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THE UPCOMING 4th RAILWAY PACKAGE

FUTURE TASKS OF THE EUROPEAN RAILWAY AGENCY

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SUMMARY

The ETF principally supports a greater role for ERA regarding a European wide authorisation of vehicles but insists on the highest health and safety at work standards.

The ETF view on the future role and tasks of ERA at a glance:

The European Transport Workers' Federation:

- Insists that the ERA's primary role must be the one of a watchdog for railway safety in the European Railway Area. It must not be an agent putting safety against competitiveness.
- Firmly believes that harmonisation of safety standards must never downgrade the national standards. Safety is an asset of the rail sector and safety rules are not barriers for the internal market!
- Is critical to the introduction of a single safety certificate.
- Believes that the Agency should be a convinced supporter of a "just culture" that encourages the personnel to report dangers, incidents and accidents without risking being blamed (no-blame-policy).
- Believes that the ERA competences on monitoring and control of respect of safety rules must be strengthened but requires a more neutral role for the Agency, being independent from the European Commission.
- Is convinced that technical and operational interoperability is an important element to improve the performance of European railways. Nevertheless interoperability should never be pursued to the detriment of safety.
- Insists that the European wide authorization of vehicles through ERA has to follow the highest operational and occupational safety standards; no run to the bottom as regards



President Lars Lindgren

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health and safety at work standards.

- Demands that the ERA establishes a horizontal working group on health and safety at work (OHS) with equal composition of trade union OHS experts and management OHS experts.
- Insists that ERA gets a mandate for proposing regular checks and enforcement rules for driving and rest time for train drivers including defining the technical features for a recording device.
- Insists on a European certification of on-board personnel (conductors) similar to the locomotive drivers' certification.
- Is of the opinion that for all professional groups with safety relevance/safety tasks within the railway sector, a harmonized EU definition of tasks, competences and training needs at a high level is necessary.
- Welcomes the integration of workers' representatives in the ERA working parties but denounces however the poor recognition of the opinion of the ETF representatives. Ask for full financial compensation of the work of workers' representatives in the working groups.

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.

1) INTRODUCTION

The ETF supported the establishment of the European Railway Agency as a safety agency in order to maintain and improve railway safety in Europe, in particular within the single European railway area. Today, ERA has three departments dealing with interoperability issues (Interoperability, cross-acceptance of rolling stock, ERTMS) and only one safety department. The European Railway Agency has a clear focus on promoting technical interoperability. As railway safety is concerned, ERAs tasks are concentrated on the harmonization of the safety culture in Europe with the inherent danger of downwards harmonization.

The ETF demands that the European Railway Agency becomes a watchdog for railway safety in the European single railway area. The ETF demands that staff competences, training, acceptable working time rules, compliance with those rules as well as quality health and safety standards at work are considered as an essential element for railway safety (human factor) and that ERA becomes a watchdog in ensuring high quality level standards for the sake of railway safety. The ETF is of the opinion that ERA shall have a more neutral status, being independent from the European Commission and accountable only to the European legislator.

2) SAFETY

The high level of safety is an advantage and an indispensable condition for the development of the railway sector in the European transport market and must not be jeopardized. To maintain and improve the high level of safety must be a first priority for the European legislators and the European Railway Agency.

No changes in safety regimes should be imposed on the national safety authorities through TSI's or by other means if the changes do not improve safety - or at least maintain the railway safety at the same level. This should be documented by risk assessments.

The ETF strongly criticizes an attitude that considers the safety argument as an argument for protectionism or that denounces an alleged over-quality in terms of safety. The ETF strongly criticizes the approach to national safety rules as barriers for the internal railway market. The ETF is critical towards a cost-benefit-approach when deciding on safety measures and demands in any case not to allow lowering the safety level on the basis of cost-benefit-assessments. We also cannot accept that good national safety rules will be deteriorated for the sake of harmonization.

The first task of the Railway Agency shall be to **detect safety risks** within the now open railway system in Europe. The focus on harmonizing the railway safety systems in Europe bears the danger of overlooking new risks arising from a multi-actor system with many interfaces.

