Notice of call for expressions of interest in the appointment as member of the Board of Appeal of the European Union Agency for Railways

1. Description of the Authority

The European Union Agency for Railways ('the Agency') as established by Regulation (EU) 2016/796, is tasked with providing the Commission with expertise and technical support in order to further the latter's policy objectives for the European railway system. Namely, guaranteeing a high level of safety and the creation of a Single European Railway Area ('SERA') without frontiers.

The Agency's main task is to contribute to the furthering of these policy objectives for rail, both through the implementation and development of the applicable European Union legislation and in the pursuit of the complementary goals of railway safety and interoperability.

With the entry into force of the Fourth Railway Package ('4RP'), the role of the Agency has been substantially extended: As of 16 June 2019 the Agency will perform the role of authorising entity, responsible for issuing vehicle authorisations and issuing single safety certificates for railway undertakings. The Agency will also become the single system authority for the European Railway Traffic Management System ('ERTMS'). On account of these developments and with a view to having the Agency fully operational in its new role, a Board of Appeal is to be established to examine appeals and act as arbitrator in case of disagreements in relation to vehicle authorisations, safety certificates and ERTMS trackside approvals.

To this end, the Commission is carrying out an open selection procedure to set up a list of qualified experts to be appointed by the Agency's Management Board as members of the Board of Appeal, in accordance with Article 55 (3) of Regulation (EU) 2016/796.

The Agency has its seat in Valenciennes and Lille, France.

i. Objective of the Call

This Call for Expression of Interest aims to select experts with the relevant competences and experience, who will be appointed by the Management Board of the Agency as members of the Board of Appeal, for a period of a maximum of 4 years.

The Management Board may decide to establish more than one Board of Appeal depending on the number of the appeals and arbitration cases.

2. Description of the Board of Appeal and the functions of its members

The Agency's Board of Appeal shall ensure an independent and impartial appeal mechanism for the parties affected by decisions of the Agency to exercise their rights to have their case heard and seek remedies.

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According to Article 55 of Regulation (EU) 2016/796 and the rules of procedure for the functioning of the Board of Appeal the Management Board of the Agency is asked to appoint one permanent Board composed of a chairperson, two other members and three alternates. These are the members of the Board of Appeal. The Board of Appeal will also be assisted in the exercise of its administrative duties by a Registrar and its services shared by all Boards of Appeal. The Registrar is not a member and will be appointed from the Agency’s staff.

The roles and functions foreseen are described as follows:

(1) **The Chairperson**: will allocate and preside over the appeal and arbitration proceedings and ensure the quality and consistency of decisions by a Board of Appeal. The role will entail coordination and administrative activities to ensure the proper implementation of the rules of procedure.

(2) **Members**: will be examining appeals and acting as arbitrators.

(3) **Alternates**: there will be three alternates who will exercise functions in cases where a member becomes unavailable.

(4) **Rapporteur**: a rapporteur will be appointed from among the members of the Board of Appeal for each case. The rapporteur will carry out a preliminary examination of the appeal and present the results of that examination to the other members.

The appointed members of the Board will be selected to provide collectively the technical, legal and procedural expertise (especially for candidates for the role of chairperson). More specifically in the topics described in the section iii below (Knowledge Requirements and criteria for the different disciplines).

i. **Full description of the fields/disciplines covered by the call for expressions of interest**

The Board of Appeal will be examining appeals against Agency decisions and acting as arbitrator in case of a disagreement between the Agency and NSAs on authorisations/ certificates/approval. Most authorisation and certification decision are composed of two parts: the assessment of the Agency and of the national safety authorities (‘NSAs’), which are concerned by the intended area of use, in accordance with Article 21 (5) of the Directive (EU) 2016/797 (‘IOD’) and 10 (5) of the Directive (EU) 2016/798 (‘RSD’) respectively. The analysis done by the Board of Appeal on these authorisations/certifications will consist of reviewing both the Agency and NSA assessment leading to the final authorisation/certification.

