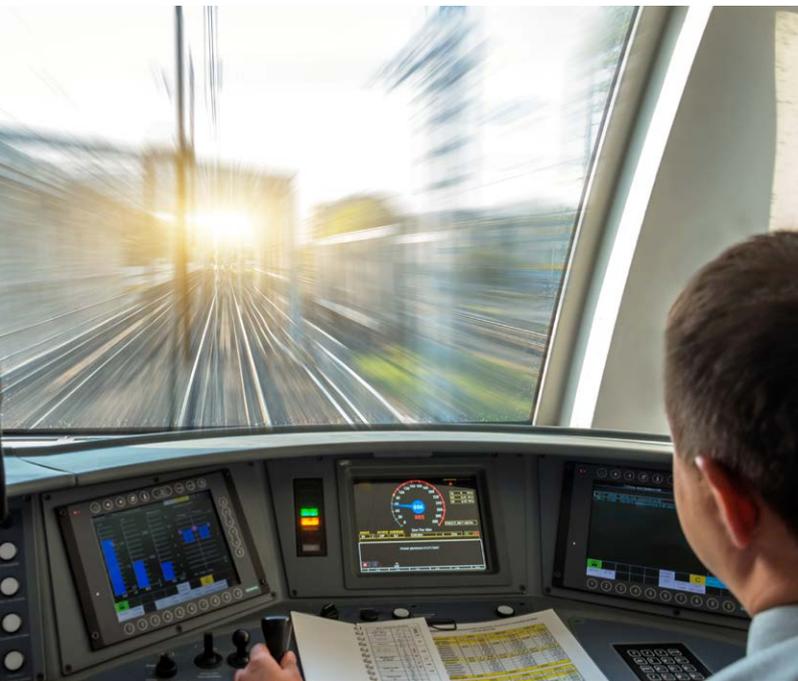


RAIL

MOBILE WORKERS



Study on the implementation and application of the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.

This report was prepared for the European social partners in the rail sector, the Community of European Railway and Infrastructure Companies (CER) and the European Transport Workers' Federation (ETF) within the framework of the EU funded project "Rail Mobile Workers" by SECAFI Groupe ALPHA, wmp consult – Wilke Maack GmbH and Fondazione Giacomo Brodolini.

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RAIL MOBILE WORKERS

FINAL REPORT

Study on the implementation and application of the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.

Commissioned by the European social partners



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TABLE OF CONTENTS

FOREWORD	4
PART 1	7
Scientific expertise on implementation of the Agreement on certain aspects of working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (Directive 2005/47/EC)	
Authors: Sophie Mosca, Christophe Bourdeleau (SECAFI)	
1. INTRODUCTION, METHODOLOGY AND SURVEY SAMPLE	8
1.1 Context and study's objectives	8
1.2 Scientific study methodology: mapping, survey and workshops	9
1.3 Rail Mobile Worker survey: an in-depth questionnaire built in five parts	11
1.4 Rail Mobile Worker survey: a large sample thanks to 66 questionnaires received from 21 countries and 47 companies	12
2. OVERVIEW OF INTERNATIONAL RAIL TRAFFIC: FREIGHT AND PASSENGER ACTIVITIES.	14
2.1 Freight and passenger rail transport have evolved differently during the last years.	14
Companies authorised for cross-border services, with various possible operational cross-border transport choices	14
2.2 Rail freight traffic which fluctuates strongly and whose international share exceeds 50%.	15
50% of freight traffic is cross-border: 40% international and 10% transit	18
2.3 Less than 6% of rail passenger traffic is international; more important in Western Europe and stimulated by the development of high-speed lines	18
Cross-border rail passenger transport: regional or high-speed long-distance flows	20
2.4 Cross-border traffic and organisation in the surveyed companies	21
3. EMPLOYMENT IN RAILWAY COMPANIES AND CROSS-BORDER STAFF	26
3.1 An initial overview of employment in railway companies in EU Member States	26
3.2 A difficult estimate of the number of cross-border mobile workers at European level	27
3.3 Characteristics of cross-border workers employed in the surveyed companies ..	28
4. COMPARATIVE ANALYSIS OF THE IMPLEMENTATION OF THE PROVISIONS OF THE AGREEMENT IN THE SURVEYED COMPANIES	31
4.1 The implementation of the clauses of the Agreement in the surveyed companies	31
4.2 Difficulties in implementation and expectations raised by CER and ETF members in the questionnaire	37
5. MAIN FINDINGS AND RECOMMENDATIONS	38
5.1 The good participation in the survey and the workshops helped to collect a lot of useful information and data for the project.	38

5.2	The question as to the definition of 'interoperable cross-border services'	40
5.3	Transposition that should comply with the minimum standards of the Agreement	42
5.4	Problems identified in the implementation of certain provisions of the Agreement. . .	43
5.5	Follow-up and controls to be strengthened	45
	Glossary and abbreviations	47
	Country abbreviations	48
	Abbreviations	48
	Sources and bibliography	49
	Appendix 1 – Organisation of the Rail Mobile Workers project: Steering Committee and Workshops. .	51
	Appendix 2 – “Rail Mobile Worker” project questionnaire	52
	Appendix 3 – Detailed results of the survey	65
	Appendix 4 – Additional data on cross-border traffic	69

PART 2 77

Legal aspects of the Implementation and Application of the CER-ETF Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border service in the railway sector (implemented by Directive 2005/47/EC)

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1.	INTRODUCTION	78
2.	METHODOLOGICAL NOTE	79
3.	THE APPLICABLE LEGAL FRAMEWORK	80
3.1	Implementing the Directive by national law	80
3.2	Sources regulating the working time of rail mobile workers engaged in cross-border services in the railway sector	81
3.3	Hierarchy of sources and derogation	85
3.4	Categories of rail mobile workers engaged in interoperable cross-border services covered by legal and other sources	88
3.5	Daily rest away from home	90
3.6	Second rest away from home	92
3.7	Competent authorities and bodies checking working hours, driving time and rest periods of mobile rail workers	92
4.	PROBLEMS AND CHALLENGES RELATED TO THE AGREEMENT AND ITS IMPLEMENTATION	99
4.1	Checks and controls	99
4.2	Notions of working and driving time	100
4.3	Increased diversity of the rail mobile workforce and employment of external rail workers	100
	References	102
	Annex	103
	National transposition law of the Directive 2005/47/EC by Member State	103
	Company-specific applicable legal and regulatory frameworks	108

PART 3 114

Council Directive 2005/47/EC and CER-ETF Agreement

FOREWORD

Dear ladies and gentlemen and dear railway sector colleagues,

On the following pages, you will find the final report of our EU social partner project “Mobile workers”, which we have now been able to complete after intensive work and discussions. We used the project to evaluate the existing social partners’ agreement between the Community of European Railway and Infrastructure Companies (CER) and the European Transport Workers’ Federation (ETF). This formed the basis for the EU directive on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (Directive 2005/47/EC). Using the social partners’ agreement as a tool, we have recognised our responsibility for the sector and the important opportunity we have to be actively involved in shaping the framework.

When CER and ETF signed the social partners’ agreement in 2004 there was no interoperability in rail transport. Back then they were pioneers. The agreement was made with an eye to the future. The intention was to strengthen the rail sector, protect employees and, at the same time, help make cross-border rail transport easier. Development might have taken longer than originally intended, but the interoperability that is important for people and traffic in Europe is in place today, and the agreement on cross-border rail transport contributed to this.

The project final report describes the national implementation in each of the EU member states and the organisation of cross-border rail transport, giving a good overview of the responsible supervisory and oversight authorities.

The results from the workshops carried out during the project are included in the report and show that there are numerous examples of good practice for collective agreements and for dealing with the subject between the social partners in the different countries.

The agreement and the Directive, which is identical in terms of content, are extremely relevant and significant. The project findings showed that the EU Directive 2005/47/EC is applied in the sector by the railway companies – the CER member companies – and has proven its worth. Around 10,000 employees currently work in the area covered by it, and that number is growing.

The social partners ETF and CER have therefore come to the conclusion that modifications to the social partners’ agreement and the Directive are currently unnecessary. Various indicators make it advisable, however, to discuss the requirement for creating clarity in the interpretation of some of the definitions and provisions with reference to implementation at a national level.

All the same – and as is clearly demonstrated by this report – there are certainly problems with the practical implementation that must be taken seriously:

- Adherence to the Directive is not or hardly monitored by the competent authorities.
- Competence of relevant authorities is not always properly recognised.
- In some countries, this competence is distributed or organised in such a way that effective control is impossible for this reason alone.

Moreover, the question has arisen as to how effective methods can be introduced to monitor how working time and rest periods are implemented in cross-border traffic.

Therefore, with the completion of this project, the work of the social partners for the European rail sector and its employees is not finished, but is just getting started.

At a European level, the sectoral social dialogue advocates an improvement to the framework – also concerning intermodal competition with the road network – including social standards. There is an increasing need for cross-border rail transport, not least to achieve climate targets.

Nationally, the social partners will use the project results to implement our findings and, for example, to clarify competence of authorities and to call for improved monitoring.

In the EU sectoral social dialogue on railways we will not cease looking ahead. We will follow developments closely as a social partner and be open to enhancements and improvements in the future.

Together, we will continue to promote the strengthening and the attractiveness of our sector, as well as representing the interests of our employees.

We would like to thank all those involved in the project.



Giorgio Tuti
President, EU Sectoral Social
Dialogue for Railways
ETF



Matthias Rohmann
Vice-President, EU Sectoral Social
Dialogue for Railways
CER



PART 1

**Scientific expertise on implementation
of the Agreement on certain aspects
of working conditions of mobile workers
engaged in interoperable cross-border
services in the railway sector
(Directive 2005/47/EC)**

Authors: Sophie Mosca, Christophe Bourdeleau (SECAFI)

1. INTRODUCTION, METHODOLOGY AND SURVEY SAMPLE

1.1. Context and study's objectives

To understand how European rules on working conditions for mobile workers engaged in interoperable cross-border services in the railway sector are implemented. This is the aim of the "Rail Mobile Worker" (RMW) project and contribution from Secafi as a scientific expert.

In the context of the creation and development of a European railway market, the European social partners aimed:

- to develop safe cross-border traffic and protect the health and safety of the mobile workers
- to avoid competition based solely on differences in working conditions
- to create common rules for minimum standard working conditions for mobile workers engaged in interoperable cross-border services

On 27 January 2004, the "Agreement on certain aspects of working conditions for mobile workers engaged in interoperable cross-border services in the railway sector" was signed between the Community of European Railway and Infrastructure Companies (CER) and the European Transport Workers' Federation (ETF). It lays down European standards for rest, breaks and driving time for mobile workers assigned to cross-border interoperable services within the scope of this Agreement.

This European Agreement, product of the European Social Dialogue for Railways, was integrated into EU legislation via Council Directive 2005/47/EC. Since 27 July 2008, this Directive has become compulsory for all Member States and binding on the entire EU railway sector.

In 2008, in order to monitor the implementation of this Agreement, the CER and ETF carried out a first joint project. The results were based mainly on surveys and workshops completed by trade unions and railway undertakings on the implementation of these rules for the employees concerned.

The main focus of the CER/ETF project was to understand the implementation of the Agreement in national legislation and via CBAs. The difficulty then was that the project was too early, while a number of Member States were still in the process of transposition during the project activities.

In 2012, TNO (The Netherlands Organisation for applied scientific research) published its own study report about the national legislative measures transposing the Directive and the development of interoperable cross-border activities in the railway sector.

While they took different perspectives in studying this implementation, the two studies seemed to agree both in terms of results achieved and difficulties encountered. For both studies, the difficulties encountered had to do with the lack of precise information about the international transport services and the number of employees working in interoperable cross-border services.

In 2017, after almost 10 years since the transposition of the Directive into national law, CER and ETF have decided to launch the project, "Rail Mobile Workers (RMW) - Assessment by the social partners of the implementation and application of the Agreement on certain aspects of

working conditions for mobile workers engaged in interoperable cross-border services in the railway sector”, funded by the European Commission.

The aim of the RMW project is to collect relevant information, in order to understand the state of implementation of the provisions at national level and their concrete application on the ground. The social partners would also like to get a better comprehension of the actual organisation of cross-border freight and passenger operations, as well as the number of the staff concerned.

With the information gathered during implementation of the project, the social partners will fulfil the obligation ('Review') in the Agreement and, on that basis; they will discuss whether a revision of the Agreement or a clarification of legal questions would be possible or necessary on the basis of the information compiled.

The RMW project includes the assistance of two experts:

- wmp consult/ FGB on legal aspects of the implementation and application of the Agreement: mapping national provisions, analysis of the collective bargaining agreements applying in the sector, legal advice and compilation of a list of national competent authorities and responsible bodies,
- SECAFI on scientific aspects to provide a comprehensive picture of cross-border freight and passenger rail services across the main EU internal borders.

Comments: Please note that the information contained in the present report does not necessarily reflect the position or opinion of CER and ETF.

Several words or expressions are used as defined in the CER-ETF Agreement and their definitions are recalled in the Glossary. But to lighten the text, the expression 'cross-border' means 'interoperable cross-border' and 'company' means 'railway undertaking' commonly known as 'train operator' or 'train operating company'.

1.2. Scientific study methodology: mapping, survey and workshops

In that respect, the European social partners need to collect information on how the Agreement has been implemented and applied in the EU member states.

The role of SECAFI, as scientific expert, is to assist the social partners with a study providing a comprehensive picture of cross-border freight and passenger rail services across the main EU internal borders.

The study is based on desk-top research, a survey completed by clarification exchanges with respondents, as well as relevant inputs collected during the project workshops and steering committee meetings.

Desk-top research (April 2017 to January 2018):

Mapping the situation of cross-border European rail transport on the basis of the analysis and evaluation of existing studies, surveys and statistics.

Comments: Our preliminary research was also hampered by the same constraints as the previously mentioned works, to obtain detailed and recent information at European level about international rail transport and staff.

Indeed, with the opening of the rail market for both international freight and passenger activities, the available information often dates back several years and is quite incomplete. More and more railway undertakings do not communicate their data to European agencies, considered as sensitive.

Thankfully it was possible to complete the information with the data and figures collected via the project survey (see below). Indeed, thanks to a large participation among railway companies, it was possible to collect and analyse data concerning railway employment that would have been otherwise unavailable, as they are not subject to any legal reporting obligation.

Survey (April 2017 to January 2018):

April to July 2017: development of a joint questionnaire with the legal expert, together with the Steering Committee members, then sent directly by CER and ETF to their members

July to December 2017: processing and analysis of questionnaires: inputting the scientific part of the questionnaires into a database and counting the data, comparing and consolidating the responses received from several members within the same company, many exchanges for clarification and validation of data with the respondents

September 2017 to February 2018: writing the analysis in a survey report, presentations and exchanges on those results with the Steering Committee members

Participation in the Five Workshops (May 2017 to February 2018):

All the Workshops gathered representatives of companies, trade unionists and some public authorities from the neighbouring countries (more details in Appendix 1):

- Workshop 1 in Berlin, Germany (May 2017): Belgium, UK/France, Germany, Luxembourg
- Workshop 2 in Krakow, Poland (June 2017): Poland, Czech Republic, Hungary, Slovakia
- Workshop 3 in Zagreb, Croatia (October 2017): Croatia, Slovenia, Austria, Italy
- Workshop 4 in Lyon, France (December 2017): France, Spain, Portugal, Switzerland, Belgium, Italy, Germany
- Workshop 5 in Copenhagen, Denmark (February 2018): Denmark, Sweden, Norway

***Comments:** The RMW survey and workshops provided opinions on the Agreement from many companies and trade unions. Overall the participants highlighted the positive impact of the Agreement for the development of the rail sector and considered it a good Agreement.*

This final scientific report synthesises the main results of these different works:

- the extent of cross-border rail services for freight and passengers: flow and organisation of international traffic
- an update on how these services are organised in terms of personnel (train drivers, train managers, controllers and other on-board staff)
- a comparative analysis of the implementation of the provisions of the Agreement (rest, break, and driving time...) by the surveyed companies, and the expectations of the social partners in view of future work on the Agreement

1.3. Rail Mobile Worker survey: an in-depth questionnaire built in five parts

The Rail Mobile Worker questionnaire was specifically developed for the project (refer to the text of the questionnaire in Appendix 2). It is divided into five parts:

- In the '**Identification**' part of the questionnaire, it was asked to give:
 - the total number of employees, detailing the categories of mobile staff (Driver, Train Manager-TM, Other staff), the interoperable cross-border staff (i.e. the percentage), the categories of staff considered as part of the 'train crew'
 - an overview of the company's activities with the number of trains per week (total and international) and the main countries concerned
 - it was then possible to analyse the cross-border interoperable mobile staff employed by the 37 companies for which the numbers were given.
- **Section A** deals with the applicable **legal and regulatory framework** and has been analysed by the legal expert.
- **Section B** of the questionnaire asked for the **provisions in force in each company**, in relation to the clauses of the Agreement, detailing those for national staff and for cross-border staff; the results of this Section are given in greater detail in part 4.1.
- In **Section C**, the various questions aimed to clarify the **organisation of international traffic** concerning:
 - each activity (Passenger, Freight), that can change for each country served or even each traffic
 - cooperation with partners (Part.) or subsidiaries (Sub.), safety certificates or other type of authorisation
 - staff employment: cross-border or change at the border
- **Section D** addresses an outlook and additional input to the social partners in view of future work on the Agreement (refer to part 4.2 for more details).

***Comments:** Both CER and ETF national affiliates received the questionnaire and were asked to complete it, a questionnaire for each company. Thus, in several cases the information reported about a company relies on the feedback of both company management and workforce. On the other hand, in some cases only one of the parties, either the company management or the trade union representative, replied to the survey. In order to allow for a proper reading of the results, the tables on pages 8-9 provide an overview of the source of the information for every company which is mentioned in the survey analysis. Most of the members answered the questions precisely, although a lot of feedback for clarification was needed. Especially in the event of divergence in the information received from the CER and ETF affiliates, feedback exchanges made it possible to reconcile information. For some companies, data were incomplete ('?' or 'na' for no answer) due to the confidentiality or unavailability of requested information.*

1.4. Rail Mobile Worker survey: a large sample thanks to 66 questionnaires received from 21 countries and 47 companies

The survey is based on 66 questionnaires received between August and December 2017.

They come from 21 countries, including Switzerland. They cover the very great majority of cross-border rail traffic. None have been received from only 6 countries: Estonia, Greece, Ireland, Latvia, Lithuania and Romania.

34 questionnaires have been sent by CER members (companies) and 32 from ETF members (tradeunions)

Number of questionnaires received (RMW survey 2017)

Countries		TOTAL	CER	ETF	Freight	Passenger	Freight & Pass.
Austria	AUT	3	2	1		1	2
Belgium	BEL	9	3	6	3	6	
Bulgaria	BGR	1	1		1		
Croatia	HRV	2	1	1		2	
Czech republic	CZE	2	2		1	1	
Denmark	DNK	3	1	2	2	1	
France	FRA	3	1	2			3
Germany	DEU	6	5	1	4	2	
Hungary	HUN	3	2	1		3	
Italy	ITA	5	4	1	3	2	
Luxembourg	LUX	4	2	2	2	2	
Netherlands	NLD	2	1	1	1	1	
Norway	NOR	5		5	3	2	
Poland	POL	1	1		1		
Portugal	PRT	1	1			1	
Slovakia	SVK	2	2		1	1	
Slovenia	SVN	2	1	1			2
Spain	ESP	2		2	1	1	
Sweden	SWE	6	1	5	2	3	1
Switzerland	CHE	1	1				1
United Kingdom	GBR	3	2	1	2	1	
TOTAL		66	34	32	27	30	9

These questionnaires concern 47 different companies (railway undertakings) according to the following distribution of activities: 40% Freight, 45% Passenger, 15% Freight & Passenger (mixed).

18 different ETF members each sent 1 to 5 questionnaires for companies from their country.

Covering 23 Freight companies, 19 Passenger companies and 5 mixed companies.

- for 15 companies, questionnaires from both CER and ETF members (highlighted in the following tables)

- for 19 companies, solely from CER members
- for 13 companies, only from ETF members, mainly with freight activities (8 companies)

Number and origin of questionnaires received for the RMW survey 2017

Freight Company, Country	Quest.	CER	ETF	Passenger Company, Country	Quest.	CER	ETF
BRC, BGR	1	1		České Dráhy, CZE	1	1	
Captrain, DEU	1	1		CFL, LUX	2	1	1
Captrain, ITA	1	1		CP, PRT	1	1	
CargoNet, NOR	1		1	DB Fernverkehr, DEU	2	1	1
ČD Cargo, CZE	1	1		DSB, DNK	1	1	
CFL Cargo, LUX	2	1	1	Eurostar, GBR	1	1	
DB Cargo, DEU	1	1		GYSEV, HUN	1	1	
DB Cargo, DNK	1		1	HZPP, HRV	2	1	1
DB Cargo, GBR	2	1	1	MÁV-START, HUN	2	1	1
DB Cargo, NLD	1		1	NS, NLD	1	1	
Green Cargo, NOR	1		1	NSB, NOR	2		2
Green Cargo, SWE	1		1	ÖBB-Personenverkehr, AUT	1	1	1
HectorRail, DNK	1		1	Renfe Viajeros, ESP	1		1
ITL, DEU	1	1		SJ Norrlandstag, SWE	1		1
Lineas, BEL	3	1	2	SJAB, SWE	2	1	1
LKAB, NOR	1		1	SNCB/NMBS, BEL	4	1	3
Mercitalia Modane, ITA	1	1		THI Factory, BEL	2	1	1
PKP Cargo, POL	1	1		Trenitalia, ITA	2	1	1
Renfe Mercancias, ESP	1		1	ZSSK, SVK	1	1	
TAGAB, SWE	1		1				
TX Logistik, DEU	1	1					
TX Logistik, ITA	1	1					
ZSSK Cargo, SVK	1	1					
TOTAL	27	14	13	TOTAL	30	16	14

Freight & Pass. Comp., Country	Quest.	CER	ETF
HectorRail, SWE	1		1
ÖBB-Produkt., AUT	2	1	1
SBB, CHE	1	1	
SNCF, FRA	3	1	2
SZ, SVN	2	1	1
TOTAL	9	4	5

Comment: The Mercitalia's questionnaire only concerns the staff of the Modane section.

The following ETF members sent questionnaires for one or more companies:

- Austria: VIDA
- Belgium: CGSP Cheminots, ACV Transcom
- Croatia: Sindikat ZH
- Denmark: DJF
- France: CGT Cheminots, CFDT-FGTE
- Germany: EVG
- Hungary: VDSZSZ and VSZ
- Italy: Uiltrasporti and FIT CISL and FILT CGIL
- Luxembourg: FNCTTFEL
- Norway: NJF, Norsk Lokmann
- Slovenia: Sindikat Strojvodij
- Spain: CCOO
- Sweden: SEKO
- The Netherland: FNV
- United Kingdom: ASLEF

Comment: The sample of responses is large and representative.

For the passenger activities, the survey has collected answers from quite all companies with cross-border traffic, with the exception of a few companies operating solely local and regional traffic.

The sample is less representative for freight companies. It covers about one third of freight companies authorised for cross-border operations (refer to 2.1.).

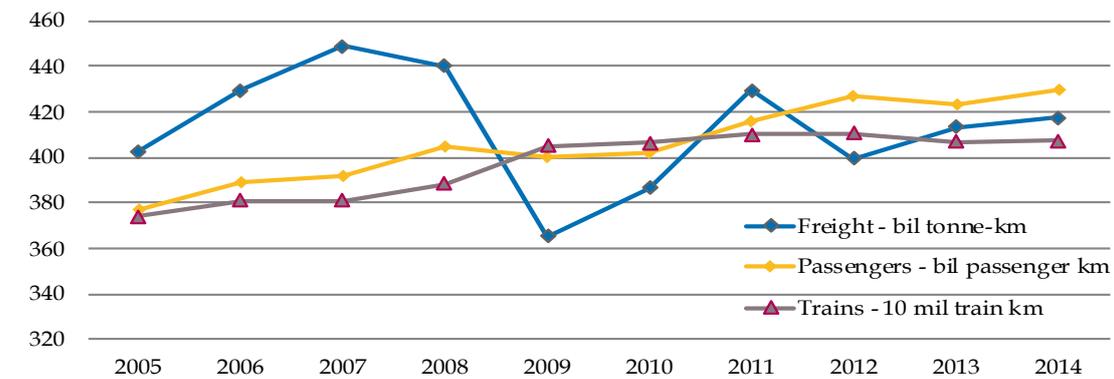
2. OVERVIEW OF INTERNATIONAL RAIL TRAFFIC: FREIGHT AND PASSENGER ACTIVITIES

2.1. Freight and passenger rail transport have evolved differently during the last years

A brief overview of railway activities in the European Union shows that:

- Passenger traffic volumes withstood the 2008 crisis better than freight (measured in passenger-km)
- Rail freight has a much stronger European dimension than passenger traffic,
- Closely linked to economic cycles, rail freight traffic volumes (in tonne-km) show significant year-on-year variations, with peaks (2007, 2011) and troughs (2009, 2012) following the financial crisis of 2008, for a 10-year increase limited to about 4%
- A steadier increase is seen in rail passenger transport, around 13% between 2005 and 2014

Graph 1: Traffic volume development and average annual change of train-km (%) from 2005 to 2014



Source: p-km RMMS, except IE and ES (Eurostat) and t-km RMMS, except IE, EL, ES and RO (Eurostat), train-km 2009 UIC, 2014 Eurostat, except BE, DK, FR, NL (IRG Rail 4th Annual Market Monitoring Report) and PT (an estimate).

Over the last 10 years, development in passenger traffic volumes shows an upward trend. Although there are many variations between EU member states, with 13 member states increasing and 12 decreasing their passenger-kilometres. The European average growth has remained quite stable at 1% per year.

Due to the unfavourable economic climate across much of the EU since 2008, rail freight traffic dropped heavily in 2009 across all member states and has not yet fully recovered. However, since 2012 a slight upturn has been confirmed.

Companies authorised for cross-border services, with various possible operational cross-border transport choices

As required by Directive 2004/49/EC, in order to be granted access to the railway infrastructure, a railway undertaking must hold a safety certificate. The award of a safety certificate, gives confirmation that the railway undertaking has established its safety management system and is able to comply with relevant safety standards and rules in order to control risks and operate safely on the network. The safety certificate comprises Part A (confirmation of acceptance of the railway undertaking's safety management system) and Part B (confirmation of acceptance of the provisions adopted by the railway undertaking to meet specific requirements necessary for the safe operation of the relevant network).

The ERADIS database extract (Graph 2) shows the number of railway undertakings that have several valid safety certificates to operate cross-border services in 2017. The services covered by these certificates can be for Freight, for Passenger and for both Freight & Passenger. But not all companies are working within the scope of the Agreement.

Graph 2. List of railway undertakings authorised for cross-border operations in 2017

Railway Undertaking		Number	Domestic (Part A/B)	Safety Certificates					
				Other safety certificates in foreign countries (Part B)					
PKP Cargo	Freight	7	Poland	Austria	Germany	The Netherlands	Hungary	Slovak Rep.	Lithuania
RTS Rail Transport Service	Freight	5	Germany	Austria	Romania	The Netherlands	Slovak Rep.		
DB Regio AG	Passenger	4	Germany	Austria	Switzerland	The Netherlands			
Rail Cargo Austria	Freight	4	Austria	Germany	Slovenia	Switzerland			
CFL	Passenger	3	Luxembourg	France	Germany				
CFL cargo	Freight	3	Luxembourg	Belgium	France				
Crossrail Benelux	Freight	3	Belgium	Germany	The Netherlands				
DB Cargo Germany	Freight	3	Germany	Austria	Switzerland				
DB Fernverkehr	Passenger	3	Germany	Austria	Switzerland				
Lineas Group	Freight	3	Belgium	France	The Netherlands				
ÖBB-Personenverkehr	Passenger	3	Austria	Germany	Switzerland				
Railtraxx (BVBA)	Freight	3	Belgium	Germany	The Netherlands				
Rotterdam Rail Feeding	Freight	3	The Netherlands	Belgium	Germany				
SJ AB	Passenger	3	Sweden	Denmark	Norway				
SŽ - Tovorni promet	Freight	3	Slovenia	Austria	Croatia				
SNCF Mobilités	Fr. & Pass.	3	France	Belgium	Spain				
2 other Fr. & Pass. companies	Fr. & Pass.	2							
10 other Passenger companies	Passenger	2							
56 other Freight companies	Freight	2							

Source ERADIS database, European Railway Agency (2017) https://eradis.era.europa.eu/safety_docs/scert/crossborder_operations.aspx The full list of the 84 companies is attached as Appendix 4.

There are therefore 84 companies operating cross-border traffic with several safety certificates:

- 66 freight companies (78%), 10 companies with 3 to 7 certificates, and 56 companies with 2,
- 15 passenger companies (17%), 5 companies with 3 or 4 certificates, and 10 companies with 2,
- 3 freight and passenger companies (5%), 1 company with 3 certificates and 2 other with 2.

However, these data do not exactly correspond to the scope of the Agreement. Indeed, regional and local international traffic do not enter into the compulsory application or, on the contrary, companies can operate traffic abroad without a foreign certificate:

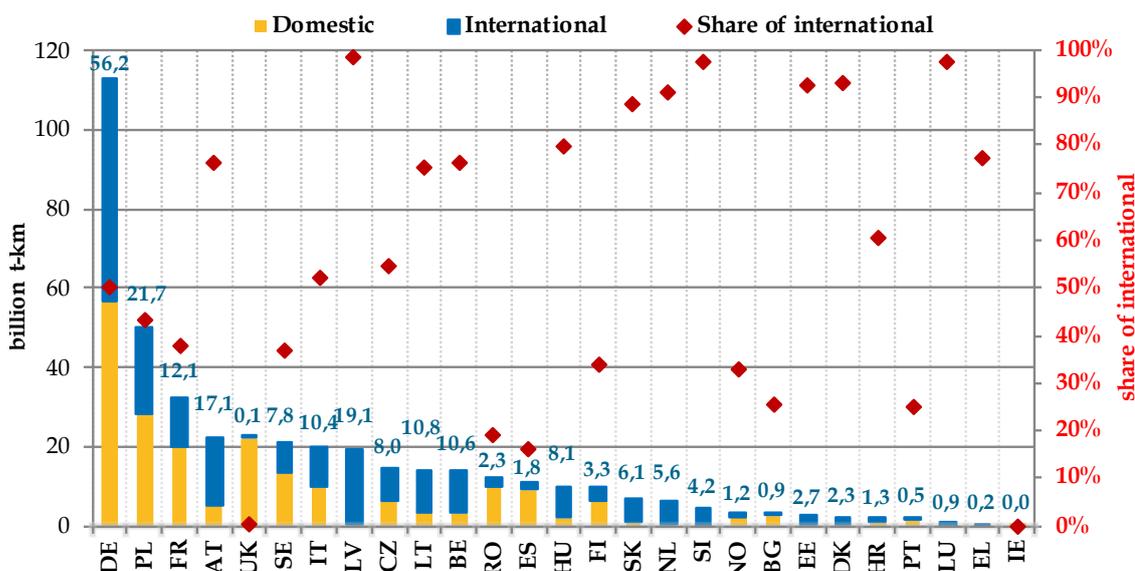
- The cross-border service is a local or regional passenger traffic, or is a freight traffic travelling no further than 15km beyond the border. The application of the Agreement is then optional for the cross-border staff engaged in these services.
- The international traffic is operated by a company that relies on a local partner's or subsidiary's safety certificate or holds another type of authorisation to operate abroad. The cross-border services can then be operated by several companies only with domestic safety certificates. But the staff can be interoperable and in the scope of the Agreement.

2.2. Rail freight traffic which fluctuates strongly and whose international share exceeds 50%

In 2014, more than 1.7 billion tonnes of freight was carried on EU railways. Rail freight outputs (t-km), while still being 7% lower than the 2007 peak levels, recovered 14% between 2009 and 2014 according to RMMS data, reaching 417.6 billion t-km and showing an average increase of 3% per year.

Overall, more than 50% of traffic (in terms of t-km) in 2014 was cross-border, giving rail freight a much stronger European dimension than passenger traffic (6%).

Graph 3. Freight traffic volumes (t-km) by Member State, share of international traffic (%) in 2014



Source: RMMS and Eurostat data

As Graph 3 reveals, countries with the highest absolute freight volumes in 2014 are Germany, Poland and France. But the highest international volumes are observed in Germany, Poland, Latvia, Austria and France.

In small Member States, such as Latvia, the Netherlands, Estonia, Slovenia, Denmark and Luxembourg freight traffic volumes are little but the international share exceeds 90%. And the international share is over 70% in Austria, Lithuania and Belgium.

Since 2009 (the low-point in the economic crisis), in Spain, Luxembourg and Denmark the average annual increase has been close to 10% or more. Only in Croatia, Slovakia, Greece and Estonia has there been a further overall decline.

In order to reinforce the competitiveness of rail freight and stimulate a modal shift towards rail, 9 rail freight corridors (RFCs) have been set-up in accordance to Regulation 913/2010, as shown in the map in Appendix 4. One key feature of the RFCs, whose infrastructure is shaped according to market needs, is the creation of a corridor “one-stop-shops” (C-OSS), through which operators are able to request an international train path, instead of dealing with different national authorities. Traffic management procedures should also be harmonised along the RFC

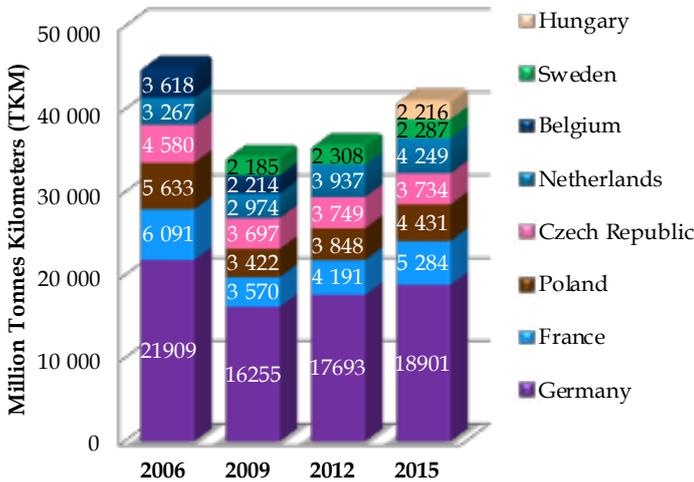
Each corridor has tracks in several countries:

1. Rhine-Alpine Corridor: the Netherlands, Belgium, Germany and Italy
2. North Sea-Mediterranean Corridor: the Netherlands, Belgium, France, Luxembourg
3. ScanMed Corridor: Sweden, Denmark, Germany, Austria and Italy
4. Atlantic Corridor: Portugal, Spain and France
5. Baltic-Adriatic Corridor: Poland, Czech Republic, Slovakia, Austria, Italy and Slovenia
6. Mediterranean Corridor: Spain, France, Italy, Slovenia and Hungary
7. Orient Corridor: Czech Republic, Austria, Slovakia, Hungary, Romania, Bulgaria and Greece
8. North Sea-Baltic Corridor: Netherlands, Belgium, Germany, Poland and Lithuania
9. Czech-Slovak Corridor: Czech Republic and Slovakia

Graph 4. Overview of the main European destinations for cross-border rail freight services from Europe

We focused on the main destination countries, where more than 2,000 million TKM were transported during the reporting year. **Note:** Data not available for Belgium in 2012 and 2014

After a sharp decline between 2006 and 2009, the gradual increase between 2009 and 2015 can be mainly explained by the growth in freight transport in countries which had a less significant weight on this market.



