issued by it. For that purpose, the Agency shall cooperate with national safety authorities in accordance with Article 21 of Directive (EU) 2016/797.

**Without prejudice to Article 21 of Directive (EU) 2016/797, the Agency shall have a role in facilitating the establishment of cross-border agreements between national safety authorities and harmonising their approach across Member States. The Agency shall maintain a publicly accessible list of available cross-border agreements and their necessary supporting documents."**

**Justification:** After over 5 years in practice, few official NSA cross-border agreements as established in the Interoperability Directive are in place, leading to additional complexity and cost to authorisation and certification cases. Visibility of those in place are low and many of the agreements in which are place still require full the compliance with national rules and designated body certification, demanding additional efforts by the authorisation applicants. In the absence of the agreements, reduction of the scope of requirements can only be achieved by mutual agreements, requiring significant case by case efforts. Giving ERA an official role in the facilitation of concluding NSA cross-border agreements will help coordinate their establishment and overcome a missed opportunity experience today to benefit from simplification for cross-border vehicle authorisation and operations, impact international traffic and border regions.

It is still an administrative burden to capture the exact list of applicable (local instead of national) requirements of the concerned NSAs and/or IMs. These requirements are sometimes clearly stated in cross-border agreements, however sometimes missing. The Agency shall help the sector by supervising existence and available documents for such cross-border agreements.

### **Article 43** *Assistance to Member States, candidate countries, **third countries** and stakeholders*

"1. At the request of the Commission, Member States, candidate countries or the networks referred to in Article 38, the Agency shall engage in training and other appropriate activities concerning the application and explanation of railway safety and interoperability legislation and related products of the Agency such as registers, implementation guides and recommendations.

**1a. At the request of the Commission, the Agency shall engage in assisting candidate countries and third countries in setting-up rolling stock certification, authorisation and registration procedures based on this Regulation and Directives (EU) 2016/797 and (EU) 2016/798.**

2. The nature and extent of the activities referred to in paragraphs 1 and 1a, including the possible impact on resources, shall be decided by the Management Board and included in the Agency's programming document. The costs of such assistance shall be borne by the requesting parties unless otherwise agreed."

### **Article 44(3)** *International relations*

"The Management Board shall adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency is competent, **including those addressed in Article 43**. That strategy shall be included in the programming document of the Agency, with a specification of associated resources."

**Justification:** The railway sector sees a positive opportunity for the Regulation to permit ERA to provide support and authority services, where resources allow, to candidate countries and third countries and thereby export the EU regulatory framework.

## Improving policy coherence by putting the Regulation in context

Rail will be a critical sector in the decarbonisation efforts of the EU and the ERA Regulation should put rail squarely in the centre of the twin green & digital transition. On the one hand, reference should be made to the Green Deal policies, such as the Sustainable and Smart Mobility Strategy (rolling out the TEN-T core network by 2030 and the comprehensive network by 2050), and on the other, to the digitalisation strategy, which includes cyber resilience.

### Recital – new

**“To achieve green and sustainable rail mobility, the Agency should also promote the sector effort to increase the market share of rail in relation to other modes of transport.”**

### Article 2 *Subject-matter and scope*

“The objective of the Agency shall be to contribute to the further development and effective functioning of a single European railway area without frontiers, by guaranteeing a high level of railway safety and interoperability, while improving the competitive position of the railway sector **and increase the market share of the sector**. In particular, the Agency shall contribute, on technical matters, to the implementation of Union legislation by developing a common approach to safety on the Union rail system and by enhancing the level of interoperability on the Union rail system.”

**Justification:** Transport by rail is one of the safest, most efficient and sustainable modes of transport, Therefore, ERA should promote the modal shift to rail, in line with the Commission's Sustainable and Smart Mobility Strategy.

### Article 38(8) *Cooperation among national safety authorities, investigating bodies, representative bodies and other Union bodies* – new

**“The Agency shall exchange information and cooperate with other Union bodies where relevant for the undertaking of its activities, particularly in areas where it lacks the necessary capacity or expertise.”**

**Justification:** As done today, in carrying out its tasks under Articles 12 and 19, ERA shall ensure close cooperation with the relevant Union bodies, for example with the European Union Agency for Cybersecurity (ENISA) in matters related to cybersecurity. Although we mention ENISA by name due to the current geopolitical climate, cooperation with other agencies, in particular for other transport modes, can improve EU policy on intermodal and multimodal transport.

### Article 28 - *System authority for the ERTMS*

“3. The development of new versions of ERTMS technical specifications shall not be detrimental to the rate of deployment of the ERTMS, the stability of the specifications which is needed to optimise the production of ERTMS equipment, the return on investment for railway undertakings, infrastructure managers and keepers, and efficient planning of the deployment of the ERTMS. **The Agency shall adapt a specification and change control management to significantly reduce the number of errors contained in the TSI.**”

“5. In accordance with Article 5(10) of Directive (EU) 2016/797, the Agency shall ensure that successive versions of ERTMS equipment are technically compatible with earlier versions. **Where backward compatibility**

cannot be ensured the Agency shall conduct a cost analysis of any proposed change to the specification.”

