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European Transport Workers' Federation  
Fédération Européenne des Travailleurs des Transports  
Europäische Transportarbeiter-Föderation  
Federación Europea de los Trabajadores del Transporte

## THE UPCOMING 4th RAILWAY PACKAGE

### ETF POSITION PAPER

18 September 2012

#### SUMMARY

In view of the announced 4<sup>th</sup> Railway Package the ETF adopted the following principle positions regarding liberalisation of rail passenger services and separation of infrastructure management and operations.

The European Transport Workers' Federation:

- Rejects any proposal to interfere in Member State competence to organise domestic rail passenger transport and to impose liberalisation and competition on all MS by EU law.
- Demands not to modify the Regulation (EC) No. 1370/2007 on public passenger transport rail and road and to maintain the principle of "freedom of choice" of the competent authorities on how to organise public services (direct award / tendering), guaranteed by Protocol 26 of the Lisbon Treaty.
- With reference to Protocol 26, calls for a stop of EU pressure to liberalise public services including public transport services, which are a national responsibility, and condemns the continuing absence of a full and comprehensive evaluation of the impact of the liberalisation of public services.
- Underlines that (open access) competition in rail passenger transport stimulates cherry picking on profitable lines and/or day times to the detriment of an overall network offer for the passengers, disregarding the principles of accessibility and universality of public transport services.
- Strongly opposes the purely dogmatic approach as regards full separation between infrastructure managers and railway operators.
- Is convinced that there cannot be one single model for the railways all over Europe. The transport-geographical conditions, the tasks and the financial possibilities are different from Member State to Member State so that a unique model could create severe damages



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in some countries.

- Insists on the fact that creating two administrative structures will have enormous financial costs and positive synergies from long term investments in research and innovation that take into account both, the state of the infrastructure and the rolling stock, will be lost.
- The ETF is as well deeply concerned of the consequences for safety since the close coordination and communication between rail and train (track and wheel) will disappear and every actor within the system will try to minimize its responsibilities in the case of accidents.

### **The social aspects**

- Insists in a better protection of workers in the case of market opening and competitive tendering. It must be compulsory for the competent authority to create a social level playing field for all competitors ("publication of tender specifications") and to protect workers' employment and all acquired rights, working and social conditions in the case of change of operator ("transfer of staff").
- Stresses on the fact that 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. This encourages underbidding and leads to social dumping.
- Strongly denounces the continuous disregard of the social consequences of market opening such as reduction of number of employees, increase of outsourcing and sub-contracting of services, increase of atypical and precarious employment, more use of agency workers, intensification of work load and work pressure, increase of flexible working hours, split work shifts, overtime, etc...
- Insists on the importance of an intra-group labor market within an integrated rail company in order allow a socially responsible restructuring and that gives social protection for workers in specific railway professions who depend on medical criteria such as train divers.
- Denounces the lack of attention for the consequences that liberalisation can have on safety and security because of the cost cutting pressure on safety-related areas such as the maintenance, technical checks, duration of training, number of personnel on board of trains.

**The ETF is a pan-European trade union organisation that represents more than 2.5 million transport workers from 243 transport unions and 41 European countries in all transport modes. In the railway sector, the ETF represents 850,000 railway workers, organised in 83 trade unions in 37 countries.**



The ETF criticizes that the Commission continues with its liberalization ideology, now focusing on rail public services, while other elements proved being more relevant:

- A clear and decisive (national) policy, which gives priority to the development of the railway system as the sustainable transport system of the future;
- A resulting infrastructure development policy (including railway stations) with a sustainable financing;
- A clear commitment for rail public transport services with the allocation of sufficient financial means in order to maintain the level of public transport offers and improve the quality of the services;
- Full internalization of all external costs for all transport modes, notwithstanding the possibility of politically decided inequalities in favor of the railway system in order to reduce greenhouse gas emissions ;
- Interoperability of the railway system across Europe, which could be easier realized within a system with few actors than with a multitude of actors.

Being aware of the 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.

**Accordingly, and as recalled by the ETUC in its resolutions "A social compact for Europe" and "EU public procurement framework", the ETF calls for a stop of EU pressure to liberalise public services, which are a national responsibility. We condemn the continuing absence of a full and comprehensive evaluation of the impact. The ETF demands a stop of unbundling integrated rail companies, leaving both a national responsibility. ETF suggests a JOINT CAMPAIGN of all players concerned in order to safeguard the rail system and to meet the demands expressed by the collectivity. The ETF will organise trade union actions when necessary.**

On the Commission's project the ETF takes the following positions:

## 2) LIBERALISATION OF DOMESTIC RAIL PASSENGER TRANSPORT

The Commission currently checks:

- Amendment of Regulation (EC) n. 1370/2007 (PSO Regulation) with the objective to impose competitive tendering for the entire public rail passenger services (competition for the track);
- Amendment of the just adopted Recast Directive and opening of the market for so called self-financed or non-PSO passenger services (open access competition, competition on the track).