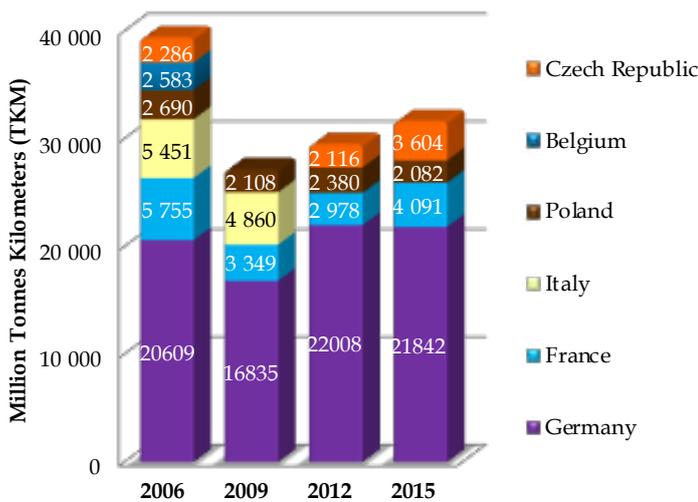
For instance, Sweden in 2009, and Hungary in 2015, joined the group of main destination countries represented in this chart. The increase in cross-border freight rail services going to Slovenia must be underlined since this flow rose from 1,026 million TKM in 2006 to 1,650 in 2015.

Source: Eurostat data base, International annual railway transport from the reporting country to the loading country

Graph 5: Overview of the main European origins for cross-border rail freight services going to Europe

Note: Data not available for Belgium and Italy, in 2012 and 2015

A sharper contrast can be seen for main freight departure countries: their development seems stable since the gap between 2006 and 2015 data is limited. As an overall trend, however, we see that they all suffered from a decline in departure flows around 2009.



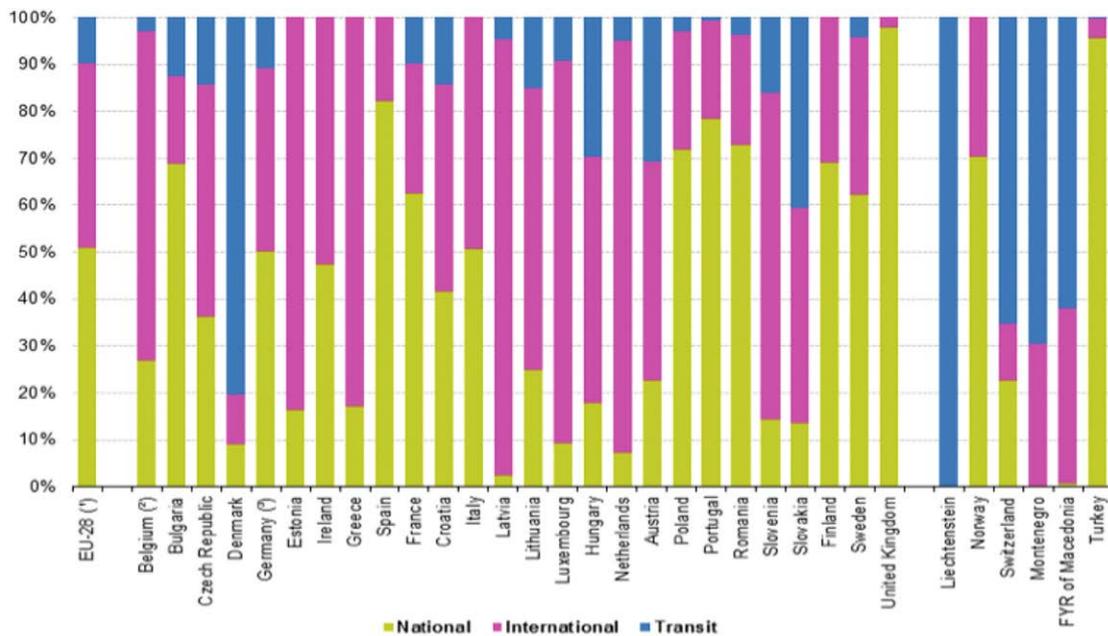
This drop was so significant for Belgium (1,533 million TKM) and Czech Republic (1,835 million TKM), even though they are not included in the main countries of origin, from where more than 2,000 million TKM were transported during 2009.

Source: Eurostat data base, International annual railway transport from the loading country to the reporting country

The highest volumes of freight traffic are in Germany, France, Czech Republic and Poland.

50% of freight traffic is cross-border: 40% international and 10% transit

Graph 6: Rail transport of goods by country and type of transport in 2015
(% of total in TKM performed)



Source: Eurostat, Rail transport statistics – Belgium 2011 data, Germany 2014 data

According to the previous chart, cross-border freight transport seems to have significant impact on European railway transport. Actually, in 2015, 50% of European rail freight flows involved cross-border transport services. On average, 40% were international transport and 10% were only transit.

Very few countries had more than 30% of their railway tracks used for freight flows for transit: Denmark (80% of flows) and Switzerland (65%), Slovakia (42%), Austria and Hungary (approximately 30%).

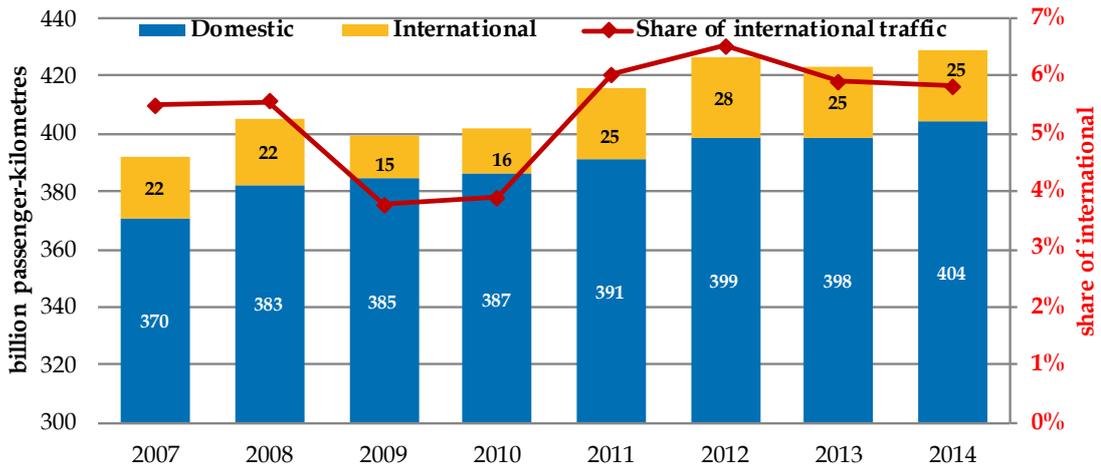
By contrast, in the United Kingdom more than 96% of rail freight flows were for national transport services, 83% in Spain and 78% in Portugal. International transport represented at least half of rail freight transport flows for 11 EU Member States. For instance, in the Czech Republic, 50% of rail freight transport was international, nearly 52% in Ireland and 62% in Lithuania.

For five European Member States, international traffic even accounted for more than two-thirds of their flows: Belgium and Slovenia (nearly 70%); Estonia, Luxembourg and Greece (nearly 82%); and for the Netherlands and Latvia (90% and 95% respectively of their flows).

2.3 Less than 6% of rail passenger traffic is international; more important in Western Europe and stimulated by the development of high-speed lines

“In 2014, about 9.4 billion rail trips were made in EU countries. According to RMMS data, over the five years to 2014, passenger rail demand in the EU increased by 30 billion p-km to 429 billion. This represents an average growth rate of 1.5% per annum. About 6% of passenger traffic is international.” (Source: Fifth report on rail market monitoring developments, Commission staff working document, 2016).

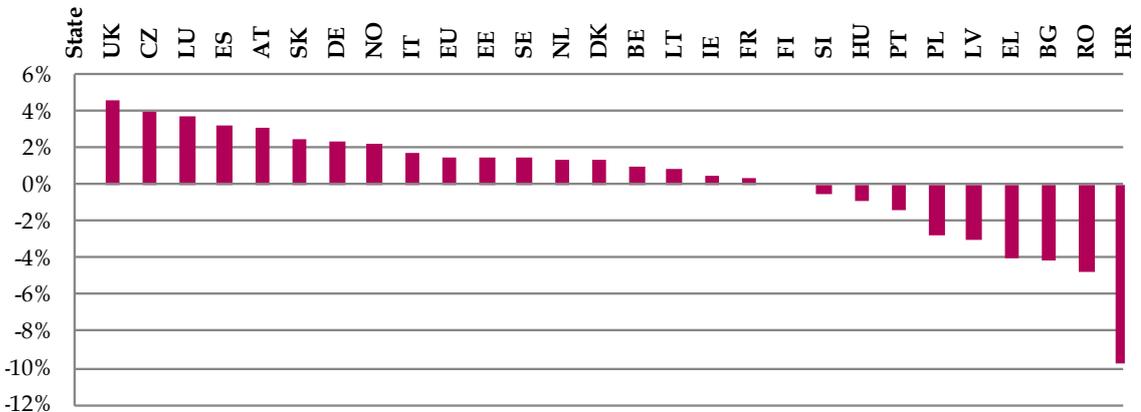
Graph 7: Evolution of rail passenger volume from 2007 to 2014 (Note: the left scale starts at 300)



Source: RMMS except GR, ES, IE where a mixture of Eurostat data and estimates is used

Domestic travel, measured in passenger kilometres, has increased consistently, about 9% between 2007 and 2014. The volume and the share of international traffic have grown less steadily.

Graph 8: Passenger traffic by Member State; average change in volumes between 2009 and 2014 (%)



Source: p-km RMMS, except IE and ES (Eurostat) and t-km RMMS, except IE, EL, ES and RO (Eurostat), train-km 2009 UIC, 2014 Eurostat, except BE, DK, FR, NL (IRG Rail 4th Annual Market Monitoring Report) and PT (an estimate).

Since 2009, an increase of passenger traffic can be seen in Western European countries with the highest income, whereas there is a decrease in eastern EU Member States, except the Czech Republic. The largest relative increases in p-km over the last 5 years have been in the United Kingdom, the Czech Republic and Luxembourg. An average decrease of 4% or more per year has taken place in Croatia, Romania, Bulgaria and Greece.

Cross-border rail passenger transport: regional or high-speed long-distance flows

Graph 9 below shows that in millions of passenger-kilometres, the highest volumes of passenger rail traffic are in France and Germany. The volumes are also high in United Kingdom, Belgium and Czech Republic. But the cross-border traffic is often low in Eastern Europe.

In 2016, the share of international passenger rail traffic was only 5.3% for EU28. But this share reaches 14% in Czech Republic, 12% in France and Belgium and up to 30% in Luxembourg. But a significant proportion of these international flows corresponded to local or regional cross-border passenger traffic.

Graph 9: International and national passenger traffic per Member States in 2016 (in Millions of passenger-km)

Country	International	National	TOTAL	International in %
France	10 810	79 514	90 324	12%
Germany	4 700	90 766	95 466	5%
United Kingdom	1 837	66 173	68 010	3%
Belgium (2011)	1 268	9 231	10 499	12%
Czech Republic	1 229	7 509	8 738	14%
Switzerland	919	18 682	19 601	5%
Netherlands (2007)	803	15 085	15 888	5%
Italy (2015)	621	50 499	51 120	1%
Sweden	467	12 333	12 800	4%
Austria	424	11 598	12 022	4%
Denmark (2015)	408	6 099	6 507	6%
Hungary (2014)	345	7 365	7 710	4%
Poland	277	18 477	18 754	1%
Spain	183	26 349	26 532	1%
Luxembourg	125	292	417	30%
Portugal	120	4 146	4 266	3%
Finland	117	3 751	3 868	3%
Slovakia	101	3 383	3 484	3%
Ireland (2015)	57	1 861	1 918	3%
Norway	51	3 644	3 695	1%
Slovenia	46	565	611	8%
Latvia	39	546	585	7%
Romania	35	4 696	4 731	1%
Croatia	27	799	826	3%
Estonia	19	297	316	6%
Bulgaria	14	1 441	1 455	1%
Lithuania	13	267	280	5%
Greece	2	1 190	1 192	0,2%

Source: Eurostat

In thousands of passengers, the ranking of countries from highest to lowest is quite different: France, United Kingdom, Belgium, Sweden, Denmark, Germany, Netherlands, Switzerland, Luxembourg and the Czech Republic. But recent data are lacking because several countries do not communicate their data anymore.

Since high-speed operators have taken over most international passenger services, Europe has become more accessible by train for cross-border travellers. Conversely, the number of sleeper trains has decreased.

Two main operators share most of the significant cross border network: Deutsche Bahn (DB) and the Société Nationale des Chemins de Fer français (SNCF). In addition, SNCF operates two subsidiaries specialising in high-speed international traffic: Eurostar and THI Factory (Thalys).

2.4 Cross-border traffic and organisation in the surveyed companies

Graphs 10 & 11: Organisation of international traffic in the surveyed companies (Freight and Passenger)

Name of company Freight	Nb of international freight trains/ week	Part of cross- b. mobile staff	Categories of cross-b mobile staff	b. Several safety certificates	d1. Staff employed along the entire route	Change of staff at the border	d3. Change of staff abroad	Orga. Freight traffic	Provisions for cross-b staff
Captrain Italia, ITA	0	None	None	-	-	-	-	None	NO
HectorRail, DNK	< 100	None	None	YES	NO	Always	NO	Mixed own & Part/Sub.	Yes
TX Logistik, ITA	< 100	None	None	YES	NO	Always	NO	Mixed own & Part/Sub.	NO
Renfe Mercancias, ESP	< 100	0% to 5%	Driver	YES	YES	Sometimes	NO	Mixed own & Part/Sub.	Yes
DB Cargo, GBR	< 100	0% to 5%	Driver	NO	NO	Always	NO	Part/ Sub only	Yes
TAGAB, SWE	< 100	20% to 50%	Driver	NO	YES	Never	NO	Mixed own & Part/Sub.	Yes
BRC, BRG	< 100	20% to 50%	Driver	NO	NO	Always	NO	Part/ Sub only	Yes
HectorRail, SWE	< 100	20% to 50%	Driver	NO	YES	Sometimes	YES	Part/Sub. only	Yes
Mercitalia Modane, ITA	< 100	100%	Driver	YES	YES	Sometimes	YES	Own trains only	NO
Captrain, DEU	100 to 500	None	None	NO	NO	Always	NO	Part/Sub. only	NO
ITL, DEU	100 to 500	None	None	NO	NO	Always	NO	Part/Sub. only	NO
TX Logistik, DEU	100 to 500	20% to 50%	Driver	YES	YES	Sometimes	YES	Own trains only	Yes
DB Cargo, NLD	100 to 500	20% to 50%	Driver	YES	YES	Never	YES	Mixed own & Part/Sub.	Yes
Lineas, BEL	100 to 500	20% to 50%	Driver	YES	YES	Sometimes	YES	Mixed own & Part/Sub.	Yes
CFL Cargo, LUX	100 to 500	55% to 95%	Driver	YES	YES	Never	YES	Mixed own & Part/Sub.	Yes
DB Cargo, DNK	100 to 500	100%	Driver	YES	NO	Sometimes	YES	Mixed own & Part/Sub.	Yes
ÖBB-Produkt., AUT*	> 500	0% to 5%	Driver	na	YES	Sometimes	YES	Mixed own & Part/Sub.	Yes*
SBB, CHE	> 500	< 5%	Driver	NO	na	Sometimes	YES	Mixed own & Part/Sub.	Out of Directive
SZ, SVN	> 500	< 5%	Driver	YES	YES	Never	NO	Own trains only	Yes
ZSSK Cargo, SVK	> 500	< 5%	Driver	YES	YES	Never	YES	Mixed own & Part/Sub.	Yes
SNCF, FRA	> 500	5% to 19%	Driver	YES	NO	Sometimes	YES	Mixed own & Part/Sub.	Yes
DB Cargo, DEU	> 500	5% to 19%	Driver	YES	YES	Sometimes	YES	Mixed own & Part/Sub.	Yes
ČD Cargo, CZE	> 500	5% to 19%	Driver	YES	YES	Sometimes	YES	Mixed own & Part/Sub.	Yes
PKP Cargo, POL	?	< 5%	Driver	YES	YES	Sometimes	na	Own trains only	Yes
Green Cargo, NOR	?	5% to 19%	Driver	NO	YES	Never	YES	Part/Sub. only	Yes
CargoNet, NOR	?	20% to 50%	Driver	YES	YES	Never	YES	Mixed own & Part/Sub.	Yes
LKAB, NOR	?	100%	Driver	NO	YES	Never	NO	Part/Sub. only	Yes
Green Cargo, SWE	?	?	?	na	na	Never	YES	?	Yes

(*) Specific provisions for cross-border staff but not considered as interoperable according to Austrian Law

Name of company Passenger	Nb of international passenger trains/ week	Part of cross- b. mobile staff	Categories of cross-b. mobile staff	b. Several safety certificates	d1. Staff employed along entire route	Change of staff at the border	d3. Change of staff abroad	Orga. Passenger traffic	Provisions for cross-b staff
SZ, SVN	< 100	None	None	NO	NO	Always	NO	Part/Sub. only	NO
Renfe Viajeros, ESP	< 100	< 5%	Driver	YES	YES	Sometimes	NO	Mixed own & Part/Sub.	Yes
NSB, NOR	< 100	< 5%	Driver + TM	YES	YES	Sometimes	NO	Mixed own & Part/Sub.	Yes
CP, PRT	< 100	< 5%	Drv	YES	YES	Never	YES	Regional trains only	Yes
SJAB, SWE	< 100	5% to 19%	Driver + TM	YES	YES	Never	NO	Own trains only	Yes
SJ Norrlandstg, SWE	< 100	20% to 50%	Driver + TM	na	na	?	na	Part/Sub. only	Yes
CFL, LUX	100 to 1000	None	None	YES	YES	Never	NO	Regional trains only	Yes
Trenitalia, ITA	100 to 1000	None	None	NO	NO	Always	NO	Part/Sub. only	NO
MAV-START, HUN	100 to 1000	< 5%	Other	NO	YES	Sometimes	NO	Part/Sub. only	Yes
HZPP, HRV	100 to 1000	< 5%	Other	NO	YES	Sometimes	NO	Part/Sub. only	Yes
NS, NLD	100 to 1000	< 5%	Driver + TM	NO	YES	Never	YES	Part/Sub. only	Yes
GYSEV, HUN	100 to 1000	5% to 19%	Driver + TM	na	na	Never	na	Regional trains only	Yes
DSB, DNK	100 to 1000	5% to 19%	Driver + TM	-	YES	Sometimes	NO	Part/Sub. only	Yes
Eurostar, GBR	100 to 1000	100%	Driver + TM	YES	YES	Never	NO	Own trains only	Yes
THI Factory, BEL	100 to 1000	100%	Driver + TM	YES	YES	Never	YES	Mixed own & Part/Sub.	Yes
ÖBB-Personen., AUT*	> 1000	0% to 5%	TM	na	YES	Sometimes	YES	Mixed own & Part/Sub.	Yes*
ÖBB-Produkt., AUT*	> 1000	0% to 5%	Driver	na	YES	Sometimes	YES	Mixed own & Part/Sub.	Yes*
ZSSK, SVK	> 1000	< 5%	Driver	NO	NO	Sometimes	NO	Part/Sub. only	Yes
SNCF, FRA	> 1000	5% to 19%	Driver + TM	NO	YES	Sometimes	NO	Part/Sub. only	Yes
České Dráhy, CZE	> 1000	5% to 19%	Driver + TM	NO	YES	Sometimes	YES	Part/Sub. only	Yes
DB Fernverkehr, DEU	> 1000	5% to 19%	Driver + TM + Oth	YES	YES	Sometimes	YES	Mixed own & Part/Sub.	Yes
SNCF/NMBS, BEL	> 1000	20% to 50%	Driver + TM	NO	YES	Sometimes	YES	Part/Sub. only	Yes
SBB, CHE	?	< 5%	Driver	YES	YES	Sometimes	na	Mixed own & Part/Sub.	Out of Directive

(*) Specific provisions for cross-border staff but not considered as interoperable according to Austrian Law

Source: Questionnaires RMW project 2017

The previous tables summarise the main information collected with the survey for Freight or Passenger activities. ('?' and 'na' mean no answer)

- 'Nb of international trains/ week': number of international freight or passenger trains per week
- 'Part of cross-border mobile staff': % of interoperable cross-border mobile staff on the total number of mobile staff
- 'Categories of cross-border mobile staff': categories of staff considered as part of the 'train crew' assigned to interoperable cross-border services (Driver/ Train Manager/ Other staff/ None)
- 'Several safety certificates': the company also holds foreign safety certificate(s) to operate in neighbouring countries (Yes/ No)
- 'Staff employed along entire route': the company staff is cross-border and employed along the entire route (Yes/ No)
- 'Change of staff at the border': for cross-border services there is a change of company staff at the border (Never/ Sometimes/ Always)
- 'Change of staff abroad': for cross-border services there is a change of company staff abroad (Yes/ No)
- 'Organisation of traffic': international transport is organised with 'Own' company means; with 'Partners/ Subsidiaries' or other type of authorisation only; with 'Mixed own means and Partners/ Subsidiaries'. International services are 'Regional trains only' without long-distance trains.
- 'Provisions for cross-border staff': specific provisions are in force in the company for staff engaged in interoperable cross-border services (Yes/ No)
In some companies, however, such provisions are not applied in practice, since there is no staff falling within the scope of application.

28 companies with Freight activities: average of 500 cross-border trains/ week operated with various organisations, 25% of traffic and 6% of mobile staff (train drivers) are international

28 companies in the survey have freight activities. But the information collected for freight is less than for passenger. For a third of freight companies questionnaires have not provided enough information about staff, activities or organisation to draw a comparison with the others; for 7 companies questionnaires are from both CER and ETF members. For 10 companies questionnaires are solely from ETF members and 11 solely from CER members.

Most companies, operating international freight traffic, are dedicated to freight (Cargo operators). Five companies have both freight and passenger activities: HectorRail SWE, ÖBB-Produktion AUT, SBB CHE, SNCF FRA and SZ-SVN.

For five countries, there are several freight companies: 4 companies in Germany, 3 companies in Italy, Norway and Sweden, and 2 in Denmark. The number of freight train operators has increased with the opening of the rail market.

Several railway freight undertakings have subsidiaries in several countries: DB Cargo, SNCF with Captrain and ITL, Mercitalia and TX Logistik, Green Cargo and HectorRail. All of these groups were founded by incumbents except HectorRail.

22 companies operate an average of 500 international freight trains per week. This average is smaller than that for passenger traffic (5%). But this share of international freight traffic represents a larger share of their total freight traffic (25%). This share, as reported by respondents who provided data on their company, is far below the European average (above 50%) mentioned above.

A quarter of companies operate less than 100 international freight trains per week. Another quarter declared between 100 and 500 international trains per week. And also a quarter

manages more than 500 international trains per week. But for the last quarter we do not have the number of freight trains operated.

One company does not operate international traffic, Captrain Italia, and has no interoperable cross-border mobile staff. Four other companies have no cross-border staff but operate international trains, because they always change the train driver at the border.

All other 23 companies have interoperable cross-border mobile staff. For freight activities, cross-border staff are all locomotive drivers. That represents on average 6% of their total mobile staff.

For the vast majority of companies, interoperable mobile staff are much less than 50% of total mobile staff. In three companies all mobile staff are interoperable (100%): Mercitalia Modane ITA, DB Cargo DNK and LKAB NOR. And in CFL Cargo train drivers are mostly cross-border (>55%).

In the companies with the biggest level of international freight services (more than 500 trains per week) the proportion of interoperable staff is lower and never exceeds 20%.

For most freight companies drivers are interoperable and do not change at the border.

Many companies organise their international freight traffic in different ways, depending on borders, connections or even trains.

A third of freight companies never change their train driver at the border. Another third sometimes changes and sometimes not. Two freight companies have cross-border drivers who always change just after the border, no further than 15km: DB Cargo GBR after the Channel Tunnel and BRC BRG.

Four freight companies in the sample have no cross-border interoperable staff and have no specific provision for such staff. One company (HectorRail DNK) does not currently have cross-border staff but it already has specific provisions for these staff. DB Cargo GBR has cross-border drivers with specific provisions but their interoperability is limited to the Channel Tunnel. BRC BRG has cross-border staff with specific provision, but staff always changes at the border station.

The organisation of freight transport cannot be related to the number of international trains or to the proportion of cross-border staff. Half of companies operate in a mixed way, both with their own safety certificates and with partners or subsidiaries. A quarter of freight companies operate their international trains only with partners or subsidiaries, without having their own foreign safety certificate. And a small minority operate only their own trains, with their own foreign safety certificates: Mercitalia ITA, PKP Cargo POL, SZ SVN and TX Logistik DEU.

Finally the number of cross-border mobile freight staff is low compared to the number of international trains (on average one worker for five trains).

23 companies with Passenger activities: average of 900 cross-border trains/ week operated most of the time with partners or subsidiaries, 5% of international traffic and 8% of cross-border staff (train drivers and/ or train managers and/ or other staff).

For the 23 passenger surveyed companies, information is more complete than that from freight companies. For nearly all passenger companies, the questionnaire has given all information relating to mobile staff and activities, even if some information is missing about the organisation of some companies.

For these 23 companies, the information is more complete, often with answers from both CER and ETF members.

Generally, the survey collected questionnaires for only one company per country for international passenger traffic. There are two companies in four countries: Austria with two companies from the same group (ÖBB Personenverkehr and ÖBB Produktion), Belgium with the incumbent operator and a company for high-speed cross-border trains (SNCB/NMBS and THI Factory/Thalys), Hungary with the incumbent operator and a cross border company (MÁV-START and GYSEV), and Sweden with two companies from the same group (SJ AB and SJ Norrlandstag).

Some passenger companies are dedicated to long-distance traffic (DB Fernverkehr, Eurostar, THI Factory) and other companies operate only local or regional cross-border trains (CP PRT, CFL LUX, GYSEV HUN).

The average for international passenger trains per company reaches 900 per week. A third of companies operate more than 1000 international passenger trains per week. A large third operates between 100 and 1000 international trains per week. A bare third of companies operate less than 100 international trains per week.

But the share of cross-border passenger trains is limited to 5% of total traffic. The share of international traffic is nevertheless much higher in five companies: 100% for Eurostar and THI Factory, 50% for SZ, and 25% for GYSEV and DB Fernverkehr.

18 passenger companies have an average of 8% cross-border mobile staff. All mobile staff (100%) are interoperable in two companies (Eurostar and THI Factory) with a medium level of international traffic. In the other 16 companies, cross-border mobile workers always represent less than 35% of their total mobile staff, and for most companies under 10%.

Three companies do not have any cross-border mobile staff, whereas they operate a small or medium number of international trains. One operates only in regional cross-border traffic (CFL). In two companies, staff always changes at the border (Trenitalia, SZ). These companies have no specific provision for cross-border workers, except CFL.

The Directive 2005/47/EC clause 2.2. was implemented into Austrian law different to its original wording. According to the EU Directive, interoperable cross-border workers in the rail sector are defined as such if working for more than one hour "on a daily shift basis". According to Austrian law (§ 18f Arbeitszeitgesetz), an interoperable cross-border worker is working at least one hour "of his/her daily working time" in another country. Based on the definition in Austrian national law, the companies ÖBB-Personenverkehr and ÖBB-Produktion, who are running many international trains, do not have any interoperable cross-border workers. For the most part, national law however already ensures the treatment of the cross-border ÖBB workers in accordance with the Directive, except e.g. the provisions for weekly rest periods. To ensure the correct application of the Directive on national level, the adjustment of the Austrian Law is necessary.

The survey shows a great diversity across companies with regard to passenger train crew composition. In more than half the companies, the train crew is made up of train drivers and train managers or conductors. In a quarter of passenger companies, only train drivers are cross-border mobile staff. And in two companies (MÁV-START and HZPP), 'Other staff' (catering, sleeping coaches) is the only category of cross-border interoperable workers. But in most companies and countries these categories of 'other staff' are not considered interoperable mobile staff.

One company (DB Fernverkehr) considers that these three categories of staff are part of the train crew assigned to cross-border services: drivers, train managers and catering staff.

A majority of companies change their train crew at the border systematically or sometimes. Half of companies 'sometimes' change their staff at the border. They always operate with partners or subsidiaries. But two companies (SZ, Trenitalia) 'Always' change their staff at the border for their international trains. And a large third 'Never' change their staff at the border.

Most companies only operate their international passenger trains with partners or subsidiaries, without their own foreign safety certificates. Just less than half of the companies operate under a mixed model, with both their own certificate and with foreign partners or subsidiaries. Only two passenger companies operate all their international trains with their own foreign safety certificates (SJAB, Eurostar).

Finally the average for cross-border mobile staff per international passenger train is higher than for freight trains: two workers for five trains.

Companies operating in neighbouring countries with their own safety certificates are more numerous for freight traffic

Graph 12: Number of foreign certificates held by the surveyed companies for Freight and Passenger activities

Companies with foreign safety certificates	Nb of certificates	Country 1	Country 2	Country 3	Country 4	Country 5	Country 6
17 companies with foreign security certificates for freight traffic							
CargoNet, NOR	1	Sweden					
ZSSK Cargo, SVK	1	Hungary					
DB Cargo, NLD	1	Belgium					
D Cargo, CZE	1	Austria					
Mercitalia, ITA	1	France					
SNCF, FRA	1	Belgium					
Renfe Mercancias, ESP	1	France					
DB Cargo, DEU	2	Austria	Switzerland				
TX Logistik, ITA	2	Germany	Austria				
SZ, SVN	2	Austria	Croatia				
SBB, CHE	2	Germany	Italy				
DB Cargo, DNK	3	Sweden	Denmark	Germany			
HectorRail, DNK	3	Sweden	Denmark	Germany			
Lineas,BEL	4	France	Netherlands	Germany	Austria		
CFL Cargo, LUX	5	France	Germany	Belgium	Denmark	Sweden	
TX Logistik, DEU	6	Austria	Italy	Netherlands	Denmark	Sweden	Switzerland
PKP Cargo, POL	6	Netherlands	Czech rep.	Germany	Slovakia	Austria	Hungary
9 companies with foreign security certificates for passenger traffic							
CFL, LUX	1	Germany					
NSB, NOR	1	Sweden					
CP,PRT	1	Spain					
SBB, CHE	1	Germany					
THI Factory, BEL	1	France					
DB Fernverkehr, DEU	2	Austria	Switzerland				
SJAB, SWE	2	Norway	Denmark				
Renfe Pasajeros, ESP	3	France	Portugal				
Eurostar, GBR	2	France	Belgium				

Source: Questionnaires RMW project 2017

26 surveyed companies have foreign safety certificates to operate in neighbouring countries.

Most of them have one or two certificates, especially all passenger companies.

But 6 freight companies have more, and up to six certificates.

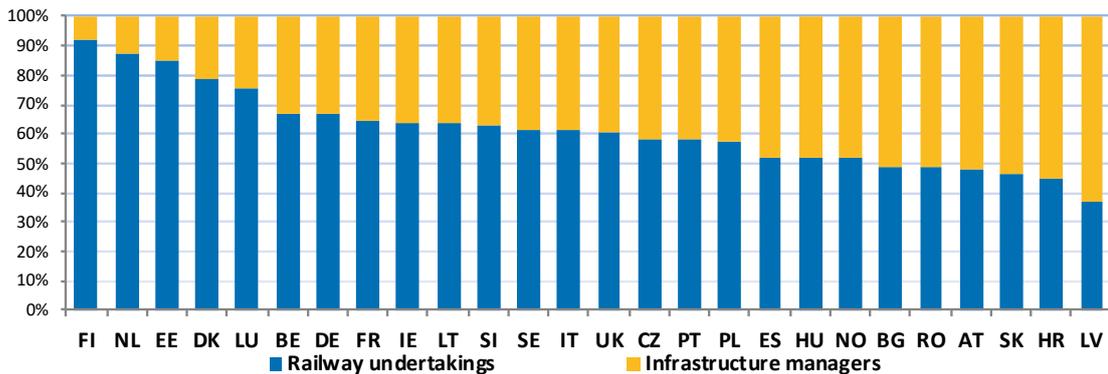
Other companies operate their international traffic relying on a partner's or subsidiary's safety certificate (refer to graphs 10 & 11).

3. EMPLOYMENT IN RAILWAY COMPANIES AND CROSS-BORDER STAFF

3.1 An initial overview of employment in railway companies in EU Member States

Based on the RMMS, about 900,000 people were employed either by railway undertakings (549 000) or infrastructure managers (357,000) at the end of 2014. In many Member States railway undertakings are among the largest national employers.

Graph 13: Share of labour force between infrastructure managers and railway undertakings (2014)

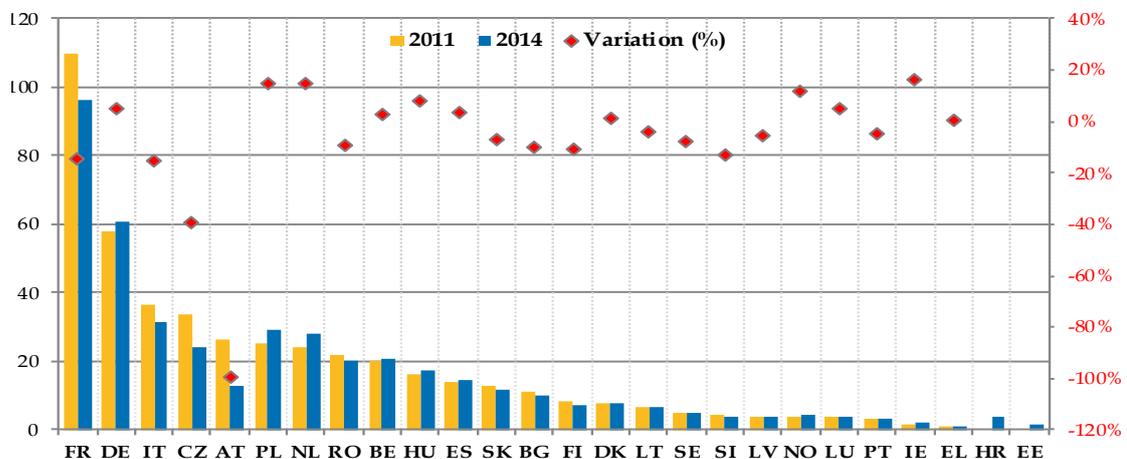


Source RMMS 2014 except for IE (data 2013 for RU& IMs) and BE (data 2013 for IMs).

