



# *Follow-up of the Agreement on the Working Conditions of Mobile Workers Engaged in Interoperable Cross-Border Services*

ENGLISH





# Follow-up of the Agreement on the Working Conditions of Mobile Workers Engaged in Interoperable Cross-Border Services\*

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## THE PROJECT: BACKGROUND AND OBJECTIVES

### 1.1 The Regulatory Background

*The rationale of the Project: Clauses 10 and 11 of the Agreement signed on 27 January 2004 between CER and ETF and transposed into Directive 2005/47/EC*

Over the past 15 years, the European railway market has radically changed its original characteristics. The European Union has faced profound social and political changes occurring in the new structuring of the Community territory. The globalisation of markets, technological progress, intermodal competition, the Economic and Monetary Union and the EU Internal Market principles of free circulation of goods and people are elements involving all aspects of society. In this context, rail transport has had to deal with blocks and nationalisms historically characterising the sector in order to undertake a crucial role in the process of integration between Member States. Within this process, the railway personnel have been considerably reduced and are still affected by the ongoing restructuring.

From 2001 to 2007, European legislators adopted three railway packages, which resulted in a total restructuring of the railway industry, a gradual market opening of the rail freight transport sector in 2003, 2006 and 2007, and the liberalisation of international rail passenger services from 1st January 2010. One of the objectives of the railway legislation was to create a single European railway area with more seamless cross-border rail services.

In such a framework, in 2002 the European Social Partners in the railway sector decided on their own initiative to negotiate minimum standards for the working conditions of mobile personnel engaged in seamless cross-border services. The negotiations took place in 2003 and the Agreement on Certain Aspects of the Working Conditions of Mobile Workers Engaged in Interoperable Cross-Border Services was signed in January 2004 between the employers' and trade unions' associations of the European railway industry, the Community of European Railways (CER) and the European Transport Workers' Federation (ETF).

The European Social Partners decided to jointly ask the European Commission to implement this European Agreement as a Council Decision. Being implemented as EC Directive with more specific provisions than the general EC Working Time Directive, the Agreement falls under the European Working Time<sup>1</sup> regime and sets forth rules on minimum stand-

ard working conditions for mobile workers engaged in cross-border transport services, while concomitantly integrating general Community legislation and governing certain institutions, such as daily rest at home, daily rest away from home, breaks, weekly rest and driving time.

This regulatory requirement originated from the awareness of the lack of minimum requirements applying to the whole railway industry and of the homogeneity between the Member States' systems, and from the need to prevent the risk of social dumping by establishing minimum standards on common rules for cross-border transport.

The signatories have therefore met to share common interests such as the definition of clear rules for competition and the prevention of "unfair competition". According to the intentions of the signatories, the Agreement took into account:

- the development of rail transport, which requires the modernisation of the system and the development of the Trans-European traffic and thus interoperability services,
- the need to develop safe cross-border traffic and to protect the health and safety of the mobile workers engaged in interoperable cross-border services,
- the need to avoid competition only based on differences between working conditions,
- the importance of developing the railway transport within the European Union,
- the idea that these aims will be met by creating common rules on minimum standards working conditions for mobile workers engaged in interoperable cross-border services,
- the conviction that the number of this staff concerned will increase over the coming years.

In accordance with the procedure envisaged by Article 139 of the Treaty<sup>2</sup>, the European Agreement represented a crucial step towards a deepening of the European social dialogue in rail transport, highlighting the Social Partners' abilities to be actors in defining, on their own, the social and safety conditions for the sector<sup>3</sup>.

The importance of the Agreement was emphasised by the objective difficulties in the negotiations regarding the delicate aspects of working time. In actual fact, the negotiations underwent a complex evolutionary process: after an initial stage of technical discussion within the "Rome Working Group" composed of CER members and chaired by Raymond Hara (SNCF), a draft text was prepared. Negotiations were opened and conducted by Johannes Ludewig (CER) and Norbert Hansen (ETF), and then concluded with the signature of the European Agreement in January 2004.

<sup>1</sup> Directive 93/104/EC, amended by Directive 2000/34/EC, which extends the regulations of the former to the previously excluded sectors, including the railway sector.

<sup>2</sup> Article 139, Para. 2, of the Treaty establishing the European Community states that the Social Partners may jointly request that the agreements signed at Community level be implemented on the basis of a Council decision upon proposal by the Commission.

<sup>3</sup> Anna Diamantopoulou, European Commissioner for Employment and Social Affairs, who attended the signature ceremony of the European Agreement, said that this agreement "is a milestone for a safe, interoperable railway system. It represents an excellent example of a balance between flexibility and safety".



It should also be considered that until now the European social dialogue has rarely led to concrete sectoral agreements. This is a further element that stresses the importance of the Agreement reached by the signatories.

Furthermore, the signatories intended that the agreed text should be converted into a directive.

In 2005 the European Agreement was actually transposed into Directive 2005/47/EC. The European Council - in compliance with the procedures (Article 139 of the Treaty) - fully adopted the Agreement text without any change, thereby making such Agreement mandatory for the entire railway industry, and setting 27 July 2008 as the deadline for implementation in the Member States.

The Project "Follow-up of the Agreement on the Working Conditions of Mobile Workers Engaged in Interoperable Cross-Border Services" was accordingly aimed at ensuring the implementation of this European regulation, in the light of initial experience in the development of interoperable cross-border transport.

The project activities indeed intended to implement two of the European Agreement clauses:

- Clause 10 stating that the signatories shall follow up the implementation and application of this Agreement in the framework of the Sectoral Social Dialogue Committee,
- Clause 11 stating that, two years after the signature of the Agreement, the parties shall evaluate the provisions in the light of initial experience in the development of interoperable cross-border transport.

These provisions represent a commitment that the Social Partners ratified in the European Agreement, assuming a gradual increase of mobile workers engaged in interoperable cross-border services.

Considering the evolution of the European railway market, the signatories thus agreed on the possibility of starting-up a project, within the Social Dialogue Committee, to jointly undertake the monitoring and evaluation of the existing experience.

<sup>4</sup> This Clause envisages that the signatories review the above provisions two years after the end of the Agreement implementation period set by the Council Decision, i.e. after 2010.

## 1.2 Objectives

### *Description of the Project's aims*

The Project "Follow-up of the Agreement on the Working Conditions of Mobile Workers Engaged in Interoperable Cross-Border Services" was primarily aimed at ascertaining the status of implementation of the 2004 CER-ETF Agreement, in the light of initial experience in railway undertakings.

The project activities thus aimed at carrying out a joint analysis in order to:

- update the Social Partners' information on the state of play and process of implementation of the Agreement;
- identify the critical aspects and needs expressed by the undertakings and trade unions in relation to the development of interoperable cross-border transport;
- evaluate the initial experience on the implementation of the European Agreement provisions.

This activity, besides collecting the requirements expressed by the Social Partners on such regulation in the light of the market evolution, could also be useful for the review of the European Agreement provisions pursuant to Clause 12<sup>4</sup>.