- **Vehicle Authorisations (‘VA’)**: VA in accordance with Article 20 and 21 of Regulation (EU) 2016/796, certify that the subsystem meets, in its design operating state, all the essential requirements in accordance with Article 21 of the IOD when integrated into the rail system. Examining appeals and arbitrating disagreements on assessments in relation to these authorisations will involve a review of the authorisation processes laid out in the practical arrangements for vehicle authorisations and the application of the relevant Technical Specifications (‘TSIs’).

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2 Commission Implementing Regulation (EU) laying down the rules of procedure of the Board(s) of Appeal of the European Union Agency for Railways - Publication pending (The Commission will share this document with the applicants through the functional mailbox).


- **Single Safety Certificates (‘SSC’):** SSC in accordance with Article 14 of Regulation (EU) 2016/796 certify that the railway undertaking concerned has established its safety management system and that it is able to operate safely in the intended area of operation in accordance with Article 10 of the RSD. Examining appeals and arbitrating disagreements on assessments in relation to these certifications will consist of reviewing the certification processes laid out in the practical arrangements for SSC and/or an evaluation of the requirements in TSIs, CSMs and CSTs and in other relevant legislation in order to control risks and provide rail transport services safely on the network.

- **ERTMS:** Examining appeals and arbitrating disagreements on assessments in relation to these approvals will consist of checking that the technical solutions envisaged are fully compliant with the relevant TSI in accordance with Article 22 and 30 of Regulation (EU) 2016/796.

3. **Procedure and working conditions**

   - Natural persons are invited to submit an expression of interest in accordance with the rules set out in this notice.
   
   - The Commission will draw up a list of experts who meet the criteria set out at point 11.
   
   - The Commission will adopt, in accordance to Article 55 of Regulation (EU) 2016/796, a Commission Decision proposing the appointment of members and alternate members of the Board of Appeal of the Agency.
   
   - In accordance with Art. 55 of Regulation (EU) 2016/796, the Management Board of the Agency shall appoint the chairperson, the other members and their alternates from the list referred to above.

The list resulting from this notice will be used exclusively for tasks to be carried out as members, including the chairperson, of the Board of Appeal of the Agency.

The list resulting from this notice is valid for four years from the adoption of the Commission Decision proposing the appointment of the members of the Board of Appeal of the Agency in accordance with Article 55 of Regulation (EU) 2016/796.

**Work conditions, remuneration and reimbursement**

The members will be appointed by the Management Board of the Agency for a period fixed in the appointment decision. The date fixed may be considered in relation to a function or ending of proceedings. The term starts approximatively in second half of 2019, for a maximum of 4 years and is renewable once. The Chairperson and the members shall be remunerated by the Agency at a fixed rate according to the annex of the Board of Appeal rules of procedure. The travel and subsistence expenses will be reimbursed under the conditions set out in Article 37 of the rules of procedure.

The following remuneration scheme is foreseen:

   - Members and alternates participating in proceedings (only when assigned to an appeal/arbitration case) shall be remunerated at a rate of 600 EUR per day, with a maximum of 9,000 EUR per case per person.
   
   - Chairperson and the rapporteur participating in proceedings shall be remunerated at a rate of 700 EUR per day with a maximum of 18,000 EUR respectively per person per case.

4. **Selection criteria**
i. **Eligibility criteria**

- The candidate must be a national of a Member State of the European Union, or a national of the European Economic Area (Iceland, Liechtenstein and Norway).

- The candidate shall not perform any other duties in the Agency or be in conflict with the any other relevant conflict of interest rules set out in Article 56 and 57 of Regulation (EU) 2016/796.

- The candidate must have thorough knowledge of an official EU working language (minimum level C1/C2) and satisfactory knowledge of a second (minimum level B2) official EU language, other language skills will be greatly valued.