A very important focus point should be to identify new safety risks emerging from the present open access policy. This is for example when safety critical tasks are contracted out, for example important operational tasks as train driving, but also maintenance. Equally important are the numerous interfaces appearing between the different actors in the railway sector like safety authorities, infrastructure managers, train operating companies and sub-contractors on different levels.

The focus of the European Railway Agency should be to find the weaknesses and problems, which are not reported according to the rail statistic regulation or the safety directive reporting requirements.

The number of staff in safety critical areas, the amplitude of working time and/or the number of overtime work, for example, should be considered as an indicator and be examined as safety critical points. The drastic increase of sick days and of burnout cases, due to staff shortages and overload should be another indicator. Also the compliance or non-compliance with working, driving and rest time rules and the number of rests away from home are as well indicators.

The Agency's task should be to strongly support a "just culture" in the rail companies, a no blame policy against staff members who report incidents and almost accidents. It should propose procedural and legal requirements in order to enforce a "just culture".

The ETF expects the European Railway Agency to be a watchdog for railway safety and not an agent for putting safety against competitiveness.

In this sense the ETF is critical regarding the intention to introduce a single safety certificate for railway undertakings, which will be recognized in all EU Member States and allow operations across Europe and in all European countries without a pre-check of the respective National Safety Authorities that the company has the necessary specific competences for operating safely on the specific network.

As regards railway safety the ETF is of the opinion that the ERA competences shall be strengthened regarding monitoring and control of the respect of safety rules. ERA must be given the opportunity to operate independently from European or national policy makers. The ETF is of the opinion that the ERA is still too much in the shadow of the EU Commission.

3) INTEROPERABILITY – VEHICLE (TYPE) AUTHORISATION

The ETF believes that technical and operational interoperability is one important element to improve the performance of the railways in Europe. The other elements are a proper financing of infrastructure development, a proper public service financing and a decisive political commitment in favour of a modal shift via the integration of all external costs into the user charges for the other transport modes. The ETF believes that these elements are more effective for promoting the rail transport system in Europe than market opening and destructive competition.

The ETF insists, however, that technical and operational harmonization must not be pursued to the detriment of operational safety and in particular not jeopardize health and safety at work of the concerned railway staff. Health and safety at work must remain the full responsibility of the employer.

In this sense the ETF supports the intention to make the placing into service of rail rolling stock more effective, faster and cheaper and to allocate to the Agency the competence of vehicle (type) authorization like it is the case with the European Aviation Safety Agency EASA.

We insist however, that the health and safety requirements for the design and the equipment of passenger and freight locomotives and rolling stock follow the highest level of protection. Experiences with the homologation of locomotives in several member states showed, that health and safety at work standards were different in different member states. They were among those elements, which required adaptation of the design. And we are not talking about the position of the fire extinguisher within the locomotive. We are talking about noise and climate conditions in the driver's cabin, ergonomics at the workplace, vision requirements etc...

The ETF insists that the European wide authorization of vehicles through ERA has to follow the chief safety and health and safety at work standards. We insist that the TSI requirements follow the highest standards and where there are no European standards, the highest national standard has to be used for a European wide homologation of rolling stock.

4) HEALTH AND SAFETY AT WORK

The establishment of a harmonized approach to railway safety as well as harmonization through technical and organizational interoperability also effects health and safety at work.

Although the interoperability directive 2008/57/EC Article 5(3)g requires the respect of health and safety at work (OHS) when drafting the Technical Specifications Interoperability (TSI), the OHS chapters (chapter 4.7 of each TSI) are drafted with a technical focus and not from an occupational health and safety at work point of view. They often just comprise one paragraph and make reference to the general EU health and safety at work legislation. The experts in the ERA working groups are technical experts but have no expertise in OHS at work or in human resource issues.

A study from a network of rail OHS experts¹ which analysed the drafting of CEN and CENELEC standards for the rail sector came to the same conclusions: those standards do not sufficiently consider OHS requirements because they were drafted by technical experts without the specific expertise.