Railway undertakings employ the highest share of the labour force compared to infrastructure managers with whom employment constantly decreased by 4% between 2011 and 2014.

As shown in the following graph, during recent years, many railway undertakings have experienced an overall decline in the number of employees, except in France and Slovenia, due in part to separation between the network and operations; and partly due to recruitment freezes associated to restructuring. However, in order to solve the problem of an ageing workforce in most companies, undertakings are tending to recruit again, also motivated by the impact of demographic change and an increasing number of passengers in some countries.

Graph 14: Staff employed in incumbent rail undertakings/ operators (2014, thousands)



Source: RMMS 2014 - UK 2011 and 2014, HR and EE 2011 not available. EL data 2012 and IE data 2013 for 2014. CZ 2014: whole CD group. DK 2014: includes DSB, Oresund, Private lines and Metro (Freight N/A). DE 2011: not including incumbent's IM and rail related facilities staff. EE 2014: includes Estonian Railways, GoRail, ELRON and Edelaraudtee. NL 2014: includes NS staff outside NL. SE 2014: SJ AB and Green Cargo AB. NO 2014: include NSB Persontog (NSB AS and Gjøvikbanen AS), Flytoget AS, CargoNet, Cargo Link, LKA

3.2 A difficult estimate of the number of cross-border mobile workers at European level

The scope of the Agreement concerns mobile workers engaged in interoperable cross-border services. They are defined as “any worker who is a member of a train crew, who is assigned to interoperable cross-border services...” (Refer to complete definition in the Glossary). The respondents have reported different professional categories of train staff:

- ‘Train drivers’ in charge of operating a traction unit
- ‘Train managers and conductors’ who accompany a train
- ‘Other on-board staff’, or auxiliary staff, with catering, technical, cleaning or sleeping coach functions

According to national or company rules and notions, these ‘other on-board staff’ are mostly not considered as part of the train crew, particularly when they are employed by a sub-contractor.

Another element that is part of the definition of workers concerned is the assignment to “interoperable cross-border services”. This implies that several factors have an impact on the applicability of the Agreement to the employees assigned to the service.

- A company can hold safety certificates to operate in neighbouring countries. In such case:
 - in freight and passenger trains, the cross-border train driver is interoperable
 - in passenger trains, the cross-border train manager or other staff are interoperable if they are considered by the company as a ‘member of the train crew’ and if they are ‘assigned to interoperable cross-border services for more than 1 hour on a daily shift basis’
 - all the company’s train crew, or part of it, changes at the border and is then not interoperable
- A company can rely on a local partner’s or subsidiary’s safety certificate or holds another type of authorisation to operate abroad, with different possible organisations:
 - all the company’s train crew, or part of it, changes at the border and is then not interoperable
 - all the company’s train crew, or part of it, is employed along the entire route or changes abroad and is then interoperable

But in the same company, production choices can be different according to the country or to the border connections, or even to the trains. These choices can concern all or part of the train crew.

Comments: An overall identification and counting of interoperable cross-border staff would require to take into account many variables connected to the organisation of the services.

Data concerning the number of employees active in interoperable cross-border services in the railway sector are not available from public resources.

An estimate of the number of cross-border drivers was given by the TNO report cited above. The following table gave detailed data for many countries. But the data are dated 2011 and many companies, operating international traffic, are missing. And this estimate only gives the number of train drivers.

Graph 15. Number of drivers in passenger and freight services (2011)

Country	Company	Number of drivers involved in cross-border transport
Austria (pass + freight)	OBB	475
Belgium (pass + freight)	SNCB	1,032
Czech Republic (pass)	CD Passengers	90
Denmark (pass)	DSB	132
Denmark (freight)	DB Schenker Denmark	70
France (pass)	SNCF	950
France (freight)	SNCF Fret, Captrain, DB Schenker France	200/300
Germany (pass)	DB ERS (long distance passenger transport)	350
Germany (freight)	Schenker Rail (350), SBB Cargo Deutschland, Captrain, ITL, HGK, TX Logistik, Rurtalbahn, Locon, CTL, CFL Cargo, Crossrail, ERS, and Mittelweserbahn	500 (best guess VDV*)
Hungary (pass)	Gysev	40
Ireland (pass)	Irish Rail	limited number
Italy (pass)	Trenitalia (0)	0
Italy (freight)	Trenitalia (17), DB Schenker, Linea Rail, SBB Cargo Italia, RTC, Veolia Cargo, Italia	17 + ?
Luxembourg		Confidential
Netherlands (pass)	NS International	50 + 180 (mixed)
Netherlands (freight)	DB Schenker NL (120), ERS (16), ACTS (32)	168
Poland (freight)	CTL	limited number
Portugal (pass)	CP	limited number
Portugal (freight)	Ibergargo	limited number
Slovakia (pass)	ZSKK	50
Spain (pass)	Renfe	limited number
Spain (freight)	Comsa	limited number
Sweden (pass + freight)	Swedish Railways and other railway undertakings	400/450
UK (pass)	Eurostar	160
Total		Appr. 5,000

* VDV - Association of German Transport Companies.

Source TNO on implementation and application of certain provisions of Directive 2005/47/EC (2011)

Comments: Captrain are freight subsidiaries of SNCF in foreign countries, not operating in France. ECR is the subsidiary of DB Cargo (formerly DB Schenker) in France. DB ERS that operated night trains has meanwhile ceased its operative business. Trenitalia has no more freight activities, Mercitalia Group is now the group of companies of the Ferrovie dello Stato Italiane that works in freight transports and logistics.

3.3 Characteristics of cross-border workers employed in the surveyed companies

The following analysis concerns only the sample of companies from the Rail Mobile Worker 2017 survey, previously described in the introduction.

Among these 47 surveyed companies, about 80% have interoperable cross-border mobile staff:

- 37 companies (80%) have such staff.
- 2 companies (ÖBB Produktion, ÖBB Personenverkehr) in Austria apply specific provisions for their cross-border staff, but they are not considered as interoperable according to Austrian national law.
- 9 companies have none.
- 1 company (Green Cargo, SWE) gave no information on cross-border mobile staff.

On average, interoperable staff represent less than 10% of total mobile staff: 9% in Freight companies and 7% in Passenger companies.

Graph 16: Distribution of interoperable cross-border mobile staff

Approximately 8000 cross-border interoperable mobile workers are employed in these 37 companies. And these staff are highly concentrated in a few companies:

- 60% of these staff work in only four companies (DB Fernverkehr, SNCF, SNCB/NMBS, České Dráhy), with more than 500 interoperable mobile staff in each.
- 9% of the cross-border staff are divided into 22 companies, with less than 100 interoperable workers in each.

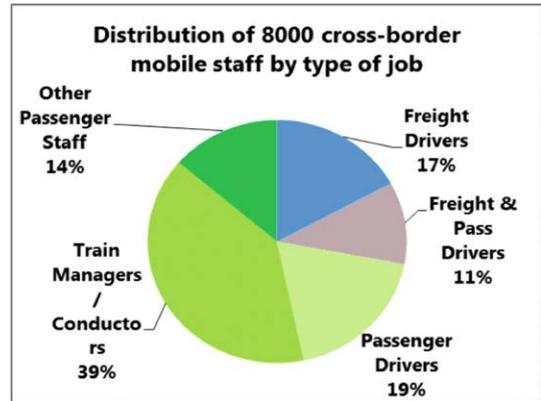
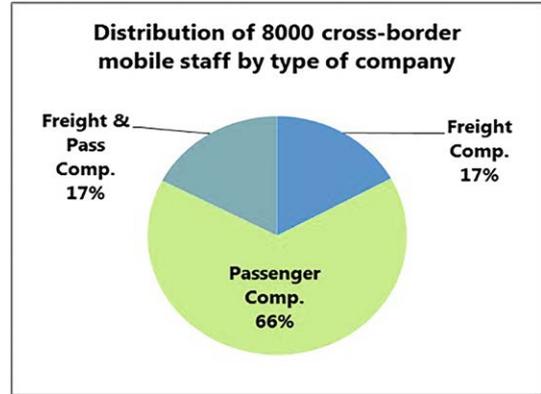
These 8000 staff work mainly on the passenger activities:

- 2/3rd are employed by Passenger companies (66%)
- 1/6th by mixed companies Passenger and Freight (17%)
- 1/6th by Freight companies (17%)

Train drivers account for almost half these workers:

- 47% are trains drivers, for freight and passenger activities
- 39% are train managers or conductors for passenger activities
- 14% are 'Other on-board staff' (staff on sleeping coaches, catering staff), but they only appear in three companies

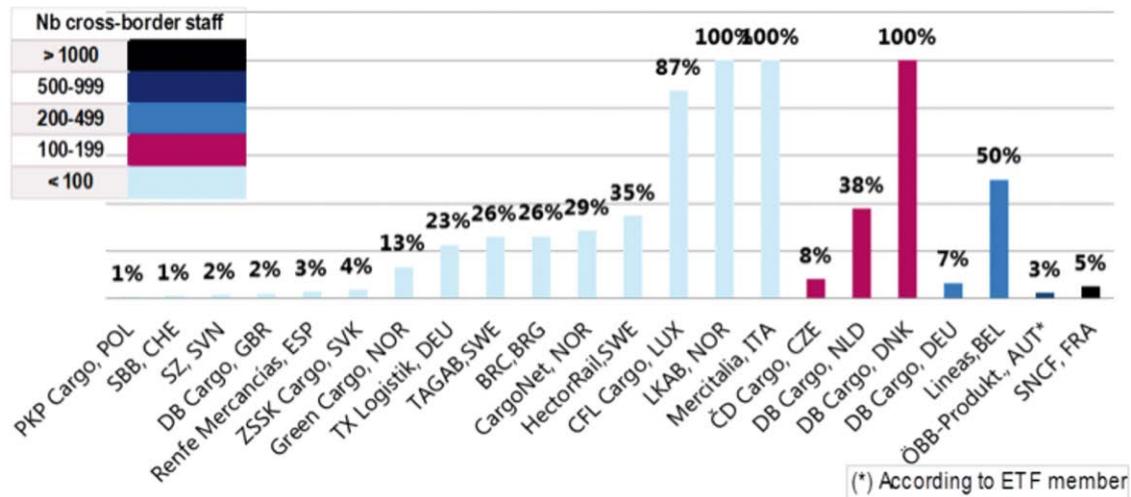
Total number of cross-border interop. staff	Number of Companies	% of 8000 staff
> 1000	3	51%
500-999	1	9%
200-499	6	21%
100-199	5	10%



Source: Questionnaires RMW project 2017

Freight companies often have few cross-border mobile staff (less than 100), but in half of the reporting companies they are over 25% of the total mobile staff.

Graph 17: Share of cross-border staff / total mobile staff in 22 Freight Companies



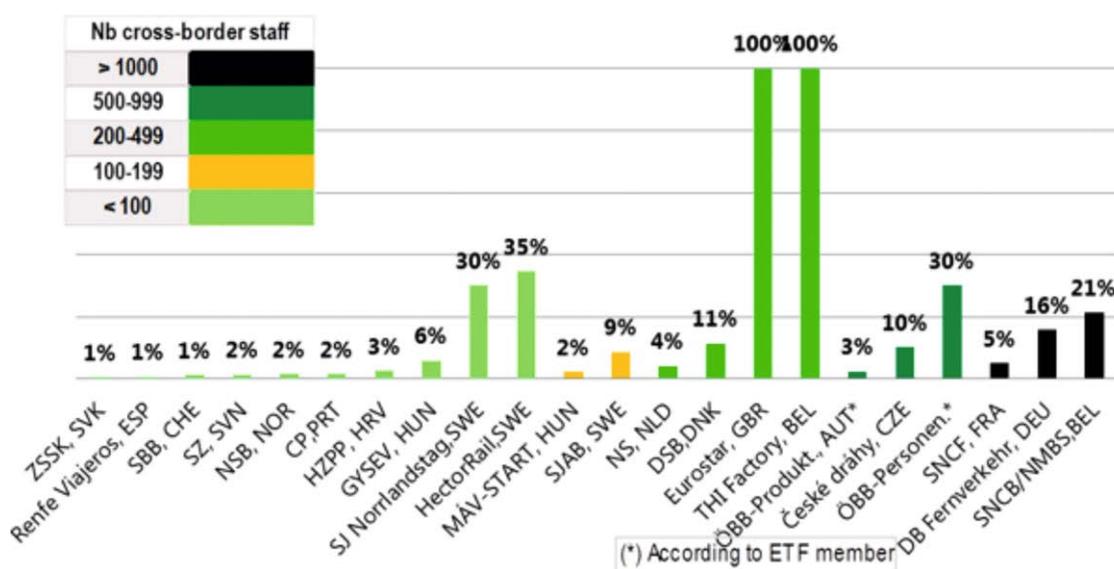
Source: Questionnaires RMW project 2017

In freight companies, the share of interoperable cross-border mobile staff (drivers) to the total number of drivers is on average of 6%:

- for a third of them, the proportion varies from 1% to 10%
- another third of companies have between 25% and 50% of their mobile drivers who are interoperable
- Four companies have exclusively cross-border mobile staff (87%-100%): DB Cargo DNK, Mercitalia Modane ITA, LKAB NOR and CFL Cargo LUX
- and five companies with international freight activities have no cross-border driver: Captrain-DEU, Captrain-ITA, HectorRail-DNK, ITL-DEU, TX Logistik-ITA.

Passenger companies have more cross-border staff but it is more often a very small proportion (less than 10%) of all mobile workers

Graph 18: Proportion of cross-border staff / total mobile staff in 22 Passenger Companies



Source: Questionnaires RMW project 2017

The proportion of interoperable cross-border mobile staff is a little higher (8%) for passenger companies:

- for more than a half of companies, the proportion varies from 1% to 10%
- more than a quarter have between 11% and 35% of cross-border staff
- two companies have exclusively cross-border mobile staff (100%): Eurostar GBR and THI Factory BEL
- and three companies do not have any: CFL LUX, SZ SVN, Trenitalia ITA.

4. COMPARATIVE ANALYSIS OF THE IMPLEMENTATION OF THE PROVISIONS OF THE AGREEMENT IN THE SURVEYED COMPANIES

4.1 The implementation of the clauses of the Agreement in the surveyed companies

The following analysis aims to assess how the European standards for the Agreement on the working conditions of mobile workers engaged in interoperable cross-border services are implemented in railway undertakings.

Concerning the main clauses of the Agreement, respondents to the questionnaire were asked to fill in tables with numbers for Freight and Passenger transport:

- with the questionnaire we have collected precise data for each category of workers: Freight Drivers, Passenger Drivers, Train-Managers/ conductors and Other on-board staff
- for each item, it is then possible to compare the provisions in force in each company for their interoperable cross-border mobile staff and Agreement standards

The graphs below compare the application of the Agreement provisions in the 39 companies that have provisions for their cross-border staff, for each box:

- **red** corresponds to a company provision **less favourable** than the Agreement
- **grey** when there is **no answer** (na) from the company for this provision **or** when it is **not regulated**
- **light blue** corresponds to a company provision **equal** to the Agreement
- **dark blue** corresponds to a company provision **more favourable** than the Agreement
- the **figure** inside the box is the total number of companies for the categories of workers represented (e.g. **50** Equal for Monitoring system means: 22 companies for freight drivers + 14 companies for passenger drivers + 12 companies for train managers + 2 companies for other on-board staff); the figure can be negative (-4) when the company provision is less favourable
 - for each provision, the **standard** required by the Agreement is specified in brackets in the key: *(30')* means 30 minutes, *(24h+12h)* means 24h weekly rest period plus 12h daily rest period, *(1/2)* means maximum of 1 consecutive rest away from home or of 2 if negotiated.

The 39 companies included in this analysis are the 37 companies having interoperable cross-border mobile staff and applying specific provisions to them, plus two other companies (HectorRail DNK, CFL LUX) which also have specific provisions for cross-border staff even if they do not currently have such staff.

The first graph below groups the results for all categories in all companies (39). And the next graphs detail these same results for each category of staff: Freight train drivers (22 companies), Passenger train drivers (18), Train managers or conductors (17) and Other on-board staff (4).

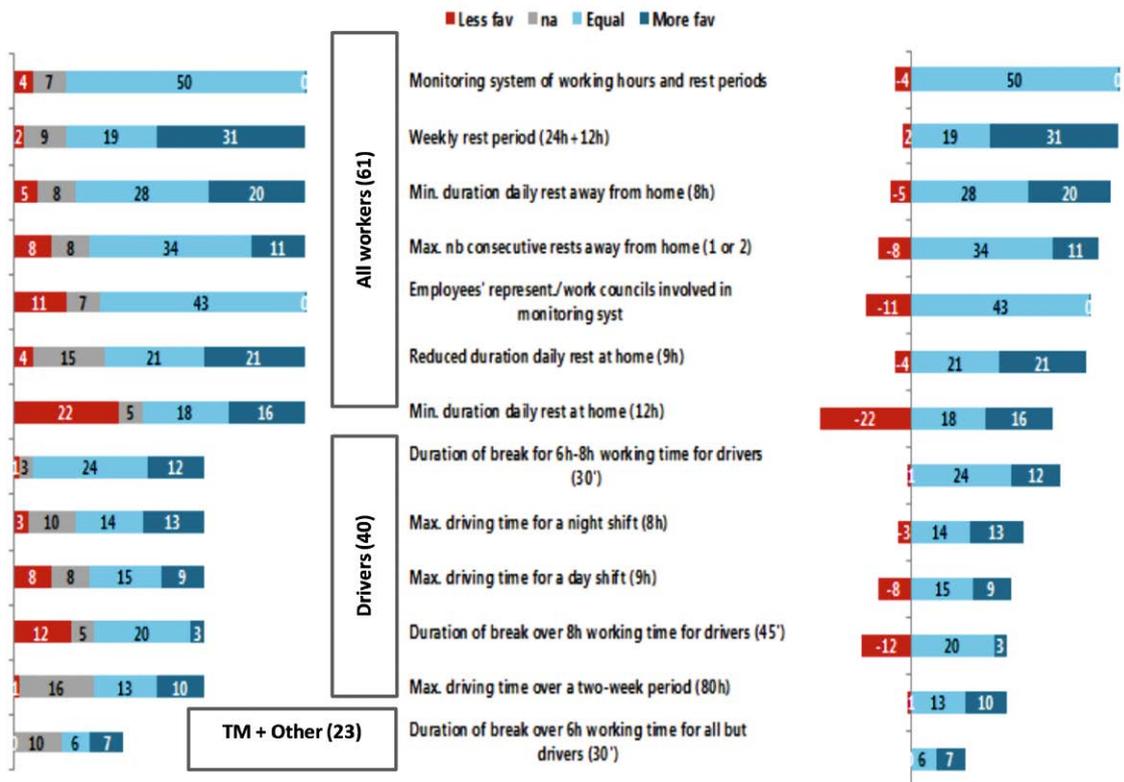
In the first graph, the total for each line represents the number of categories of personnel if they are represented in the companies:

- 'TM+Other (23)' means: 17 companies with Train Managers plus 4 with Other Staff;
- 'Drivers (40)' means 22 companies with Freight Train Drivers plus 18 with Passenger Train Drivers;
- 'All workers (61)' means: 21 + 40 for all categories of staff in all (39) companies

Comment: The analysis of the survey replies showed a significant number of cases in which respondents did not reply to questions about the implementation of certain provisions of the Agreement. Social partners found that this was a finding deserving further attention. Follow-up discussions in Steering Committee meetings and Workshops showed that a 'No Answer' (na) in a questionnaire concerning a provision could be motivated by different reasons:

- a certain definition or concept does not exist within the company (e.g. driving time, reduced duration daily rest at home...)
- a certain aspect is not regulated within the company (e.g. 80h of driving time over a two-week period...)
- the respondent did not have access to all the requested information
- the respondent could not answer given the sensitive nature of some of the answers

Graph 19: How each provision is equal to, more or less favourable compared to the Agreement for all cross-border workers (drivers, train managers and other staff) in 39 companies

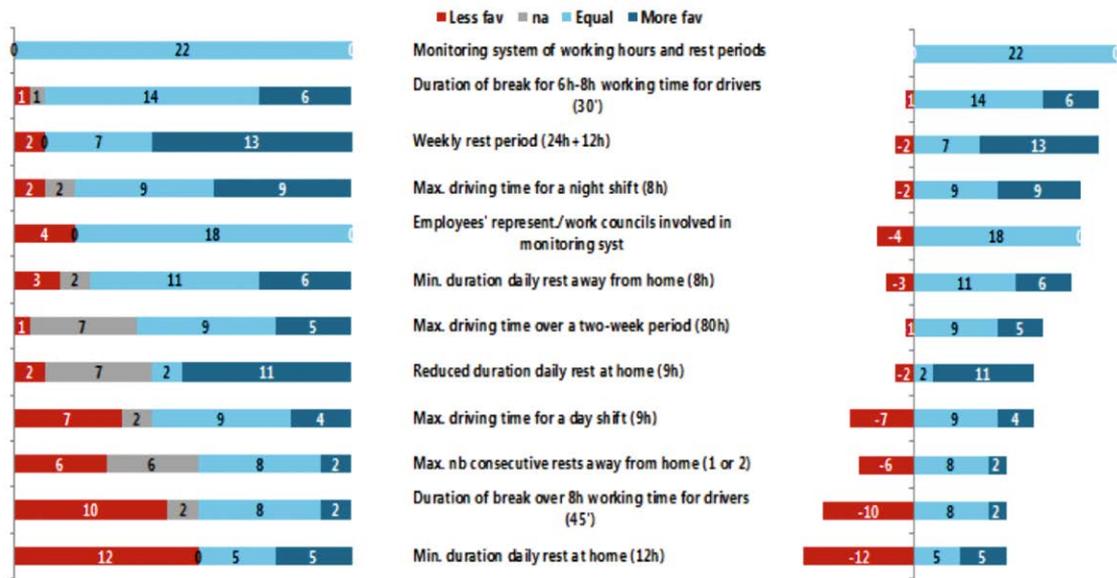


Source: Questionnaires RMW project 2017

Regarding the provisions which concern all staff (61 answers for 39 companies):

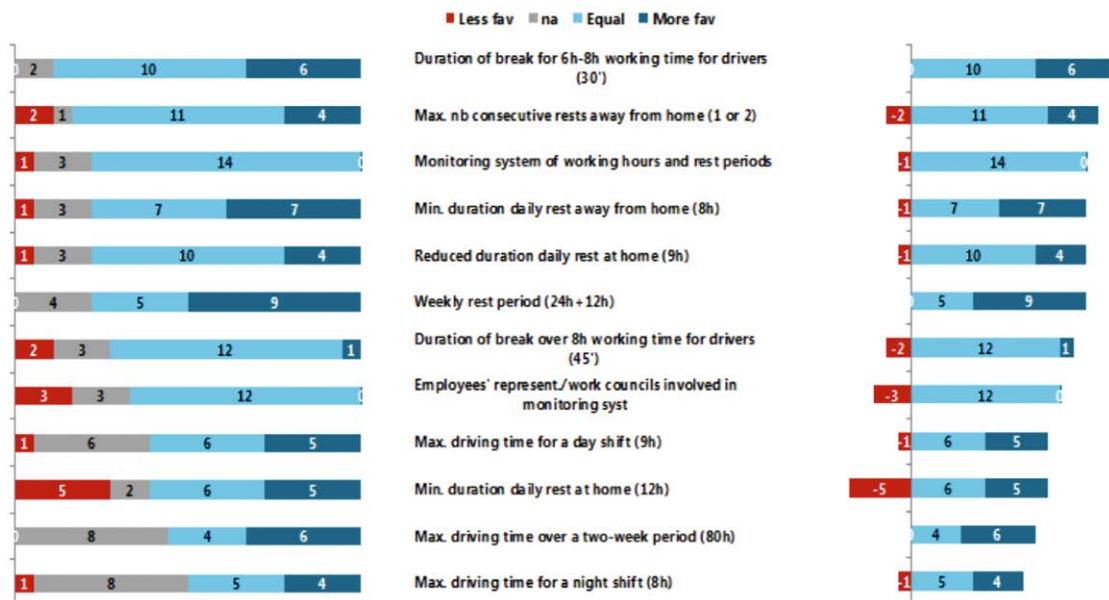
- According to the respondents, 11 companies have **all their provisions equal to or more favourable** than the Agreement. These 11 companies cover 75% of the cross-border interoperable staff of the survey (62% of cross-border train drivers, 87% of train managers or other cross-border staff).
- Overall, compared to the Agreement, **all different provisions** in force in the companies for the various jobs are: 24% more favourable, 47% equal to, 12% less favourable and 17% no answer or unregulated.
- **'Monitoring system for working hours and rest periods' and 'Employees' representatives/work councils involved in monitoring system'**: two provisions among the best applied in companies
 - over 80% of companies have a monitoring system, except one for passenger traffic and some companies that have not responded
 - in 75% of companies, employees' representatives or work councils are involved in this monitoring, except for four freight companies and four passenger ones
- The minimum **duration of rest away from home** is at least 8 hours in 80% of companies
 - in a few companies, this duration can last up to 10h or 11h
 - but some others have no minimum duration or a lower duration (7h to 5h)
- The **maximum number of consecutive rests away from home** is in accordance with the Agreement in 74% of companies
 - in 15% of companies the staff can spend no daily rest away from home
 - in 50% the maximum is one, and in 2 companies an agreement for a second rest away has been negotiated with Employees' representatives and is then Equal to the Agreement standard
 - but no answers for 5 companies and no restriction concerning this provision for 3 others
 - and for 8 companies provisions are less favourable: 7 reported two rests away without agreement, and 1 freight company stated a maximum of ten consecutive rests away from home
- A **weekly rest period** of 24h+12h (24h weekly rest plus 12h daily rest) is also comfortably fulfilled in 75% of companies
 - nearly half of companies grant a weekly rest period of more than 24h+12h (including daily rest period of 12h), often double rests, especially for train drivers
 - in some cases, the duration is not stated
 - the number and the duration of double rest periods were not asked for
 - concerning the minimum weekly rest periods in a year, many answers are not usable; this question was often misunderstood, perhaps because this provision is not regulated
- The **reduced duration of daily rest at home** (9h) is more used than the respect of the minimum duration (12h)
 - two thirds of companies have a reduced duration that is at least of 9h
 - for a few companies it can be reduced to 8h, 6h or even to no minimum rest
 - but the minimum duration of 12h for daily rest is in force in half of the companies
 - daily rest can often be limited to 11h, rarely to 8h, more often for drivers in freight activities

Graph 20: How each provision is equal to, more or less favourable compared to the Agreement for Freight Train Drivers in 22 companies



Source: Questionnaires RMW project 2017

Graph 21: How each provision is equal to, more or less favourable compared to the Agreement for Passenger Train Drivers in 18 companies



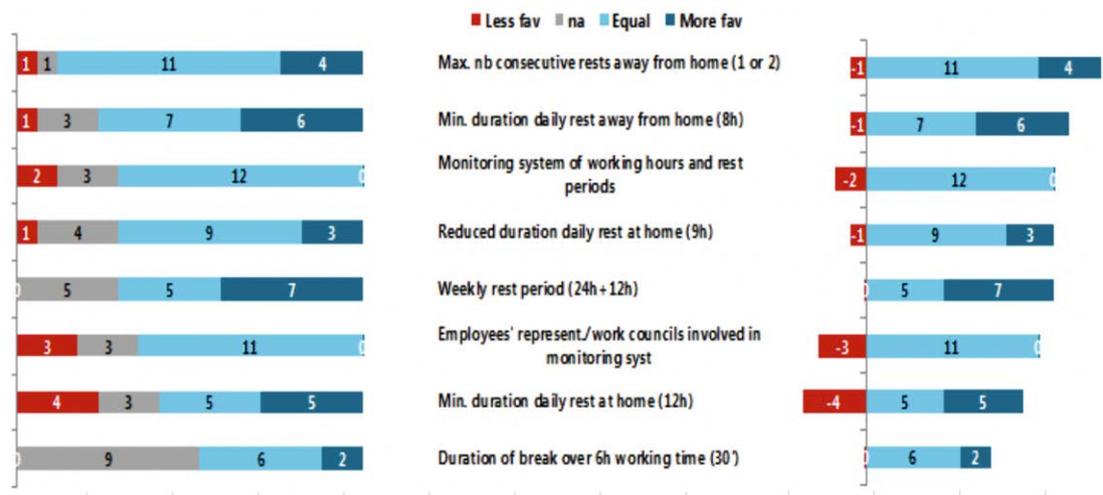
Source: Questionnaires RMW project 2017

Regarding the specific provisions for train drivers (31 companies)

- A **break** of 30 min is usually given to the drivers, but less often 45 min over 8h.
 - the 30 min break for 6h-8h working time is planned in 90% of companies.
 - in one freight company the break is only 20 min and three companies did not answer.
 - but the 45 min break over 8h working time is applied to a lesser extent in 60% of companies.
 - above 8h, this break is shorter in a half of freight companies (often 40 min, for a few 30 min, and 20 min for one company).
- Maximum **driving times** (for a day shift, for a night shift, over a two-week period) are applied by less than 60% of companies.
 - a quarter of companies do not regulate 'driving time' at all, especially in passenger activities, where they usually monitor only the working time.
 - the maximum driving time for a night shift exceeds 8h in three companies (two freight, one passenger) that allow 10h to 12h driving time at night.
 - a quarter of companies accept more than 9h driving time for a day shift.
 - half of freight companies have a maximum day-time driving time of 10h, and for one company up to 12h.
 - the driving time over a two-week period is not regulated by half of companies.

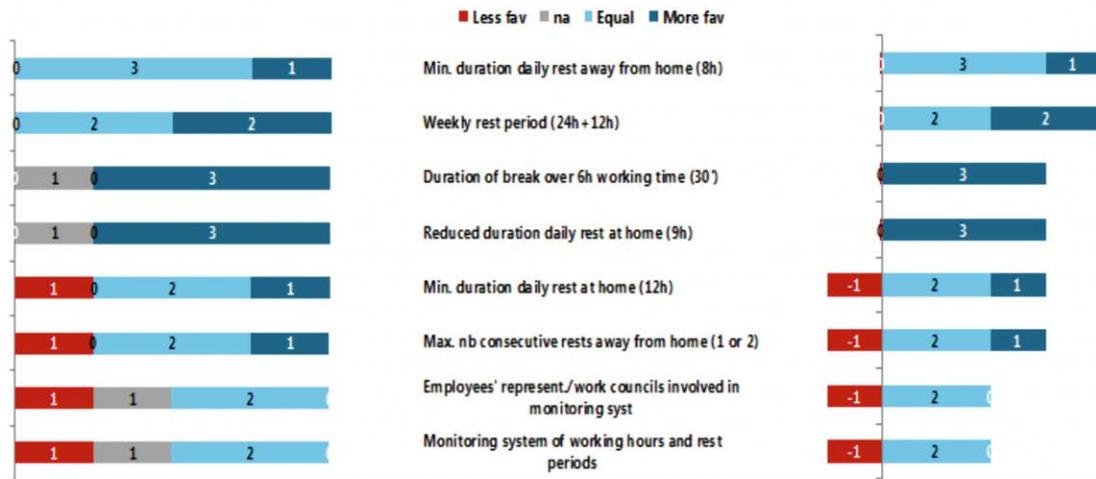
Comment: Overall, freight companies more often declare less favourable provisions (minimum duration of daily rest at home 55%, duration of break over 8h working time 45%, maximum driving time for a day shift 32%) than passenger companies.

Graph 22: How each provision is equal to, more or less favourable compared to the Agreement for Train Managers (passenger) of 17 companies



Source: Questionnaires RMW project 2017

Graph 23: How each provision is more or less favourable compared to the Agreement for Other on-board staff (passenger) in 4 companies



Source: Questionnaires RMW project 2017

Regarding the specific provision for train managers and other-on board staff (12 companies)

- For these passenger staff, the 30 min **break** beyond 6h of working time is not applied in half the cases
 - in half of companies, the break for these categories of staff is not answered or not regulated.
 - but in a quarter of passenger companies, the length of the break exceeds 30 min.

Additional questions on implementation

After these figures on the provisions, the questionnaire also asked some **additional questions** on implementation. The main results are for the surveyed railway undertakings:

- 70% of companies have **standards for accommodation** offered to staff resting away from home
 - 85% of passenger companies have standards but only 60% of freight companies.
 - 15% of companies have no accommodation standards and 15% did not answer.
- A third of passenger companies apply the provisions of the Agreement to both **local and regional cross-border traffic**, even if it is optional in the Agreement.
 - Less than a half applies the derogation.
 - 20% did not answer.
- Few companies are recruiting, directly or through a partner or subsidiary, from **temporary work agencies** to cover all or part of the cross-border transport chain
 - 4 freight do recruit from temporary agencies
 - 70% do not recruit, but a quarter of companies did not respond to this question
 - and during workshops, participants also explained that drivers can be engaged by several companies not necessarily from temporary work agencies
- Four passenger companies reported using **sub-contractors' on-board staff** for cross-border services
 - in two companies these staff do not carry out any safety tasks, and in another company it is not specified
 - in one company, the sub-contractor's staff has specific safety tasks related to the Channel Tunnel

- a large half of passenger companies do not use sub-contractors
- and 30% did not answer

Comment: In several companies, based on national or internal rules, sub-contractors' employees engaged for catering, cleaning or other on-board services are not considered as member of the train crew.

4.2 Difficulties in implementation and expectations raised by CER and ETF members in the questionnaire

The analysis of this part comes from the answers to the questions of the Section D: 'Outlook and additional input to the social partners in view of future work on the Agreement'.

More than 50% of the questionnaires made no comment in Section D.

More comments come from ETF members (2/3) than from CER (1/3). And also, more comments concern freight activities. All details concerning ETF and CER members can be found in Appendix 3.

