



## PETITION

to the Council of Transport Ministers, meeting on 8 October 2014 in Luxembourg

### The political pillar of the 4<sup>th</sup> Railway Package

The European Transport Workers' Federation asks the EU Transport Ministers to respect the following position and demands of the European railway workers in their orientation debate.

#### No need for amending existing legislation

The ETF is of the opinion that there is no need for amending the current legislation, Regulation 1370/2007 on public passenger transport by rail and road and Directive 2012/34/EU on the establishment of a single European railway area.

The application of the so-called PSO Regulation 1370/2007 is still in transition period until 2019 and the Member States have to deliver their interim reports in 2015. There is little return on experience with the current legislation in transition.

Directive 2012/34/EU, which modified already the rules on the structure of integrated rail companies and increased the role of the Rail Regulators, just came into force in December 2012 and still has to be implemented by the Member States until June 2015.

#### Respect Protocol 26 of the Treaty (TFEU) on Services of General Interests

Article 14 and Protocol no. 26 of the TFEU on 'Services of general interest' clearly state the importance of public services and underline the essential role of the national, regional and local level to provide them. The Treaty confirms the "**freedom of choice**" of public authority on how to organize their public transport services, by direct award of public service contracts or by competitive tendering. Regulation 1370/2007 is well balanced and ensures this "freedom of choice". Giving priority to one model, the competitive tendering of rail public transport services, is a disrespect of Protocol 26.

#### The ETF demands:

- **No cherry picking on profitable railway lines** to the detriment of an integrated and area-wide offer of public passenger services for the people. No open access competition for domestic rail passenger services.
- **No further strangling of integrated rail companies.** Respect different organizational models. The most successful railways are integrated railway systems. Preserve the internal labour market that gives for example a

perspective for those railway workers with safety relevant tasks who are not able to carry out their job any more for health reasons.

- **No compulsory tendering of rail public passenger services across Europe.** Respect the freedom of choice of competent authorities on how to organize their public services, which is guaranteed by Protocol 26 of the EU Treaty.
- **Don't make public transport workers and their jobs subject to competition;** don't allow a race to the bottom on working conditions when public transport services are tendered. Ensure a social level playing field for all competitors and ensure job security for workers by a compulsory transfer of staff in the case of change of operator.

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### **Impact of open access competition of domestic rail passenger services (on the track)**

Open access competition stimulates **cherry picking** on profitable lines and/or profitable day times. At the same time it reduces the overall possibilities of the incumbent company to cross finance services on less profitable lines through revenues from profitable lines. A combined package of profitable and not-profitable routes cannot be offered any more. We can assume that the cost saving strategy of the incumbent is closing down lines, thus less offer of public passenger transport for the public, thus reduction of employment.

If the public authorities decide, to keep the level of services offered to the customers also on non or less profitable lines or off-rush-hour-times, they have to replace such former self-financed services by PSO services. The consequence is more compensation by the public budget for rail passenger services, thus more public financing than before.

On the other hand one has to consider that private operators need to generate a profit margin, which is mostly unbearable to the viability of the railways. This is true in open access competition and in competitive tendering. It is a political decision to open up the markets for open access competition and consequently for private profit making on the one hand and to make the public pay more for keeping upright the same level of service offer also on unprofitable lines through increasing public spending for public service obligations.

- **The ETF decisively rejects such a transfer of public money to private pockets of shareholders**

### **Impact on the offer of rail passenger services, quality of passenger services, prices and public budgets**

The ETF notes that the expectations usually promised with market opening, such as higher efficiency, lower costs (lower prices for consumers; lower costs for public authorities) and better quality of services, are not confirmed by reality.

Reality of liberalization of public services including rail passenger services shows:

- Competition based on a deterioration of quality; the users pay;
- Private oligopolies vs public monopolies; tendency of private companies to lower investments for the sake of short-term profit;
- Private-public-partnerships: increase the costs of public services for the tax payers for the profit of the private sector;
- Fragmentation of services (higher costs for related services);
- New price policies (e.g. high prices for flexible tickets; lower prices for tickets bought long hand before departure) and not lower prices for the users;
- Social dumping vs high quality employment;

Just some examples of the impact on services and public finances:

- Cherry picking and potential closing down of services;
- Lower quality of services due to cost saving measures in personnel (on-board staff is disappearing in regional trains): eg. impact on passengers' security and feeling of insecurity;
- Risks that companies run into bankruptcy because of underbidding in the tendering process: higher costs for the public;
- Risks due to lack of resources and experiences of competent authorities with tender processes and goods contracts: higher costs; risks for service reliability;
- Higher transaction costs e.g. to provide one recognized ticket for all companies within a rail network;
- Profit margins required by private shareholders, lower re-investment;
- Less renewal of the rolling stocks;

### **Social consequences of market opening**

By experience the competition for a contract is taking place on the basis of the lowest price, not on the basis of quality, in particular when there are no compulsory quality and social standards. Often the public authorities don't have the expertise, neither to manage the competitive tendering nor to check if the invited offers are feasible. They can't control if the stipulation of the contracts are observed. This encourages underbidding and the disrespect of awarding criteria.