## 1.3 Methods of Project Development

### *Description of the project development methodology with special reference to the composition of the working group, research phases, etc.*

The methodology adopted by the Project involved integrating the typical tools of the statistical quantitative approach and the distinctive methods for qualitative orientation. More precisely, the semi-structured questionnaire was, in fact, accompanied by meetings with employers' and trade unions' representatives of some undertakings in the railway industry.



The Project was thus structured in 3 phases, and organised as follows.

The first phase of the Project consisted in sending out a questionnaire, drawn up by the working group, containing some thematic areas, of which the most significant were: applied experience of the Agreement, needs connected with the development of interoperable cross-border transport and functioning of the Agreement with regard to the evolution of the railway market.

The aim of the second phase was instead to integrate the information obtained from the survey questionnaire with on-site visits to some railway undertakings. In this phase of the Project, information was collected directly through participatory observation and discussion between the working group and representatives of the Social Partners of the railway undertakings concerned.

After completing the scheduled visits, this final report was also drawn up by the project *rapporteur*, in collaboration with the working group. This deliverable will be illustrated within the Social Dialogue Committee.

The working group with the task of following up and applying the Project was set up within the Social Dialogue Committee for the railway sector, and was coordinated by Italo Inglese (*Ferrovie dello Stato*), Project *rapporteur*, co-assisted by Francesca Rango (*Trenitalia*).

The working group consisted of two representatives of the central organisations representing the European partners of the Project: Jean-Paul Preumont (CER) and Sabine Trier (ETF) and included the following members: for the employers, Michaela Eigenbauer (*ÖBB - Dienstleistungs Gesellschaft mbH - Austria*), Raymond Hara (*SNCF - France*), Silke Streichert (*DB Mobility Logistics AG - Germany*); for the trade unions, Josef Armingier (*Vida - Austria*), Michael Bartl (*TRANSNET - Germany*), Maria Cristina Marzola (*FILT-CGIL - Italy*) and Serge Piteljon (*CGSP Cheminots - Belgium*).

The working group availed itself of a project staff from *Ferrovie dello Stato*, composed of Roberta Tomassini, Stella De Angelis, Silvia Cataldi and Mariapia Tordi.

#### Composition of the Working Group

Composition of the Working Group		
CER		
• Italo INGLESE ( <i>Rapporteur</i> )	FERROVIE DELLO STATO	ITALY
• Jean-Paul PREUMONT	CER	BELGIUM
• Michaela EIGENBAUER	ÖBB	AUSTRIA
• Raymond HARA	SNCF	FRANCE
• Silke STREICHERT	DB	GERMANY
ETF		
• Sabine TRIER	ETF	BELGIUM
• Josef ARMINGIER	Vida	AUSTRIA
• Michael BARTL	TRANSNET	GERMANY
• Maria Cristina MARZOLA	FILT-CGIL	ITALY
• Serge PITELJON	CGSP Cheminots	BELGIUM

## THE FIRST PHASE OF THE PROJECT: SURVEY ON THE STATUS OF IMPLEMENTATION

### 2.1 Survey Questionnaire and Collected Information

*Description of the tool utilised in the survey and indication of the total number of responses and origin of respondents*

As planned in the Project, within the working group, the Social Partners collectively developed a questionnaire (in four languages: English, French, German and Italian), which was then administered to the railway undertakings, as well as among CER affiliates and the ETF trade unions operating in passenger and freight transport services.

The survey questionnaire was structured in four sections (see Annexe B). The purpose of the first section (Section A) was to assess whether or not any mobile workers come within the scope of the European Agreement, i.e. workers engaged in interoperable cross-border services, and to obtain figures on the workers concerned. The aim of the second section (Section B) was to identify the implementation status of the European Agreement and the procedures by which this Agreement had been implemented (through collective bargaining, with national or in-company agreement, or by law), while highlighting any obstacles or causes which had hindered the implementation or made such implementation challenging. The third section (Section C) was basically developed to analyse the issues regulated during the implementation phase, including the possible introduction of more favourable provisions. The last section (Section D), looking ahead, was aimed at gathering suggestions and indications from the operators (either undertakings or trade unions) on issues requiring further review with respect to the development of interoperable cross-border transport, and on issues needing to be discussed within the social dialogue.

The survey questionnaire was sent out to the CER and ETF affiliates in October 2008. Responses were received from October to December 2008. A total of 9 railway undertakings and 16 trade unions responded to the survey questionnaire.

The countries involved in the questionnaire were: Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, Lithuania, Luxembourg, Norway, Czech Republic, Slovakia, Spain, Sweden, Switzerland and Hungary (totalling 16 countries). The geographical distribution of the countries confirmed the Social Partners' idea developed during the preparatory phase of the Project, later presented to the European Commission, i.e. that a representative sample of railway undertakings operating in interoperable cross-border transport would have involved not only the "traditional" countries of continental Europe, but also the

countries of Eastern and Northern Europe. This is particularly significant as concerns the geographical position covered in the rail transport market with reference to the major European “corridors”.

Moreover, besides countries such as Italy, France, Austria, Germany and Spain, others like Bulgaria, the Czech Republic, Slovakia and Hungary responded to the questionnaire (in the first countries, responses were from the railway undertakings and in the others from the trade unions), while Romania (*MARFA*), as is purposely illustrated in the paragraph on this matter (see Section 3, Point 3.1), hosted one of the six on-site visits of the working group to the railway undertakings. The involvement of Sweden, Norway and Finland was especially interesting, also allowing for the completeness of the responses to be reached.

There follows a complete list of respondents, broken down by related countries: Austria (railway undertaking: *ÖBB* Group, also called *ÖBB*; trade union: *VIDA*), Belgium (trade union: *CGSP Cheminots*), Bulgaria (railway undertakings: *BDZ EAD* and *BDZ-Voyahgeurs EOOD*), Finland (trade union: *VETURIMIESTEN LIITTO*), France (railway undertaking: *SNCF*; trade union: *Fédération CGT des Cheminots*), Germany (railway undertaking: *DB*; trade union: *Transnet*), Italy (railway undertaking: *FS-Trenitalia SpA*; trade unions: *Filt-Cgil* and *Fit-Cisl*), Lithuania: (railway undertaking: *Lithuanian Railways*), Luxembourg (railway undertakings: *Société Nationale des Chemins de Fer Luxembourgeois – CFL Cargo*; trade union: *FNCTTFEL*), Norway (trade unions: *Norsk jernbaneforbund* and *Norsk lokomotivmannsforbund*), Czech Republic (trade union: *Odborového sdružení železničářů, OSŽ*), Slovakia (trade union: *Odborové Združenie Železničiarov*), Spain (trade unions: *Unión General de Trabajadores (UGT)* and *Federación de Servicios a la Ciudadanía de CC.OO.*), Sweden (employers’ association: *ALMEGA*; trade union: *Facket för Service och Kommunikation, SEKO*), Switzerland (railway undertaking: *BLS*) and Hungary (trade union: *VDSZSZ*).