- According to many of the respondents, **overall, the Agreement is already good**
 - in the questionnaires, relatively few comments and implementation difficulties were expressed
 - for members, the Agreement is well balanced between working conditions and the management of a flexible organisation
 - some companies asked if the provisions could be applied to interoperable traffic with Switzerland.
- Some answers and comments show that **certain definitions or provisions could be clarified** to avoid problems of interpretation.
 - *'Workers concerned'*: which other on-board staff? Staff with or without safety tasks? Staff from subsidiaries or temporary work agencies? Meaning of *"more than 1h on a daily shift basis"*?
 - *'Home'*: used in "rest at *home*" and "rest away from *home*"?
 - *'Breaks'*: minimum duration of a break if it is split? Specific duration of a meal time? Rules adapted to train drivers?
 - *'Driving time'*: general definition? What is preparation time?
 - *'Night shifts'*: maximum duration of each? Maximum successive number?
 - *'Level of comfort of accommodation'*: what should be the minimum standards or recommendations?
- Many asked for an **improvement of the supervision and control system**
 - at the individual level, with electronic monitoring, even for mobile staff working for several companies
 - at the company level, by records and checks available to the social partners
 - at the regional and national level, enforced by the authorities and with effective cooperation between them
 - at the European level, with a Community control body (e.g. a cross-border transport inspectorate)
 - with identification of consequences or a definition of sanctions in case of non-compliance.

5. MAIN FINDINGS AND RECOMMENDATIONS¹

5.1 The good participation in the survey and the workshops helped to collect a lot of useful information and data for the project

The aim of the “Rail Mobile Worker” (RMW) project is to understand the state of implementation and application of the “Agreement on certain aspects of working conditions for mobile workers engaged in interoperable cross-border services in the railway sector”.

Thanks to the good participation of companies and trade unions from most European countries, the survey and workshops organised for the project provided detailed information about the state of implementation of the provisions, the actual organisation of cross-border freight and passenger operations, as well as the number and categories of the staff concerned.

Concerning international rail traffic, freight and passenger activities have evolved differently during the last years (2005-2014):

- Rail freight traffic fluctuated strongly closely linked to economic cycles. Its 10-year increase is limited to about 4%. But the international share (in tonnes-km) exceeds 50% including 10% transit.
- Rail passenger transport increased more and steadily, around 13%. But less than 6% is international, more important in Western Europe and stimulated by the development of high-speed lines.

84 companies are authorised to operate cross-border traffic with several safety certificates:

- 66 freight companies (79%)
- 15 passenger companies (18%)
- 3 companies (3%), for both freight and passenger services

However, these data do not exactly correspond to the scope of the Agreement. Indeed, international traffic can be excluded from the application (local, regional, change of staff at the border). Or, on the contrary, companies can operate without a foreign certificate (cooperations, subsidiaries, other type of authorisation).

In the 47 companies from 21 countries of the project survey:

- 28 companies have freight activities. They operate an average of 500 cross-border trains/ week with various organisations. It represents 25% of their total number of freight trains. These companies have more, and up to six safety certificates.
6% of their mobile staff is cross-border and they are all train drivers. The number of cross-border mobile freight staff is low compared to the number of international train, due to different forms of organisation: on average 1 worker for 5 trains.
- 23 companies operate passenger services. It represents an average of 900 cross-border trains/ week. They are more often operated with partners or subsidiaries. Only 5% of their trains are international.
8% of their mobile staff is cross-border. And they are from various categories: train drivers, train managers, other on-board staff. The average of cross-border mobile staff per international passenger train is higher than for freight trains: 2 workers for 5 trains.

¹ This chapter has been reviewed jointly with the Steering Committee.

At European level, during recent years, many railway undertakings have experienced an overall decline in the number of employees, but are tending to recruit again. Data concerning the number of employees active in interoperable cross-border services in the railway sector are not available from public resources.

According to the survey, approximately 8000 cross-border interoperable mobile workers are employed among 37 of the 47 surveyed companies (80%). And these staff are highly concentrated in a few companies: 60% in only 4 companies.

- On average the cross-border staff represents less than 10% of total mobile staff in each company (minimum 1%, maximum 100%).
- 60% of this staff is concentrated in 4 passenger companies, each employing more than 500 cross-border workers.
- 22 companies, each with less than 100 cross-border workers, employ less than 10% of the 8000.
- 2/3rd are employed by passenger companies, 1/6th by freight companies and 1/6th by mixed companies.
- Freight companies often have few cross-border mobile staff (less than 100), but in half of the reporting companies they are over 25% of the total mobile staff.
- Passenger companies have more cross-border staff but it is more often a very small share (less than 10%) of all mobile workers.
- 47% are train drivers, 39% train managers and 14% other on-board passenger staff (catering, sleeping coaches).
- Moreover, apart from their own staff, few companies are recruiting, directly or through a partner or subsidiary, from temporary work agencies to cover all or part of the cross-border transport chain. And 4 passenger companies reported using sub-contractors' on-board staff for cross-border services.

The survey also gives a precise picture on how the European standards for the Agreement on the working conditions of mobile workers engaged in interoperable cross-border services are implemented in railway undertakings.

- According to the respondents, 11 companies have all their provisions equal to or more favourable than the Agreement. These companies cover 75% of the cross-border interoperable staff of the survey (62% of cross-border train drivers, 87% of train managers or other cross-border staff).
- Overall, compared to the Agreement, all different provisions in force in the companies for the various jobs are: 24% more favourable, 47% equal to, 12% less favourable and 17% no answer or unregulated. Overall, freight companies more often declare less favourable provisions.
- 'Monitoring system for working hours and rest periods' and 'Employees' representatives/work councils involved in monitoring system' are two provisions among the best applied in companies (80%).
- The minimum duration of rest away from home is at least 8 hours in 80% of companies. And the maximum number of consecutive rests away from home is in accordance with the Agreement in 75% of companies, in two cases a second rest away from home has been negotiated between the social partners.
- A weekly rest period of 24h+12h (24h weekly rest plus 12h daily rest) is also comfortably fulfilled in 75% of companies.
- The reduced duration of daily rest at home (9h) is applied to a greater extent than the minimum duration (12h).

And even if there is no standard in the Agreement or it's optional:

- 70% of companies have standards for accommodation offered to staff resting away from home.
- A third of passenger companies apply the provisions of the Agreement to both local and regional cross-border traffic.

According to many respondents of the survey and workshop participants, overall, the Agreement is already good and positive for the development of interoperable cross-border services. However several issues were expressed and discussed:

- Certain definitions or provisions could be clarified to avoid problems or differences in interpretation and implementation.
- The less favourable provisions in force and the standards that are not regulated in some companies raise difficulties in implementation.
- It would be useful, if the Agreement could be applicable for the cross-border services to Switzerland, at least in the border section.
- Many also asked for an improvement of the supervision and control system.

The following points analyse these main topics.

5.2 The question as to the definition of 'interoperable cross-border services'

CER and ETF negotiated the Agreement under consideration in the light of a developing trans-European railway market, and considering that the number of mobile workers engaged in interoperable cross-border services would also increase.

Looking at the evolution of the sector since the conclusion of the Agreement in 2004, growth in international rail activities has been fairly constant in passenger traffic and stimulated in particular by the development of international high-speed lines and by investments aimed at perfecting interoperability (ERTMS, etc.).

The trend has been more uneven in freight traffic, heavily impacted by the crisis and the competition with road transport, which remains strong. Concerning the latter aspect, freight operators attending the project workshops stressed the challenge of operating cross-border services, when confronted to more complex and burdensome administrative procedures and controls, related inter alia to personnel, than those applying to their road competitors. The implementation of the rail freight corridors (RFC) is aimed at developing these international traffic flows by improving coordination and efficiency, along these routes. The development of interoperability (infrastructure and rolling stock) is due to facilitate the crossing of European borders and traffic over longer distances.

Shifting the attention to the workforce engaged in cross-border traffic, the analysis carried out during the project confirmed that the evolution of mobile workers' cross-border mobility is not automatically linked to the development and increase in interoperable cross-border services. In fact, railway companies can organise their traffic in different ways with different workforce allocation models:

- Company holds multiple safety certificates for different countries to operate on its own in neighbouring countries, and employs its own **interoperable cross-border staff**.
- Company holds multiple safety certificates for different countries but its staff changes at the border, or is replaced by a partner's or subsidiary's staff, or other staff (temporary work agency, self-employed).
- Company relies on a local partner's or subsidiary's safety certificate or holds another type of authorisation to operate abroad, but all or part of the train crew is **cross-border** and can work beyond the border.
- Company relies on a local partner's or subsidiary's safety certificate or holds another type of authorisation to operate abroad, and changes the entire train crew at the border to be replaced by the partner's or subsidiary's staff.

In only two out of the four cases described above is the staff cross-border and in the scope of the Agreement.

The use of cross-border personnel is particularly attractive when border crossing is fluid, and does not entail a change in locomotive or stop for administrative procedures. However, this implies having personnel trained and authorised across multiple rail systems and generally proficient in several languages.

On the other hand, many railway companies base their international traffic on partnerships with operators in the neighbouring countries, particularly for passenger rail. Large freight companies establish or acquire small foreign companies to operate in foreign domestic markets, but also to participate in international traffic and transit.

In the Agreement 'Interoperable cross-border services' are defined as "cross-border services for which at least two safety certificates are required from the railway undertakings".

Bear in mind that due to coming changes referring to safety certificates (e.g. single safety certificates) and the impact on the definition in the directive a misinterpretation of the definition might be possible. **An interpretation of the social partners is necessary.**

The definition of mobile workers engaged in interoperable cross-border services includes two elements: a worker that is member of the train crew and the assignment of the worker to interoperable cross-border services for more than 1 hour on a daily shift basis.

- **Other on-board train staff and the concept of train crew**

The notion of 'train crew' is not defined in the Agreement. This leads to different interpretations.

In the clause related to breaks, the Agreement distinguishes two categories of personnel: 'Drivers' and 'Other on-board staff'.

This 'Other on-board staff' obviously includes train managers and conductors who are accompanying the train and usually in charge of the safety-critical tasks with the train drivers.

However the results of the project show that depending on national or company circumstances staff in catering, cleaning, technicians or customer care in sleeping coach, occasionally called '*auxiliary staff*', sometimes are included in other on-board staff, sometimes not.

Out of 23 railway companies that answered the questionnaire, 2 directly employ catering staff, and 1 employs other staff with customer-care duties in sleeping coaches.

For example, in Germany, the food services staff ('Gastro') are directly employed by DB Fernverkehr and considered part of the crew, with over 500 cross-border food services staff.

For cross-border services, the remaining 20 railway companies use train managers and conductors but do not have other on-board staff, or they use subcontractors (for example catering companies).

The '*auxiliary staff*' with tasks related to catering, technical, cleaning or the sleeping coach may be required to perform specific safety duties on board the trains. In some cases they are considered members of the train crew.

ÖBB awarded a contract for 'train service on-board catering combining the functions of rail safety and on-board service' to the company Newrest Wagon-Lits, to manage in particular Austrian night trains to Germany, Switzerland and Italy. The train crews are made up of 'conductors, stewards and house keepers'.

In one case, it was reported that the auxiliary staff performs safety duties related to the evacuation of the train. *This is the case for the Cremonini food services staff - Momentum on board the Eurostar: two employees per train are part of the evacuation team and have specific safety responsibilities linked to the evacuation during the Channel Tunnel crossing.*

In the light of the findings and having in mind the ongoing liberalisation especially in high speed and long distance rail passenger services, **it is recommended to the social partners to specify the definition of 'train crew'**.

- **Rail mobile workers with mixed activities, cross-border and domestic**

Many companies do not deploy their personnel exclusively for cross-border services. The same personnel can be engaged in both domestic and cross-border activities.

The requirement that interoperable cross-border workers are those who are '*assigned to interoperable cross-border services for more than one hour on a daily shift basis*' is not transposed or interpreted in the same way in all countries.

In almost all countries it is interpreted as '*assigned at least once to interoperable cross-border services for more than one hour on a daily shift basis*'. The companies then apply the provisions on cross-border mobile workers to all of their staff regularly or occasionally working in cross-border services.

In Austria the EU-Directive was implemented differently to its original wording, as meaning '*assigned to cross-border services one hour every working day*'. According to Austrian Law, in ÖBB no cross-border worker thus falls within the scope of the Agreement (see part 2.4).

Pushing this discussion further, the question could be raised as to how frequently a rail mobile worker needs to be active on cross-border services to fall within the application scope: Every day? At least once per week, per month, per year? And in the same way, over what length of time do the provisions of the Agreement apply, governing the working conditions of these employees?

The Agreement contains several clauses referring to periods that exceed the working day: 'weekly rest period', 'seven-day period', 'driving time over a **two-week** period', 'each **year** 104 rest periods'.

It is recommended to the social partners to review the definition 'mobile workers engaged in interoperable cross-border services' to clarify the application of the Agreement for workers with mixed activities (domestic and cross-border).

5.3 Transposition that should comply with the minimum standards of the Agreement

Directive 2005/47/EC has implemented the CER/ETF Agreement in all EU countries. Each Member State has had to transpose this Directive with the various clauses provided for in the Agreement.

- Article 2.1 states that '*Member States may maintain or introduce more favourable provisions than those laid down by this Directive*'.
- Article 2.2 confirms that '*The implementation of this Directive shall... provided that the minimum requirements laid down in this Directive are always complied with*'.
- And item (16) explains that '*This Directive and the Agreement lay down minimum standards; the Member States and/or the social partners should be able to maintain or introduce more favourable provisions*'.

The fact that each provision of the Agreement constitutes a **minimum standard** to be respected in each country and in each company is therefore clearly explained in the Directive, taking full consideration of Clause 9 of the Agreement: the '*Non-regression clause*', specifies that '*The implementation of this Agreement shall not constitute in any case valid grounds for reducing the general level of protection afforded to mobile workers engaged in interoperable cross-border services*'.

The RMW survey questionnaire has made it possible to compare each of the provisions in force in the companies with the provisions of the Agreement.

The Analysis of the questionnaires and presentations by participants in the Workshops shows that the provisions in force in the companies are often 'Equal to' those set out in the Agreement, sometimes 'More favourable' but can also be 'Less favourable'.

5.4 Problems identified in the implementation of certain provisions of the Agreement

The comparative analysis of the provisions in force in the companies also shows that several provisions create more implementation issues.

It was recalled that the Agreement constituted a major step forward by introducing a new concept definition of '*driving time*' (Clause 2) The maximum duration of scheduled driving time is then regulated in Clause 7. These provisions are more specific than those contained in Directive 2003/88/EC ('*Working Time Directive*') and they logically apply only to train drivers.

The survey and the workshops have clearly shown that in some companies the concept of '*driving time*' is not defined, and/or there are no specific provisions in the applicable law or collective agreements signed with workers' representatives. Nonetheless, the companies concerned reported that the working time of their train drivers is regulated in order to take the specific constraints of this profession into account. For instance, some companies limit drivers' working time in a way that is at least as favourable as that relating to the '*driving time*' of Clause 7.

A lack of definition and/or a lack of limitation of driving time can constitute a problem in cases where there is no limitation of daily working time or a clear definition of driving periods within a shift.

'**Daily rest at home**' is 11 consecutive hours in several companies, whereas the Agreement provides for a minimum of 12 hours. Clause 3 of the Agreement applicable to rail mobile workers is actually more favourable than that which is provided.

In the general Directive 2003/88/EC concerning certain aspects of the organisation of working time: '*every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period*'.

The Agreement establishes a more favourable duration for the '*daily rest at home*' than the general regulation of working time. **Railway undertakings should therefore grant a minimum of 12 hours 'daily rest at home' to their cross-border mobile workers.**

The Agreements gives the possibility to companies to reduce this period down to a minimum of 9 hours once every seven-day period, provided that the reduced hours are compensated with a similar period to be added to the next daily rest at home. Replies to the survey showed that many companies make use of this possibility of derogation. The survey did not ask about the application of the compensation of the reduced periods of rest, therefore it was not possible to check whether it was always respected.

The Agreement actually provides that '*a daily rest away from home must be followed by a*

daily rest at home'. But it is also provided that 'negotiations on a second consecutive rest away from home as well as compensation for rest away from home could take place between the social partners at railway undertaking level or national level as appropriate'.

8 out of 39 respondents reported that two - and in one case more than two - successive 'rests away from home' are possible without notifying of any specific agreement on this subject. In two cases a second rest away from home has been negotiated between the social partners, as requested by the Agreement. In addition, five companies did not answer to the survey question about the maximum number of allowed consecutive rests away from home. And three questionnaires have reported no restriction concerning this maximum number.

It is therefore important to make sure that cross-border mobile workers take one, or a maximum of two consecutive rests away from home, and that the second rest is negotiated between social partners.

The Agreement regulates the duration of '**breaks**' to train drivers and other on-board staff. It also provides for certain latitudes specifically for drivers:

- *'Breaks may be adapted during the working day in the event of train delays'.*
- *'A part of the break should be given between the third and the sixth working hour'.*

From the questionnaire and discussions during workshops several issues emerged regarding the allocation of 'breaks' to Train drivers:

- a break of 30 minutes is granted, but it is not always increased to 45 minutes if the driver's working time is longer than 8 hours
- the break is scheduled at the end of the working day
- in practical terms, it is not easy to grant breaks as scheduled because of delays and unforeseen events
- trade unions reported that it is more difficult to take breaks in a suitable room outside the driving cab, in particular in freight transport

The question of **splitting up breaks** was also mentioned **for the 'Other on-board staff'**. For these staff, it is simply specified that *'a break of at least 30 minutes shall be taken if the working time is longer than 6 hours'.*

The possibility to splitting up breaks is - in an indirect way (*'the duration of the break', 'a part of the break'*) - only mentioned for train drivers. For other on-board staff Article 4 of the general working time Directive 2003/88 applies since social partners did not specify this question in their Agreement. *"Article 4: Member States shall take the measures necessary to ensure that, were the working day is longer than six hours, every worker is entitled to a rest break, the details of which, including duration and the terms on which it is granted, shall be laid down in collective agreements (...) or failing that, by national legislation."*

During the workshops, there were also exchanges about the conditions for taking these breaks on board the trains. In fact, separate places that are quiet and remote from the public are not always available. And availability for safety missions may also be necessary. According to the trade unions, an undisturbed break of at least 30 minutes would allow to take a decent meal that is important for a healthy lifestyle and for wellbeing at work.

The rules on breaks for other on-board staff are less detailed than those for train drivers, although on-board staff (especially conductors/train attendances) is in many cases responsible for carrying out safety tasks as well, such as safe closing of doors and safe departure of trains or safe evacuation of trains. The allocation of breaks to train drivers was dealt with in a more detailed way in the Agreement because of the specific tasks of drivers. The provision *'The time of day and the duration of the break shall be sufficient to ensure effective recuperation of the*

worker demonstrates on the one hand the high safety relevance of breaks, on the other hand the rail companies' request for some flexibility.

It is therefore recommended to the social partners to give importance to a good implementation of this provision on breaks.

Furthermore, it is recommended to the social partners to clarify details of how to take breaks during the working day in consideration of the safety tasks that on-board staff may have to fulfil, as well as the question of minimum standards for break rooms for both, drivers and other on-board personnel.

Understanding of the term '**home**' has also posed problems with interpretation: of the terms '*daily rest at home*' and '*rest away from home*'.

This distinction is necessary for mobile workers who may be required to take their daily rest period at home or on the move. However, the working day does not start at the employee's home, but at the place of employment. However, this point was addressed and clarified in a joint interpretation of the signatories, which defined '*home*' as '*the normal place of employment*'.

During the workshops, participants mentioned situations where freight drivers no longer really have a normal place of employment. They have a service car and go directly from their individual residence to various places where their locomotive is located. These places may require several hours of travel, sometimes even abroad. And the same at the end of the working day. These journeys are not counted in working hours.

The evolution of freight (cross-border) transport is establishing new patterns in the production and thus organisation of work, which the social partners could not take into account in the Agreement.

5.5 Follow-up and controls to be strengthened

The Clause 8 of the Agreement mentions that '*information on actual working hours must be available*'.

In the surveyed companies employees' representatives or work councils are most often, though not always, involved in the monitoring system.

During the Workshops, situations were discussed that make these internal checks more complex or even impossible.

In **smaller companies, especially freight companies** internal checks on working conditions often cannot take place because:

- There are no elected workers' representatives or trade union representatives and thus no internal control bodies and procedures involving them.
- Employment and working conditions of cross-border workers are more likely to be regulated only via individual employment contracts.

More in general, the use of atypical forms of employment makes monitoring and control more difficult. This is the case, for example, of companies using temporary workers or self-employed. These workers can work for several companies at the same time, making it difficult or even impossible for the company using those workers, to control their cumulative working time.

To be able to control all these situations, it is important to have the means to *record daily working hours and rest periods of mobile workers*, as stated in the Agreement, especially when they work for more than one company.

As far as external controls are concerned, the Article 17 'Supervision' of the Directive (EU) 2016/798 on railway safety states: *"The monitoring of compliance with applicable working, driving and rest-time rules for train drivers shall be ensured by competent authorities designated by Member States. Where the monitoring of compliance is not ensured by national safety authorities, the competent authorities shall cooperate with the national safety authorities with a view to allowing the national safety authorities to fulfil their role of supervision of railway safety"*.

The survey showed that in most of the countries the Labour Inspectorate is responsible for the monitoring and control of working time, including the provisions of the Agreement. However, the workshops have also clearly shown that effective and regular checks can hardly be based only on Labour Inspections because of a lack of resources, necessary knowledge or awareness about their responsibility vis-à-vis the Directive.

Moreover, in the specific case of cross-border transport, further hindrances to effective controls were mentioned: a lack of cooperation between national Labour Inspectorates, a lack of competence to check foreign drivers and difficulties to have access to information based abroad.

During workshops, the need to check actual working hours was highlighted, using also on-site checks. In several questionnaires and at several Workshops, the possibility of generalising devices for controlling the driving and working time of drivers was raised. Electronic driver identification systems are already in use in some countries.

In the light of the above, it is recommended to the European social partners to seriously discuss how to tackle loopholes arising in the field of monitoring and control of working time.

As stipulated by the European Railway Safety Directive the role of National Safety Authorities in the field of working time should be strengthened in cooperation with other competent authorities, and particularly Labour Inspections.



GLOSSARY AND ABBREVIATIONS

Agreement: signed by CER and ETF the 27/01/2004, regulating “certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services”.

Directive: this Agreement was integrated into EU legislation via Council Directive 2005/47/EC. The text of the Agreement and of the Directive, in all EU official languages: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:42005A0727\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:42005A0727(01))

DEFINITIONS USED AS CONTAINED IN THE AGREEMENT

'Interoperable cross-border services': cross-border services for which at least two safety certificates, as stipulated by Directive 2001/14/EC, are required from the railway undertakings (EU countries plus Norway). The application of the Agreement is optional for local and regional cross-border passenger traffic and cross-border freight traffic travelling no further than 15km beyond the border (clause 1 of the Agreement).

'Mobile worker engaged in interoperable cross-border services': any worker who is a member of a train crew, who is assigned to interoperable cross-border services for more than one hour on a daily shift basis.

'Cross-border staff': Drivers, train managers, conductors and other staff who are assigned to interoperable cross-border services for more than one hour on a daily shift basis.

'Working time': any period during which the worker is at work, at the employer's disposal and carrying out his or her activities or duties, in accordance with national laws and/or practice.

'Rest period': any period which is not working time.

- **'Daily rest':** uninterrupted period of daily rest per 24-hour period; can be reduced.
- **'Weekly rest':** uninterrupted rest period per seven-day period plus the daily rest period; can be double and may or may not include Saturday and Sunday.

'Rest away from home': daily rest which cannot be taken at the mobile worker's normal place of residence.

'Night time': any period of not less than seven hours, as defined by national law, and which must, in any case, include the period between midnight and 5 a.m.

'Night shift': any shift of at least three hours' work during the night time.

'Driving time': the duration of the scheduled activity where the driver is in charge of the traction unit, excluding the scheduled time to prepare or shut down that traction unit, but including any scheduled interruptions when the driver remains in charge of the traction unit.

'Breaks': provisions on breaks distinguish between working time of six to eight hours or more than eight hours for drivers, and apply to a working time of more than six hours for on-board staff.

COUNTRY ABBREVIATIONS

Countries	Code 2	Code 3
Germany	DE	DEU
Austria	AT	AUT
Belgium	BE	BEL
Bulgaria	BG	BGR
Croatia	HR	HRV
Denmark	DK	DNK
Spain	ES	ESP
Estonia	EE	EST
Finland	FI	FIN
France	FR	FRA
Greece	GR / EL	GRC
Hungary	HU	HUN
Ireland	IE	IRL
Italy	IT	ITA

Countries	Code 2	Code 3
Latvia	LV	LVA
Lithuania	LT	LTU
Luxembourg	LU	LUX
Norway	NO	NOR
Netherlands	NL	NLD
Poland	PL	POL
Portugal	PT	PRT
Czech republic	CZ	CZE
Romania	RO	ROM
United Kingdom	UK	GBR
Slovakia	SK	SVK
Slovenia	SI	SVN
Sweden	SE	SWE
Switzerland	CH	CHE

ABBREVIATIONS

CBA	Collective Bargaining Agreement
CER	Community of European Railway and Infrastructure Companies
EC	European Commission
ETF	the European Transport Workers' Federation
EU	European Union
NA	No Answer
Nb	Number
NSA	National Safety Authority
Part.	Partner
Pass.	Passenger
p-km	passenger-kilometre
RFC	Rail Freight Corridor
RMMS	Rail Market Monitoring Schema
RMW	Rail Mobile Workers project
RNE	RailNetEurope
RU	Railway Undertaking
Sub.	Subsidiary
TD T	rain Driver
TKM/ t-km	tonne-kilometre (freight)
TM	Train Manager or conductor

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APPENDIX 1 – Organisation of the Rail Mobile Workers project: Steering Committee and workshops

Members of the Steering Committee

CER members: Agv MoVe/ DB, Germany ; Almega, Sweden ; ASTOC/ SJ AB, Sweden ; FS Group, Italy ; ÖBB Holding, Austria ; SNCB/ HR Rail, Belgium ; SNCF, France

ETF members: ASLEF, UK ; CGSP Cheminots, Belgium ; CGT Cheminots, France ; EVG, Germany ; SEKO, Sweden ; Sindikat Strojevodij Slovenije, Slovenia ; Vida, Austria

Participants in the five Workshops

• Workshop 1 in Berlin, Germany (May 2017): Belgium, UK/France, Germany, Luxembourg

Agv MoVe, Germany ; CGSP Cheminots, Belgium ; DB Cargo AG, Germany ; Eurostar, France / UK ; EVG, Germany ; FGTE-CFDT, France ; Ministerium für Soziales, Arbeit, Gesundheit und Demografie, Germany ; Mobifair e.V., Germany ; RMT, UK ; SNCB, Belgium ; Struktur und Genehmigungsdirektion Süd, Germany

• Workshop 2 in Krakow, Poland (June 2017): Poland, Czech Republic, Hungary, Slovakia

CD Cargo a.s., Czech Republic ; FZZ, Poland ; FZZK, Poland ; ÖBB Holding AG, Austria ; PKP Cargo S.A., Poland ; Railway Workers' Trade Union, Czech Republic ; Railway Workers' Trade Union, Slovakia ; Trade Union of Hungarian Railwaymen, Hungary ; VDSzSz Solidarity, Hungary ; Vida, Austria ; ZSSK (Slovak Passenger RU), Slovakia

• Workshop 3 in Zagreb, Croatia (October 2017): Croatia, Slovenia, Austria, Italy

FILT CGIL, Italy ; FIT CISL, Italy ; FS Italiane S.P.A., Italy ; HŽ Cargo d.o.o., Croatia ; HŽ Passenger Transport, Croatia ; Ministry of Infrastructure, Slovenia ; NEWREST - Wagon Lits, Austria ; ÖBB Holding AG, Austria ; ÖBB-Produktion GmbH, Austria ; Railway Workers Trade Union of Croatia, Croatia ; Sindikat Strojevodij Slovenije, Slovenia ; Slovenian Railways Ltd., Slovenia ; Trade Union of Croatia, Croatia ; Trenitalia, Italy ; TX Logistik AG, Germany ; TX Logistik AG Italy, Italy ; TX Logistik Austria GmbH, Austria ; UILTRASPORTI, Italy ; Vida, Austria

• Workshop 4 in Lyon, France (December 2017): France, Spain, Portugal, Switzerland, Belgium, Italy, Germany

ACV TRANSCOM, Belgium ; CGT, France ; CP - Comboios de Portugal, Portugal ; European Commission ; EVG, Germany ; FGTE-CFDT, France ; FIT CISL, Italy ; FSC-CCOO, Spain ; MERCITALIA RAIL S.r.l., Italy ; SBB, Switzerland ; SEV - Swiss Transport Workers Union, Switzerland ; SNCF Fret, France ; SNCF Voyages, France ; UILTRASPORTI, Italy ; UNSA-Ferroviaire, France ; UTP, France

• Workshop 5 in Copenhagen, Denmark (February 2018): Denmark, Sweden, Norway

ALMEGA, Sweden ; DJF, Denmark ; EVG, Germany ; NLF, Norway ; Norsk Jernbaneforbund (NJF), Norway ; SEKO, Sweden ; SJAB, Sweden

APPENDIX 2 – “Rail Mobile Worker” project questionnaire

Preamble

We kindly ask you to fill in the questionnaire and provide us with any relevant background material.

In order to facilitate your filling, please note that questions:

- in blue fields refer to freight transport,
- in green fields refer to passenger transport.

Please answer this questionnaire by filling:

- A single questionnaire for your company, if you are a representative of a railway company
- A questionnaire for each company member of your network, if you are a representative of a trade union, an authority or other organization.

When filling in the questionnaire, please take into account the following definitions contained in the Agreement:

- **‘Interoperable cross-border services’**: cross-border services for which at least two safety certificates as stipulated by Directive 2001/14/EC are required from the railway undertakings;

Note: this questionnaire is nonetheless addressed to all companies having interoperable cross-border traffic in the broadest meaning, including cases when they have only one safety certificate.

The application of the Agreement is optional for local and regional cross-border passenger traffic and cross-border freight traffic travelling no further than 15km beyond the border (clause 1 of the Agreement);

- **‘Mobile worker engaged in interoperable cross-border services’**: any worker who is a member of a train crew, who is assigned to interoperable cross-border services for more than one hour on a daily shift basis;
- **‘Working time’**: any period during which the worker is at work, at the employer's disposal and carrying out his or her activities or duties, in accordance with national laws and/or practice;
- **‘Rest period’**: any period which is not working time;
- **‘night time’**: any period of not less than seven hours, as defined by national law, and which must include in any case the period between midnight and 5 a.m.;
- **‘Night shift’**: any shift of at least three hours' work during the night time;
- **‘Rest away from home’**: daily rest which cannot be taken at the normal place of residence of the mobile worker;
- **‘Driving time’**: the duration of the scheduled activity where the driver is in charge of the traction unit, excluding the scheduled time to prepare or shut down that traction unit, but including any scheduled interruptions when the driver remains in charge of the traction unit.
- **Breaks**: provisions on breaks distinguish between working time of 6-8 hours or more than 8 hours for drivers, and apply to a working time of more than 6 hours for on-board staff.

Please return the completed questionnaire to Sabine Trier (s.trier@etf-europe.org) and/or Ester Caldana (ester.caldana@cer.be).

And do not hesitate to contact us in case of any questions.

Christophe BOURDELEAU, SECAFI, France (Questions Sections B, C, D)	Eckhard VOSS, wmp consult, Germany (Questions Section A)
c.bourdeleau@secafi.com	Eckhard.voss@wilke-maack.de

Identification of the respondent

Name of the contact person	
Name of the organization and type of organization (company/ trade union/ authority)	
Position in this organization (job title)	
Country	
E-mail	
Phone	

Identification of the company [1]

Name of the company	
Activities	<input type="checkbox"/> Freight <input type="checkbox"/> Passenger <input type="checkbox"/> Freight & Passenger
Total staff number :	
Staff categories	Number of employees
Total number of mobile staff	
<i>... number of locomotive drivers</i>	
<i>... number of train managers/ conductors</i>	
<i>... number of other on-board staff (e.g. catering staff, technical staff)</i>	
Total number of interoperable cross-border mobile staff [2]	
<i>... number of interoperable cross-border drivers</i>	
<i>... number of interoperable cross-border train managers/ conductors</i>	
<i>... number of other interoperable cross-border on-board staff (e.g. catering staff, technical staff)</i>	

[1] Company for which data are provided in the questionnaire. If you provide information for more than one company, please fill in a separate questionnaire for each of them.

This means where the Agreement applies for your company, in EU countries plus Norway (see Clause 1 “Scope”, in particular the application of the Agreement is optional for local and regional cross-border passenger traffic and cross-border freight traffic travelling no further than 15 kilometres beyond the border).

What are the staff categories that are considered as part of the ‘train crew’ in your company and are assigned to interoperable cross-border services for more than one hour on a daily shift basis?

Please explain how the definition “for more than one hour on a daily shift basis” is interpreted in your company.

Overview of the company activities

Flow	
Number freight trains per week (yearly average)	Trains / week
Number of international freight trains	Trains / week
Main loading countries	
Main unloading countries	
Number of passenger trains per week (yearly average)	Trains / week
Number of international passenger trains	Trains / week
Main embarkation countries	
Main disembarkation countries	

SECTION A: The applicable legal and regulatory framework

1

What are the sources regulating the working time of staff (drivers, train managers/ conductors, other on-board staff) engaged in cross-border services in the railway sector, in your country?

Law or decree
 administrative decisions
 sectoral collective agreement
 judicial decisions
 company agreement
 plant (site) or local agreement
 others, please, specify: _____

Please provide the exact reference to the source (title and date of implementation).
Please fill in the table

<i>Title of document (source)</i>	<i>Date</i>

2 In order to clarify the hierarchy between the different sources, please specify the following:

a. Can sectoral collective agreements derogate rules established by law / decree in a less favorable way?

YES NO

b. Can company agreements derogate rules established by law / decree and/or sectoral collective agreements in a less favorable way?

YES NO

c. Can plant (site) or local agreements derogate rules established by law / decree and/or sectoral collective agreements in a less favorable way?

YES NO

If yes, please choose the aspects concerned:

working time
 night time
 night shift
 daily rest at home
 rest away from home
 breaks of drivers
 breaks of other on-board staff
 weekly rest period
 driving time
 checks

d. Under which conditions are the above derogations possible?