ETF demands since the beginning of the establishment of the ERA to set up a horizontal working group on health and safety at work and interoperability with equal composition of trade union OHS experts and company OHS experts. This was always refused by ERA with the argument of

- a) Lack of human resources;
- b) Lack of a mandate;

¹ Association for the promotion of safety at work in Europe (VFA), KAN report 27e "Standardization relating to occupational health and safety in the field of rail traffic (2002) by the Commission for Occupational Health and Safety and Standardization (KAN),

- c) Lack of competences since health and safety at work issues are a matter of the Commission's Advisory Committee on Health and Safety at Work and the Bilbao OSH Agency.

However, Directive 89/654/EEC on health and safety at the work place, for example, excludes locomotives or any work place in a transport vehicle from the scope of the Directive.

The work in maintenance workshops for locomotives and other rolling stock is totally different and with specific hazards than the work in usual workshops. Another example is infrastructure maintenance work, which has specific hazards different to other construction sites due to the running trains. There are a number of specific OHS hazards in the rail sector, which require specific attention and are not covered by general legislation.

Additionally both, the rail safety directive and the interoperability directive, forbid Member States to establish new rules including health and safety at work rules. On the other hand the objective to "improve the competitiveness of the sector", the use of cost-benefit-analysis even for safety measures, technical and operational harmonization and the cost reduction objective of cross-acceptance of rolling stock all have the tendency to harmonize health and safety standards in the rail sector down to a minimum level, in particular when defined by non OHS experts; an immense threat to railway safety in general.

And last but not least due to growing cross-border operations of the railways and cross-border use of mobile railway personnel, additional operational and occupational health and safety problems are arising.

ETF demands that ERA gets from the European Commission a clear mandate without ambiguity to establish a horizontal working group on health and safety at work, which is composed equally of trade union OHS experts and company OHS experts. This working group has to work transversal, independent and has to examine all ERA draft from an OSH point of view and make own proposals.

The ETF demands that ERA gets competences in:

- Studies on fatigue and other OHS hazards in cross-border driving, in particular when driving in different safety systems with different operational rules and using different languages;
- Define the features for a technical recording device that records driving and rest time and breaks for control purpose (digital tachographs);
- Develops a (legislative) proposal on regular checks for cross-border driving including a proposal for the organization of control and enforcement of working, driving and rest time in cross border driving, including the role and cooperation of the National Safety Authorities, labour inspectorates and other control and enforcement bodies within the railway system;

5) TRAINING AND VOCATIONAL COMPETENCES

The Interoperability Directive 2008/57/EC Article 5(3)g also requires to tackle the question of vocational competences when drafting the TSIs (Chapter 4.6 of each TSI).

The ERA Regulation (amended Regulation 1335/2008/EC) says in the new

“Article 17 Vocational competences and training

(1) The Agency shall make recommendations on specifying common criteria for defining vocational competences and assessing staff in the case of staff involved in the operation and maintenance of the rail system but which is not covered by Articles 16b or 16c.”

(Articles 16b and 16c are dealing with locomotive drivers and other crew members.)

Although ERA has a specific working group on vocational competences, this working group is only dealing with the implementation of the locomotive drivers' certification Directive 2007/59/EC.

The ETF is of the opinion that for all professional groups with safety relevance/safety tasks within the railway sector, a harmonized EU definition of tasks, competences and training needs is necessary. We insist that this harmonisation has to take place at a high level and must ensure quality in order to avoid that in the course of the establishment of the Single European Railway Area - as pursued by the European Commission and supported by the European Parliament - a downwards pressure on vocational training and competences is taking place.

The ETF's affiliates are currently experiencing that companies are reducing investment in training, redefining professions, downsizing tasks and so contribute to a reduction of skills in the rail sector. This tendency is supported by the European approach to safety rules, which hinders Member States and/or National Safety Authorities to establish new rules or even tends to interpret existing rules on professional competences and required vocational training for safety relevant rail professions as a barrier for the internal market (see report on on-board personnel).

The ETF demands to review the policy on professional competences for railway staff with safety relevance and to ensure that also in a European internal railway market a high level of competences and training for safety relevant personnel are ensured and thus railway safety for the rail users and the environment.