### Survey Questionnaire: Responses and Countries

	RAILWAY UNDERTAKINGS	TRADE UNIONS
AUSTRIA	ÖBB GMBH	VIDA
FRANCE	SNCF	CGT
GERMANY	DB	TRANSNET
ITALY	FS-TRENITALIA	FILT-CGIL / FIT-CISL
LUXEMBOURG	CFL	FNCTTFEL
SWEDEN	ALMEGA	SEKO
BELGIUM		CGSP
BULGARIA	BDZ	
FINLAND		VETURIMIESTEN LIITTO
LITHUANIA	Lithuanian Railways	
NORWAY		Norsk Jernbaneforbund Norsk Lokomotivmannsforbund
CZECH REPUBLIC		OSŽ
SLOVAKIA		Odborové Združenie Železničiarov
SPAIN		UGT, CC.OO
SWITZERLAND	BLS	
HUNGARY		VDSZSZ

## 2.2 Evaluation of Responses

### Description of the main outputs of the survey

With regard to Section A, Point 1, of the survey questionnaire concerning mobile workers coming within the scope of the European Agreement, the information collected from the completed questionnaires, and later processed, revealed first of all that the great majority of the interviewees gave affirmative responses as regards mobile workers coming within the scope of the European Agreement (for the railway undertakings: *ALMEGA, BDZ, BLS, CFL, DB, SNCF*; for the trade unions: *CGSP, FNCTTFEL, NORSK JERNBANEFORBUND, NORSK LOKOMOTIVMANNNSFORBUND, ODBOROVÉ ZDRUŽENIE ŽELEZNIČIAROV, OSŽ, SEKO, TRANSNET, UGT, VDSZSZ, VETURIMIESTEN LIITTO, VIDA*) (see also Summaries of the Visits to Vienna, Berlin and Luxembourg).

However, in some cases, the responses from railway

### Mobile Workers: Do they come within the scope of the European Agreement or not?

	YES	NO
VIDA		ÖBB
BDZ		FS-TRENITALIA
VETURIMIESTEN LIITTO		FILT-CGIL
SNCF		FIT-CISL
CGT		LITHUANIAN RAILWAYS
DB		CC.OO
TRANSNET		
CFL		
FNCTTFEL		
NORSK JERNBANEFORBUND		
NORSK LOKOMOTIVMANNNSFORBUND		
OSŽ		
ODBOROVÉ ZDRUŽENIE ŽELEZNIČIAROV		
UGT		
ALMEGA		
SEKO		
BLS		
VDSZSZ		
CGSP		

undertakings and trade unions did not tally, thus underlining that this was a controversial aspect – also emerging subsequently in the visits to the railway undertakings (see Section 4, Point 4.2.1, and Summary of the Visit to Vienna) – referring to the uncertainty of the notion of interoperable mobile workers contained in the European Agreement (Clauses 1 and 2).

With regard to the increase in the number of mobile workers over recent years (Section A, Point 3: “During recent years, has there been an increase in the number of mobile workers who come within the scope of the Agreement?”), the total number of negative responses was equivalent to the total number of affirmative responses (negative responses numbered 10 and more precisely: for the railway undertakings: *BDZ, ÖBB*; for the trade unions: *CC.OO, FIT-CISL, NORSK JERNBANEFORBUND, ODBOROVÉ*



ZDRUŽENIE ŽELEZNIČIAROV, UGT, VDSZSZ, VETUR-IMIESTEN LIITTO and VIDA; affirmative responses numbered 10: for the railway undertakings: ALMEGA, BLS, CFL, DB and SNCF. For the trade unions: CGSP, NORSK LOKOMOTIVMANNFORBUND, OSŽ, SEKO and TRANSNET).

In consideration of the responses on the implementation status of the European Agreement (Section B, Point 1: "What is the status of the implementation of the clauses contained in the CER/ETF Agreement?") - fully, partially or not implemented - as well as in relation to the issues for which implementation was achieved, the questionnaire results indicated differing situations<sup>5</sup>.

Moreover, it was observed that in some countries the European Agreement had only been partially implemented (Belgium, France, Germany, Luxembourg, Czech Republic, Slovakia and Switzerland; see Section 3, Points 3.2, 3.2.2, 3.2.5, 3.2.6, and Summaries of the Visits to Paris, Predeal and Luxembourg), while other countries had fully implemented the Agreement (Austria, Bulgaria, Finland, Lithuania, Norway and Sweden). Only a few countries did not implement the Agreement (Italy, Hungary; with reference to Italy, see Section 4, Point 4.1, and Summary of the Visit to Rome). Sometimes the responses for a country did not tally, such as, for example, in the case of Spain.

Conversely, the responses on the Social Partners' involvement in the process of transposing the European Agreement into national legislation (Section B, Point 4: "If the Agreement has been transposed into national legislation by law, have the Social Partners been consulted or anyhow involved in the legislative process?") were fairly homogeneous (Austria, Belgium, Bulgaria, France, Germany, Lithuania, Norway, Czech Republic, Sweden and Hungary). This revealed that, in this respect, a convergence process between national systems is actively occurring.

As for issues regulated by the European Agree-

ment, whether implementation occurred through collective bargaining or by law, the questionnaires' results highlighted that aspects not provided for in the Agreement had sometimes also been regulated (Section C, Points 1.2 and 1.3: "Is the collective agreement or amendment of an existing collective agreement limited to reproducing the contents of the European Agreement? If yes, on what issues?") (Austria, France, Germany, Luxembourg, Czech Republic, Slovakia and Switzerland).

In some cases, the new regulation introduced more favourable provisions compared to the European Agreement provisions (Luxembourg, Norway, Czech Republic, Sweden, and Switzerland; in the case of France, the existing law already provided more favourable provisions; with reference to Luxembourg, see Summary of the Visit to Luxembourg), while in other cases, the European Agreement implementation offered the opportunity to revise national legislation (Slovakia) (Section C, Point 1.7: "In which areas did the sectoral and/or company-level collective agreement establish more favourable provisions than the minimum provisions defined in the CER/ETF Agreement?").

When the European Agreement implementation occurred through collective bargaining, the aspects arousing controversy between the Social Partners were the following: weekly rest period (Clause 6), rests away from home (Clause 4), the definition of place of residence, the duration of working time (Section C, Point 1.6: "If the European Agreement is implemented with an in-company agreement, what aspects have raised the most controversy between the management of the railway undertaking and trade-union organisations?").

In particular 'rest away from home' was the most recurring issue, as regards questions in Section D of the survey questionnaire, referred by both railway undertakings and trade unions. This was probably due to the fact that during the submission and reception

<sup>5</sup> According to a study conducted by the European Commission and issued in December 2008 [COM (2008) 855, 15 December 2008], the Directive has been fully implemented in 8 countries, partially implemented in 4 countries and not implemented in 13 countries.



periods of the questionnaire (October to December 2008), ongoing negotiations took place between the European Social Partners on Clause 4 of the Agreement, as agreed in the footnote of this Clause. However, these negotiations were highly conflictual.

Besides 'rest away from home', other aspects of the Agreement that would deserve further examination were: checks on the correct application of the Agreement (Clause 8; *CGSP, NORSK LOKOMOTIV-MANNSFORBUND, TRANSNET, VIDA*); definition of the scope (Clauses 1 and 2; *VIDA, ÖBB*, with reference to "mixed" working conditions); extension to national rail traffic (*VIDA*); break scheme (Clause 5; *OSŽ, SNCF*); qualitative standard of accommodation (*SEKO*); advance notice of shifts (*CGT*).

