

Assessment 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

Project ‘Rail Mobile Workers’

Joint conclusions from the European rail social partners CER and ETF

General remarks

The rail social partners’ project Rail Mobile Workers¹ confirmed that the 2004 CER-ETF Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services² is still relevant for regulating the working conditions of rail mobile workers that are engaged in interoperable cross-border services.

The negotiation of a binding agreement by the sector social partners allowed to regulate working time aspects of a specific category of railway staff, giving due consideration to the sector’s reality and specific needs. CER and ETF therefore wish to make the preliminary remark that such agreements remain without any doubt a very valuable tool in the hands of representatives of labour and management at EU level.

With the Agreement, CER and ETF aimed at accompanying the gradual development of railway interoperability with a sound basis of social provisions that set the framework for fair competition among companies operating internationally, avoiding competition based solely on differences in working conditions³.

When forecasting the social impact of the Agreement, the rail social partners estimated that seamless cross-border operations, and cross-border mobility of workers associated to it, would grow over the years and that their agreement would cover approximately 10.000 workers. The project research confirmed the social partners’ forecast⁴, but at the same time did not show a progressive increase in the number/share of affected workers, as one might expect.

¹ “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” (Support for social dialogue. Call for Proposals VP/2016/001).

² The Agreement is a social partners’ agreement according to Article 155 TFUE and it was implemented via Council Directive 2005/47/EC.

³ Cfr. the first three indents of the introduction to the Agreement (“having regards”).

⁴ Companies participating in the project survey reported in total around 8.000 cross-border mobile workers affected by the Agreement. This figure should be increased with the concerned workforce of companies not participating in the project.

The project findings demonstrated that the explanation is twofold. On the one hand, this can be explained by the lack of full technical railway interoperability, demonstrating that the lack of technical and operational interoperability is a bigger obstacle than interoperability of the personnel. At the time of negotiations, railway interoperability was still not a reality as interoperability legislation had been adopted only a few years earlier. Nowadays the situation is likely to be progressively overcome with the roll-out of enablers such as ERTMS, and politically- and business-led initiatives such as Rail Freight Corridors.

On the other hand, even when it is technically possible for a train to move seamlessly across borders, companies can still and do allocate staff to cross-border services according to different business / operational models that have an impact on the application (or not) of the agreement to this staff. Hence, the development of cross-border traffic does not necessarily coincide with the development of cross-border mobility of workers.

Looking at future developments in the sector, the social partners note that the upcoming issuing of single safety certificates by ERA (as a consequence of the technical pillar of the Fourth Railway Package) can make the existing definition of “interoperable cross-border operations” in the agreement obsolete.

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The project allowed to collect a wealth of information about the concrete application of the Agreement and each of its clauses. Analysis of the data collected revealed that in some companies some provisions applied to mobile workers are less favorable than the minimum standards of the agreement. CER and ETF look at this result with concern and reiterate that the provisions of the agreement have to be respected. The social partners on European level see it therefore as their duty to promote the Agreement within their membership, e.g. with a joint leaflet to be distributed to CER and ETF member organisations.

The social partners consider it a positive fact that the Agreement itself and project findings triggered concrete activities and discussions among some social partners and with national authorities, with a view to addressing unclear aspects in the application of the provisions or their enforcement.

Conclusions about open points for renegotiation and/or interpretation of the Agreement

In the project work programme, CER and ETF committed to “reflect on possible joint interpretation and conclusions on the interpretation, application and enforcement of the agreement” and to “also consider whether to open negotiations in order to revise the agreement and if so, on which topics”.

After analysis of the project findings, the social partners came to the joint conclusion that to this date there is no need to renegotiate the agreement, as its clauses still provide an adequate reference framework for assuring minimum working conditions and preventing social dumping in cross border services provided that the provisions are applied.

With regards to the interpretation of certain clauses of the agreement, the social partners identified some provisions that were interpreted and thus implemented and applied differently in different countries, generated discussions during the Workshops and Steering Committee

meetings and for which at least one of the social partners sees the need for a reinterpretation, also in the light of sector developments. These are⁵:

- the definition of interoperable cross-border mobile worker;
- the definition of train crew;
- the absence of a limitation of driving time in some countries or companies and the relation with working time;
- the specific regulation of breaks for locomotive drivers and on-board personnel.

In order to follow-up on these project findings, CER and ETF have decided to give further attention to these topics, to bring them in the next work programme 2020/2021 of the Sectoral Social Dialogue Committee for Railways, and to define a timeline for addressing them.

Conclusions about monitoring and enforcement of the Agreement

One of the project findings is that a proper monitoring and enforcement of the Agreement at member state level is hindered by a lack of clarity about the national competent authorities.

Even in situations where an authority is clearly defined – usually the national labour inspectorate - it seems to lack the necessary resources, capacity and/or awareness about the Agreement and the Directive implementing it to perform its duties in an effective way.

On top of this, the social partners stress the specific situation of the Agreement scope of application, i.e. cross-border operations. Cases and examples reported by the (very few) representatives of national authorities attending project workshops highlighted the difficulties they encounter when they want to obtain information or carry out more in-depth checks about transport undertakings whose parent company is established abroad, or even in another region of their country when enforcement responsibilities are at the regional level.

One of the reasons is the national or even regional perspectives of the authorities based on inspections in companies while the subject of the social partner agreement is cross-border operation.

Against this background the social partners wonder how effective sector-wide monitoring and checks can be assured. The enforcement aspect is indeed key to assure the respect of the objective of the agreement, namely to ensure a fair social level playing field among companies carrying out interoperable cross-border services.

The use of on-site checks to control the respect of working and driving time was also addressed during the project. While some (railway) National Safety Authorities perform this type of checks in some countries, they seem to limit these checks to train drivers' professional qualifications and medical requirements. The social partners underline that Directive (EU)

⁵ A description of the specific questions related to the different Clauses can be found in the report "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", published by the social partners.

2016/798 of the European Parliament and of the Council on railway safety (Railway Safety Directive) explicitly mentions the role of NSAs for working time aspects as well, either in a direct way or in cooperation with the competent authorities designated by the member states⁶.

Although differing about the proper means for effectively monitoring actual working, driving and rest time of mobile staff assigned to cross-border services, the social partner renew their commitment laid down in the sectoral social dialogue committee's work programme 2018/2019 to work together on this aspect, aiming to assure the respect of the agreement by all operators while taking into account developments in the sector and the challenges posed by the cross-border nature of operations.

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⁶ Article 17 "Supervision" of Directive (EU) 2016/798 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."