### a) **Compulsory competitive tendering for railway passenger services (competition for the track)**

#### **Rail passenger transport and public service obligations (PSO)**

Rail passenger transport as part of public transport is a public service (Service of General Interests) that plays an essential role in providing European citizens with mobility. It plays an important role for the inclusion of people and for social cohesion in Europe. As a public service it must be accessible and affordable for every European citizen. And European citizens have the right for quality public transport services, which are performed under fair conditions for workers.

National rail passenger transport is the only segment in European rail sector that is not subject to EU imposed liberalisation. It is the only segment that remains subject of the political decision of national and regional governments.

Public rail passenger transport is governed by Regulation (EC) n. 1370/2007 on public passenger transport by rail and road. This Regulation was adopted in 2007 after 10 years of difficult discussion and compromise finding and after three different Commission proposals and came into force in 2009. The transition period ends in 2019 and the Regulation requires an mid-term report from the Member States on the implementation and on experiences, which is due in 2014.

The ETF is of the opinion that the current PSO Regulation is a balanced compromise, that should not be unilaterally modified and compromised by proposing unnecessary and unacceptable amendments for the rail sector, even before the MSs mid-term reports and return of experiences are required.

The Regulation ensures the **“freedom of choice”** on how to organise public services for the national, regional and local level. The competent authorities can decide on whether to directly award public service contracts or whether to go for competitive tendering.

This “freedom of choice” has been confirmed by the Treaty. Article 14 and Protocol no. 26 of the Lisbon Treaty on ‘Services of general interest’ clearly states the importance of such services and underlines the essential role of the national, regional and local level to provide them:

#### **Article 1 of Protocol no 26**

*“The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:*

- *the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;*
- *the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;*
- *a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights."*

Additionally, Article 36 of the Charter of Fundamental Rights of the European Union, part of the Lisbon Treaty, underlines the role of SGEIs for social and territorial cohesion in Europe.

**In this sense the ETF rejects any proposal to interfere in Member State competences to organise rail passenger transport according to their decision and to impose liberalisation and competition by EU law. The ETF demands not to modify the Regulation (EC) n. 1370/2007 and to maintain the principle of "freedom of choice" on how to organise public services.**

The ETF underlines that it is no coincidence that the Swiss Federal Railways (SBB) developed without competitive tendering as the best railway system in the world. In Swiss, high quality is achieved not through competition, but through proper and long-term transport policy decisions, support by the population, competent management and motivated staff.

On the other hand there is clear evidence of failures of a competitive tendering (or franchising) system like for example in UK:

- Bankruptcy of the East Coast Main Line operator in 2009, which required that the Department of Transport took the operations back under public control and as consequence huge costs for the tax payers;
- Stop of the UK West Coast Line tender procedure due to mistake of the competent authority (Department for Transport) in October 2012, which will cost the British tax payers, estimated 300 million Pounds;
- The fragmented British rail franchising system is three times more expensive than the railways at the European continent and costs the tax payers much more than before liberalization and privatisation.

**Competitive tendering and social dumping** 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 (see UK West Coast Line disaster). 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; people will not stay longer in employment, but:

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

#### **b) Open access completion (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.**

#### **c) 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: 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;
- Risk of destruction (phasing out) of the local rail industry versus a strengthening of few companies creating a sort of European monopoly on the production of technology for infrastructure (rail, signaling, command and control), rolling stock (traction and mechanics, etc) and telecommunication.

#### **d) Social consequences of market opening**

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.

The introduction of competition forces railway companies to cost cutting measures to the detriment of service quality. By experience these cost cutting measures are taking place to a large extent on the basis of personnel costs. The consequences are:

- Reduction of number of employees (e.g. on-board personnel in trains, railway station staff);
- Outsourcing and sub-contracting of services (such as cleaning services, ticket selling services, security personnel, infrastructure and rolling stock maintenance);
- Increase of atypical and precarious employment (e.g. in the out-sourced services), more use of agency workers, more fix-term contracts (e.g. when related to tendered services) and even false self-employment (see first tendencies within the locomotive drivers' profession);
- Intensification of work load and work pressure, increase of flexible working hours, split work shifts, overtime;
- A two-tier work force in the same company, different treatment and different conditions for new and old staff in incumbent companies;
- much lower conditions for staff working in subsidiaries of the incumbent company or in outsourced services;
- Emergence of two-tier work force in the sector;
- Less investment in training and health and safety at work (e.g. due to the limited duration of public service contracts);
- Increase in psychosocial risks due to work intensity, restructuring and uncertainty and thus higher health related costs for – in particular the incumbent - companies;
- Less apprentices employed in the incumbent companies and thus less jobs for young workers; new-comers often do not employ apprentices at all;