For ETF the ERA seems the right body with the railway specific knowledge to work on this. However, the ETF insists that the mandate must clearly require high level standards and exclude downward harmonization.

In addition, national governments and companies shall not be stopped to make additional efforts in education and training.

The ETF demands a European wide certification system for on-board staff with safety tasks similar to the certification of locomotive drivers (two parts), which is delivered by a national authority.

The ETF decisively rejects any temptation to forbid existing national rules for safety relevant railway professions with the argument that those rules would be a barrier for the Internal Market. For example the parameters and quality of national infrastructure are very different in the different Member States. This still requires a definition of rules and requirements for safety relevant professions by the respective Member States.

6) WORK OF TRADE UNION REPRESENTATIVES WITHIN ERA

The ETF highly welcomes the provision in the Agency's Regulation Article 3(1) that workers' representatives can be nominated to the working parties of the European Railway Agency.

The ETF nominated workers' representatives to three working parties within the Safety Unit, to one working party within the ERTMS Unit, to the WP of the Cross-Acceptance Unit and to 5 WPs within the Interoperability Unit. Currently our affiliates are actively working in 10 WP with a total number of 14 trade union experts.

It is highly important to integrate workers' representatives in the ERA working parties since the huge majority of proposals on technical, operational and safety harmonization affects directly and indirectly the work place of the railway staff and/or the human factor in operational and safety questions. The expertise of the workers representatives is indispensable.

However, there are a number of problems related to guaranteeing workers' representatives expertise within the drafting work of the Agency:

The workers' representatives with the necessary expertise to work in the specific working parties of the Agency are usually NOT trade union employees or permanent trade union representatives. They are actively working railway staff, often elected to the company's works council. They do not receive free days from their companies and they are not paid by their employers for their work in the ERA working parties. In order to follow the ERA work and participate in meetings they have to use their annual contingent of days foreseen for their works council work. This is to the detriment of their work as elected workers' representatives within their companies.

This is totally different from the situation of the representatives from the rail industry (CER, UNIFE, EIM, ERFA etc.). They are sent to the ERA working parties by their employers, they are paid for that work within their normal salaries and the ERA expert work is part of the job description. Since the ERA expert work is part of the job description of the company representatives, those organizations were able to establish structures, the Group of Representative Bodies, which prepares the ERA working group work and provides the experts in the ERA WP with a mandate; something that cannot be provided by the workers' representatives and their European organization.

Additionally, the fact that ERA is working in English only creates huge difficulties since trade union and work council representatives are deeply involved at company level and are experts in their fields but do not have the language capacities.

Therefore the ETF demands to establish a system to finance the work of the workers' representatives in the ERA working parties. Additionally to travel and accommodation costs, the ERA budget or another EU budget line must financially compensate the working time allocated to the ERA expert work including preparatory and coordination work, which are not paid by their employers, the railway companies. This could be in form of a consultancy fee or a direct reimbursement of partial salary to the expert's employer.

Additionally, English language courses and simultaneous interpretation at the meetings should be financed by the ERA budget for the workers' representatives.

The ETF is of the opinion that the establishment of the European Railway Agency with all its harmonization work cannot be done by the industry representatives and by consultants only. It must include the workers' perspective and expertise. But this must be financed by the EU budget.

7) NO TASKS FOR THE EUROPEAN RAILWAY AGENCY

Within the discussion on the future role of the European Railway Agency other functions like a European rail regulator, European infrastructure allocation and charging agency or tasks like interoperability questions related to commercial issues (ticketing, time tables etc.) are discussed.

The ETF warns against establishing a European super body for the railway sector.

The ETF strictly opposes to allocate tasks of a **rail regulator** to ERA. The ERA is a safety agency. From an ETF point of view the two responsibilities shall not be united in one agency. It can create a conflict of interests within the same organization and there is too much the danger that competition prevails to the detriment of safety. Safety on the one hand and competition supervisory functions on the other hand have to be independent functions.

The ETF is of the opinion that the Agency shall not have tasks within the **allocation of infrastructure slots or the charging**. These are tasks that have to take into consideration the local and regional situation and cannot be managed at European level.