In order to make a cheaper offer, competitors save to a large extent in personnel costs: lower wages, longer working hours, less number of personnel. This produces a downwards trend not only in the new private operator but also in the entire sector. Contrary to the objectives of the European Union, no quality employment will be created or safeguarded.

Furthermore, competition through competitive tendering is characterized by a limitation of the contract duration. This discourages a long term human resource policy, discourages investment in training and health and safety at work, discourages the development of a human resource policy promoting women employment, etc. It encourages short sighted human resource policies and increases insecurity among workers linked to the contract duration with negative effect on motivation and increased psychosocial risks.

- **Competitive tendering based on a lowest cost principle stimulates social dumping within the sector**

### **ETF demands compulsory social standards in tender specifications and compulsory transfer of staff in the case of change of operator**

It must be compulsory for competent authorities to require in tender specifications the respect of social standards that create a level playing field for all bidders. Important is the collective agreement relevant in the place where the service is provided (e.g. ILO Convention 94, PSO Regulation 1370/2007 Recital 17) in the absence of a binding sector wide collective agreement. It is not acceptable that a competitor can choose to apply any collective agreement of his convenience or no collective agreement at all.

Sub-contracting and out-sourcing shall be limited. In the case of sub-contracting and out-sourcing the same conditions have to apply to the staff employed by the sub-contractor and the responsibility must remain with the main contractor.

No bypassing of labor laws and collective agreements by switching to self-employed or other less or not at all protected workers. Minimum wage and working time arrangements must relate to all forms of employment.

Social criteria such as staffing (e.g. number and level of qualification of staff on board of trains for information, comfort, security and safety reasons, etc.) shall be imposed by the tendering competent authority in order to ensure quality of services.

Investment in training and health and safety at work have to be imposed since the limited period of time of the contracts usually result in a lack of investment in mid and long term measures.

In the case of competitive tendering security of employment, contractual rights and working conditions have to be guaranteed (the employees concerned have families with children; a wife, husband or partner in employment in the same region, own houses or apartments to be paid etc...). There must be a compulsory takeover of staff from the previous operator at the same conditions without temporary limits; all acquired rights must be maintained: from the sector collective agreement (if available), the company collective agreement as well as from the work contract. All details of the employee's contractual rights have to be guaranteed, not only basic rights covered by a collective labour agreement (including allowances, age-based pay, etc). Only then the vicious circle of ruinous competition, competitive tendering at the expenses of personnel costs and the employees, can be broken.

### **The consequences of a further strangling of integrated rail companies**

The European Transport Workers' Federation (ETF) doesn't want one model imposed on all Member States. There is no proof that the unbundling of infrastructure management and operations would improve the situation of European railways. In a number of countries - which railways systems are considered among the most successful ones – the railway companies are integrated companies.

Further strangling integrated rail companies would mean:

- It will be more difficult to guarantee safety since the close coordination between rail and train (track and wheel) will disappear and every company will try to minimise its responsibilities in case of accidents;
- An integrated company is generally better suited to quickly implement the necessary innovations and to take responsibility for the investment risk. The existence of several leaders runs the risk of slowing down the development of the railway system. Investments (especially the long-term ones) in research and innovation have to be done taking into account both the state of the infrastructure and the rolling stock and their converging developments. With unbundling in place this necessary synergy is lost;
- Establishing new separated companies has a financial cost in creating the separate administrative structures and in organising the coordination and communication among the different companies;
- Communication and transparency, especially with passengers, will be more difficult and in case of delays, accidents and complaints, it will be problematic to identify which company bears the responsibility;
- The intra-group labour market, thus the possibility of redeployment of some workers (geographical mobility; workers like drivers who cannot practice their job anymore due to lost physical aptitude), would be more complicated or impossible with obvious consequences in terms of redundancies and possible loss of skilled and experienced workers.
- An integrated railway guarantees for safety and quality from a single source. The railway system is a technologically sophisticated system, which - regardless of the organizational solution - in any case requires intensive cooperation. Safety is guaranteed to a particularly great extent, if an integrated company has overall responsibility for the system wheel / track. With complete separation, in contrast, new interfaces with new risks would develop.

**Being aware of the typically statistic based argumentation; the ETF is however concerned about the effects on railway safety**

- of continuous liberalization and thus cost cutting pressure on the rail system; this inevitably leads to savings in safety-related areas such as the reduction of maintenance intervals, technical checks, duration of training, number of personnel on board of trains, etc.;
- the lack of proper functioning structures in a number of Member States (National Safety Authorities, implementation of new safety legislation);
- missing rules and structures as well as technical conditions for the registration for control and enforcement of relevant rules like driving and rest time limitations, which have a direct effect on the safety level;
- on the other hand a multitude of actors with an accelerating number of interfaces and thus increasing potential for communication weaknesses and failures;
- Outsourcing, temporary/short term work contracts and the growing number of temporary work agencies within the sector creates unclear lines of responsibilities regarding safety matters;
- No rules and structures for monitoring and enforcement of relevant technical requirements such as minimum intervals for maintenance and minimum inspections of rolling stock in circulation.