3	
What are the categories of staff that are covered by the applicable sources (in legislation or collective agreements)?	
<input type="checkbox"/> in law or decree	<input type="checkbox"/> driver <input type="checkbox"/> train manager/ conductor <input type="checkbox"/> other on-board staff, please specify: _____
<input type="checkbox"/> sectoral collective agreement	<input type="checkbox"/> driver <input type="checkbox"/> train manager/ conductor <input type="checkbox"/> other on-board staff, please specify: _____
What are the categories of staff that are covered by the applicable sources (in legislation or collective agreements)?	
<input type="checkbox"/> company agreement	<input type="checkbox"/> driver <input type="checkbox"/> train manager/ conductor <input type="checkbox"/> other on-board staff, please specify: _____
<input type="checkbox"/> plant (site) or local agreement	<input type="checkbox"/> driver <input type="checkbox"/> train manager/ conductor <input type="checkbox"/> other on-board staff, please specify: _____
<input type="checkbox"/> others, please specify:	<input type="checkbox"/> driver <input type="checkbox"/> train manager/ conductor <input type="checkbox"/> other on-board staff, please specify: _____

4. Daily rest away from home	
a. Do the applicable rules (law / decree, sectoral, local or company agreement) contemplate that staff (driver, train manager/ conductor, or other on board staff) engaged in cross-border services can spend a daily rest away from home?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please specify what kind of agreement	
<input type="checkbox"/> company agreement	<input type="checkbox"/> sectoral collective agreement
<input type="checkbox"/> law / decree	<input type="checkbox"/> plant (site) or local collective agreement
b. In case of a daily rest away from home, what kind of compensation is offered to the concerned employees?	
<input type="checkbox"/> extra allowance	<input type="checkbox"/> compensatory rest
<input type="checkbox"/> others, please specify: _____	
c. Has a 2nd daily rest away from home been negotiated by the social partners at company or national level?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO

5 Competent authorities

a. What are the competent authorities and bodies responsible for checking the daily working hours, driving time and rest periods of mobile rail staff in your country?

- labour inspectorate social security agency national safety authority (NSA)
 railway police railway undertakings
 other, please specify: _____

b. What are the legal texts/sources defining the competences of these authorities?

c. How are checks performed by the different competent authorities (e.g. onboard the locomotive/on site, at the premises of the company, prior to or after approval of the rosters)?

d. Have there been controls so far?

- YES NO I don't know

If yes, by whom and how often?

e. Do you have any documents/materials that can be useful to understand the authorities' or bodies' activities?

- YES NO

If yes, please provide us with the documents or link:

f. Is there any form of cooperation among the public entities of the states crossed by the railway cross-border service, to check daily working hours and rests periods?

- YES NO I don't know

If yes, please explain how the cooperation is concretely working:

g. Do you know of any legal actions or case law concerning the non-respect of the Directive?

- YES NO

If yes, please name and explain the case:

SECTION B: Implementation of the clauses of the Agreement

6. Please indicate, with numbers in each box, the provisions that are in force in your company

6.a. Freight transport

	National [1] drivers	Cross-border [2] drivers
Normal duration of working time (in weekly and/or daily hours)	h	h
Minimum duration of daily rest at home (in hours)	h	h
Reduced duration of daily rest at home (in hours), if applicable	h	h
Minimum duration of daily rest away from home (in hours)	h	h
Maximum number of consecutive rests away from home		
Duration of break for 6h-8h working time (in minutes)	mn	mn
Duration of break over 8h working time (in minutes)	mn	mn
Can the breaks be split?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Weekly rest period (in hours)	h	h
Minimum weekly rest periods for a year (number of rest periods and duration in hours)	/year h	/year h
Maximum driving time [*] for a day shift (in hours)	h	h
Maximum driving time [*] for a night shift (in hours)	h	h
Maximum driving time [*] over a two-week period (in hours)	h	h
Availability of a monitoring system of working hours and rest periods?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are employees' representatives/work councils involved in the monitoring system?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

[1] Drivers engaged in national freight transport. National freight transport shall also include cross-border freight traffic travelling no further than 15 kilometres beyond the border, if your company decided not to apply the Agreement to this case as it is allowed by Clause 1.

[2] Drivers assigned to interoperable cross-border services for more than one hour on a daily shift basis.

[*] Please specify in the table whether the notion of '**driving time**' does not exist in the applicable legislative/regulatory framework or in the provisions of your company and other notions apply (e.g. only 'working time', with no distinction between driving and other activities performed by the driver).

6.b. Passenger transport

	National drivers[1]	Cross-border drivers [2]	National train managers/ conductors [1]	Cross-border train managers/ conductors [2]	National other on-board staff [1] [3]	Cross-border other on-board staff [2] [3]
Normal duration of working time (in weekly and/or daily hours)	h	h	h	h	h	h
Minimum duration of daily rest at home (in hours)	h	h	h	h	h	h
Reduced duration of daily rest at home (in hours)	h	h	h	h	h	h
Minimum duration of daily rest away from home (in hours)	h	h	h	H	h	h
Maximum number of consecutive rest away from home						
Duration of break for 6h-8h working time (in minutes)	mn	mn	/	/	/	/
Duration of break over 8h working time (in minutes)	mn	mn	/	/	/	/
Duration of break over 6h working time (in minutes)	/	/	mn	mn	mn	mn
Can the breaks be split?						
Weekly rest period (in hours)	h	h	h	h	h	h
Minimum weekly rest periods for a year (number of rest periods and duration in hours)	/year h	/year h	/year h	/year h	/year h	/year h
Maximum driving time [*] for a day shift (in hours)	h	h	/	/	/	/
Maximum driving time [*] for a night shift (in hours)	h	h	/	/	/	/
Maximum driving time [*] over a two-week period (in hours)	h	h	/	/	/	/
Availability of a monitoring system of working hours and rest periods?	<input type="checkbox"/> Yes <input type="checkbox"/> No					
Are employees' representatives/work councils involved in the monitoring system?	<input type="checkbox"/> Yes <input type="checkbox"/> No					

[1] Drivers engaged in national passenger transport. National passenger transport shall also include local and regional cross-border passenger traffic, if your company decided not to apply the Agreement to this case as it is allowed by Clause 1.

[2] Drivers, train managers, conductors and other staff that are assigned to interoperable cross-border services for more than one hour on a daily shift basis.

[3] Please specify if catering staff is included.

[*] Please specify in the table whether the notion of 'driving time' does not exist in the applicable legislative/regulatory framework or in the provisions of your company and other notions apply (e.g. only 'working time', with no distinction between driving and other activities performed by the driver).

6.c. Do you have any standards for accommodation offered to staff resting away from home?

YES NO

6.d. Do you apply the provisions of the Agreement also to local and regional cross-border passenger traffic?

YES NO

6.e. How are breaks regulated in your company?

6.f. What is the maximum number of split breaks in which the daily break can be split up?

6.g. What is the minimum duration of each of the split breaks?

7. Regarding the provisions in force in your company, working conditions of mobile workers engaged in cross-border services, if compared to those engaged in national services, are:			
a. Cross-border drivers	<input type="checkbox"/> More favourable favourable	<input type="checkbox"/> Similar/the same	<input type="checkbox"/> Less
Please explain which provisions are concerned			
b. Cross-border train managers/conductors	<input type="checkbox"/> More favourable favourable	<input type="checkbox"/> Similar/the same	<input type="checkbox"/> Less
Please explain on which provisions are concerned			
c. Cross-border other on-board staff	<input type="checkbox"/> More favourable favourable	<input type="checkbox"/> Similar/the same	<input type="checkbox"/> Less
Please explain on which provisions are concerned			

SECTION C: Organisation of international traffic

8. Regarding international freight transport, what are your operational management choices?	
a. Cross-border services rely on a cooperation agreements with a partner railway undertaking, whereby your company rely on the partner's safety certificate or hold another type of authorization to operate abroad,	
<input type="checkbox"/> YES <input type="checkbox"/> NO	
If yes, please specify the countries that are concerned and the partners' names.	
b. Company holds several safety certificates and operates in the neighboring countries	
<input type="checkbox"/> YES <input type="checkbox"/> NO	
If yes, please specify the countries that are concerned.	
c. The interoperable cross-border services are entrusted to local group subsidiaries	
<input type="checkbox"/> YES <input type="checkbox"/> NO	
If yes, please specify the countries and cross-border connections that are concerned and the local group subsidiaries names	
8d. If the interoperable cross-border services are delegated to partners or subsidiaries, how is staff employed?	
d1. Your company staff is employed along the entire route	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries and cross-border connections that are concerned.	
d2. There is a change of staff at the border	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries and cross-border connections that are concerned.	
d3. There is a change of staff abroad	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries and cross-border connections that are concerned.	
d4. Is your company, partner or subsidiary recruiting from temporary work agencies to cover parts or the entire cross-border transport chain?	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries and/or cross-border connections that are concerned.	

9. Regarding international passenger transport, what are your operational management choices?	
a. Cross-border services rely on cooperation agreements with a partner railway undertaking, whereby your company rely on the partner's safety certificate or hold another type of authorization to operate abroad.	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please specify the countries that are concerned and the partners' names.	
b. Company holds several safety certificates and operates in the neighboring countries	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please specify the countries that are concerned.	
c. The interoperable cross-border services are entrusted to local group subsidiaries	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please specify the countries <u>and cross-border connections that are concerned</u> and the local group subsidiaries names	

9d. If the interoperable cross-border services are delegated to partners or subsidiaries, how is staff employed?	
d1. Your company staff is employed along the entire route	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries <u>and cross-border connections that are concerned</u>.	
d2. There is a change of staff at the border	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries <u>and cross-border connections that are concerned</u>.	
d3. There is a change of staff abroad	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries <u>and cross-border connections that are concerned</u>.	
d4. Is your company, partner or subsidiary recruiting from temporary work agencies to cover parts or the entire cross-border transport chain?	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, please specify the countries <u>and/or cross-border connections that are concerned</u>:	
e. For cross-border services, company uses subcontractors' on-board staff without/ with safety tasks	
<input type="checkbox"/> NO	<input type="checkbox"/> YES, but without safety tasks <input type="checkbox"/> YES, with safety tasks
If yes, please specify the countries and the subcontractors' names	

SECTION D: Outlook and additional input to the social partners in view of future work on the Agreement

10 Considering the above, do you consider some Clauses of the agreement require further attention?	
a. Daily rest at home (Clause 3)	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain	
b. Daily rest away from home / Accommodation (Clause 4)	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain	
c. Breaks (Clause 5)	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain	
10.d. Weekly rest period (Clause 6)	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain	
e. Driving time (Clause 7)	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain	
f. Checks / Record of daily working hours and rests periods (Clause 8)	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain	
g. Definitions (Clause 2)	
<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain	
h. Other, please explain	

11. Did you have any problem (interpretative or concrete) in the application of the Agreement?

YES NO

If yes, please specify the item and explain

12. Are there any other elements you would like to address in the context of working conditions of mobile staff engaged in interoperable cross-border services?

YES NO

If yes, please specify and explain

13. Considering the above, do you think some issues not currently regulated by the CER/ETF agreement should be addressed by European Social Dialogue partners?

YES NO

If yes, please specify and explain

Thank you very much for filling out the questionnaire!

APPENDIX 3 – Detailed results of the survey

The comments below are the answers to the questions of the Section D: ‘Outlook and additional input to the social partners in view of future work on the Agreement’. They were sometimes summarised or grouped where several were similar.

Comments *from ETF are in italic green* and *from CER are in blue*.

- Daily rest at home (Clause 3)
 - clarify the word ‘home’ as ‘place of employment’ (in rest at home, rest away from home)
 - *minimum of 15h, or minimum of 11h*
 - *preferably the same duration. Everyone needs compensation for reduced daily rest at the remote station*
 - *need additions in the collective Agreement covering cross-border service.*
 - *the consequences of non-compliance with the requirements must be important: e.g. administrative fines for the employer, civil law claims (also consequential loss) by the employee*
- Daily rest away from home/ Accommodation (Clause 4)
 - distinction between night period (0:00-5:00) minimum of 6h, and other periods minimum of 7h
 - minimum of 9h, because people do not sleep well away from home; or at least 10h to get enough sleep
 - *preferably the same duration for everyone*
 - *need minimum standards: “dark” rooms, quieter locations, short distances between the workplace (train) and the accommodation, etc.*
- Breaks (Clause 5)
 - *longer break for meal times, minimum of 1h*
 - *a fixed minimum break during the driving period*
 - many occasions on which international rail path schedules cannot be reconciled with break requirements
 - *preferably the same for everyone*
 - *where should the breaks be taken?*
 - *rules are good and clear, but not always applied..*
 - *need minimum standards for rest rooms: WC, showers, microwave oven, quiet corners, etc.*
- Weekly rest period (Clause 6)
 - *no single weekly rest period, allow only double periods*
 - apply these rules only to personnel who have rest periods away from home

- *the system in the Agreement should be fine-tuned, to work towards more “humane” rosters...*
- *consequences of non-compliance: e.g. administrative fines, civil law claims (also consequential loss) by the employee*
- Driving time (Clause 7)
 - *maximum of 6h40*
 - increase the daytime driving period to 10 hours
 - *specify maximum driving time before break*
 - treat personnel who have rest periods away from home differently
 - the definition of driving time is very broad: in case of delays or incidents, this can force the driver to stop his shift, while he is still willing and able to continue
 - *need better supervision*
 - *consequences of non-compliance... (same comment)*
- Checks/Record of daily working hours and rest periods (Clause 8)
 - *checks by the authorities and electronic monitoring (driving, working, rest time)*
 - quarterly check on safety indicators
 - controls must be guaranteed; who checks?
 - *malfunctioning control system; our system is difficult to manage*
 - all trade unions should have access to “driver logbooks”
 - *use digital controls, tachograph, etc*
- Definitions (Clause 2)
 - rest at home/ away from home: state that it means place of work or employment, not place of residence
 - *does the Agreement include catering staff?*
 - state for driving time: except for paid and unpaid breaks
 - *“driving time” always creates confusion around the time to prepare the locomotives (safety checks)...*
 - *the employer considers the definition “for more than one hour on a daily basis shift basis” to mean “for the most part” (i.e. > 50%), whereas the union argues that the term “for the most part” is not contained in the (collective) Agreement, the directive or in the national Working Time Act. The term “related to a day shift” is thus viewed restrictively by the union.*
- Problems (interpretative or concrete) in the application of the Agreement
 - ‘night shifts’: *length, number in succession*
 - ‘breaks’: interpretation (Can be split in how many periods? Minimum duration of each split break?), *and management of drivers' breaks*

- ‘driving time’: *generally and more specific definition of the term “preparatory time”*
- ‘cross-border services’: *definition of “interoperable operations” in association with the “one hour regulation”*
- ‘training’: *add admission requirements and standards*
- Other elements addressed in the context of the working conditions of mobile staff engaged in interoperable cross-border services
 - establish a single Community control body for cross-border staff to avoid various national interpretations
 - *control and enforcement of working time provisions, better implementation and policing*
 - apply only European rules to avoid all different national laws
 - apply to interoperable traffic with Switzerland through bilateral Agreements
 - *ensure a good working environment for drivers – e.g. cab*
 - *avoid different spoken languages in one country – e.g. in Belgium*
 - *“humane” aspects of the rosters (work schedules): for example a night shift followed by a morning shift, or the other way around. These changes are difficult for drivers, and create fatigue and safety risks, yet it is perfectly “legal” to schedule this.*
- Issues not currently regulated by the CER/ETF Agreement that should be addressed by European Social Dialogue partners
 - the current balance reached by the Agreement is quite good. All stakeholders are aware of their rights and duties; the Agreement provides effective protection for workers with a common basis to ensure equivalent rules and allows enough flexibility for smooth operation of the system
 - *add electronic checks on working conditions, driving and rest periods, licence, education... to ensure safety and avoid social dumping*
 - working time and crew composition should be equal throughout Europe
 - if an employee is working for two different companies, he/she is responsible for compliance with the rules – the two companies do not have the other company's respective data
 - *the directive is basically good, but it should be fine-tuned, and there’s not enough for other drivers, who don’t cross borders...*
 - *What is the applicability of the Rome Treaties? What are intervention rules? Need definition of sanctions with the possible deployment of a cross-border transport inspectorate*
- General comment from a company
 - Eurostar considers that the current balance reached by the agreement is a good one, in which all sides are aware of their rights and duties. It provides effective protection of workers, as evidenced by the lack of disputes, while having enough safeguards in place to make sure any concerns – if there were any - can be quickly and efficiently raised. We strongly believe that any issues that might be brought to light are not linked to the agreement, but to improper implementation locally: revising the agreement is not the solution to this problem, better implementation and policing – as already allowed in the current text – are. The current framework also provides enough flexibility to allow for a smooth operation of the system in the context of a genuine cross-border rail operator like Eurostar:

- The agreement implemented by the directive provides a common basis to ensure equivalent rules for all workers, wherever they are employed, while leaving enough flexibility to cater for different national situations.
- The spirit of the agreement clearly is setting a common minimal basis, it is not about a maximum harmonisation of rules.
- Lastly, moving towards too tight rules for cross-border traffic would risk making cross-border rail traffic so complicated that it would (i) act as a disincentive for rail companies to operate internationally – which surely would run contrary to the EU’s own efforts to develop cross border rail traffic – and (ii) make rail even more uncompetitive vis-à-vis other modes of transport.

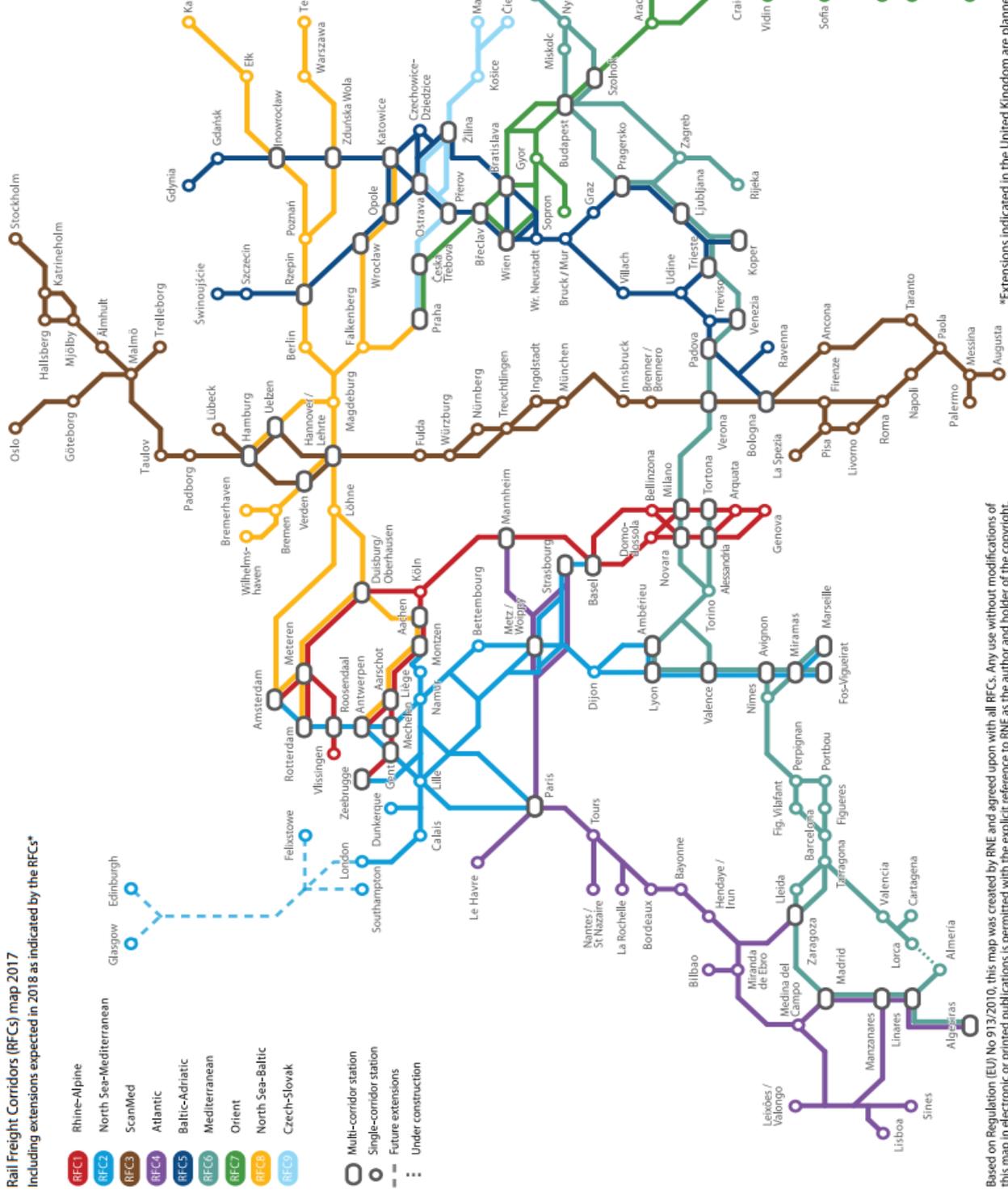


APPENDIX 4 – Additional data on cross-border traffic

List of railway undertakings with cross-border operations in 2017 but not necessarily in the scope of the Agreement

- Abellio Rail NRW GmbH
- ARRIVA vlaky s.r.o.
- Bayerische Oberlandbahn GmbH
- Bentheimer Eisenbahn AG
- BoxXpress.de GmbH
- Captrain Italia S.r.l.
- Cargo Service GmbH
- CargoNet AS
- ČD Cargo, a.s.
- CENTRAL RAILWAYS, a.s.
- CER Slovakia a.s.
- CFL
- CFL cargo S.A
- Crossrail Benelux NV
- DB Cargo (UK) Ltd
- DB Cargo AG
- DB Fernverkehr AG
- DB Regio AG
- Duisport Rail GmbH
- Ecco-rail GmbH
- EuroCargoRail
- Europorte France
- Eurostar International Ltd
- Express Slovakia “Medzinárodná preprava a.s.”
- FOXrail Zrt.
- GJW Praha spol. s r.o.
- Green Cargo AB
- Hector Rail AB
- HSL Polska spółka z ograniczoną odpowiedzialnością
- IDS CARGO a.s.
- InRail S.p.A.
- Joint-stock company “Lietuvos geležinkeliai”
- Keolis Deutschland GmbH & Co. KG
- KombiRail Europe B.V.
- LEO Express, a.s.
- Limited company “LDZ CARGO”
- Lineas Group
- LKAB Malmtrafik
- LOKO TRANS s.r.o.
- Lokomotion GmbH
- LOTOS Kolej sp. z o.o.
- LTE Netherlands B.V.
- Medway - Operador Ferroviário Logístico de Mercadorias, SA
- MERCITALIA Rail
- METRANS /Danubia/
- ÖBB-Personenverkehr AG
- Oceanogate Italia S.p.A.
- Ostravská dopravní společnost, a.s.
- Petrolsped Slovakia, s.r.o.
- PKP Cargo S.A.
- PRVÁ SLOVENSKÁ ŽELEZNIČNÁ, a.s.
- Przedsiębiorstwo Usług Kolejowych KOLPREM Sp. z o.o.
- Rail Cargo Austria AG
- Railtrans International
- Railtraxx (BVBA)
- RCC Kft.
- RENFE MERCANCÍAS, S.A.
- RENFE VIAJEROS, S.A.
- RheinCargo GmbH & Co. KG
- Rhomberg Bahntechnik GmbH
- RM LINES, a.s.
- Rotterdam Rail Feeding BV
- RTB Cargo Netherland B.V.
- RTS Rail Transport Service GmbH
- Salzburg AG/Salzburg Lokalbahn
- SBB Cargo Deutschland GmbH
- SJ AB
- SLEZSKOMORAVSKÁ DRÁHA a.s.
- Slovenská železničná dopravná spoločnosť, a.s.
- SNCF Mobilités
- STRABAG Rail a.s.
- SŽ - Tovorni promet d.o.o.
- Tågåkeriet i Bergslagen AB
- THI Factory S.A.
- Train Hungary Kft.
- TRANSFESA RAIL, S.A.U.
- Traťová strojní společnost, a.s.
- Trenitalia SpA
- Trenord S.r.L.
- TX Logistik AG
- vlexx GmbH
- Widmer Rail Services
- Wiener Lokalbahnen Cargo GmbH
- Železničná spoločnosť Cargo Slovakia, a.s.

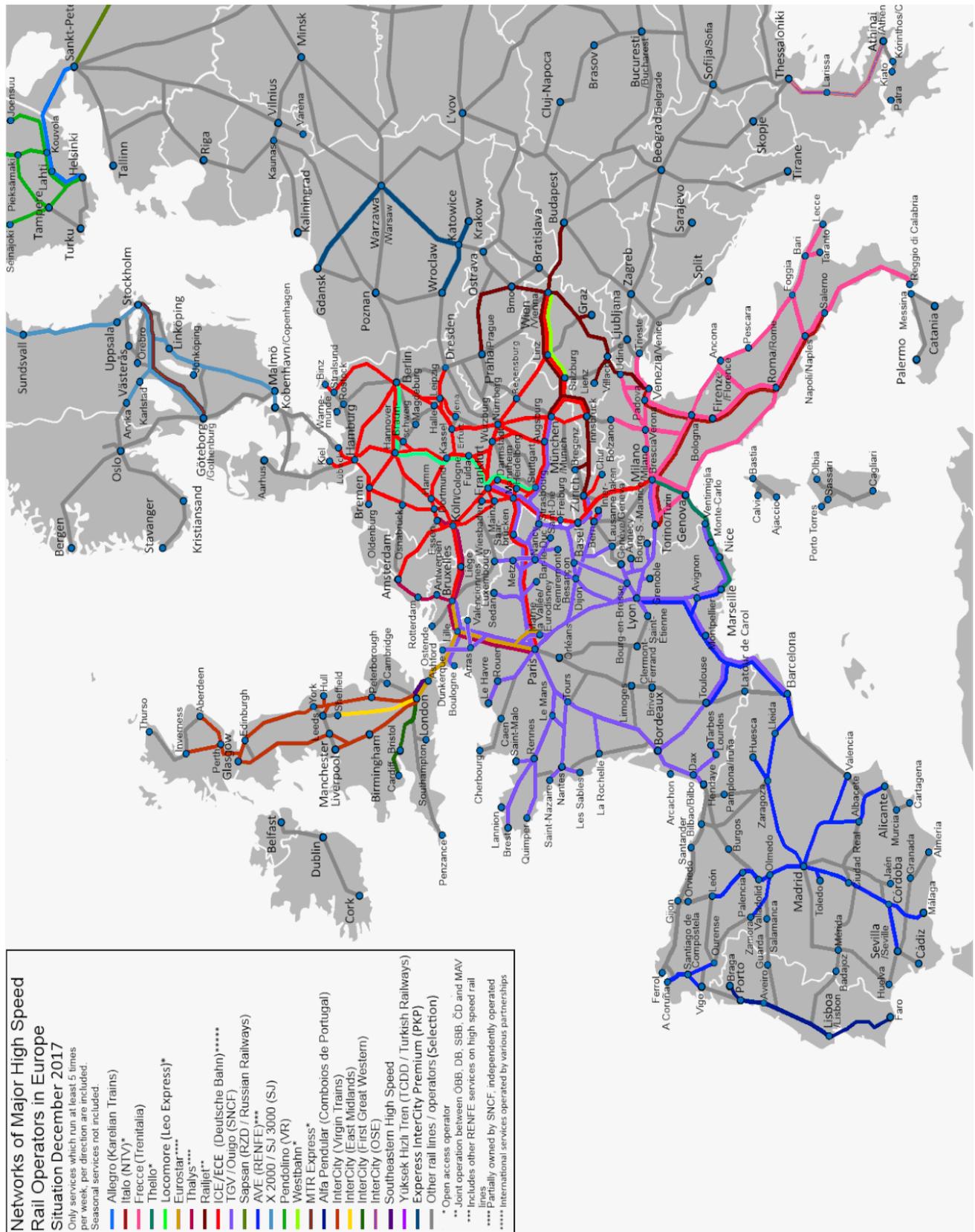
Rail freight corridors map 2017 (Rail Net Europe)



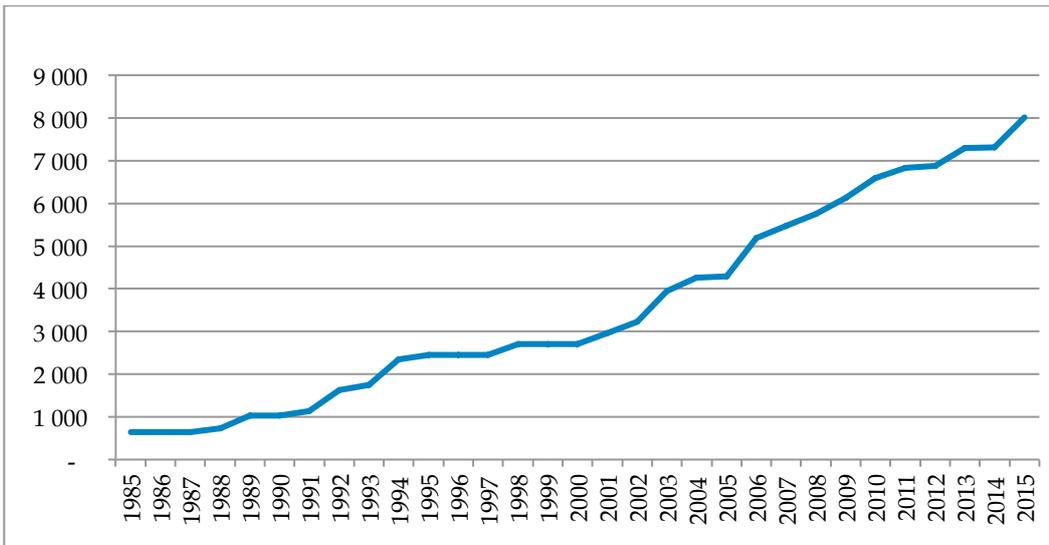
Based on Regulation (EU) No 913/2010, this map was created by RNE and agreed upon with all RFCs. Any use without modifications of this map in electronic or printed publications is permitted with the explicit reference to RNE as the author and holder of the copyright.

*Extensions indicated in the United Kingdom are planned for 12/2018 © 2017 RNE

Networks of major high-speed operators in Europe, 2017 (Source: Wikimedia)



Long term evolution of high speed lines in Europe (km)



Source: Statistical pocketbook 2016

HIGH-SPEED LINES CURRENTLY UNDER CONSTRUCTION

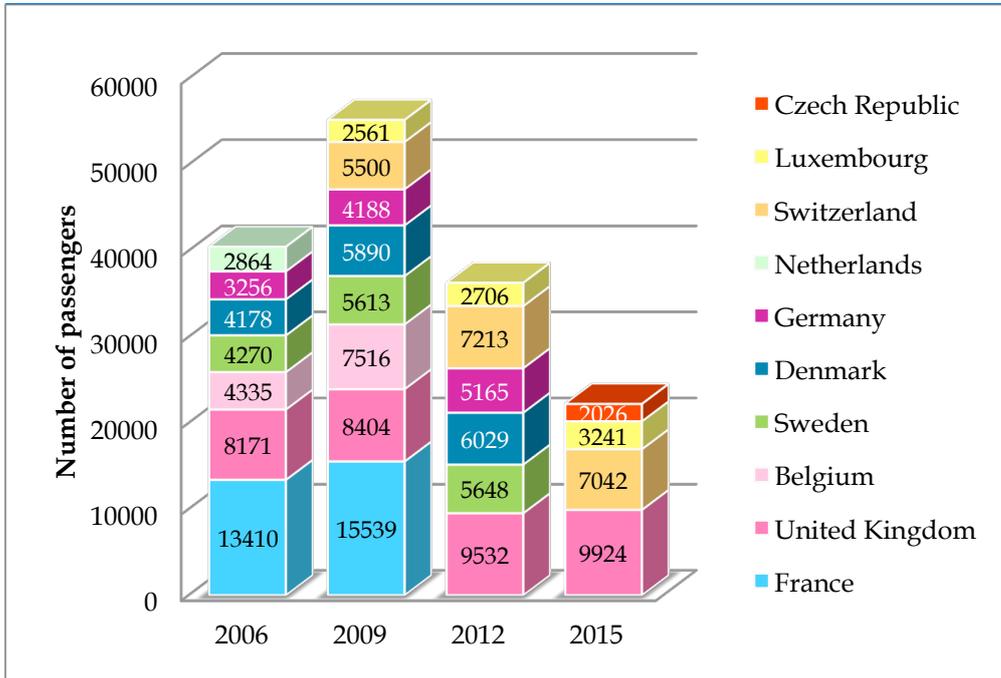
LINE	LENGTH km	START OF OPERATION
DK Copenhagen - Ringsted	56	2018
DE Offenburg - Riegel (Basel)	39	2029
DE Nürnberg - Ebensfeld	83	2017
DE Ebensfeld - Erfurt	100	2017
DE Stuttgart - Wendlingen	57	2021
DE Buggingen - Katzenberg tunnel (Basel)	12	2021
DE Wendlingen - Ulm	60	2021
DE Tunnel Rastatt	17	2022
ES (Madrid-Valencia)/Alicante - Murcia/Castellon	231	
ES Vitoria - Bilbao - San Sebastian	175	
ES Variante de Pajares	50	
ES Bobadilla - Granada	109	
ES La Coruña - Santiago	62	
ES Navalmoral-Cacere-Badajoz-Fr. Port	278	
ES Sevilla - Cadiz	152	
ES Hellin - Cieza (Variante de Camarillas)	27	
ES León - Asturias	50	
ES Sevilla-Antequera	128	
FR LGV EST - Européenne (second phase)	106	2016
FR LGV Bretagne - Pays de la Loire	214	2017
FR LGV Sud Europe Atlantique	340	2017
FR Counternement Nimes - Montpellier	80	2018
IT Milan (Treviglio) - Brescia	58	2016
IT Genoa - Milan (Tortona)	67	2020
AT Ybbs - Amstetten	17	2015
AT Gloggnitz - Mürzzuschlag (Sermmering-Basistunnel)	27	2024
AT Graz-Klagenfurt (Koralmtunnel)	110	2024
AT Brennerachse	64	

Note: The length indicated above is the length of the line under construction and not necessarily the distance between the places named.