As regards the issues that would deserve more discussion within the European social dialogue (Section D, Point 2: "In your opinion are there issues not regulated by the CER/ETF Agreement which should be discussed within the European social dialogue?"), the following issues emerged: training, consequences of the opening of major European corridors and the impact of related technologies on personnel.

On the whole, the evaluation of the outcomes of the first phase of the Project revealed a partial response by the questionnaire respondents, i.e. the CER-affiliated undertakings and the EFT-affiliated trade unions. However, it should be pointed out that, in general terms, these initiatives do not receive "plebiscitary" participation. Nonetheless, the responses obtained should not in any way be underestimated from both the quantitative and qualitative standpoint. As mentioned in Paragraph 2.1, all the undertakings and trade unions involved in the survey are strategic actors of rail transport both from the geographical and economic viewpoints.

As for responses, it should be pointed out that for some matters, the questions led to misunderstandings.

This is the case for the scope of the European Agreement, and, more specifically, for the identification of the notion of "mobile worker engaged in interoperable cross-border services", a controversial issue also emerging during the on-site visits to the railway undertakings, and which was extensively addressed (Clause 1; see also Section 4, Point 4.2.1).

Another question involving differing interpretations was the "status of implementation of the Agreement" (see Section 4, Point 4.1). Some of the respondents stated that the EC Directive had been fully implemented, even though the implementation actually regarded only one undertaking and not all undertakings operating in the railway industry.

Some of the responses revealed uncertainty about the distinction between implementation of the European Agreement and implementation of the EC Directive. In these cases, "Agreement" and "Directive" were used synonymously or mixed (see Section 4, Point 4.1).

## THE SECOND PHASE OF THE PROJECT: VISITS TO SELECTED UNDERTAKINGS AND COUNTRIES

### 3.1 Meeting Venues - The Participating Undertakings and Trade Unions

#### *Outline of the on-site visits and the Social Partners involved in the Project*

As envisaged in the Project, the working group conducted on-site visits to the railway undertakings in six European countries: *FS* (Italy), *SNCF* (France), *ÖBB* (Austria), *DB* (Germany), *CFR* (Romania) and *CFL* (Luxembourg).

These on-site visits provided considerable information which, though not exhaustive, was very interesting and explanatory regarding the implementation status of the European Agreement and the critical points connected with this implementation process. The visits to the railway undertakings and countries indeed provided a variety of experiences related to the different sizes of the undertakings concerned, the main geographical areas where such undertakings operate, the different economic and social conditions, and the variety of laws existing in the six countries.

Moreover, information collected revealed the existence of similarities (e.g., between Italy and France and between Germany and Austria; see Section 3, Points 3.2.1 – 3.2.4), but also relevant dissimilarities due to the differences in the industrial relations systems (characterised in Germany and Austria by co-determination systems), the strategic positioning of the railway undertakings within the market evolution, as well as the related productivity and competitiveness situations.

The meetings enabled the working group members to collect information not only on the specific theme of the initiative, but also on the more general regulatory background existing in the various countries, as well as on how the various railway undertakings intend to act in view of the development of interoperability.

The meetings, mainly focussed on discussing the viewpoints of the undertakings' and trade unions' representatives, were sometimes attended by third-party organisations such as European Commission representatives (in Italy and Romania); the *ANSF* representative (National Agency for Railway Safety) (in Italy); a European Parliament member (in Luxembourg); and representatives from private undertakings and employers' associations (in Italy, France, Austria and Germany).

The most representative trade unions in the various countries participated in the meetings.

### 3.2 Major Issues Emerged from the Visits

#### Details of the most interesting aspects

It can be pointed out that the trade unions in all the countries showed their appreciation for the European Agreement, except in Italy, where the trade unions' representatives expressed the fear that transposition of the EC Directive might increase social dumping.

Trade unions highlighted a number of critical points and interpretation difficulties regarding some aspects of the regulation (see for example Section 3, Point 3.2.6).

As for the railway undertakings, in some cases the need emerged to make changes to specific clauses (see Section 3, Point 3.2.2), or at least to achieve a clear, shared interpretation of some provisions (see Section 3, Point 3.2.6).

Overall, it can be stressed that some issues emerged as points of discussion in almost all visits – either raised by the undertakings' or trade unions' representatives (see Section 4 in detail) and specifically on:

- the scope of the European Agreement/EC Directive, as well as the distinction between national and cross-border services;
- the application of the non-regression clause;
- checks on the application of the European Agreement/EC Directive provisions in the context of cross-border services.

The main elements and issues that emerged during the Project are summarised in the following sheets<sup>6</sup>.

#### 3.2.1 Rome

##### Visit to Italy, 11-13 February 2009 - Main Issues -

- The Directive has not been implemented.
- Trenitalia does not currently undertake interoperable cross-border services.
- Collective bargaining: 3 sectoral collective agreements coexist; none of these agreements are globally applied to workers in the railway sector.
- Trade Unions fear that the transposition of the European Agreement might increase social dumping.
- Correct interpretation of the non-regression clause.

#### 3.2.2 Paris

##### Visit to France, 24-25 March 2009 - Main Issues -

- Difference between SNCF (special statute) and other companies (common civil law).
- The European Agreement has been fully implemented only by SNCF.
- As far as other companies are concerned, the employers' association UTPF negotiated an agreement on the national rail service that was later signed by some trade unions, which, however, did not represent the majority of workers in the sector.
- Critical aspect of the European Agreement: provision on breaks during night shifts.



<sup>6</sup> In evaluating such elements, it should in any case be recalled that a transnational comparative analysis is difficult due to the differing traditions, institutional frameworks and social contexts in which these elements are incorporated. These differences should be a stirring impetus for the Social Partners to overcome all these difficulties and conclude European-level agreements.

In this type of survey, it should be made aware that it is not simple to extract a single institution or rule from a national industrial relations system and compare such institution or rule with what seems to be the corresponding institution or rule in another country.

It should likewise be considered that common or similar problems may be solved adopting varied solutions within differing national situations and contexts.

### 3.2.3 Vienna

#### Visit to Austria, 2-3 April 2009 - Main Issues -

- The Directive has been implemented and is applicable to all companies.
- Controversy about the interpretation of the definition of “mobile worker engaged in interoperable cross-border services”, especially with regard to people who are engaged in national and interoperable cross-border services, and the clause concerning driving time.
- In some cases, the European Directive is more favourable to the workers than national legislation.

### 3.2.4 Berlin

#### Visit to Germany, 30 June-1 July 2009 - Main Issues -

- The transposition of the EC Directive into German legislation is approaching (Summer 2009). However, the essential provisions of the ETF-CER Agreement/Directive 2005/47/EC have already been established. These provisions have also been regulated in the Law on Working Time or wage agreements.
- Appreciation of increasing legal certainty by Directive 2005/47/EC.
- Main problems:
  - competency of differing supervisory authorities in Germany;
  - differentiation between interoperable and national services, and the corresponding application of the provisions;
  - definition of “home”;
  - transit services throughout Switzerland.
- Discussion on the principle of “territoriality”, impact of the social dialogue on the interpretation of the European Agreement clauses and the issue of to what extent the non-regression clause is binding on the lawmakers in the Member States.