- A university degree relevant to transport or law and or professional experience in the field of transport/law, in particular railway safety and interoperability, preferably in one or more of the disciplines described below in section iii.

ii. **Criteria relating to technical and professional capacity**

Applications are welcome from candidates that:

- have sufficiently extensive work experience enabling them to cover all or a high number of the disciplines set out in the section below, and /or

- are specialists in one of these disciplines. To be considered a specialist in one discipline a candidate must have at least five years of professional experience in this discipline, and /or

- have legal and procedural expertise generally and/or safety/authorisation experience in other areas but preferably in the context of the institutional framework and functioning of the European Union

iii. **Knowledge Requirements and criteria for the different disciplines**

In terms of procedural and legal expertise, good knowledge of national/international organisations operating within the scope of the Agency’s activities would be an asset, as would a good knowledge of the institutional framework and functioning of the European Union. In particular, good understanding and experience with administrative procedures, especially for granting authorisations/certifications.

Future members must also be knowledgeable of at least one and preferably all of the disciplines subject to an Agency decision, to the extent outlined below:

- **VA:** Knowledge and an understanding and/or experience of vehicle authorisation procedures and interoperability in general would be important. The knowledge of the certification, EC conformity and EC verification procedures is (as it is part of the authorisation process as well) is recommended. The understanding of the relevant TSIs would be a significant advantage and more consideration will be given to candidates who have it.

- **SSC:** Knowledge and an understanding and/or experience of safety certifications and safety requirements in general would be important. The understanding of TSIs would be a significant advantage and more consideration will be given to candidates who have it.
ERTMS: An understanding and knowledge of ERTMS and more specifically ERTMS trackside deployment laid out in Directive (EU) 2016/797 would be important and is required for one of the members of the Board of Appeal. The understanding of TSIs would be a significant advantage and more consideration will be given to candidates who have it.

5. Submission and closing date of applications

For applications to be valid, candidates must submit in electronic format a letter of motivation and EC curriculum vitae (https://europass.cedefop.europa.eu/documents/curriculum-vitae) of a maximum of three pages (the latter two documents being typed).

Information and documents to be provided

Interested persons should provide their full contact details [and list the role and specific fields indicated in point 2 that interest them] in their expression of interest.

Upon request, the Commission may ask supporting evidence related to the selection criteria (point 4 above).

i. Closing date

The deadline to submit an expression of interest is 30 June 2018.

Applications should be submitted by electronic means to the following address:

MOVE-ERA-BOARD-OF-APPEAL@ec.europa.eu

The subject of the email should clearly mention ‘MEMBER OF THE BOARD OF APPEAL OF ERA’.

The application will risk to be rejected if the dossier is incomplete.

For any further inquiry on this call, please contact MOVE-ERA-BOARD-OF-APPEAL@ec.europa.eu

6. Exclusion criteria

Potential candidates shall be excluded from participation if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they or persons having powers of representation, decision-making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of ‘res judicata’;

(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the European Investment Bank and international organisations;

(d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
(e) they have been the subject of a judgment which has the force of ‘res judicata’ for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such an illegal activity is detrimental to the Union's financial interests;

(f) they are subject to an administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in a procurement procedure or failing to supply information, or being declared to be in serious breach of their obligation under a contract covered by the budget;

g) they have a conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest.

Before signing a contract experts shall provide a declaration on their honour stating that they are not in one of the situations of exclusion listed above. In case of doubt, they may be requested to provide supporting evidence of non-exclusion.

7. Protection of personal data

If processing your expression of interest involves the recording and processing of personal data (such as your name, address and CV), such data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your reply to this notice and any personal data requested are required for the purposes indicated above in point 4 and will be processed solely for those purposes by the contracting authority indicated in point 1, which is also acting as data controller. Details concerning the processing of your personal data are available on the privacy statement at:

Your personal data may be registered in the Early Detection and Exclusion System (EDES) by the responsible Authorizing Officer of the Commission, should you be in one of the situations mentioned in Article 106 of the Financial Regulation (regulation EU/EURATOM 966/2012 of 25 October 2012 as amended).