Source: Union Internationale des Chemins de Fer – High Speed Department (March 2016)

Overview of the main European destinations for cross-border rail passengers from Europe

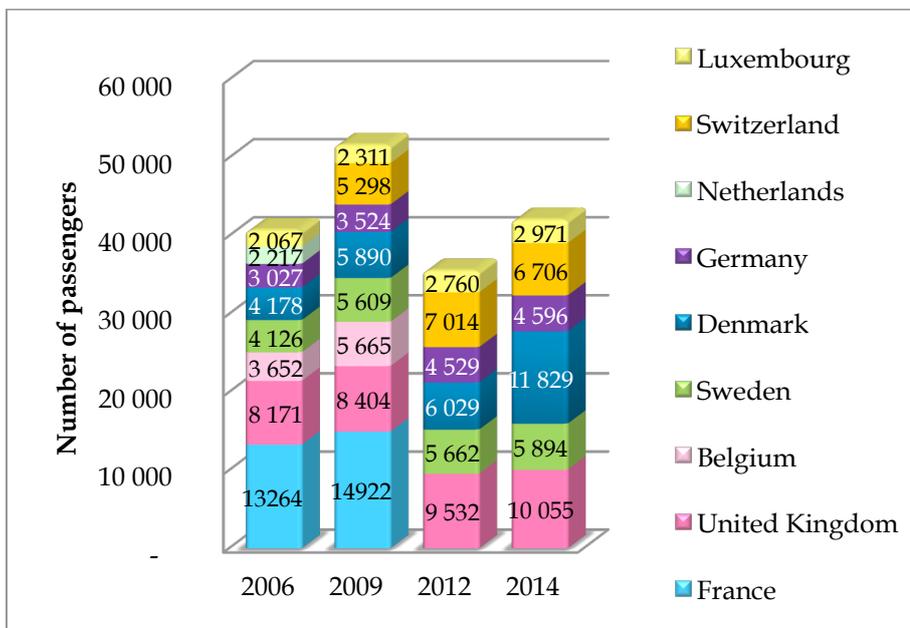
In thousands of Passengers (**Note:** Data for some countries/ years are missing)



Source: Eurostat data base, International railway passenger transport from the reporting country to the country of disembarkation 2015

Overview of the main European countries of departure for cross-border passengers travelling within Europe by rail

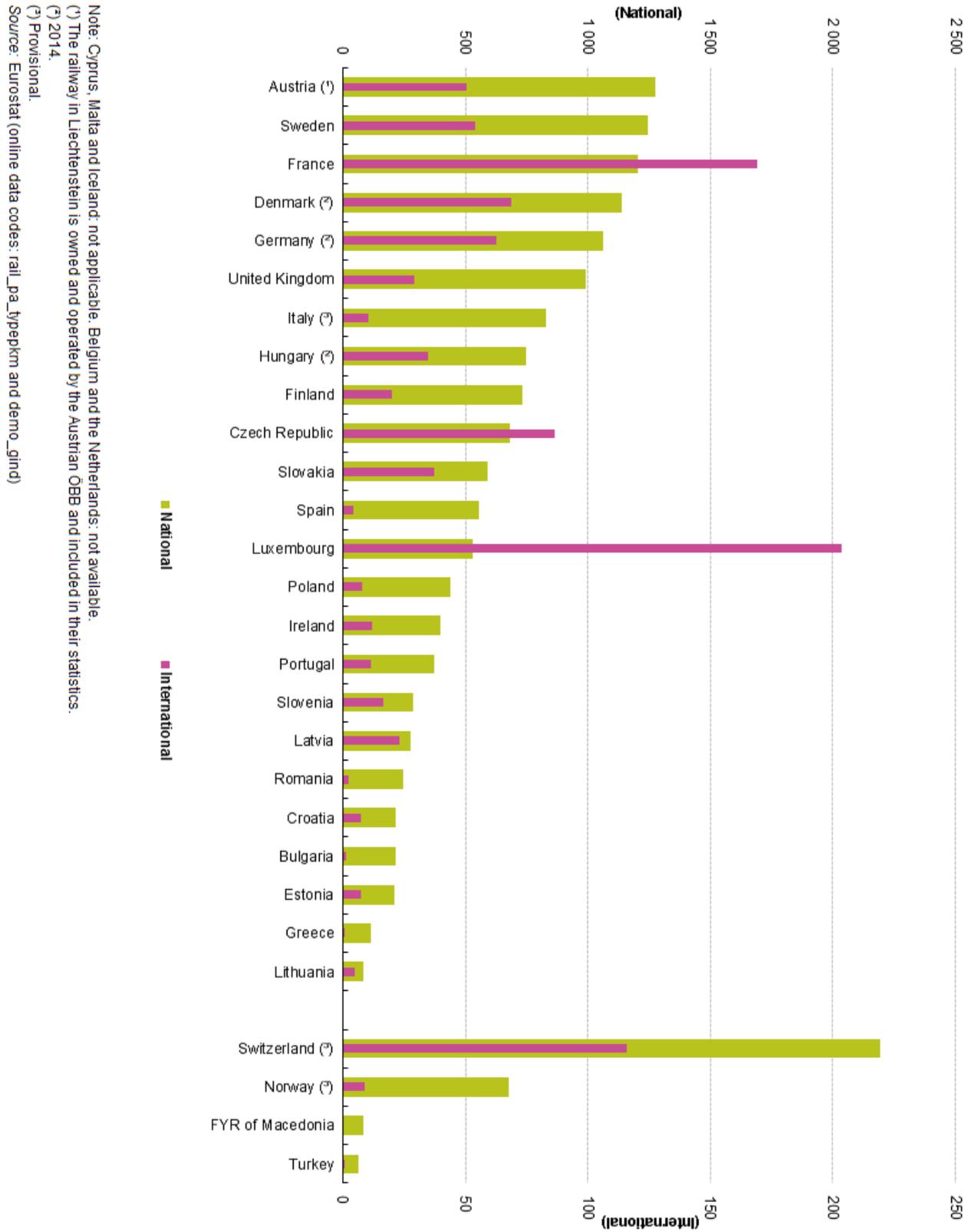
In thousand Passengers (**Note:** Data for some countries/ years are missing)



Source: Eurostat data base, Passenger international railway transport from the country where they boarded to the reported country of destination

Rail passenger transport (passenger-km per inhabitant)

Note: The scales are different for national and international values



Source: Eurostat, Passenger rail transport, 2015 (passenger-km per inhabitant)



TOBIAS COLLA



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PART 2

Legal aspects of the Implementation and Application of the CER-ETF Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border service in the railway sector (implemented by Directive 2005/47/EC)

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1. INTRODUCTION

This study analyses the implementation of the CER-ETF Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector implemented by Directive 2005/47/EC (hereafter, the 'Agreement' or 'Directive'), ruling the working conditions of mobile workers engaged in interoperable cross-border railway services, in most of the EU Member States.

The research has been carried out jointly by wmp Consult (Germany) and Fondazione "Giacomo Brodolini" (Italy) within the project "Rail Mobile Workers – Assessment of the social partners of the implementation and application of the agreement on certain aspects of working conditions of mobile workers engaged in interoperable cross-border services in the railway sector".

The purpose of the report, which forms part of a joint ETF-CER project funded by the European Commission, is to offer an overview of the implementation of the Agreement at national and company level after more than ten years the approval of the Directive.

The study is structured as follows:

- The first chapter provides an overview of the current implementation of the Directive in the different EU Member States. This work summarises mainly relevant parts of the implementation report as published by the EU Commission in 2012 (European Commission 2012).
- The second chapter consists of a comparative analysis of the questionnaire survey responses in relation to different sources regulating the working time of rail mobile workers concerned; hierarchy between the different sources; categories of rail mobile workers covered; daily rest away from home; competent authorities and bodies entitled to check working conditions.
- The third chapter offers further legal advice on specific issues that have been debated during the Steering Committee meetings and the workshops.

Please note that the information contained in the present report do not necessarily reflect the position or opinion of CER and ETF.



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2. METHODOLOGICAL NOTE

Within the underlying analysis of this study the authors have followed a comparative approach. In particular, in the preparatory phase they have identified some core issues, which have been the basis for the drafting of a questionnaire that was addressed to both railway companies and trade unions. The responses received have been collected and evaluated in order to highlight the commonalities as well as differences between national systems of industrial relations and collective bargaining, and the practices applied at company/plant level.

As to the questionnaire survey, the study builds on a total of 66 questionnaire responses from 21 countries¹, including Switzerland and Norway.² 34 responses were received from the railway companies (CER) and the remaining 32 from trade union organisations (ETF). In some case, where responses were not clear or left relevant questions open, the authors consulted respondents also bilaterally via e-mail or phone in order to clarify single aspects.

The research, despite it is mainly based on the data contained in the questionnaires, also took into account input provided by social partners and national authorities during different meetings in the context of the project (Berlin, Cologne, Zagreb, Lyon and Copenhagen). Furthermore, it relies on the analysis of comparative labour law and industrial relations works (Eurofound reports, comparative labour law handbooks and encyclopaedia).

Draft versions of this study report were presented and discussed at the CER-ETF steering committee meetings in Lyon in December 2017 and in January 2018 in Copenhagen. This report considers the comments received during the meetings by representatives of both EU level social partners as well as a number of written comments and clarifications received by national members of CER and ETF.



1 No responses were received from Estonia, Greece, Ireland, Latvia, Lithuania and Romania.

2 Whereas Switzerland has not transposed the Agreement into national legislation, Norway did so in 2008 by Executive Order on working time for employees in cross-border services in the railway sector (*FOR 2008-07-03 No. 783*).

3. THE APPLICABLE LEGAL FRAMEWORK

3.1 Implementing the Directive by national law

On 27 January 2004, the Community of European Railway and Infrastructure Companies (CER) and the European Transport Workers' Federation (ETF) signed an agreement regarding certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector.

The Agreement aimed at striking a balance between the need to ensure adequate protection of the health and safety of mobile workers in interoperable cross-border rail services and facilitate interoperability in running rail transport enterprises in an integrated European Union (EU) railway network. A further motivation of the Agreement was to avoid unfair competition, based on the worsening of working conditions as regards working time and driving periods or daily and weekly rest periods as well as breaks.

The Agreement includes minimum standards with regard to working conditions, such as daily and weekly rest times, breaks, and driving periods:

- *Daily rest at home* must be a minimum of 12 consecutive hours per 24-hour period; possibility of reduction to nine hours once every seven-day period (Clause 3);
- A *minimum daily rest away from home* of 8 consecutive hours per 24-hour period, followed by a daily rest at home (Clause 4);
- *Breaks* between 30 and 45 minutes depending on the working time (Clause 5);
- A minimum *uninterrupted weekly rest period* of 24 hours plus the 12 hours daily rest referred to in Clause 3 (Clause 6);
- Each year, every mobile worker shall have 104 rest periods of 24 hours, including the 24-hour periods of the 52 weekly rest periods and including 12 *double rest periods* (of 48 hours plus a daily rest of 12 hours) including Saturday and Sunday, and 12 double rest periods (of 48 hours plus a daily rest of 12 hours) without the guarantee that this will include a Saturday or Sunday.
- *Maximum driving periods* of 9 hours for a day shift and 8 hours during night shifts and maximum driving time of 80 hours in a two-week period (Clause 7);

The Agreement provides employers with greater flexibility because, under exceptional circumstances, it is possible to shorten the daily rest period to 9 hours instead of the minimum of 12 consecutive hours per 24-hour period.³

As regards to Clause 4 of the Agreement, the social partners agreed that a second consecutive rest away from home as well as compensation for rest away from home could be negotiated between social partners at company or national level. During discussions of the Agreement, particular attention was given to Clause 4. Here, the Agreement mirrors the concept of EU social legislation: If social regulation is agreed between social partners in a collective agreement at national or other level, this should also apply for the second rest away from home.

EU countries may keep or introduce more favourable rules than those established by the

³ According to Clause 3 of the Agreement, a reduced daily rest of nine hours is possible once every seven-day period. In that case, the hours corresponding to the difference between the reduced rest and 12 hours will be added to the next daily rest at home. A significantly reduced daily rest shall not be scheduled between two daily rests away from home.

Agreement. Clause 9 of the Agreement specifies a non-regression principle according to which the implementation of provisions of the agreement shall not be used to justify a lower level of protection for workers where better protection is given under existing national legislation.

Member States were required, after consultation with the social partners, to implement the Directive by 27 July 2008 into national law or should have ensured that the social partners have adopted the necessary provisions by means of an agreement. With the exception of three EU Member States – namely Cyprus and Malta with no railway activities and Finland (no cross-border railway connections with other EU countries), all Member States implemented the Directive into national law.

In the following we are analysing from a comparative perspective both national legislations and collective agreements at various level implementing the Agreement. The topics analysed are as follows:

- the regulatory framework of the working time of rail mobile workers engaged in interoperable cross-border services;
- the hierarchy of the different sources;
- the categories of the train crew covered by the applicable sources;
- the daily rest away from home;
- and the competent authorities and bodies for checking of working time rules.

3.2 Sources regulating the working time of rail mobile workers engaged in cross-border services in the railway sector

Based on the responses to the questionnaire survey it can be stated that in all countries covered, terms and conditions of employment of rail-mobile workers are ruled by different sources. These can be clustered into the following groups:

- General legal sources regarding labour conditions and working time that relate to all economic sectors in the respective countries. Here in particular working time law has been highlighted by the survey respondents.
- Secondly, administrative regulation or decrees that are specific to the railway sector and/or specific groups of personnel, for example drivers.
- Thirdly, there are internal company-specific regulations, for example regarding working and rest times, roster orders, etc.
- Finally, collective agreements that regulate employment and working conditions of rail-mobile workers. Depending very much on the prevailing system of collective bargaining and social dialogue in the respective country, collective bargaining may be highly coordinated and take place at multi-level (sector, company, plant/local level) or may be carried out only at the company/plant level.

As regards to collective agreements it should be noted that the information gathered in the context of the CER/ETF survey reflects the situation at the level of companies rather than country specific patterns. This difference is important because for example as regards the coverage by sectoral collective agreements or the existence of company-specific collective agreements or other rules, often differences exist between companies.

For example, in Belgium, in publicly-owned railway companies such as SNCB, relevant provisions are set by company internal regulation and not by collective agreements. This source for provisions is only the case for private railways companies.

This difference between public-owned and private companies however is not mirrored in all countries that follow a pattern of multi-level collective bargaining. For example, in France, Switzerland, the Netherlands and Italy, also representatives of public companies report that

both sectoral collective as well as company agreements are sources of provisions for the regulation of working time of rail mobile workers.

The following table summarizes country specific patterns as regards different sources of regulation, indicating also differences that may exist within the national context.

Table 1: Different sources for provisions regarding working time of rail mobile workers

COUNTRY	LAW / DECREE	SECTORAL COLLECTIVE AGREEMENT	COMPANY OR PLANT LEVEL COLLECTIVE AGREEMENT	COMPANY INTERNAL REGULATION	ADMINISTRATIVE / JUDICIAL DECISION	DIFFERENT PATTERNS BETWEEN COMPANIES
Austria	x	x	x	x		yes
Belgium	x	x		x		yes
Bulgaria	x	x	x			n.a.
Switzerland	x	x	x	x		n.a.
Czech Republic	x		x			n.a.
Germany*	x		x	x		yes
Denmark		x	x			yes
Spain	x	x	x			
France	x	x	x	x	x	yes
Croatia	x		x			n.a.
Hungary	x		x		x	yes
Italy	x	x	x	x		yes
Luxembourg	x					n.a.
Netherlands	x	x				yes
Norway	x		x			no
Poland	x	x		x		n.a.
Portugal	x		x			n.a.
Slovakia	x	x				yes
Slovenia	x	x				no
Sweden	x	x	x			no
UK	x		x	x		no

* In Germany, there are no sectoral collective agreements. Legal provisions on working time, civil servants, participation of the works council or the EFPV and collective agreements are valid for DB Fernverkehr and DB Cargo

n.a. = not applicable because only one company participated in the survey.

Source: CER/ETF survey. Company specific details, including on sources presented in annex 2 table.

The only example where no regulatory space is left to collective agreements is CFL in Luxembourg, where employment and working conditions are only set by public law (law and administrative regulations). However, this is due to the public ownership of CFL – for private companies in Luxembourg collective agreements at various level also play an important role apart from legal sources of regulation.

The situation is similar in Belgium, where at SNCB/NMBS the main sources are royal decrees and internal company regulations but not collective agreements.⁴ Private railway companies, such as Lineas, are covered by the Joint Committee on International Trade, Transport and logistics (PC 226). They can negotiate sectoral collective agreements.

In nine countries, collective bargaining agreements at sectoral (often complemented by plant level/local agreements) are applicable for the companies participating in the survey and complement legal regulation, administrative decrees or internal regulation: These are the cases of Switzerland (SBB), Denmark (DSB and DB Cargo), France (SNCF), Italy (Trenitalia, Mercitalia), the Netherlands (NS), Poland (PKP Cargo), Sweden (SJB) and Slovenia (SZ).

By contrast, a number of countries and companies are characterised by a pattern of collective bargaining that is only taking place at company and/or plant level. These cases are Bulgaria (BRC), the Czech Republic (Ceske Dráhy), Germany (Captrain Germany), Hungary (Máv-Start), Norway (Green Cargo, LKAB, CargoNet and NSB), Portugal (CP), Spain (Renfe) and United Kingdom (DB UK Ltd.).

It has to be stressed however, that this latter group includes two types of countries: On the one hand countries where sectoral collective agreements covering either the whole or the private owned railway sector exist but where company-based agreements are more important (and likely more favourable). On the other hand, there are countries such as the Czech Republic, Hungary or the UK where sectoral collective bargaining has no tradition and were company level bargaining is the only existing form.

The following table summarizes this complexity of legal sources, collective bargaining agreements and other provisions as regards the regulation of working time of rail mobile workers in public-owned railway companies in Germany, France and Hungary.



⁴ See annex table 2 for details.

Table 2: Different sources for provisions regarding working time of rail mobile workers

COUNTRY	LAW, DECREE	COLLECTIVE BARGAINING AGREEMENT	OTHERS
Germany (DB Fernverkehr, DB Cargo)	Working Time Law (ArbZG)* [applicable only to employees] Federal Civil Servants Law (BBG) *) Working time decree (AZV) *, Railway Working Time Regulation (EAZV*), applicable for civil servants Works Constitution Law (BetrVG) **)*) On-board railway staff regulation (EFPV) [applicable for cross-border interoperable railway services – implementation of the Agreement)		Agreements between works council and management***)
France (SNCF Freight and Passenger)	Decree n°2016-755 of 8 June 2016 concerning the hours of work scheme for employees of companies in the rail transport sector and employees assigned to railway activities within the meaning of Article L2161-2 of the Transport Code Decree n°2017-393 of 24 March 2017 on the working hours regime for workers performing cross-border interoperable services	Sectoral collective agreement 31.5.2016 Company agreement 14.6.2016	
Hungary (MÁV START)	Labour code	(Collective Agreement of MÁV-START	Local Appendices of MÁV-START various regulations issued by the CEO

*) The legal sources do not contain specific rules for rail mobile workers engaged in interoperable cross-border transport. The regulations apply regardless of whether the rail mobile workers is engaged in interoperable cross-border traffic or not.

**) The beginning and end of working hours including breaks and the distribution of working time are subject to the co-determination of works councils.

***) Regulations in company agreements between management and works councils apply to all train drivers, regardless of whether they are used in interoperable cross-border traffic or not. There are no special regulations in company agreements for train drivers in interoperable cross-border traffic.

Source: CER/ETF survey

In the case of Eurostar, the sources for provisions regarding working time of rail mobile workers in the three countries involved in the company reflect the different national legal and collective bargaining systems as the table below shows.

Table 3: Eurostar - Sources for provisions regarding working time of rail mobile workers in the UK, Belgium and France

COUNTRY	LAW, DECREE	COLLECTIVE BARGAINING AGREEMENT	OTHERS
UK	Office for Road and Rail rules (ORR)		
France	Law or decree	Sectoral collective agreement convention collective sectorielle	Enterprise agreement
Belgium	Royal Decree		SNCB internal rules

Source: CER/ETF survey. Response of Eurostar, Director of Train Services and Performance

The CER/ETF survey also asked about any incidences of judicial decision held by domestic courts on aspects of working conditions of rail-mobile workers engaged in cross-border services that are regulated by the Agreement. More generally, neither in the context of the survey nor the presentations of national social partners and company representatives during the workshops any relevant legal cases or judicial decisions in the context of interoperable cross-border services in the railway sector have been identified.⁵

However, in Austria, there has been a legal case as regards working time and pay issues of an external catering company that had a contract with ÖBB. The Austrian Company Do&Co was awarded with a contract for on-board catering services by ÖBB. Do&Co awarded the company Henry am Zug Austria, who founded Henry am Zug Hungary Kft., headquartered in Hungary. HaZ Hungary engaged Hungarian workers for board catering especially for routes from Budapest to Salzburg or Munich. Some of these employees worked directly for the company Henry am Zug (HaZ), but most of them were posted/seconded to HaZ by another Hungarian company. HaZ received penalties due to the regulations intended to combat wage and social dumping (e.g. missing documents, notifications in time). HaZ fought to the Administrative Court (VwGH). The Administrative Court raised a number of questions to the European Court of Justice (ECJ) for preliminary ruling.

The Austrian Court in particular highlighted legal uncertainties regarding the applicable rules of on-board catering in cross-border mobile work in cases of employees providing services directly on the train and the question whether or not the Posting in Workers Directive would apply for this specific case (given the fact that HaZ not only employs own workers but also workers that are provided by other Hungarian companies. While there is no doubt that the Posting of Workers Directive also applies for temporary agency workers, the status of HaZ as a posting company or a temporary agency is legally uncertain. These as other questions have to be addressed by the European Court of Justice, ECJ. A decision of the ECJ is expected in March 2019. A ruling will apply for the entire EU and will also be relevant for traveling and flying personnel.

3.3 Hierarchy of sources and derogation

In the context of the questionnaire survey, participants were asked to clarify the hierarchy of sources regulating the working time of train crews engaged in cross-border services in the railway sector. Participants in particular were asked to clarify the following:

- Whether collective agreements at sectoral, company or plant/site level can derogate from rules established by law/decreed in a less favourable way.
- If so, respondents were asked to indicate the aspects concerned by derogation possibilities (working time, daily rest at home, breaks, weekly rest periods, night time/night shift, rest away from home, breaks of other on-board crew, driving time, checks)
- Finally, participants were asked to clarify the specific conditions under which derogations are possible.

The background of this question in the survey is the need to learn more about the role of collective bargaining and collective agreements in determining the implementation of relevant provisions of the Agreement. This seems important as labour law and industrial relations research has indicated quite a strong variety of derogation possibilities across European countries.

⁵ During one of the workshops held in the context of the project, a German NGO representative as well as trade union representatives reported about incidents of controversial employment and working conditions. See: Helmut Diener: Implementation and application of the Agreement in Germany. Employee' experiences. Mobifair e.V., Rail Mobile Workers Workshop I, 16-17 May 2017, Berlin.

For example, as regards standards defined by sectoral or national collective agreements, collective agreements at national level may foresee the possibility of companies to deviate or derogate from the respective provisions, in particular when it comes to wage agreements.⁶ Whereas there are different types of derogation, for example opening clauses or opt-out clauses,⁷ the respective rules regarding the conditions normally are strict and have to be agreed between trade unions and employers at national/sectoral level.

The reasoning behind such derogations is that they are an instrument that may permit companies to overcome temporary economic difficulties or to provide company actors with a certain degree of flexibility in an overall decentralised system of collective bargaining.

The evaluation of the survey results shows that as regards of the aspects regulated by the Agreement, in most countries there is no possibility of collective agreements derogating from rules established by law or decree in a less favourable way. In countries (e.g. Portugal), where the legislator foresees such possibilities, deviations from legal norms can only be made in case of standards set at sectoral, company or plant/site level being more favourable.

And even in national systems of industrial relations where social partners have a high degree of autonomy in defining rules and setting standards by collective agreements that may also include less favourable conditions at company level, the rules as regards minimum working conditions as defined by the Agreement are very strict.

As the following table shows, collective agreements might deviate from certain aspects that are addressed by the Agreement in Denmark, Norway, Sweden and Switzerland as well as Germany. However, such practice is linked to clearly defined conditions and strict requirements, in particular in case of less favourable conditions agreed. As regards Switzerland as well as Germany it has to be noted that whereas the possibility of derogation exists in the collective bargaining system, this is not applied to working conditions aspects covered by the Agreement.

In all cases, a basic requirement is an agreement between the employer and the trade unions that in most cases would define compensatory provisions for workers. This is illustrated by the practice reported in Italy (by the CER Members of two companies): For three companies (TX Logistics, Trenitalia, Mercitalia Rail) collective agreements according to information provided by the management, collective agreements at sectoral, company or plant/site level might derogate from the rules established by law or decree in a less favourable way. However, this derogation possibility is allowed only for certain aspects (see table below) and may not establish less favourable conditions as regards driving time, night shift and checks. Furthermore, in case of less favourable conditions agreed, there must be either equivalent periods of compensatory rest or – if this is not possible – other appropriate protection provisions for the concerned workers.

In Denmark, a country where social partners by collective agreements have a strong autonomy to define rules and conditions and where the implementation of the CER/ETF Agreement is done by a collective agreement at sectoral level, agreements at company level may deviate and provide for less favourable conditions only in one company (DSB) and only as regards to certain aspects of working conditions covered by the Agreement (see table below). A similar practice is reported for Norway. However, in Norway derogations only are possible if foreseen in the national agreement for train drivers.

6 See Martin Keune 2011: Derogation clauses on wages in sectoral collective agreements in seven European countries, Eurofound; OECD 2017: Collective Bargaining in OECD and accession countries: Use and scope of derogations and opt-out, www.oecd.org/employment/collective-bargaining.htm

7 *Opening clauses* which allow to set lower standards, i.e. less favourable conditions for workers, in a generalised way and not specifically related to economic difficulties; *opt-out clause*: temporary “inability to pay” or hardship clauses allow the suspension or renegotiation of (part of) the agreement in situations of economic difficulties.

Sweden and France are the only countries where the social partners have reported that by sectoral collective agreements provisions for a second rest away from home have been concluded.

Table 4: Possibilities to deviate from legal working time provisions by collective agreements

COUNTRY	ASPECTS	CONDITIONS / REQUIREMENTS
Denmark (DSB)	Working time, night time, night shift, breaks of drivers, driving time Not possible for daily rest at home, weekly rest period, rest away from home, breaks of other on-board staff, checks	Collective agreement at company level
Italy (TX Logistik⁸, Trenitalia, Mercitalia Rail)	Working time, daily rest at home, breaks of drivers, weekly rest period, night time, rest away from home, breaks of other on-board staff Not possible for driving time, night shift and checks	Equivalent periods of compensatory rest or, in exceptional cases in which it is not possible, appropriate protection for concerned workers
Norway	Working time, night time, night shift, daily rest at home, rest away from home, breaks of drivers, weekly rest period, driving time, checks Not possible for breaks of other on-board staff	Only for train drivers Conditional to the approval by national trade union
Sweden	Rest away from home (including 2nd rest away from home), longer rest periods, resting place	Only agreements at sector level – no derogation possible by collective agreements at company or plant/site level
Switzerland	Compensation of overtime No aspects of working time regulated by the Agreement are addressed	Overtime compensation can be set differently by a collective agreement, for example by a compensation day

Source: CER/ETF survey.

As shown in the table above, derogations may refer to a broad range of aspects, such as working time, drivers break, weekly rest period, night time and rests away from home. More focussed rules regard the aspects are reported for countries such as Sweden and Switzerland. In Sweden, collective bargaining can derogate from legal standards regarding the rest away from home only. In Switzerland a local agreement may only deviate from legal rules regarding the compensation in case of overtime.

Thus, clear rules regarding the hierarchy of sources and exemptions from the rule of the favourability principle exist in all countries covered by our study. An illustrative example is Germany.

⁸ As said by trade unions (see country presentation on Italy, ETF/CER Workshop in Zagreb, 4 October 2017) TX Logistik individual contracts concluded between the management and workers on the basis of company agreements on working time conditions and company internal regulations (see the questionnaire filled in by the company).

Hierarchy of norms and the favourability principle in Germany

As in other countries, the principle of hierarchy (“Rangprinzip”) of norms is applied in general, i.e. rules and standards set at lower level may not be in breach with higher rules and standards. However, in addition, the favourability principle (“Günstigkeitsprinzip”) is applied, i.e. rules and standards set at lower level may apply if the provisions are more favourable for the workers.

The regulations are minimum standards; a shortfall is only possible if the law / collective agreement provides for an explicit opening. The working time law contains e.g. a well-defined opening for specific deviating regulations in a collective agreement or a collective agreement in a company agreement. However, as regards to the Agreement / Directive 2005/47/EC and its provisions the German legislator does not foresee any derogation from the rules that are implemented by the on-board railway staff regulation (Eisenbahnpersonalverordnung, EFPV).

Source: CER/ETF Survey, response of DB Cargo AG

3.4 Categories of rail mobile workers engaged in interoperable cross-border services covered by legal and other sources

According to clause 2 of the Agreement a “mobile worker engaged in interoperable cross-border services” is member of a train crew, who is assigned to interoperable cross-border services for more than one hour on a daily shift basis.

Against this, flexible provision regarding categories of rail mobile workers covered, the European as well as national legislator general has left room for manoeuvre for social partners to concretise eligible staff categories. For example, in Austria it has been reported by the management representative of ÖBB, that the legislator has left it open if restaurant crew is concerned from the regulation about interoperable cross-border workers.

As regards to the different groups of the train crew covered by national implementation law of the Agreement and/or by collective agreements the survey shows that as regards **freight railway companies**, only drivers are covered by the provisions of legal sources and collective agreements. This is not surprising as in most cases, in freight companies only drivers are engaged in interoperable cross-border services.

The only exemptions here are HectorRail and DB Cargo in Denmark where also shunting workers and TX Logistic and Mercitalia Rail in Italy where mechanics and technicians are covered by a collective agreement at sectoral level or company level agreements.

As regards to **passenger transport**, there are more categories of rail mobile workers that potentially might be covered: However, as the following table shows, the majority of respondents report that only a core group, consisting of drivers, train managers and conductors are covered by the legal provisions as well as collective agreements. As regards the latter, respondents in most cases referred to collective agreements at sectoral as well as company level as sources of regulation.

In relation to further categories of the train crew covered, the survey shows that in particular different groups of catering and restaurant workers, specific groups of train attendants as well as technical personal are covered in some countries and companies whereby in most cases, the respective provisions are set by company-based agreements between the company and the respective trade union(s).

Table 5: Categories of interoperable cross-border mobile workers covered by legal or other sources*

COMPANY / COUNTRY		TRAIN DRIVERS	TRAIN MANAGER / CONDUCTORS	OTHER STAFF
THI Factory	BE	Law/decre Company agreement	Law/decre Company agreement	---
SNCB/NMBS	BE	Law/decre Company agreement	Law/decre Company agreement	Law/decre any member of a train crew
SBB	CH	Law/decre Sectoral agreement Company agreement Plant/local agreement	Law/decre Sectoral agreement Company agreement Plant/local agreement	---
Ceske drahy	CZ	Law/decre Company agreement	Law/decre Company agreement	---
DB Fernverkehr	DE	Law/decre Company agreement	Law/decre Company agreement	Law/decre Company agreement Catering personnel
DSB	DK	Law/decre Company agreement	Law/decre Company agreement	---
Renfe Viajeros	ES	Law/decre Company agreement	Law/decre Company agreement	---
SNCF	FR	Law/decre Sectoral agreement Company agreement Plant/local agreement	Law/decre Sectoral agreement Company agreement Plant/local agreement	---
HZPP	HR	Law/decre Company agreement	Law/decre Company agreement	Company agreement on-board staff in sleeping coaches and in coaches with beds
MAV-START	HU	---	---	Law/decre Company agreement Plant/local agreement VIP train attendants, attendant, waiter, cook
GYSEV	HU	Law/decre Plant/local agreement	Law/decre Plant/local agreement	---
NS	NL	Law/decre Sectoral agreement	Law/decre Sectoral agreement	---
NSB	NO	Law/decre Company agreement	Law/decre Company agreement	---
CP	PT	Law/decre Company agreement	Law/decre Company agreement	---
SJAB	SE	Law/decre Company agreement	Law/decre Company agreement	---
SJ Norrlandstag	SE	Law/decre Company agreement Plant/local agreement	Law/decre Company agreement Plant/local agreement	---
ZSSK	SK	Law/decre Company agreement	Law/decre Company agreement	---
Eurostar	UK	Law/decre Company agreement Plant/local agreement	Law/decre Company agreement Plant/local agreement	---

*Note: only those rail passenger companies are included in the table that have reported to employ cross-border mobile staff. Source: CER/ETF survey.

3.5 Daily rest away from home

This section focusses on regulation as regards rest away from home in interoperable cross-border services in the railway sector. According to clause 4 of the Agreement, the minimum rest away from home shall be eight consecutive hours per 24-hour period. Moreover, a daily rest away from home must be followed by a daily rest at home, i.e. only one rest away from home is possible, unless a second one has been negotiated.

In the context of the survey, participants were asked to providing information on four aspects related to daily rest away from home in the context of cross-border railway services:

- whether there are rules contemplating that rail mobile workers engaged in cross-border services can spend a daily rest away from home;
- if applicable, respondents should clarify the type of rules (law/decree, sectoral agreement, company agreement, plant/site or local collective agreement);
- information on the kind of compensation offered to the concerned employees;
- whether or not a 2nd daily rest away from home for rail mobile workers engaged in cross-border railway services has been negotiated by the social partners at company or national level.

As currently no daily rest away from home is planned, provisions regarding a daily rest away from home have not been established at HZPP (Croatia), PKP Cargo (Poland), DSB (Denmark), Captrain (Italy), CP (Portugal⁹), as well as Green Cargo, HectorRail, and SJ Norrlandstog (Sweden) and ZSSK in Slovakia.¹⁰ All other companies are covered by provisions regarding a daily rest away from home for interoperable rail mobile workers engaged in interoperable cross-border services as the following table shows.

In most company cases, regulation of daily rest away from home is based on a combination of law/decree and collective agreements as the following overview table shows. There are only few countries where the sole source for provisions regarding a daily rest away from home only consists of legal regulation or decrees. Out of the 35 companies where complete information has been provided, only eight (20%) referred to law/decree as the only source of regulation regarding a daily rest away from home.

More than half of the companies reported that provisions for daily rest away from home are defined in law/decree as well as collective agreements at various level (19 or 54%). The most important level of collective bargaining and agreements for rest away from home is the company level.

Finally, in particular companies in the Nordic countries (Denmark and Norway) as well as Hungary and Slovenia report that the sole source of regulation and provisions regarding rest away from home are collective agreements (10 companies, i.e. 29%).

9 In the presentation of a company representative of CP at the projects' workshop in Lyon, it has been noted that in case a daily rest away from home would occur, the same rules as regards compensation would apply that are applicable in domestic railway services, i.e. extra allowance, payment of the overnight stay costs and associated expenses.

10 As regards Austria, the EU Directive 2005/47/EC clause 2.2. was implemented into Austrian law different to its original wording. According to the EU Directive, interoperable cross-border workers in the rail sector are defined as such if working for more than 1 hour on a daily shift basis. According to Austrian law (§18 Arbeitszeitgesetz), an interoperable cross-border worker is working at least one hour of his/her daily working time in another country. Based on the definition in Austrian national law, the companies ÖBB-Personenverkehr and ÖBB-Produktion, who are running many international trains, do not have any interoperable cross-border workers. For the most part, national law however already ensures the treatment of the cross-border ÖBB workers in accordance with the Directive, except e.g. the provisions for weekly rest periods. To ensure the correct application of the Directive on national level, the adjustment of the Austrian Law is necessary.