### 3.2.5 Predeal

#### Visit to Romania, 22-24 September 2009 - Main Issues -

- The EC Directive has been partially (with regard to the contents) implemented by national legislation, without consultation of the Social Partners.
- Currently no train drivers come into the scope of the European Agreement; the agreement provisions would apply to approximately 70 mobile workers (not train drivers).
- Some European regulations are more favourable to workers than national regulations.
- Besides CFR, 28 private undertakings account for 51% of the market share in the railway freight market industry. Such undertakings enjoy a competitive advantage situation, i.e. they benefit from lower labour costs.

### 3.2.6 Luxembourg

#### Visit to Luxembourg, 5-6 November 2009 - Main Issues -

- The EC Directive has been partially adopted, since transposition occurred through a Grand Ducal regulation only for CFL.
- CFL pointed out that the clause on breaks is not clear as regards the possibility of splitting breaks.
- Trade unions particularly stressed the following critical aspects:
  - the lack of provisions on checks and sanctions;
  - the comfort of the accommodation offered to drivers resting away from home;
  - the duration of rest away from home.
- The non-regression clause is a source of contrasting interpretations.

## FINAL ASSESSMENTS

### 4.1 Implementation of the European Agreement and Directive 2005/47/EC

*Views on the status of transposition and implementation of the Agreement extrapolated from the questionnaires and on-site visits*

From the responses to the questionnaire and the information collected during the six on-site visits, it appeared that in most of the countries surveyed the European Agreement and Directive 2005/47/EC had mainly been implemented by law, but also, in some cases, through a trade-union agreement, and sometimes by both law and collective bargaining. In some countries, laws or the Social Partners had not just transposed the contents of the European Agreement or EC Directive, but had also allowed the opportunity to regulate other aspects of the rules concerning working time.

However, it should be pointed out that in most cases there had been a transposition of the European Agreement or EC Directive, but in such a way that implementation had occurred only partially.

Touching upon this, it should be fundamental to distinguish the cases in which implementation regarded only some of the contents of the European Agreement/EC Directive (i.e., Romania; see Summary of the Visit to Predeal), and cases in which implementation, though fully covering all the contents, regarded only one railway undertaking (in general, the incumbent railway undertaking), as in France and Luxembourg (see Summaries of the Visits to Paris and Luxembourg).

In the latter case, a “two-step” transposition occurred: in the first phase, implementation was carried out exclusively for the traditional state-owned undertaking (through collective agreement transposed into national legislation) and, in the second, the transposition process extended to all the other undertakings operating in the railway industry. It must be explained that this two-step implementation in France and Luxembourg was due to the fact that the personnel of the traditional railway undertaking fall under a specific status regime (comparable with state officials) that does not apply to the personnel of other railway undertakings.

The employment contracts of the personnel entered with private undertakings are regulated by common law. In the case of the state-owned undertaking, implementation was carried out through a decree or regulation, usually requiring less time than for enacting a law.

In two of the cases under review (France and Germany), the coexistence of both situations was observed (employees with public law status and employees with a private employment contract) within the same undertaking, but this circumstance had no



relevance with respect to the process of transposing the Agreement, which was fully implemented in the surveyed undertakings.

Italy deserves a particular mention (see Summary of the Visit to Rome). Neither the European Agreement nor the EC Directive has been implemented yet for a number of reasons: 1) the Government seems to have preferred to leave the initiative to the Social Partners; 2) *Ferrovie dello Stato*, which does not currently operate in interoperable services as defined in the Agreement, has little motivation to start up trade-union negotiations on the specific theme, since this would raise difficulties in the negotiations currently under way for the definition of the new collective agreement regarding mobility; 3) the trade unions have expressly opposed the contents of the Agreement, since in their views it could lead to a reduction in the existing levels of protection, and encourage social dumping due to the contrasting interpretations of the non-regression clause. It should in any case be recalled that in Italy collective bargaining is not legally efficacious for all the employees and, therefore, the Directive must necessarily be transposed by law.

Furthermore, during the visit to Italy, it emerged that *SBB Cargo Italia*, which undertakes interoperable services on the Italian territory, applies the minimum standards of the European Agreement, even though it has not been transposed into Italian legislation.

Both in the questionnaire responses and by the participants in the meetings held in the six countries visited, the need was often stressed for an implementation of the European Agreement/EC Directive as uniform as possible, in order to avoid any discrimination between the railway undertakings operating in the same market. This implementation must not be misunderstood as only applying the minimum standards. From the trade unions' viewpoint, this would be best ensured through mandatory national sectoral collective agreements. In this regard, it should be pointed out that in recent years new undertakings have come into the rail transport industry, currently characterised by high levels of competition (just to take some examples, in Austria 23 undertakings operate in the freight transport market; Romania numbered 28; in Germany, approximately 30 railway undertakings currently account for the greater part of the total traffic performance in rail freight, whereas more than 300 undertakings are licensed to provide freight transport services and could expand their businesses at any time). While in Austria a mandatory national sectoral collective agreement is applied, this is not the case in other countries.

To confirm that the European Agreement aimed at introducing minimum standards, it can be stated that in most of the countries surveyed, the previously existing regulations contained more favourable provisions for workers. Instead, an exemption is the weekly rest provisions (double rests) applied in some countries, where the European Agreements provisions are more favourable than the national

provisions.

It should be pointed out that according to ETF, the uniform application of the Agreement can in no way mean a reduction in the existing working conditions. From a general viewpoint, the evaluation of the data collected from the surveys leads to the conclusion that the development of the "interoperable use of personnel" is proceeding gradually and without strong acceleration.

This cautious dynamism is probably owed to the several obstacles still existing (i.e., technical, linguistic, regulatory barriers).

In particular, working conditions are governed by national regulations that are still highly differentiated.

The European Agreement addresses only certain specific aspects of working time and is undoubtedly an important, though not final, step towards the promotion of interoperability.

Generally, it should be considered that during the time gap between the survey and on-site visits, a new phase of the implementation of the EC Directive developed as some Member States were still finalising the transposition process.

## 4.2 Issues under Discussion

### *Analysis of the issues with disputed interpretations*

It should first be stated that according to the analysis conducted in the Project, the Agreement has not, on the whole, encountered problems in its implementation. In fact, there is a unanimous interpretation regarding numerous provisions of the Agreement (such as, most of the definitions contained in Clause 2, Clause 3 on daily rest at home and Clause 6 on weekly rest period).

### 4.2.1 Scope of the Agreement (Clauses 1 and 2)

One of the most relevant issues emerging from the questionnaires and on-site visits regards the scope of the European Agreement and the definition of "mobile worker engaged in interoperable cross-border services".

Contrasting interpretations were identified in relation to this aspect. This contrast influenced the responses to the question in the survey questionnaire concerning the number of workers involved, leading to differing indications.

In this regard, significant differences in viewpoints emerged: e.g., *ÖBB* representatives believed that only workers engaged in interoperable services every day for at least one hour a day come within the scope of the European Agreement (see Summary of the Visit to Vienna).