**Justification:** Error reduction in the TSI improves specification reliability and deployment efficiency. While it may be necessary due to fundamental changes in technology, introducing cost analysis for non-backward-compatible changes ensures financial impact is assessed, preventing undue burdens on stakeholders.

#### Article 24 - Support for ~~notified~~ conformity assessment bodies

1. The Agency shall support the activities of notified conformity assessment bodies as referred to in Article 30 of Directive (EU) 2016/797. That support shall include, in particular, the issue of drafting guidelines for assessing the conformity or suitability for use of an interoperability constituent as referred to in Article 9 of Directive (EU) 2016/797 and of guidelines for the ‘EC’ verification procedure referred to in Articles 10 and 15 of Directive (EU) 2016/797. **The certificates delivered by the notified conformity assessment bodies shall be proof of conformity for interoperability constituents and subsystems which are certified.”**

#### Article 34 - Monitoring of ~~notified~~ conformity assessment bodies

1. For the purposes of Article 41 of Directive (EU) 2016/797, the Agency shall support the Commission in **establishing a continuous monitoring system of the notified** conformity assessment bodies through the provision of assistance to accreditation bodies and to the relevant national authorities, and through audits and inspections **covering all Member States**, as provided for in paragraphs 2 to 6, **in order to ensure presumption of conformity for interoperability constituents and subsystems which are certified.**

**Justification:** The support and monitoring of the Conformity Assessment Bodies should ensure the quality of the certificates delivered and therefore shall be accepted by the Agency without further checks. This was an original principle of the Fourth Railway Package and use of third-party assessment. Double assessment and duplication shall be avoided to reduce burden and costs on the processes and sector. Such shift of responsibility should require that the Agency builds a continuous monitoring system on the quality of the work performed by the conformity assessment bodies (NoBos and AsBos), as well as on the follow-up/remedy actions.

#### Article 13 - Technical support – recommendations on railway safety

1. The Agency shall address recommendations to the Commission on the CSIs, CSMs and CSTs provided for in Articles 5, 6 and 7 of Directive (EU) 2016/798. The Agency shall also address recommendations on periodic revision of CSIs, CSMs and CSTs to the Commission. **The commission may not change the technical content of the recommendations without prior coordination with the Agency and stakeholder networks referred to in Article 38(1) and (4).**

#### Article 19 - Technical support in the field of railway interoperability

1. The Agency shall: (a) address recommendations to the Commission on the TSIs and their revision, in accordance with Article 5 of Directive (EU) 2016/797; **The commission may not change the technical content of the recommendations without prior coordination with the Agency and stakeholder networks referred to in Article 38(1) and (4).**

**Justification:** As found in Article 75(2)(b) of Regulation (EU) 2018/1139 establishing the European Union Aviation Safety Agency (EASA), the European Commission should not be able to circumvent the measures proposed by ERA by amending the recommendations without prior consultation with stakeholders and ERA, as the competent technical bodies for the drafting of recommendations on railways safety and interoperability.

## ERA funding

As found in the Cyber Resilience Act regarding ENISA, we recommend a statement at the end of the Amending Act to the effect of “**A statement has been made with regard to this act and can be found in [link to statement in the OJ].**”

### Statement by the European Parliament and the Council of the European Union

*“The European Parliament and the Council consider that this Regulation confers additional tasks on the European Union Agency for Railways which result in additional workload and would require additional resources in terms of both expertise and number. In view of this, in order to enable the Agency to effectively carry out the tasks under this Regulation, the European Parliament, the Council and the Commission consider that an increase in its resources, in particular its human resources with the adequate expertise, may be necessary. Such an increase could be provided for in the annual procedure related to the establishment plan of the Agency. Accordingly, the Commission, which is responsible for entering in the draft general budget of the Union the estimates it deems to be necessary for the Agency’s establishment plan, in the framework of the budgetary procedure set out in Article 314 TFEU and in accordance the procedure set out in Regulation (EU) 2016/796, shall assess the estimates for the establishment plan of the Agency entered for the first year after entry into force of this Regulation in consideration of the necessary resources, in particular human resources, to enable the Agency to adequately carry out its tasks under this Regulation.”*

**Justification:** Analogous to the CRA, the proposed revision of the ERA Regulation will confer additional tasks to ERA, which will require an allocation of additional resources. As the Commission is to propose ERA’s establishment plan when proposing the general draft Union budget, and the Council and Parliament shall authorise the necessary appropriations to ERA. Therefore, the sector sees it necessary to include such a statement to incentivise an increased budget for ERA.