Table 6: Type of sources regulating daily rest away from home applicable to the implementation of the Agreement

TYPE OF RULES	COUNTRIES AND COMPANIES
Only law/decreed (8)	CFL (LU), Ceske Drahy (CZ), ITL (DE), TX Logistics (DE), TX Logistics (IT), Trenitalia (IT), Mercitalia (IT), ÖBB (AT)
Law decree in combination with collective agreements (19)	DB Cargo (DE), DB Fernverkehr (DE), CFL Cargo (LU), DB Cargo (UK), Captrain (DE), DB Cargo (NL), Eurostar (UK), GYSEV (HU), Lineas (BE), MAV-Start (HU), NS (NL), Renfe (ES), SSB (CH), SNCB/NMBS (BE), SNCF (FR), THI-Factory (BE), THI-Factory (FR), ZSSK (SK), ZSSK Cargo (SK)
Only collective agreements (10)	CargoNet (NO), DB Cargo (DK), Green Cargo (NO), HectorRail (DK), LKAB (NO), MAV-Start (HU), NJB (NO), NS (NL), NSB (NO), SZ (SI)

Source: CER/ETF Survey. N = 35 companies that provided complete information.

According to the available data there are three kinds of compensation offered in case of a daily rest away from home: extra allowance, compensatory rest and others types. There might also be a mixture of different types of compensations. The table below shows that extra allowances are the most frequent way to compensate for daily rest away from home.

Table 7: Compensation in case of daily rest away from home

TYPE OF COMPENSATION	LAW/DECREE AND COLLECTIVE AGREEMENT
Extra allowance	Cargo Net (NO), DB Cargo (DK), DB Cargo (NL), Eurostar (UK), Green Cargo (NO), GYSEV (HU), HectorRail (DK), ITL (DE), Lineas (BE), LKAB (NO), MAV-Start (HU), NJB (NO), NS (NL), NSB (NO), Renfe (ES), SBB (CH), SZ (SI), SNCB/NMBS (BE), SNCF (FR), THI-Factory (BE), THI-Factory (FR), Trenitalia (IT), Mercitalia (IT)
Compensatory rest	Captrain (DE), CFL (LU), DB Fernverkehr (DE), MAV-Start (HU), SBB (CH), SNCF (FR), ZSSK and ZSSK Cargo (SK)
Other	Czeske Drahy (CZ), DB Cargo (UK), DE Cargo (DE), DB Fernverkehr (DE), Eurostar (UK), NS (NL), SNCF (FR), TX-Logistik (IT and DE)

Source: CER/ETF Questionnaire Survey

It should be noted that there seems to be correlation between extra allowances, sometimes in combination with further compensatory provisions and collective bargaining: In all cases where respondents referred such types of allowances, also collective agreements at sectoral or lower level exist. By contrast, those company representatives that reported only of reimbursement of costs such as hotel of food or per diems in most cases are from companies, where provisions regarding daily rest away from home are only based on legal regulation of decree(s).

3.6 Second rest away from home

As an exception the agreement enables social partners to negotiate a second rest away from home as well as compensation at railway undertaking or national level as appropriate.

According to the survey responses, only two companies have made use of such possibility, in all cases on the basis of an agreement between the trade unions and management at company level: MAV-Start in Hungary¹¹ and CD Cargo AS in the Czech Republic.

At SNCF in France, despite the sectoral collective agreement has already enabled the company level to negotiate a second rest away from home, company representatives have reported that a second rest away from home is currently not applied in practice by company level actors.

3.7 Competent authorities and bodies checking working hours, driving time and rest periods of mobile rail workers

In all the countries analysed normally public authorities as well as employer and employees at company level intervene in the field of health and safety controls. Based on European Directives as well as national law, joint employer-worker committees, works councils or health and safety committees are relevant bodies as regards compliance with working time and health and safety provisions set by law of collective agreements.

It should be noted here that also the new Rail Safety Directive 2016/798/EU requires national safety authorities to cooperate with other authorities on drivers' driving and rest time in case they are not themselves responsible. According to Art. 17.4, *"The monitoring of compliance with applicable working, driving and rest-time rules for train drivers shall be ensured by competent authorities designated by Member States. Where the monitoring of compliance is not ensured by national safety authorities, the competent authorities shall cooperate with the national safety authorities with a view to allowing the national safety authorities to fulfil their role of supervision of railway safety"*.

However, neither Directive 2016/798/EU nor the question of cooperation between different authorities was included in the survey as a special topic.

The discussions during the project workshops with representatives of the competent authorities have shown that at national level an exchange of the competent authorities takes place but that working time and rest periods in the national railway traffic nevertheless are barely controlled. According to the representatives of the competent authorities, controls of working time and rest periods in the national railway traffic take place predominantly in case of special incidents. The exchange with representatives of competent authorities has also revealed that there is no established exchange between the competent authorities of the EU Member States and the responsibilities in the interoperable cross border traffic moreover are not clear. As far as known, not even a comprehensive overview about the competent authorities of the EU Member States exists so far. In the first instance this report therefore gives an appropriate overview about the competent authorities of the EU Member States and the relevant legal basis. Hereinafter, a closer look at this issue seems to be advisable.

¹¹ It should be noted that according to the response of the MAV-Start management the only categories of mobile staff engaged in cross-border interoperable services are other staff - VIP train attendants, attendants, waiters, cooks. Only for these a plant level collective agreement for a second rest away from home has been negotiated by the company level social partners according to the response to the survey.

As regards to working conditions, health and safety as well as other aspects at company level, there are two EU Directives that are binding for all EU Member States and that provide for certain employee rights as well as responsibilities at company level:¹²

The European Directive 2002/14/EC establishes a general legal framework for informing and consulting employees in the European Community. The Directive obliges employers to inform and consult employees via the workers' representatives in the company, in three specific areas: the recent and probable development of the undertaking's or the establishment's activities and economic situation; the situation, structure and development of employment and any anticipatory measures envisaged; decisions likely to lead to substantial changes in work organisation or in contractual relations.

The main legal act for informing and consulting workers on occupational safety and health (OSH) is the OSH Framework Directive 89/391/EEC. Worker participation is a fundamental part of the OSH management framework as promoted in this Directive.

Thus, company level structures of social dialogue and employee interest representation play an important role in the supervision and monitoring of working conditions, including working time rules.¹³

Examples highlighted in the responses to the survey: at SNCB/NMBS (Belgium) prior to their approval, rosters are submitted to the trade unions. ÖBB-Produktion GmbH (Austria) operates an integrated management system, which ensures the monitoring of all drivers on yearly basis. In France (SNCF) the Industrial Health and Safety Committee continuously receives and reviews the diagram and the employees' representatives check before and after in order to make sure the correct application of the rules. Furthermore, the railway undertakings are carrying out self-monitoring, with software tools controlling the conformity. In Bulgaria, the national railway company is conducting periodical (on yearly basis) and extraordinary audits.

As regards to public bodies, in most of the cases only one legal body to make controls exists (essentially the labour inspectorate). In some Member States there are two or even more public bodies entitled to make controls: i.e., in Slovakia an active role is played by the labour inspectorate, the Transport Authority and the railway police; moreover, in Italy the competent body is the labour inspectorate. In France, the Czech Republic and in Sweden it are the labour inspectorate and the national safety authority.

Furthermore, if in some countries there is only one law governing controls (Norway and Belgium), in other countries the situation is more complex (Czech Republic, Austria, Croatia and Slovenia). Furthermore, in France, two laws (Labour code and transport code) are acting jointly with the ministerial decree on public establishments of railway safety.

Finally, in Germany, there are different competent bodies for different groups of employees and different circumstances: For employees, the competent bodies are the labour inspectorates

¹² It should be mentioned in this context however, that there is no even coverage of companies by employee representation bodies as regards information and consultation as well as health and safety: There are thresholds in terms of the total number of employees for the establishment of works councils or similar types of information and consultation bodies. As regards small companies there are also special provisions as regards health and safety committees. As a result, the coverage of smaller companies by works councils, workers health and safety committees and other bodies involved in the monitoring of working conditions is much lower than in larger companies.

¹³ According to a comment from ETF this of course raises questions about the effectiveness of control systems in railway companies where no employee interest representation at company level exists, see also footnote above.

that are regulated at the level of the 16 federal states.¹⁴ Officials of the federal states (in this case the supervisory authorities for safety and health at workplaces) and the accident insurance institutions have supervision over businesses and provide advice. The supervisory authorities for safety and health at workplaces of the federal States enact The Hours of Work Act and the Railways Crew Regulation. In contrast to employees, the competent body to make controls for civil servants in companies within the DB Group are not the labour inspectorates but the Federal Railway Fund. Furthermore, when it comes to technical occupational safety, the competent body to make controls is the Federal Railway Authority.

Moving from the legal framework to practical application, there are either *ex ante* or *ex post* mechanisms of control. A paradigmatic example of *ex post* control is carried out by the Swiss Federal Office of Transport: it announces its inspections, it demands to the company the executive service plans (not the rosters before the implementation) of usually one month back and verifies if the regulations have been adhered to. This happens in the premises of the concerned company. Another case of *ex post* control is carried out by the Dutch National Safety Authority after the realization of the duty (or sometimes real time on board of the train). Another example is France, where controls are made on board of the trains by the National Safety Authority and after the validation of the rosters by the Labour inspectorate; and the Luxembourg experience, where controls take place after the validation of the rosters.

At Eurostar and according to the French and UK legislation, rosters have to be agreed with the trade union representatives, then sent to labour inspectorate which have full access to them and can control and audit as they wish as per the law. The system also relies on effective checks and balances, since the labour inspectorate and/or the employees via the works council and the CHSCT¹⁵ can at any time challenge rosters that do not reflect the rules.

In Bulgaria there are both *ex ante* and *ex post* controls, carried out by the labour inspectorate prior to or after the approval of the rosters. The same happens in Austria, where *ad hoc* controls by labour inspectors are accompanied by *ex post* checks at the request of the work councils.

As regards to the frequency and the prerequisites of checks, the results are very different and they cannot give rise to specific clusters: they happen irregularly in Switzerland, rarely in Sweden, rarely after a complaint (Portugal), randomly and on request in Norway, continuously in Slovakia, on a yearly basis in Slovenia, punctually in France, or only in front of incidents (Denmark) or in front of serious accidents (Belgium-Lineas); in other countries the respondents have reported a total lack of controls (Luxembourg). In a same country, sometimes, the situation seems different between companies: In the Netherlands, according to the management of NS, an inspection of the safety management system is done each year and working time checks are carried out by the National Safety Authority randomly. In contrast, according to the Dutch ETF member, controls at DB Cargo in the Netherlands (according to the trade union respondent to the survey) of no more than one time per five years. In Italy, controls in Trenitalia according to the Italian CER member are conducted once or twice per year by the labour inspectorate, whereas Italian trade unions in the context of a workshop reported about a lack of inspections and controls at the

14 In particular, according to Art. 74.1.12 of the Basic Law for the Federal Republic of Germany 'labour law, including the organisation of enterprises, occupational health and safety, and employment agencies...' fall within the matters under concurrent legislative powers. Therefore, laws on occupational health and safety are largely federal, but the monitoring of observance of the federal regulations is within the sphere of responsibility of the federal states: each one has set up its own occupational health and safety inspectorate whose tasks include – inter alia – the monitoring of compliance with legal requirements, the counselling of employers and the necessary measures for the safety and health of employees in case of petitions. The coordination of the different federal states systems is ensured by the Conference of Ministers, Senators for Labour and Social Affairs of all the federal states, supported by the federal state committee for Occupational Safety and Safety (LASI).

15 CHSCT (*Comité d'hygiène, de sécurité et des conditions de travail*): industrial health and safety committee in France (employees' representative body).

freight railway company TX-Logistik. It should be noted that TX-Logistik does not employ cross-border mobile staff: Actually, the train crew changes at the border so it has to be considered as “domestic” workers. As far as Mercitalia Rail is concerned, the company had controls by the French National Safety Authority.

None of the participants – both managers and trade unions representatives – knows of any legal actions or case law specifically concerning the non-respect of the Directive, either still pending or already solved by domestic courts.

Social partners cannot include obligatory provisions for third parties in Art. 155 Agreement: Provisions are only made with reference to companies’ internal recording and storage of data. Nonetheless, the absence of sharing of data and of joint direct intervention between public authorities/third parties is an outcome of the lack of clarity about competence to control, as well as of an official framework of cooperation (as it exists, on the contrary, in the road sector through the Euro Contrôle Route cooperation, see textbox). Furthermore, it may also be linked to the territoriality principle (*lex loci laboris*).¹⁶ This does not mean that forms of international cooperation do not exist: they are just outside the EU legal order and domestic legislations.

Euro Contrôle Route: Transnational cooperation of checks on social provision in road transport

Based on cooperation of road transport inspection actors in the BENELUX countries Euro Contrôle Route (ECR) was established in 1999 by an Administrative Arrangement of the competent transport ministers in Belgium, the Netherlands, Luxembourg and France. Since then, the number of European countries has continued to grow and currently has 20 interested/observing countries, including 14 member countries. In 2007 a second Administrative Agreement was signed by the competent transport ministers of Belgium, the Netherlands, Luxembourg, France, Germany, the United Kingdom, Ireland, Spain, Poland, Austria, Romania, Bulgaria, Italy and Hungary. The 2007 Administrative Agreement defines the main mission of ECR as “working together to improve road safety, sustainability, fair competition and labour conditions in road transport by activities related to compliance with existing regulations.”

In accordance with the Directive 2006/22/EC (commonly known as the Control Directive) which sets minimum implementation requirements as regards the relevant social legislation in road transport, the ECR’s secretariat and the working group which are based in Brussels, is fostering amongst other the exchange of information between member countries and interested countries, develops and implements coordinated inspection and check activities and runs a joint training programme for inspection services that is based on uniform check procedures. Furthermore, ECR engages in consultation and the development of recommendations as regards control policies and practices.

In accordance with EC 2006/22 at least seven coordinated control weeks each year. During these weeks all ECR members perform roadside checks using harmonized reporting checklists and a common control briefing. The checks focus on the entire roadside acquis, but particular attention goes to driving and resting hours, the tachograph enforcement and the technical conditions of the vehicles. The ECR working group uses the detailed analysis of this controls to further finetune control targeting.

¹⁶ ‘Law of the place where the contract is made’, which means applying the law of the country in which a worker is employed.

Several members use these controls as an opportunity to further the exchange of best practice by organising shadowing exercises as well as cross-border checks with enforcement teams made up of different nationalities.

During the control weeks in 2017, more than 240,000 vehicles were stopped and checked. The majority of vehicles controlled were engaged in freight transport. Around 22% of the vehicles checked were found to have at least one infringement and one fifth of the controlled vehicles had infringements that were serious enough to immobilize the vehicles.

Source: <https://www.euro-controle-route.eu>

In the context of the survey, two cases of cooperation between companies have been identified: The first case is related to the companies NS (The Netherlands) and ZSKK (Slovakia) that have concluded a mutual agreement as regards controls. In the case of ZSKK there is a special agreement with Czech Railways (CD), establishing that ZSKK's drivers are under licence and safety certificate and legislative conditions of CD's employees when at the territory of the Czech Republic and vice versa. According to the agreement, national railway workers are entitled to control train drivers from the other signatory party when they are at the own territory.¹⁷ The original agreement was signed after the dissolution of Czechoslovakia in 1993 and it was renewed in 2008 because of the requirements of the new EU regulation. The specific topics addressed by controls are, apart from working conditions in general, working time, breaks, overtime and daily rest. Controls are carried out by the 2 railway companies as well as labour inspectorates; it must be pointed out that the domestic Czech and Slovakian regulations on working time are more or less the same.

There are also other cooperation examples: NS in the Netherlands has cooperation (not based on a written agreement but according to conventional practice) with companies in Belgium (NMBS/SNCB), France (THI) and Germany (DB) according to which NS rail mobile workers are not only covered by the Dutch sectoral collective agreement, but also by the national regulations of the country where they are working from time to time depending on the itinerary of the train. According to a representative of NS in the Netherlands, *"All the agreements are based on the mutual acceptance of each other's specific rules of deployment. As for shift work for example, working time, shift length, breaks, etc. are respected as they are agreed with the unions in each home country."*

This cooperation has evolved in the context of increased cross-border railway operations. Every month NS International (the international part of Dutch Railways) has a meeting with SNCB/NMBS (Belgium),¹⁸ where logistics planning and other relevant information is shared as regards the cross-border train activities between Belgium and the Netherlands. Moreover, in these meetings also working conditions aspects as regards drivers and the train-managers are reviewed. More precisely, the planning personnel who is actually responsible for the making of the working shifts is using the information from this monthly meeting: they know, i.e., that a Belgium driver is not allowed to work more than 9 hours in a shift, and that the Dutch driver can work up to 12 hours in a shift but that it is necessary to plan a break of one hour in the middle of a shift. If the driver gets in a situation of conflict with the respective rules, he/she will complain to his/her manager and the issue will be corrected right away. The unions on both sides also have influence on monitoring the compliance with the Agreement. Every three months they have a meeting with the director of NS International on all the social issues including working hours, shift lengths etc. Besides this, the safety department of both SNCB/NMBS and NS execute a mutual audit every year, where the inspector has the possibility to check the working shifts in the past (in the roster systems).¹⁹ Any anomalies will be reported to

¹⁷ More specifically, there are 16 interoperable cross-border drivers operating in the Czech territory according to the operational rules of CD.

¹⁸ Whenever a train operating company drives under the safety certificate of another company there is such a meeting: the yearly safety meeting. SNCB has the same meetings with SNCF, DB Fernverkehr and CFL. Issues discussed at the meeting are the last year's REX, safety critical events, training needs, etc.

¹⁹ These checks are only relating to safety critical events and whether they were due to the working shifts.

the management. NS has similar meetings with DB and THI Factory: the unique difference lies in the frequency.

The two cooperation examples demonstrate that social partners are able to create own procedures as regards controls, exchange of information and cooperation that are however not directly linked to the Agreement/Directive. The above-mentioned agreements constitute an exception. They concern incumbent companies with a long history of cross-border cooperation. In the case of the Czech-Slovakian cooperation the also root in a tradition of a unique state until the beginning of the 1990s. The survey shows that no cooperation agreements have been signed by countries very far from each other or with very different social systems (i.e., a partnership among a company of an Eastern European State with a Southern European or Scandinavian one).

According to discussions with social partners in the context of the workshops of the project, the positive examples concern incumbent companies only. It is very unlikely that similar cooperation practices have been put in place by private operators and/or new market entrants.

Table 8: List of national competent authorities and bodies responsible for the monitoring and enforcement of working time rules for workers in interoperable cross-border railway services

COUNTRY	COMPETENT AUTHORITY/IES
Austria	Labour Inspectorate (<i>Arbeitsinspektorat</i>)
Belgium	Labour Inspectorate (<i>Inspection du travail</i>)
Bulgaria	Labour Inspectorate National Safety Authority (<i>Ministry of Transport – Railway Administration Executive Agency</i>)
Croatia	Labour Inspectorate National Safety Authority (<i>Agencija za sigurnost željezničkog prometa</i>)
Czech Republic	Labour Inspectorate National Safety Authority (Rail Authority / <i>Drážní Úřad, DU</i>)
Denmark	Labour Inspectorate (<i>Danish Environment Authority DWEA</i>)
France	Labour Inspectorate (<i>Inspection du travail</i>) National Safety Authority (<i>autorité nationale de sécurité, IPSF</i>)
Germany	<i>For employees: Labour Inspectorates (Arbeitsschutzbehörden) of the single Länder (16)</i> <i>For civil servants in companies within DB Group: Federal Railway Fund (Bundeseisenbahnvermögen)</i> <i>Competent authority for technical occupational safety: Federal Railway Authority (Eisenbahnbundesamt)</i>
Hungary	Labour Inspectorate
Italy	Labour Inspectorate (<i>servizio ispettivo del lavoro</i>)
Luxembourg	Labour Inspectorate (<i>Inspection du travail</i>)
Netherlands	Labour Inspectorate (<i>Arbeidsinspectie, AI</i>) National Safety Authority (<i>Inspectie Leefomgeving en Transport, ILT</i>)
Norway	Labour Inspectorate National safety authority (<i>Statens Jernbanetilsyn, SJT</i>)
Poland	National Safety Authority (<i>Urząd Transportu Kolejowego</i>)
Portugal	Labour Inspectorate (<i>Authority for Working Conditions, ACT</i>)

COUNTRY	COMPETENT AUTHORITY/IES
Slovakia	Labour Inspectorate National Transport Authority of Slovakia (<i>Dopravny Urad, DU</i>) Railway police
Slovenia	Labour Inspectorate Inspectorate for transport, energy and special planning
Spain	Labour Inspectorate (<i>LSSI</i>)
Sweden	Transport Authority
Switzerland	Labour Inspectorate (<i>Bundesamt für Verkehr, BAV</i>)
United Kingdom	Labour Inspectorate (<i>Employment Agency Standards Inspectorate, EAS</i>)

Source: CER/ETF Questionnaire Survey and <http://www.era.europa.eu/The-Agency/Cooperation/Pages/National-Safety-Authorities.aspx>



4. PROBLEMS AND CHALLENGES RELATED TO THE AGREEMENT AND ITS IMPLEMENTATION

In the context of the five workshops that were organised in the context of the project, national social partners and company representatives (both from the management and employee/trade union representations) provided input as regards to the implementation of the ETF/CER Agreement in their specific national context and/or company.

As to problematic aspects and challenges in relation to an efficient application of the Agreement and the provisions on working time, participants in particular highlighted issues that are related to the need to improve checks and controls by competent authorities. Many participants also referred to the need to clarify aspects and questions regarding aspects related to the understanding of working time. Finally, in particular trade union representatives highlighted the need to strengthen enforcement and compliance with the Agreement also against a worsening of working conditions and an increase in unfair competition practices in the railway sector in general.

In the following three sections, these issues are briefly addressed. It should be stressed that they related to aspects that have not been addressed by the questionnaire survey and thus would require more in-depth research, including legal research at national as well as at EU level.

4.1 Checks and controls

An issue that was addressed by social partners from different countries participating in the workshops held in the context of the project was related to the issue of the respective competence of the authorities that should be in charge of checking the respect of working time rules: It seems that competent authorities are not always aware of the respective rules and thus not able to identify possible infringements. Survey responses as well as contributions to the project workshops also showed that there not only is a large variety of competent authorities between the European countries (including the number per member state which raises the question of who is responsible for what and how authorities are cooperating) but also significant varieties as regards frequency of checks, likeness of checks²⁰ as well as type of checks (ex-ante, ex-post; on-board, in the company, checking rosters or actual working time, etc.).

Finally, in all workshops participants referred to cases in different national contexts and related to different examples of interoperable cross-border railway services where the competences of national authorities to perform check on foreign operators are not sufficiently clear at all. The cooperation examples of cross-border railway activities in the Netherlands, Belgium and Germany or between Slovakia and the Czech Republic that were presented in the context of the project illustrate how important this type of cooperation is for finding practical solutions.

²⁰ For example, participants from some countries (e.g. Belgium) reported that larger railway companies are more likely to be checked than smaller ones though larger companies tend to apply rules more strictly than smaller ones. As regards frequency, it was reported that in some countries/companies checks are carried out frequently whereas for other countries it was noted that checks are only done after complaints have been made.

However, companies involved in these cooperation practices are larger incumbent railway companies, characterised also by a strong involvement of workers and trade unions in working conditions and safety controls. But what about companies such as new market entrants or others that compete very much on lower costs?

According to the project participants, these challenges are not so much related to shortcoming of the Agreement but require improvements as regards checks and controls, cooperation between competent authorities as well as a stronger monitoring of compliance of all railway companies engaged in interoperable cross-border services.

4.2 Notions of working and driving time

The Agreement contains the same definition of working time that we can find in Directive 2003/88/EC: *“working time is any period during which the worker is at work, at the employers’ disposal and carrying out his or her activities or duties, in accordance with national laws and/or practice”*.

At the same time the Agreement in two different clauses refers to “driving time” and its duration: First, according to clause 2 *“driving time is the duration of the scheduled activity where the driver is in charge of the traction unit, excluding the scheduled time to prepare or shut down the traction unit, but including any scheduled interruption when the driver remains in charge of the traction unit”*. Secondly, clause 7 stipulates that *“driving time ... shall not exceed nine hours for a daily shift and eight hours for a night shift between two daily rest periods”*.

Though it is clear that driving time is part of the working time, discussions and exchange at the workshops showed that there is a lack of clarity of company practice regarding what counts exactly as driving time. Questions in this context for examples emerged as regards the time spent for preparing locomotives (whether or not it should be part of the driving time) or whether the time spent by the rail-mobile worker to join the working place must be considered or not as working time.²¹ In this context it was also reported that it often happens that train drivers not only have to commute between their home and the ‘normal’ place of work (i.e. the railway depot) but have to travel to other and often more distant places to take over a locomotive.

According to a literal reading of the Directive such a period is not part of working time, except the staff is inside the premises of the company in order to join the train, including in means of transport provided by the employer.²²

4.3 Increased diversity of the rail mobile workforce and employment of external rail workers

In the context of the five projects workshop discussions as well as the presentations by social partners it was stressed by participants from different countries that there is an increasing trend towards employment of external workers (temporary agency workers, independent drivers, self-employed engage via works contracts) in the context of cross-border interoperable services. This relates also to train drivers. Furthermore, in some countries, most prominently Germany, workshop participants have also stressed that market liberalisation has resulted in a strong increase in the number of railway companies. This contributes further to the diversity of mobile rail workforces, namely diversity of contractual relationships.

²¹ During the project some trade unions’ representatives reported about a case where a train driver had to drive 150 km by car to reach the working place.

²² Case C-266/14 *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL, Tyco Integrated Fire & Security Corporation Servicios SA*.

It also was highlighted at one of the workshops held in the context of the project²³ as a specific challenge that the number of rail workers that are employed at external service providers and are involved in safety-relevant areas have increased over the last years. In this context, a representative of a German non-profit organisation in the railway sector raised the demand for a rule that the company responsible for train travel should also be responsible for the deployment of safety-relevant railway personnel and should be in a direct employment relationship with that personnel.

Reported consequences of these developments that have been highlighted in the presentation are:

- quality and safety problems;
- lack of proper training and competences of drivers and other crew members (e.g. local knowledge, languages)
- increasing competition between companies for contracts that is based on unfair practices, i.e. irregular long working and driving time on the locomotive, low wage levels, non-respecting minimum wage regulations, working outside collective agreements and without workers representation;
- furthermore, in particular in interorable cross-border services, relatively new practices of unfair competition have been reported where companies engage personnel from other countries (e.g. via temp agencies) in arrangements that are very similar to posting of workers and cabotage practices.²⁴

This increasing diversity of employment contractual relationships of workers engaged in cross-border railway services as well as the diversity of railway companies according to business models, competitiveness factors and size also result in difficulties to carry out checks and monitor the compliance rules as regards certain aspects of working conditions.

And this challenge again brings us back to the key challenge to improve the efficiency of checks and controls of working conditions of mobile workers engaged in cross-border railway services that was highlighted above, including a clarification of competences of national authorities in the field of monitoring and checking the working conditions of train crews from other countries on the own territory.

23 See: Helmut Diener: Implementation and application of the Agreement in Germany. Employees' experiences, Rail Mobile Workers, Workshop 1, Berlin, 16-17 May 2017.

24 In this context, also the question was raised whether the employment of workers for example in France under the conditions of labour contracts and remuneration rules of Italy for example would be possible or should be regarded as similar to the Ryan Air case that recently was judged by the ECJ. The Court established that disputes over a cabin crew member's contract of employment fall within the jurisdiction of the courts of the country from which they carry out their duties – not those of a country such as Ireland which the airline might choose to suit its own interests. See: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170097en.pdf>

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ANNEX

National transposition law of the Directive 2005/47/EC by Member State

AUSTRIA

- Bundesgesetz, mit dem das Arbeitszeitgesetz und das Arbeitsruhegesetz geändert werden. Official Journal: *Bundesgesetzblatt für die Republik Österreich (BGBl.)*; OJ number: *I Nr. 124/2008*.

BELGIUM

- FEDERALE OVERHEIDSDIENST MOBILITEIT EN VERVOER - 7 NOVEMBER 2008. - Koninklijk besluit houdende regeling van bepaalde aspecten van de arbeidsvoorwaarden voor mobiele werknemers die interoperabele grensoverschrijdende diensten in de spoorwegsector verrichten. Official Journal: *Staatsblad*.

BULGARIA

- НАРЕДБА № 50 от 28.12.2001 г. за работното време на ръководния и изпълнителския персонал, зает с осигуряване на превозите на пътници и товари в железопътния транспорт. Official Journal: *Държавен вестник*; OJ number: *99*.
- КОДЕКС на труда. Official Journal: *Държавен вестник*; OJ number: *57*.

CROATIA

- Zakon o sigurnosti i interoperabilnosti željezničkog sustava. Official Journal: *Narodne Novine*; OJ number: *82/2013*.
- Pravilnik o radnom vremenu izvršnih radnika u željezničkom prometu. Official Journal: *Narodne Novine*; OJ number: *105/08*.
- Pravilnik o izmjenama i dopunama Pravilnika o radnom vremenu izvršnih radnika u željezničkom prometu. Official Journal: *Narodne Novine*; OJ number: *33/13*.
- Zakon o izmjenama i dopunama Zakona o sigurnosti i interoperabilnosti željezničkog sustava. Official Journal: *Narodne Novine*; OJ number: *110/15*.
- Zakon o izmjenama i dopunama Zakona o sigurnosti i interoperabilnosti željezničkog sustava. Official Journal: *Narodne Novine*; OJ number: *18/15*.

CZECH REPUBLIC

- Zákon č. 266/1994 Sb., o dráhách. Official Journal: *Sbirka Zakonu CR*.
- Nařízení vlády č. 589/2006 Sb., kterým se stanoví odchylná úprava pracovní doby a doby odpočinku zaměstnanců v dopravě. Official Journal: *Sbirka Zakonu CR*.
- Nařízení vlády č. 353/2008 Sb., kterým se mění nařízení vlády č. 589/2006 Sb., kterým se stanoví odchylná úprava pracovní doby a doby odpočinku zaměstnanců v dopravě. Official Journal: *Sbirka Zakonu CR*.
- Zákon č. 251/2005 Sb., o inspekci práce. Official Journal: *Sbirka Zakonu CR*.
- Zákon č. 362/2007, kterým se mění zákon č. 262/2006 Sb., zákoník práce, ve znění pozdějších předpisů, a další související zákony. Official Journal: *Sbirka Zakonu CR*.
- Zákon č. 264/2006 Sb., kterým se mění některé zákony v souvislosti s přijetím zákoníku práce. Official Journal: *Sbirka Zakonu CR*.
- Zákon č. 262/2006 Sb., zákoník práce. Official Journal: *Sbirka Zakonu CR*.
- Zákon č. 181/2006 Sb., kterým se mění zákon č. 266/1994 Sb., o dráhách, ve znění pozdějších předpisů, a zákon č. 200/1990 Sb., o přestupcích, ve znění pozdějších předpisů. Official Journal: *Sbirka Zakonu CR*.
- Zákon č. 294/2008 Sb., kterým se mění zákon č. 262/2006 Sb., zákoník práce, ve znění pozdějších předpisů, a zákon č. 251/2005 Sb., o inspekci práce, ve znění pozdějších předpisů. Official Journal: *Sbirka Zakonu CR*.

DENMARK

- Lov om arbejdstid for mobile lønmodtagere, der udfører grænseoverskridende tjenester i jernbanesektoren (nr 459 af 17/06/2008). Official Journal: *Lovtidende A*.

ESTONIA

- Raudteeseadus¹. Official Journal: *Elektroniline Riigi Teataja*; OJ number: *RT I 2003, 79, 530*.

FINLAND²⁵

- Veturimiestehtäviä rautatieliikenteessä koskeva työehtosopimus 1.10.2007 - 30.4.2010. Official Journal: *Hallinnolliset toimet*.

FRANCE

- Décret n°2017-393 du 24 Mars 2017 relatif au régime de la durée du travail du personnel roulant effectuant des services d'interopérabilité transfrontalière (decree interoperability) Official Journal: *Journal Officiel de la République Française (JORF)*

replacing:

- Décret no 2008-1198 du 19 novembre 2008 modifiant le décret no 99-1161 du 29 décembre 1999 relatif à la durée du travail du personnel de la Société nationale des chemins de fer français. Official Journal: *Journal Officiel de la République Française (JORF)*.
- Décret n° 2010-404 du 27 avril 2010 relatif au régime de la durée du travail du personnel de certaines entreprises de transport ferroviaire (Consolidated version). Official Journal: *Journal Officiel de la République Française (JORF)*.

GERMANY

- VO über die Einsatzbedingungen des fahrenden Personals im interoperablen grenzüberschreitenden Eisenbahnverkehr (Eisenbahn-Fahrpersonalverordnung - EFPV). Official Journal: *Bundesgesetzblatt Teil 1 (BGB 1)*; OJ number: *57*.

GREECE

- Εναρμόνιση της Ελληνικής Νομοθεσίας προς τις διατάξεις της οδηγίας 2005/47/EK..... Official Journal: Εφημερίς της Κυβερνήσεως (ΦΕΚ) (Τεύχος Α); OJ number: *200*.

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IRELAND

- EUROPEAN COMMUNITIES (WORKING CONDITIONS OF MOBILE WORKERS ENGAGED IN INTEROPERABLE CROSS-BORDER SERVICES IN THE RAILWAY SECTOR) REGULATIONS 2009. Official Journal: *Iris Oifigiúl*.
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²⁵ The Directive is not applicable in the case of Finland. However, EUR-Lex refers to the legal document "Veturimiestehtäviä rautatieliikenteessä koskeva työehtosopimus".

ITALY

- Contratto collettivo nazionale delle attività ferroviarie del 16 aprile 2003, art. 22. Official Journal: *Administrative measures*.
- Attuazione della direttiva 2005/47/CE del Consiglio, del 18 luglio 2005, concernente l'accordo tra la Comunità delle ferrovie europee (CER) e la Federazione europea dei lavoratori dei trasporti (ETF) su taluni aspetti delle condizioni di lavoro dei lavoratori mobili che effettuano servizi di interoperabilità transfrontaliera nel settore ferroviario. (Consolidated version). Official Journal: *Gazzetta Ufficiale della Repubblica Italiana*; OJ number: 33.

LATVIA

- Grozījumi Dzelzceļa likumā. Official Journal: *Latvijas Vēstnesis*; OJ number: 153.
- Latvijas Administratīvo pārkāpumu kodekss. Official Journal: *Latvijas Vēstnesis*; OJ number: 51.
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- DZELZCEĻA NOZARES ĢENERĀLVIENOŠANĀS. Official Journal: *Latvijas Vēstnesis*; OJ number: 103.