Considering that various criteria for identifying mobile workers can be proposed in relation to the working time engaged in cross-border transport, it was affirmed at the meeting in Germany that the number of



workers involved in cross-border transport can only be abstractly determined with reference to personnel trained and authorised for this purpose.

The main problems arose from the so-called “mixed use of mobile personnel”: staff members that partially spent part of their weekly/monthly/annual working time in cross-border services and partially in national services. In several countries the Social Partners – in order to minimise uncertainty – agreed on a common interpretation of some provisions which could be interpreted differently but were important for the shift scheduling.

In this respect, it should be pointed out that personnel trained in interoperability do not necessarily correspond to the personnel actually engaged in interoperable services, and this might have been one of the reasons why apparently inconsistent responses emerged from the questionnaires (Section A, Point 1, of the questionnaire).

Then there is the issue of the definition of “worker who is a member of a train crew engaged in interoperable cross-border services”. Hereof, there is argument over whether this notion can also refer to on-board personnel working in sleeping wagons or on-board catering staff.

Again as regards the scope of the European Agreement, concerns were raised as to the interpretation of the second sentence of Clause 1 of the European Agreement referring to local and regional cross-border passenger traffic. This issue was only mentioned during the meeting held in Luxembourg since in this small country major passenger transport services also act as regional cross-border services. There was also no consensus of opinions on the application of a 15-km limit not only to freight traffic, but also to cross-border local and regional passenger transport due to the placing of a comma in the Agreement text. However, the Social Partners expressed the opinion that the interpretation should be undertaken in the spirit of both the Agreement’s objectives and the 15-km margin (training in languages and safety regulation).

#### 4.2.2 Driving Time (Clause 2)

The notion of “driving time” was debated on the following two aspects:

1) The European Agreement defines “scheduled driv-

ing time”, not actual driving time. It raises problems when timetables and shifts are organised in such a way that the actual driving time systematically extends the scheduled driving time. The flexibility envisaged by the Agreement to deal with unforeseeable exceptional circumstances in this case would be abused. In this context, the issue of registering and checking driving time is of great importance.

2) In a number of countries traditionally no distinction exists between driving time and working time. This lack of distinction raises uncertainties as regards interpretation of the whole working time.

It should also be mentioned the contrasting interpretations of the application of the non-regression clause mainly raised within the context of driving/working time, especially when national provisions were more favourable than the Agreements’ minimum standard provisions.

In some countries, trade unions’ representatives criticised that the European Agreement does not envisage restrictions on driving at night, but allows night time driving/work every day of the week. Conversely, most national agreements provide a limitation on the number of night shifts and/or consecutive night shifts within a single week.

#### 4.2.3 Breaks (Clause 5)

The vague formulation of Clause 5 on breaks raised interpretation concerns, specifically with reference to (see Summary of the Visit to Luxembourg):

- the possibility of splitting breaks (in how many fractions?)<sup>7</sup>,
- the minimum duration of a single break,
- the relevant application procedures and the timing of the break within a working day.

The delegation of Social Partners was confronted during the visits with cases in which breaks were scheduled prior to the start or at the end of a shift (France and Luxembourg). It should be stated, however, that in one case the scheduled driving time and/or working time is substantially lower than the maximum time allowed by the CER/ETF Agreement or the European Working Time Directive.

It would be advisable to clarify such clause, also taking into account the need, expressed by SNCF, for an amendment to the provision introducing a possi-

<sup>7</sup> With regard to the possibility of splitting breaks, see the Council of the European Union, Permanent Representatives Committee 9371/05, Soc 234, Trans 104, page 22.



ble derogation with regard to the night shift, through national/company-level agreements between the Social Partners.

ETF reminded that the splitting of breaks was a highly controversial subject during negotiations, and took the position that a splitting in two breaks should be only allowed for 45-minute breaks.

In a number of visits the issue on the quality of breaks was also raised: Should there be the possibility for train drivers to leave the locomotive and take the break away from the actual workplace (locomotive), or can the employer impose to take the break on board of the locomotive?

#### **4.2.4 Daily Rest Away From Home (Clause 4)**

Trade unions highlighted the need for a precise determination of the duration of the rest in order to guarantee the actual use of the eight consecutive hours. This duration should, therefore, be equivalent to the actual rest without including time needed to travel to and from the accommodation and the workplace.

#### **4.2.5 Daily and Weekly Rest Time (Clauses 3 and 6)**

The Agreement provisions on daily and weekly rest time (Clauses 3 and 6) did not raise concerns as such.

It should be mentioned that contrasting interpretations of the scope of the Agreement were mainly raised in circumstances when the provisions of the European Agreement on weekly rest were more favourable than national provisions. From the employers' viewpoint, a restrictive interpretation of the scope was preferred, while the trade unions tended towards a position extending the provisions of the Agreement also to the mobile personnel assigned only to national traffic. The latter was the case in Austria.

#### **4.2.6 The Relationship between EC Directive Provisions and National (Legislative or Collective) Rules (Article 2 of the EC Directive)**

One of the main objectives of the European Agreement, and therefore of the EC Directive, is to guarantee common rules on minimum standards for working time conditions in interoperable services among all EU countries (see "having regards" in the Agreement), without reducing the existing more favourable provisions at the national level. It was observed that, in practice, concerns could arise in identifying

the law applicable to the concrete case when national law differs from European law (see the 16th "having regard" in the EC Directive).

In consideration of the above, a concern was further expressed about the relationship between the provisions of the European Agreement/EC Directive and the (mandatory) rules of public policy in the various EU countries<sup>8</sup>. According to DB, these provisions prevail over the principle of territoriality. If this were not the case, the scope of the European Agreement would be impossible to achieve (see Summary of the Visit to Berlin).

In this debate, a theoretical issue was also raised on which legislation has to apply to cabotage services in the railway sector, whether by the European Agreement or the Posted Workers' Directive.

The debate held on this matter in the Paris meeting particularly covered the legislation applicable in case of infringements when these latter take place in the territory of a country other than that of origin (see Summary of the Visit to Paris).

#### **4.2.7 Non-Regression Clause (Article 2, Clause 9)**

This was one of the most important and controversial aspects emerging from the discussions at the various on-site visits.

The relevance of the issue obviously goes beyond the scope of the CER-ETF Agreement, since the non-regression clause is always present in directives concerning labour. The interpretation of the clause has also been the subject of a sentence of the Court of Justice of the European Communities<sup>9</sup>.

In this regard, various controversial aspects emerged.

- Does the clause only concern the internal regulations as they were before the implementation of the directives, or also subsequent national provisions amending or integrating the original rules?
- What is the scope within which pejorative changes are not allowable?
- Does the clause allow for "compensations" between more favourable and less favourable provisions?
- Does the prohibition to reduce the working conditions have permanent efficacy or might it be dropped over time?

The first interpretation proposed argued that only when existing national legislation regulates the same matters as in the European Agreement/EC Directive (such as driving time, breaks, rest away from home, etc.), does the non-regression clause apply. When the same matter is not regulated by national legislation, the non-regression clause does not apply.

This interpretation was strongly contested by the

<sup>8</sup> The Court of Justice of the European Communities (Sentence of 19 June 2008, C 319/06) has defined as a matter of public policy the crucial provision for the protection of the political, social and economic order.