- Lowering costs in maintenance through longer intervals, less technical inspections with negative effect on employment in this segment;
- Increase in non-compliance with working/driving/rest time rules for safety relevant personnel;

As regards the effect of open access competition on employment and quality of working conditions ETF was informed that 'open access' competitors on profitable lines reduce staff costs by for example redefining the tasks of staff and using different collective agreements – if any – than the railway collective agreement. For example: using the collective agreement for catering personnel in Austria for on-board personnel instead of the railway collective agreement. In Italy the new rail operator NTV applies the collective agreement for commerce workers to the catering personnel on board of the trains while the recently signed collective agreement "Mobility and rail activities" includes auxiliary workers in the same collective bargaining agreement as railway staff. This is direct social dumping.

A negative effect of competition is for example a de-qualification of the on-board personnel (conductors, train accompanying personnel): The operational responsibilities including operational safety tasks of the on board personnel are eliminated, and the staff is used only as commercial, catering and cleaning staff.

It has as well a negative effect on passengers' safety: The on-board personnel is not at all or less trained in operational safety. Such de-qualified personnel has less competences to ensure passenger's safety in the case of accidents, incidents or degraded situations.

We denounce as well the observed reduction of number of personnel on board of trains for cost saving reasons, thus less service for the customer. Additionally competition promotes out-sourcing and sub-contracting of services such as cleaning, catering, chouchette attending, again a social dumping measure with less qualified jobs, less job-security, increase in precarious work contracts, less pay and deterioration of working conditions.

Passenger trains should always be accompanied by qualified conductors. That is a concern of the unions, as by "conductor free" rail passenger services and occasional inspections escalations and attacks on train attendants is virtually inevitable. It should also be in the interests of transport operators and passengers, as this reduces vandalism and the subjective feeling of safety of the passengers is increased. This is of great importance especially in emergency situations (evacuation of trains, etc.).

From the ETF point of view the liberalization of rail passenger services stimulates developments, which are in contradiction to a number of other EU policy goals:

- Employment reduction – reduced employment rate (while the EU objective is an increase to 75% by 2020);
- Reduction of labour costs – reduces take home pay and increases income insecurity;
- Growing intensity and insecurity of work – erodes quality of work;
- Worsening working conditions and early retirement – contradicts goal to keep people longer in employment;
- Reductions of vocational education and training – contradicts employability goal.

### e) **ETF demands compulsory social protection**

ETF has the position that competition on the basis of personnel costs must be excluded. This is social dumping. If an authority decides in favor of competitive tendering, this competition must take place on the basis of the quality level offered to the customers. **Socially responsible procurement** means a level playing field for all participants that must be guaranteed prior to market opening.

Saying this, two stages have to be considered:

#### **Publication of the tender specifications**

It must be ensured that all interested parties participate at the same level playing field:

There should be compulsory sector collective agreements to be respected by all competitors participating in a tender competition. This collective agreement must be based on good standards, which guarantee quality employment and thus quality services for the passengers.

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). 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 change of operator: Safeguarding employees' rights in the event of transfer of staff**

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.

Employees have to accept voluntarily to be taken on by new operators. This is relevant in particular in the relation between the incumbent and other operators. If the employee decides to remain with

the previous operator, geographical mobility is not excluded. In no way a decision not to move to the new operator must be considered as a resignation from the job or must lead to redundancy. This is the only way to ensure that all competitors have to calculate with the same personnel costs.

The employment security and contractual rights guarantee is preferably given by national legislation and shall not depend on the good will of a competent authority.

### **3) FURTHER SEPARATION OF INFRASTRUCTURE MANAGEMENT AND OPERATIONS ("UNBUNDLING")**

The current EU legislation requires separation of accounting of infrastructure managers and railway operators (and passenger and freight operations) but does not require a legal separation. EU legislation permits integrated companies under the condition of separation of so-called essential functions, which guarantees non-discriminatory access for all. In a number of countries - which railways systems are considered among the most successful ones – the railway companies are integrated companies.

The European Commission wants to impose complete separation of infrastructure and operation in the framework of its liberalisation policy of the railway sector.

The European Transport Workers' Federation (ETF) doesn't want a model to be imposed in all Member States because there is no proof that the unbundling would improve the situation of European railways.

On the contrary, the ETF opposes the separation between infrastructure manager and railway operator because, if this happens:

- 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 practise 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.

There is no correlation between the degree of fragmentation of the corporate company, the level of market shares and/or the satisfaction of customers. More railways (market share) and better railways (customer satisfaction) is taking place there, where it is wanted by politics and the necessary financial means are provided and not there, where railways have been separated or liberalized. The most successful railways in passenger transport (CH) and freight transport (USA) are all integrated systems.

#### **4) FUTURE TASKS OF THE EUROPEAN RAILWAY AGENCY** (see separate Position Paper)