LITHUANIA

- Lietuvos Respublikos administracinių teisės pažeidimų kodekso pakeitimo ir papildymo įstatymas Nr. VIII-1543. Official Journal: *Valstybės žinios*; OJ number: 22.
- Lietuvos Respublikos administracinių teisės pažeidimų kodekso 21, 26, 27, 29, 41(4), 41(5), 44(2), 46(1), 50, 50(4), 50(7), 51(3), 56(1), 56(2), 64, 91(8), 111, 112, 112(1), 112(2), 119, 119(1), 119(2), 120, 121, 122, 122(1), 130, 136, 138, 138(1), 141, 143, 172(2), 188(10), 188(13), 207(7), 224, 225, 225(2), 227, 229, 233, 234, 237, 241(1), 242, 244, 259(1), 261, 262, 266, 269, 270, 281, 320 straipsnių pakeitimo ir papildymo ir Kodekso papildymo 41(11), 51(23), 84(2), 84(3), 84(4), 112(3), 112(4), 112(5), 112(6), 112(7), 112(8), 119(3), 188(18) straipsniais įstatymas Nr. X-1675. Official Journal: *Valstybės žinios*; OJ number: 81.
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- Lietuvos Respublikos Vyriausybės 2008 m. balandžio 9 d. nutarimas Nr. 338 „Dėl Lietuvos Respublikos Vyriausybės 1998 m. rugsėjo 15 d. nutarimo Nr. 1117 „Dėl Lietuvos Respublikos susisiekimo ministerijos nuostatų patvirtinimo“ pakeitimo“. Official Journal: *Valstybės žinios*; OJ number: 46.
- Lietuvos Respublikos Vyriausybės 2008 m. spalio 8 d. nutarimas Nr. 992 „Dėl Lietuvos Respublikos Vyriausybės 2003 m. gegužės 14 d. nutarimo Nr. 587 „Dėl darbų, kuriuose gali būti taikoma iki dvidešimt keturių valandų per parą darbo laiko trukmė, sąrašo, darbo ir poilsio laiko ypatumų ekonominės veiklos srityse, darbų sąlygų, kurioms esant gali būti įvedama suminė darbo laiko apskaita, suminės darbo laiko apskaitos įvedimo įmonėse, įstaigose, organizacijose tvarkos aprašo patvirtinimo“ pakeitimo“. Official Journal: *Valstybės žinios*; OJ number: 119.
- Lietuvos Respublikos susisiekimo ministro 2003 m. spalio 14 d. įsakymas Nr. 3-567 "Dėl Lietuvos Respublikos susisiekimo ministerijos 1996 m. rugsėjo 24 d. įsakymo Nr. 304 „Dėl Valstybinės kelių transporto inspekcijos prie Susisiekimo ministerijos nuostatų patvirtinimo“ pakeitimo“ (nauja redakcija). Official Journal: *Valstybės žinios*; OJ number: 100.
- Lietuvos Respublikos Valstybinės darbo inspekcijos įstatymas Nr. IX-1768. Official Journal: *Valstybės žinios*; OJ number: 102.

- Lietuvos archyvų departamento prie Lietuvos Respublikos Vyriausybės 1997 m. rugpjūčio 15 d. įsakymas nr. 38 „Dėl bendrųjų dokumentų saugojimo terminų“. Official Journal: *Valstybės žinios*; OJ number: 78.
- Lietuvos Respublikos administracinių teisės pažeidimų kodekso 5, 41, 51(3), 51(12), 55, 58, 70, 76, 77, 77(1), 81, 82, 84(1), 87, 89(1), 91, 99(8), 183, 188(4), 188(9), 189(1), 214(3), 221, 224, 225, 232(1), 237, 242, 244, 246(2), 259(1), 262, 263, 268, 320 straipsnių pakeitimo bei papildymo ir Kodekso papildymo 42(4), 51(18), 51(19), 51(20), 51(21), 51(22), 56(2), 58(1), 78(1), 89(2), 99(9), 99(10), 148, 173(20), 173(21) straipsniais įstatymas Nr. X-691. Official Journal: *Valstybės žinios*; OJ number: 73.
- Lietuvos Respublikos darbo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas Nr. IX-926. Official Journal: *Valstybės žinios*; OJ number: 64.

LUXEMBOURG

- Règlement grand-ducal du 24 août 2007 portant modification du statut du personnel des chemins de fer luxembourgeois. Official Journal: *Mémorial Luxembourgeois A*; OJ number: 168.
- Loi du 2 juin 2011 portant 1. transposition de la Directive 2005/47/CE du Conseil du 18 juillet 2005 concernant l'accord entre la Communauté européenne du rail (CER) et la Fédération européenne des travailleurs des transports (ETF) sur certains aspects des conditions d'utilisation des travailleurs mobiles effectuant des services d'interopérabilité transfrontalière dans le secteur ferroviaire; 2. modification du Code du travail. Official Journal: *Mémorial Luxembourgeois A*; OJ number: 119.

NETHERLANDS

- Besluit van 11 juni 2008 tot wijziging van het Arbeidstijdenbesluit vervoer in verband met de werk- en rusttijden van spoorwegpersoneel van grensoverschrijdende diensten. Official Journal: *Staatsblad (Bulletin des Lois et des Décrets royaux)*; OJ number: 268.
- Besluit van 11 juni 2008 tot wijziging van het Arbeidstijdenbesluit vervoer in verband met de werk- en rusttijden van spoorwegpersoneel van grensoverschrijdende diensten. Official Journal: *Staatsblad (Bulletin des Lois et des Décrets royaux)*; OJ number: 268.
- Besluit van 11 juni 2008 tot wijziging van het Arbeidstijdenbesluit vervoer in verband met de werk- en rusttijden van spoorwegpersoneel van grensoverschrijdende diensten. Official Journal: *Staatsblad (Bulletin des Lois et des Décrets royaux)*; OJ number: 268.
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- Besluit van 11 juni 2008 tot wijziging van het Arbeidstijdenbesluit vervoer in verband met de werk- en rusttijden van spoorwegpersoneel van grensoverschrijdende diensten. Official Journal: *Staatsblad (Bulletin des Lois et des Décrets royaux)*; OJ number: 268.

POLAND

- Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy. Official Journal: *Dziennik Ustaw*.
- Ustawa z dnia 10 lipca 2008 r. o zmianie ustawy o transporcie kolejowym. Official Journal: *Dziennik Ustaw*.
- Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy. Official Journal: *Dziennik Ustaw*.
- Ustawa z dnia 26 czerwca 1974 r. Kodeks Pracy. Official Journal: *Dziennik Ustaw*; OJ number: 1998/21/94.

PORTUGAL

- Assembleia da República-Regula certos aspectos das condições de trabalho dos trabalhadores que prestam serviços transfronteiriços no sector ferroviário, transpondo a Directiva n.º 2005/47/CE, do Conselho, de 18 de Julho. Official Journal: *Diário da República*; OJ number: 168.

ROMANIA

- Ordin al ministrului transporturilor și al ministrului muncii, familiei și egalității de șanse pentru aplicarea cerințelor minime privind anumite aspecte legate de condițiile de muncă ale lucrătorilor mobili care prestează servicii de interoperabilitate transfrontalieră în sectorul feroviar. Official Journal: *Monitorul Oficial al României*; OJ number: 604.

SLOVENIA

- Zakon o varnosti v železniškem prometu. Official Journal: *Uradni list RS*; OJ number: 61/2007.
- Zakon o spremembah in dopolnitvah Zakona o železniškem prometu. Official Journal: *Uradni list RS*; OJ number: 15/2007.
- Uredba o merilih za delo v izmenah izvršilnih železniških delavcev. Official Journal: *Uradni list RS*; OJ number: 73/2008.

SLOVAKIA

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- Zákon č. 462/2007 Z. z. o organizácii pracovného času v doprave a o zmene a doplnení zákona č. 125/2006 Z. z. o inšpekcii práce a o zmene a doplnení zákona č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov v znení zákona č. 309/2007 Z. z. Official Journal: *Zbierka zákonov SR*; OJ number: 196.

SPAIN

- REAL DECRETO 1579/2008, de 26 de septiembre, por el que se modifica el Real Decreto 1561/1995, de 21 de septiembre, sobre jornadas especiales de trabajo, y se regulan determinados aspectos de las condiciones de trabajo de los trabajadores móviles que realizan servicios de interoperabilidad transfronteriza en el sector del transporte ferroviario. Official Journal: *Boletín Oficial del Estado (B.O.E)*; OJ number: 240/2008.

SWEDEN

- Lag (2008:475) om kör- och vilotid vid internationell järnvägstrafik. Official Journal: *Svensk författningssamling (SFS)*; OJ number: 2008:475.
- Lag (2008:476) om ändring i arbetstidslagen (1982:673). Official Journal: *Svensk författningssamling (SFS)*; OJ number: 2008:476.

UNITED KINGDOM

- The Cross-border Railway Services (Working Time) Regulations 2008. Official Journal: *Her Majesty's Stationery Office (HMSO)*; OJ number: 2008/1660.
- The Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008. Official Journal: *Her Majesty's Stationery Office (HMSO)*; OJ number: 2008/315.

Sources: EUR-Lex

Company-specific applicable legal and regulatory frameworks

	Company	Activity	Respondent	Source(s)	Details
AT	ÖBB Personenverkehr	Passenger	CER	law/decree	Working-time-law
AT	ÖBB Produktion	Operation	CER	law/decree	Working-time-law
BE	SNCB/NMBS	Passenger	CER	law/decree, company internal regulation	L'arrêté royal portant réglementation de certains aspects des conditions d'utilisation des travailleurs mobiles effectuant des services d'interopérabilité transfrontalière dans le secteur ferroviaire (7.11.2008) La loi du travail (16.3.1971) L'arrêté royal relatif à la durée du travail et à la protection de la rémunération de certains travailleurs occupés à la SNCB (12.2.1970) RGPS - fascicule 541
BE	SNCB/NMBS	Passenger	CGSP/ETF	loi ou décret, accord d'entreprise	AR (12/02/1970), Loi du travail, AR (07/11/2008), Fascicule RGPS 541
BE	SNCB/NMBS	Freight & Passenger	ETF	law/decree, company agreement	ARPS 541 (HR-Rail)
BE	SNCB/NMBS	Freight & Passenger	ACV CSC / ETF	law/decree, company agreement	ARPS 541 (HR-Rail)
BE	Lineas	Freight	CER	no info	no info
BE	Lineas	Freight	ACV- Transcom / ETF	sector and company agreement	Conditions are settled in "paritair comité 226", for the whole sector
BE	Lineas	Freight	ACV- Transcom / ETF	sector and company agreement	Conditions are settled in "paritair comité 226", for the whole sector
BE	THI Factory	Passenger	CER	law/decree, company internal agreement	A.R. du 12 février 1970, relatif à la durée du travail de certains travailleurs occupés par la Société Nationale des Chemins de Fer Belges; A.R. du 7 novembre 2008, portant réglementation de certains aspects des conditions d'utilisation des travailleurs mobiles effectuant des services d'interopérabilité transfrontalière dans le secteur ferroviaire; La loi du travail; Règlement de travail.
BG	BRC	Freight	CER	law/decree, company agreement	no info
CH	SBB	Freight & Passenger	CER	law/decree, sectoral collective agreement, company agreement, judicial decisions, plant agreement	Bundesgesetz über die Arbeitszeit in Unternehmen des öffentlichen Verkehrs (AZG), Verordnung über die Arbeit in Unternehmen des öffentlichen Verkehrs (AZGV), Rahmen-Gesamtarbeitsvertrag Normalspurbahnen Regionaler Personenverkehr, Gesamtarbeitsvertrag SBB AG 2015, Gesamtarbeitsvertrag SBB Cargo AG 2015, Gesamtarbeitsvertrag SBB Cargo International, Gesamtarbeitsvertrag TILO, Gesamtarbeitsvertrag THURBO

	Company	Activity	Respondent	Source(s)	Details
CZ	Ceske Drahy	Passenger	CER	law/decree, collective bargaining agreement between railway trade union and Czech Railways	Act No. 262/2006 Coll. Labour Code, Government decree No. 589/2006, Collective bargaining agreement of Czech Railways
DE	DB Fernverkehr	Passenger	CER	Gesetz, Betriebsvereinbarung	Arbeitszeitgesetz Betriebsverfassungsgesetz BasisTV FGr 4-TV FGr 5-TV BuRa-ZugTV Agv MoVe LftV ZubTV UmsatzTV Fernverkehr BBG AZV EAZV EFPV (except for EFPV all agreements are applied in cross-national routes as well)
DE	DB Fernverkehr	Passenger	EVG / ETF	Gesetz, Betriebsvereinbarung	Eisenbahnpersonalverordnung, Tarifverträge, Arbeitszeitgesetz
DE	DB Cargo	Freight	CER	law/decree, company agreement (Betriebsvereinbarung)	Arbeitszeitgesetz (ArbZG), Bundesbeamtengesetz (BBG), Arbeitszeitverordnung (AZV), Eisenbahnarbeitszeitverordnung (EAZV), Betriebsverfassungsgesetz (BetrVG), Eisenbahnfahrpersonalverordnung (EFPV-Richtlinie 2005/47/EG)
DE	Captrain	Freight	CER	law/decree	Working Hours Act (11.11.2016), Collective Agreement (10.07.2014)
DE	TX Logistik	Freight	CER	law/decree	ArbZg
DE	ITL Eisenbahngesellschaft mbH	Freight	CER	law/decree, administrative decisions	ArbZg (Working Hours Act), Railway Drivers Regulation (24.08.2009)
DK	DSB		CER	company agreement	Appointment 570.1 between Delivery and LPA working time rules and vacation for locomotive staff
DK	DB Cargo		ETF	sectoral collective agreement	DI railway a agreement (1 April 2017)
DK	HectorRail		ETF	sectoral collective agreement	DI railway a agreement (1 April 2017)
ES	Renfe Viajeros	Passenger	ETF	law/decree, Collective agreement company level	LEY 38/2015 DE SECTOR FERROVIARIO, REAL DECRETO 2387/2004 REGLAMENTO DEL SECTOR FERROVIARIO, REAL DECRETO 810/2007 REGLAMENTO SEGURIDAD EN LA CIRCULACIÓN RFIF, REAL DECRETO 664/2015 REGLAMENTO DE CIRCULACIÓN FERROVIARIA, CONVENIO COLECTIVO GRUPO RENFE
ES	Renfe Mercaoncias	Freight	ETF	no info	no info
FR / UK / BE	Eurostar	Passenger	CER	law/decree, sectoral collective agreement, company agreement	loi ou décret (2016), convention collective sectorielle (2016), accord d'entreprise (2016), ORR rules, TCLA, Arrêté royalux, SNCB Rules

	Company	Activity	Respondent	Source(s)	Details
FR	SNCF	Freight & Passenger	CER	law/decree, sectoral collective agreement, company agreement	<p>Accord collectif sur l'organisation du temps de travail (company agreement- 14.06.2016)</p> <p>Accord relatif au contrat de travail et à l'organisation du travail dans la branche ferroviaire (sectoral collective agreement 31.05.2016)</p> <p>Décret n°2016-755 du 8 juin 2016 relatif au régime de la durée du travail des salariés des entreprises du secteur de transport ferroviaire et des salariés affectés à des activités ferroviaires au sens de l'article L2161-2 du code des transports (decree)</p> <p>Décret n°2017-393 du 24 Mars 2017 relatif au régime de la durée du travail du personnel roulant effectuant des services d'interopérabilité transfrontalière (decree interoperability)</p>
FR	SNCF	Freight & Passenger	CFDT/FGTE Syndicat / ETF	law/decree, sectoral collective agreement, company agreement	<p>Accord collectif sur l'organisation du temps de travail (company agreement- 14.06.2016)</p> <p>Accord relatif au contrat de travail et à l'organisation du travail dans la branche ferroviaire (sectoral collective agreement 31.05.2016)</p> <p>Décret n°2016-755 du 8 juin 2016 relatif au régime de la durée du travail des salariés des entreprises du secteur de transport ferroviaire et des salariés affectés à des activités ferroviaires au sens de l'article L2161-2 du code des transports (decree)</p> <p>Décret n°2017-393 du 24 Mars 2017 relatif au régime de la durée du travail du personnel roulant effectuant des services d'interopérabilité transfrontalière (decree interoperability)</p>
FR	SNCF	Freight & Passenger	CGT / ETF	law/decree, sectoral collective agreement, company agreement	<p>Accord collectif sur l'organisation du temps de travail (14.6.2016)</p> <p>Accord relatif au contrat de travail et à l'organisation du travail dans la branche ferroviaire (sectoral collective agreement 31.05.2016)</p> <p>Décret n°2016-755 du 8 juin 2016 relatif au régime de la durée du travail des salariés des entreprises du secteur de transport ferroviaire et des salariés affectés à des activités ferroviaires au sens de l'article L2161-2 du code des transports (decree)</p> <p>Décret n°2017-393 du 24 Mars 2017 relatif au régime de la durée du travail du personnel roulant effectuant des services d'interopérabilité transfrontalière (decree interoperability)</p>
FR	THI Factory	Passenger	CFDT/FGTE Syndicat / ETF	accord d'entreprise	Régime de travail (21.10.2016)
HR	CD Cargo, a.s.(freight transport company)	Freight	CER	law/ decree, plant or local agreement	na
HR	HZ Putnicki prijevoz	Passenger	CER	law/ decree, company agreement, others	Labour Act(2014), Regulations on the working time of executive workers in railway traffic (2008),

	Company	Activity	Respondent	Source(s)	Details
HU	GYSEV Zrt.	Passenger	CER	law/ decree, others, local collective agreement	Act I of 2012 on the Labor Code; According to the CLXXXIII. law Collective Agreement of GYSEV Zrt
HU	MAV-Start	Passenger	CER	law/ decree, administrative decisions, company agreement, plant or local agreement	Act I of the Labor Code 2012 (Law I. of 2012 - Labor Code) the MÁV-START Zrt. Collective Agreement of MÁV-START the Local Appendices of MÁV-START MÁV-START Zrt. the instructions issued by the CEO of MÁV-START Zrt. (regulations issued by the CEO)
HU	MAV-Start	Passenger	ETF	law/decreed	Railways Act (2005), Labour Act (2012)
IT	Trenitalia	Freight & Passenger	UIL / ETF	sectoral collective agreement, company (group) agreement	CCNL Mobilità/ AF 2016 (December 2016)
IT	Trenitalia	Passenger	CER	law/ decree, sectoral collective agreement, company agreement, plant or local agreement	D.Lgs. 08/04/2003 n. 66 (implementing Directive 2003/88/CE) In place since 29/04/2003 CCNL Mobilità/Area Contrattuale Attività Ferroviarie 16/12/2016 In place since 01/01/2017 Contratto Aziendale Gruppo Ferrovie dello Stato Italiane 16/12/2016
IT	Mercitalia	Freight	CER	law/ decree, sectoral collective agreement, company agreement, plant/local agreement	D. lgs. n. 66/2003 (attuazione della direttiva 88/2003/CE); Ccnl Mobilità/Area Contrattuale Attività Ferroviarie 16.12.2016; Contratto Aziendale di Gruppo Ferrovie dello Stato Italiane 16.12.2017
IT	TX LOGICTIK AG	Freight	CER	law/ decree, company agreement, Corporate regulations	Legislative Decree No. 66 (2003), Corporate regulations (2011), Supplementary working time collective agreement (2016), Supplementary collective agreement for the Use of Multifunctional Technician (2016)
IT	Captrain Italy	Freight	CER	law/decreed, sectoral collective agreement, company agreement	CCNL Contratto Collettivo Nazionale di lavoro logistica, trasporto merci e spedizione (1.8.2013)
LU	CFL Cargo	Freight	CER	law/decreed	Convention collective de travail...(2017), Code du travail (2011), Statut du Personnel des Chemins de fer...
LU	CFL Cargo	Freight	ETF	law/decreed	Convention collective de travail...(2017), Code du travail (2011), Statut du Personnel des Chemins de fer...
LU	CFL	Passenger	CER	law/decreed	Statut de Personnel des Chemins de fer (2007), Code du travail (2011)
LU	CFL	Passenger	ETF	law/decreed	Statut de Personnel des Chemins de fer (2007), Code du travail (2011)
NL	NS	Passenger	CER	law/decreed, sectoral collective agreement	Arbeidstijdenwet (BWBR000767), Collectieve Arbeids Overeenkomst (CAO) 2015-2017

	Company	Activity	Respondent	Source(s)	Details
NL	DB Cargo Nederland	Freight	ETF	law/decreed, CLA	CLA DB Cargo Nederland N.V.
NO	LKAB Malmtrafikk	Freight	ETF	law/decreed, company agreement	Overenskomst mellom LKAB Malmtrafikk AS og Norsk Lokomotivmannsforbund
NO	NSB	Passenger	ETF	law/decreed, company agreement	Overenskomst mellom NSB AS og Norsk Lokomotivmannsforbund
NO	CargoNet	Freight	ETF	law/decreed, company agreement	Overenskomst mellom CargoNet AS og Norsk Lokomotivmannsforbund
NO	Green Cargo Togdrift AS	Freight	ETF	law/decreed, company agreement	Overenskomst mellom Green Cargo Togdrift AS og Norsk Lokomotivmannsforbund
NO	Norsk Jernbaneforbund (NJF)	Passenger	ETF	law/decreed, collective agreement between union and company	agreement between NJF and NSB
PL	PKP Cargo SA	Freight	CER	law/decreed, sectoral collective agreement, Staff regulations of PKP Cargo Establishments	Labour Code, Collective Labour Agreement, Staff Regulations of PKP Cargo Establishments
PT	CP	Passenger		law/decreed, company agreement, green decree	labour code (approved by law n. 7/2009, published in DER n. 30 1st series), company general agreement, published in BTE n. 29, 1st series, company agreement - SMAQ, published in BTE n. 35, 1st series, green decree (approved by decree n. 381/72, published in Government Diary n. 235/1972)
SE	SJAB	Passenger	CER	law/decreed, sectoral collective agreement, company agreement	law 2008:478, working time law 1982:673, sectoral collective agreement for railway traffic, ALMEGA, company collective agreement in SJAB, Spara SJ
SE	Green Cargo	Freight	ETF	law/decreed, sectoral collective agreement, company agreement	Collective agreement
SE	Hector Rail	Freight & Passenger	ETF	law/decreed, sectoral collective agreement, company agreement	n.n.
SE	Norrandstag AB	Passenger	ETF	law/decreed, sectoral collective agreement, company agreement	n.n.
SE	SJ	Passenger	ETF	sectoral collective agreement, company agreement	n.n.

	Company	Activity	Respondent	Source(s)	Details
SE	Tågakeriet i Bergslagen AB	Freight	ETF	law/decree, sectoral collective agreement, company agreement	n.n.
SI	Slovenske zeleznice	Freight	CER	sectoral collective agreement	collective agreement in railway transport
SI		Freight & Passenger	ETF	sectoral collective agreement	collective agreement in railway transport
SK	ZSSK Cargo	Freight	CER	law/decree	labour code (No 311/2001 Coll.), Act. No 514/2009, Act No. 462/2007, ZSSK Cargo regulations on working hours regulation
SK	ZSSK	Passenger	CER	law/decree, company agreement, plant agreement	working time regulation, collective agreement, internal (company) working and rest time regulation, roster order
UK	DB Cargo	Freight	ASLEF / ETF	company agreement / company internal regulation	DB Cargo Staff Handbook
UK	DB Cargo	Freight	CER	law/decree, company agreement	European Working Time Directive, Office of Road and Rail Guide to Fatigue Management, DB Cargo UK Safety Management System

Source: ETF/CER survey

PART 3

COUNCIL DIRECTIVE 2005/47/EC AND CER-ETF AGREEMENT

of 18 July 2005

**on the Agreement between the Community of European Railways (CER)
and the European Transport Workers' Federation (ETF) on certain aspects
of the working conditions of mobile workers engaged in interoperable
cross-border services in the railway sector**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) This Directive complies with the fundamental rights and principles set out in the Charter of Fundamental Rights of the European Union and is designed to ensure full compliance with Article 31 thereof, which provides that all workers have the right to healthy, safe and dignified working conditions, to a limit on their maximum working time and to weekly and daily rest periods and an annual period of paid holidays.
- (2) The social partners may, in accordance with Article 139(2) of the Treaty, jointly request that Agreements concluded at Community level be implemented by a Council Decision on a proposal from the Commission.
- (3) The Council adopted Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time¹. Rail transport was one of the sectors of activity excluded from the scope of that Directive. The European Parliament and the Council adopted Directive 2000/34/EC² amending Directive 93/104/EC in order to cover the sectors and activities which had previously been excluded.
- (4) The European Parliament and the Council adopted Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time³, which codified and repealed Directive 93/104/EC.
- (5) Directive 2003/88/EC provides for derogations from Articles 3, 4, 5, 8 and 16 thereof in the case of persons working in the rail transport sector on board trains.

¹ OJ L 307, 13.12.1993, p. 18. Directive as amended by Directive 2000/34/EC.

² OJ L 195, 1.8.2000, p. 41.

³ OJ L 299, 18.11.2003, p. 9.

- (6) The Community of European Railways (CER) and the European Transport Workers' Federation (ETF) have informed the Commission of their desire to enter into negotiations in accordance with Article 139(1) of the Treaty.
- (7) On 27 January 2004 those organisations concluded an Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services, hereinafter referred to as 'the Agreement'.
- (8) The Agreement included a joint request for the Commission to implement the Agreement by a Council Decision on a proposal from the Commission in accordance with Article 139(2) of the Treaty.
- (9) Directive 2003/88/EC applies to mobile workers engaged in interoperable cross-border services, except where more specific provisions are contained in this Directive and in the Agreement annexed thereto.
- (10) For the purposes of Article 249 of the Treaty, the appropriate instrument for implementing the Agreement is a Directive.
- (11) Since, in the light of completion of the internal market in the rail transport sector and the competition in the sector, the objectives of this Directive, which is intended to protect health and safety, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (12) The development of the European railways sector requires close monitoring of the role of current and new actors, in order to ensure harmonious development throughout the Community. The European social dialogue in this field should be able to reflect this development and to take it into account as far as possible.
- (13) This Directive leaves the Member States free to define those terms of the Agreement that it does not specify in accordance with national legislation and practice, as is the case for other Directives on social policy matters using similar terms, as long as the definitions used are compatible with the Agreement.
- (14) The Commission has prepared its proposal for a Directive in accordance with its Communication of 20 May 1998 entitled 'Adapting and promoting social dialogue at Community level', taking into account the representative status of the contracting parties and the legality of each clause of the Agreement; the signatories are sufficiently representative of the mobile railway workers assigned to interoperable cross-border services run by the railway companies.
- (15) The Commission has drawn up its proposal for a Directive in accordance with Article 137(2) of the Treaty, which provides that Directives in the social domain shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
- (16) This Directive and the Agreement lay down minimum standards; the Member States and/or the social partners should be able to maintain or introduce more favourable provisions.
- (17) The Commission has informed the European Parliament, the European Economic and Social Committee and the Committee of the Regions by sending them the proposal for a Directive for implementing the Agreement.

- (18) The European Parliament adopted a resolution on the Agreement of the social partners on 26 May 2005.
- (19) Implementing the Agreement will contribute to achieving the aims set out in Article 136 of the Treaty.
- (20) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making 4, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to implement the Agreement concluded on 27 January 2004 between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services.

The text of the Agreement is annexed to this Directive.

Article 2

1. Member States may maintain or introduce more favourable provisions than those laid down by this Directive.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are complied with.

Article 3

Without prejudice to the provisions of the Agreement on the follow-up and evaluation by the signatories, the Commission shall, after consulting management and labour at European level, report to the European Parliament and the Council on the implementation of this Directive in the context of the development of the railways sector, before 27 July 2011.

Article 4

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed and shall take all necessary measures to ensure that they are implemented. The penalties must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by 27 July 2008 and any subsequent amendments thereto in good time.

Article 5

Member States shall, after consultation with the social partners, bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 July 2008 or shall ensure that the social partners have adopted the necessary provisions by means of an Agreement by that date. They shall immediately forward the text of the provisions to the Commission.

4 OJ C 321, 31.12.2003, p. 1.

Member States shall take all necessary measures to enable them to guarantee at any time the outcome required by this Directive and shall inform the Commission thereof immediately.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 6

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 18 July 2005.

For the Council
The President
 M. BECKETT

Agreement concluded by the European Transport Workers' Federation (ETF) and the Community of European Railways (CER) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services

HAVING REGARD TO:

- the development of rail transport, which requires the modernisation of the system and the development of trans-European traffic and thus interoperable services;
- the need to develop safe cross-border traffic and protect the health and safety of the mobile workers engaged in interoperable cross-border services;
- the need to avoid competition based solely on differences in working conditions;
- the importance of developing rail transport within the European Union;
- the idea that these aims will be met by creating common rules on minimum standard working conditions for mobile workers engaged in interoperable cross-border services;
- the conviction that the number of such workers will increase over the coming years;
- the Treaty establishing the European Community, and in particular Articles 138 and 139(2) thereof;
- Directive 93/104/EC (amended by Directive 2000/34/EC), and in particular Articles 14 and 17 thereof;
- the Convention on the law applicable to contractual obligations (Rome, 19 June 1980);
- the fact that Article 139(2) of the Treaty provides that agreements concluded at European level may be implemented at the joint request of the signatories by a Council decision on a proposal from the Commission;
- the fact that the signatories hereby make such a request,

THE SIGNATORIES HAVE AGREED AS FOLLOWS:

Clause 1

Scope

This Agreement shall apply to mobile railway workers assigned to interoperable cross-border services carried out by railway undertakings.

The application of this Agreement is optional for local and regional cross-border passenger traffic, cross-border freight traffic travelling no further than 15 kilometres beyond the border, and for traffic between the official border stations listed in the Annex.

It is also optional for trains on cross-border routes which both start and stop on the infrastructure of the same Member State and use the infrastructure of another Member State without stopping there (and which can therefore be considered national transport operations).

As regards mobile workers engaged in interoperable cross-border services, Directive 93/104/EC shall not apply to those aspects for which this Agreement contains more specific provisions.

Clause 2

Definitions

For the purposes of this Agreement, the following definitions apply:

1. 'interoperable cross-border services': cross-border services for which at least two safety certificates as stipulated by Directive 2001/14/EC are required from the railway undertakings;
2. 'mobile worker engaged in interoperable cross-border services': any worker who is a member of a train crew, who is assigned to interoperable cross-border services for more than one hour on a daily shift basis;
3. 'working time': any period during which the worker is at work, at the employer's disposal and carrying out his or her activities or duties, in accordance with national laws and/or practice;
4. 'rest period': any period which is not working time;
5. 'night time': any period of not less than seven hours, as defined by national law, and which must include in any case the period between midnight and 5 a.m.;
6. 'night shift': any shift of at least three hours' work during the night time;
7. 'rest away from home': daily rest which cannot be taken at the normal place of residence of the mobile worker;
8. 'driver': any worker in charge of operating a traction unit;
9. 'driving time': the duration of the scheduled activity where the driver is in charge of the traction unit, excluding the scheduled time to prepare or shut down that traction unit, but including any scheduled interruptions when the driver remains in charge of the traction unit.

Clause 3

Daily rest at home

Daily rest at home must be a minimum of 12 consecutive hours per 24-hour period.

However, it may be reduced to a minimum of nine hours once every seven-day period. In that case, the hours corresponding to the difference between the reduced rest and 12 hours will be added to the next daily rest at home.

A significantly reduced daily rest shall not be scheduled between two daily rests away from home.

Clause 4***Daily rest away from home***

The minimum daily rest away from home shall be eight consecutive hours per 24-hour period. A daily rest away from home must be followed by a daily rest at home⁴. It is recommended that attention should be paid to the level of comfort of the accommodation offered to staff resting away from home.

Clause 5***Breaks******(a) Drivers***

If the working time of a driver is longer than eight hours, a break of at least 45 minutes shall be taken during the working day.

Or

When the working time is between six and eight hours, this break shall be at least 30 minutes long and shall be taken during the working day.

The time of day and the duration of the break shall be sufficient to ensure an effective recuperation of the worker.

Breaks may be adapted during the working day in the event of train delays.

A part of the break should be given between the third and the sixth working hour.

Clause 5(a) shall not apply if there is a second driver. In that case, the conditions for granting the breaks shall be regulated at national level.

(b) Other on-board staff

For other on-board staff, a break of at least 30 minutes shall be taken if the working time is longer than six hours.

Clause 6***Weekly rest period***

Any mobile worker engaged in interoperable cross-border services is entitled, per seven-day period, to a minimum uninterrupted weekly rest period of 24 hours plus the 12 hours' daily rest period referred to in Clause 3 above.

Each year, every mobile worker shall have 104 rest periods of 24 hours, including the 24-hour periods of the 52 weekly rest periods, including:

- 12 double rest periods (of 48 hours plus a daily rest of 12 hours) including Saturday and Sunday,

and

- 12 double rest periods (of 48 hours plus a daily rest of 12 hours) without the guarantee that this will include a Saturday or Sunday.

Clause 7***Driving time***

The driving time, as defined in Clause 2, shall not exceed nine hours for a day shift and eight hours for a night shift between two daily rest periods.

The maximum driving time over a two-week period is limited to 80 hours.

⁴ The parties agree that negotiations on a second consecutive rest away from home as well as compensation for rest away from home could take place between the social partners at railway undertaking or national level as appropriate. At European level, the question of the number of consecutive rests away from home as well as compensation for the rest away from home will be renegotiated two years after signature of this Agreement.

Clause 8***Checks***

A record of daily working hours and rest periods for the mobile workers shall be kept to allow monitoring of compliance with the provisions of this Agreement. Information on actual working hours must be available. This record shall be kept in the undertaking for at least one year.

Clause 9***Non-regression clause***

The implementation of this Agreement shall not constitute in any case valid grounds for reducing the general level of protection afforded to mobile workers engaged in interoperable cross-border services.

Clause 10***Follow-up to the Agreement***

The signatories shall follow up the implementation and application of this Agreement in the framework of the Sectoral Dialogue Committee for the railways sector, established in accordance with Commission Decision 98/500/EC.

Clause 11***Evaluation***

The parties shall evaluate the provisions of this Agreement two years after its signing in the light of initial experience in the development of interoperable cross-border transport.

Clause 12***Review***

The parties shall review the above provisions two years after the end of the implementation period laid down in the Council Decision putting this Agreement into effect.

Brussels, 27 January 2004.

On behalf of the CER

Giancarlo CIMOLI
President

Johannes LUDEWIG
Executive Director

Francesco FORLENZA
*Chairman of the Group of Human
Resources Directors*

Jean-Paul PREUMONT
Social Affairs Adviser

On behalf of the ETF

Norbert HANSEN
Chairman of the Railway Section

Jean-Louis BRASSEUR
Vice-Chairman of the Railway Section

Doro ZINKE
General Secretary

Sabine TRIER
Political Secretary

ANNEX

List of the official border stations located beyond the 15 km limit and for which the agreement is optional

RZEPIN (PL)

TUPLICE (PL)

ZEBRZYDOWICE (PL)

DOMODOSSOLA (IT)



TOBIAS COLLA



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