<sup>9</sup> In the *Mangold and Angelidaki* sentences, the Court of Justice affirmed that national lawmakers are free to introduce or maintain greater protection with respect to the protection established in the Directive, but are likewise free to reduce national protection measures to the Community minimum threshold, as long as this reduction is not a pretext connected exclusively with the implementation of the Directive and without any other purposes.

trade unions since a number of provisions, such as rest away from home or diving time, were never regulated by national legislation. Conventionally they are governed by collective agreements.

In a number of smaller EU Member States, “rest away from home” did not exist at all.

As regards collective agreements, in some countries the distinction between driving time and working time for drivers does not exist. Typically only working time is established, whereas the European Agreement has introduced a new element.

When strictly interpreted, the non-regression clause would not apply at all. This would raise serious problems for the possibility to conclude European agreements for a specific sector and its related needs.

Another interpretation proposed that all national labour legislation and railway collective agreements define “the general level of protection”, and so has to be respected when implementing the European Agreement/EC Directive. This interpretation was also given by the representative of the European Commission during the visit to Italy. From the trade unions’ viewpoint, the principle of “most favourite provision” (ILO Convention no. 94) has to apply.

According to a third interpretation (CFL, see Summary of the Visit to Luxembourg), national rules, in which less favourable clauses are counterbalanced by more favourable provisions, should be considered as being in compliance with the non-regression clause.

Uncertainty was put forward about the solutions to the issues stated above. In any case, it is obvious that a uniform interpretation of the non-regression clause in the various countries is the fundamental basis for avoiding distortions in competition.

### 4.3 Indications for Social Dialogue - First Conclusions

*Based on the issues emerged from and the opinions collected in the two phases of the Project, details of the aspects which could, in the near future, be examined within the European social dialogue*

The Project analysed the implementation of the European Agreement and Directive 2005/47/EC in a selected number of countries, as agreed with Clauses 10 and 11 of the Agreement. It is important to state that the European Agreement as such was not put into question, and also the Social Partners’ decision to implement such Agreement through the EC Directive was generally confirmed. There is the exemption of Italy where the implementation of the European Agreement interferes with the ongoing national conflict over the establishment of a single national collective agreement for the whole sector. The analysis of the actual application of the European Agreement turned out to be more difficult than expected, since the timing of the Project was in parallel with the implementation deadline for the EC Directive and no exhaustive experience from the ground exists.

The aspects highlighted in the previous paragraph represent crucial steps towards future social dialogue, which could assess whether to evaluate some of the Agreement clauses in order to overcome certain ambiguous aspects, and thus increase the certainty of the regulation (Clause 12).

This especially applies for clauses involving contrasting interpretations regarding the issues mentioned above, such as: scope, definition of mobile worker, notion of driving time, splitting of breaks, actual duration of the rest away from home.



However, it can be mentioned that some ambiguities are the result of compromises reached during the negotiations, and the European Social Partners might be able to clarify them only after more experiences with the actual application of the European Agreement.

Evidently, some issues regarding the relationship between European and national legislation do not come within the intervention capacity of the parties involved. However, the parties could intervene on the Agreement's non-regression clause in order to better identify the extent. The fact that the non-regression clause was discussed in several visits and, sometimes, in a very controversial way reveals the impact of the clause on the capacity for the European social dialogue to conclude agreements at the European level.

The project group could identify Agreement clauses leading to differing interpretations once implemented. From the questionnaires and on-site visits, useful indications and concrete requests for a possible review of some of the Agreement provisions emerged. However, making concrete recommendations on aspects which could be subject to amendments or innovative measures goes beyond the mandate.

The project group can only recommend the European Social Partners to take into account the requirements emerging from the questionnaire responses and meetings when reviewing the provisions of the European Agreement according to Clause 12.

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The European Agreement ratified on 27 January 2004 is a reasonable compromise between the need for the development of interoperable services and the need to avoid social dumping. This compromise is instrumental in safeguarding conditions of fair competition.

Social dialogue is an eminently suitable instrument for producing standards of mutual interest. In such a way, the role of the Social Partners has been highly appreciated by both the European Parliament and the European Commission. Moreover, it is evident that the dialogue between the parties is a constantly developing process that must reflect the evolution of experience. In consideration hereof, it is significant that Clause 12 provides for the review of the European Agreement provisions two years after the end of the implementation period laid down in the Council Decision putting this Agreement into effect. It is therefore a process for producing social standards that are likely to be amended by the Social Partners through subsequent joint revisions.

The Social Partners therefore hope to continue along the same path, with the aim of striking a more advanced balance between their respective interests, in connection with the developments of interoperability.

## SUMMARIES OF THE VISITS

### 5.1 Visit to Italy Rome, 11-13 February 2009

The first visit scheduled for the Project "Follow-up of the Agreement on the Working Conditions of Mobile Workers Engaged in Interoperable Cross-Border Services" took place on 11, 12 and 13 February 2009.

#### Meeting Records

On the afternoon of the 11th February, the first meeting was held with the trade unions' representatives, and then with the employers' representatives. *Trenitalia* was represented by Marco Romani, Director of Human Resources, and Giovanni Cassola, Head of the National and International Passenger Transport Services Division; both speakers provided a general outline of *Trenitalia's* position on developments in the European market.

On the 12th February, the meeting was opened by Domenico Braccialarghe, Director-General of the FS Department of Human Resources, who highlighted the importance of the European social dialogue in the prospect of balancing the development of competition with the need to avoid social dumping.

The address thereafter was given by Alessandro Giuseppetti from *Rete Ferroviaria Italiana (RFI)*, who illustrated the projects in which *RFI* was participating, as well as the aims of these projects, as indicated in the attached slides (Annexe D).

Next to take the floor was Mauro Natali from *Trenitalia*, who explained the undertaking's position on the development of interoperability, while presenting the attached slides (Annexe D). He clarified that *Trenitalia* does not currently undertake interoperable cross-border services, and therefore has not applied the European Agreement. He also stressed that the lack of effective reciprocity between various countries is an obstacle to the development of interoperability.

The contributions from *SBB Cargo Italia* were presented by Giorgio Bernasconi (Head of the Safety and Quality Systems Department) and Giovanni Mezzogori (Director of the Technical Department). Both speakers pointed out, *inter alia*, that *SBB Cargo Italia* was applying the European Agreement, and that approximately 60 employees were engaged in interoperable cross-border services. The *SBB* representatives likewise presented slides (Annexe D).

Claudio Bargilli, representing the *Agenzia Nazionale per la Sicurezza delle Ferrovie (ANSF - National Railway Safety Authority)*, stated that Italy currently has approximately 25 certified undertakings and 46 hold licenses. He also observed that *ANSF* currently takes as its reference point the European Agreement of 27 January 2004 between CER and ETF on the European Driver's License, with regard to checking the professional qualification requirements of staff performing safety tasks, and the CER-ETF





Agreement of 27 January 2004 on the working conditions of mobile workers engaged in interoperable services (incorporated into Directive 2005/47/EC, not yet transposed into Italian legislation), in relation to checking working conditions (Annexe D).

At the end of the day, Giorgio Usai, Director of Industrial Relations and Social Affairs at *Confindustria*, and Stefano Bellomo, Professor of Labour Law at the University of Perugia, discussed their presentations. The *Confindustria* representative illustrated the developments in the membership of the employers' confederation, of which *FS* is an affiliate. In particular, Giorgio Usai highlighted the increasing weight achieved in recent years by utilities enterprises with respect to traditional membership from the manufacturing industry. In his contribution, Stefano Bellomo discussed legal issues regarding the relationship between the EC Directive and national legislation, with special emphasis on the effectiveness of the non-regression clause.

All the representative organisations embracing the rail transport industry (*FILT-CGIL*, *FIT-CISL*, *UILT-RASPORTI*, *UGL Attività Ferroviarie*, *OR.S.A. Ferrovie* and *FAST FerroVie*) actively participated in the debate on the position adopted by the Italian trade unions. Following the exchange of ideas and the answers given by the trade unions' representatives, a generally negative evaluation was observed of both the European Agreement and the EC Directive transposing such Agreement. This stance seems to have basically been determined by the fear that the European Agreement's transposition might exacerbate, rather than reduce, social dumping. This is especially the case for Italy where collective agreements are not globally applied and, in the railway sector, at

least three sectoral agreements currently coexist. On the morning of 13 February, Osvaldo Marinig of *FIT-CISL* presented his contribution by expressing the position adopted by the trade-union organisations, while Sergio Macciò spoke on behalf of *Federtrasporto*, an Italian employers' association. Finally, Lamine Diallo, the EC representative, concluded the meeting by going over the various issues discussed by previous speakers. Moreover, he expressed some thoughts on the interpretation of the non-regression clause and the effectiveness of European directives, even without a national transposing legislation.

#### **The Industrial Relations System in which the European Agreement is Framed**

The Italian Constitution confirms the principle of trade-union freedom. This principle gives rise to the positive freedom to join a representative organisation, and the negative freedom not to join one. This leads to the further assertion that a collective labour agreement cannot have a binding effect on the parties (either undertakings or workers) not belonging to signatory organisations. A law or administrative act extending the effectiveness of a collective labour agreement would be against constitutional provisions.

In Italy, several collective agreements may thus coexist within the same production sector. This is the situation in railway transport, where three national collective labour agreements are concomitantly applied: the agreement for railway activities (applied by the railway undertakings in the *FS* Group), the public transport workers' agreement (applied by enterprises in local public transport); the logistics agreement

(applied by freight transport enterprises). There are also undertakings that do not apply any national collective labour agreement, but only company-level agreements or individual agreements with workers. The situation is made all the more complex by the current process of the opening-up of the market. The entry of new undertakings in the railway industry, especially those having their headquarters in another EU country, surely has not contributed to the greater homogeneity of the various existing collective regulations. These undertakings, while applying the European Agreement, would maintain a competitive advantage, since they are not required to apply a national collective labour agreement.

To solve this problem, the employers' organisations and trade unions have decided to start negotiations to achieve a single collective labour agreement for the sector. However, these negotiations are highly complex and require a long period of time for their definition due to the considerable differences between the various collective agreements currently applied.

### Comparative Opinions

The FS Group was among the promoters of the European negotiations leading to the signing of the CER/ETF Agreement of 27 January 2004, and obviously the FS Group is not against the implementation of the European Agreement within national legislation. Moreover, it is a matter with no immediate practical effects, since at present no FS Group employees come within the scope of the European Agreement. The trade unions hold a different position and have repeated their disagreement already expressed within the ETF. This negative view is also shared by the Italian trade unions not affiliated with the EFT federation.

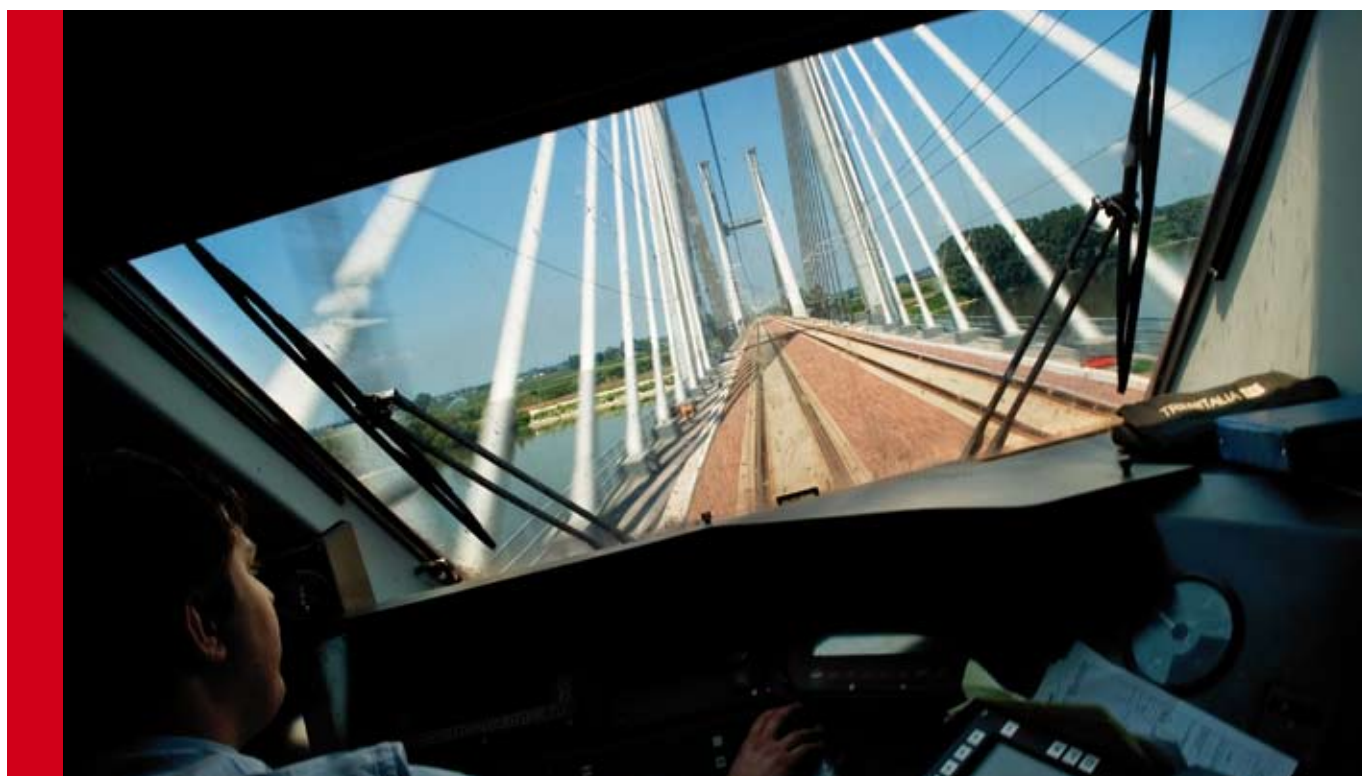
The trade-union opinion was influenced by the

comparison between European and national laws. As observed from this comparison, especially with regard to certain aspects such as driving time, national rules are more favourable to mobile workers. According to trade unions, the implementation of the European Agreement could therefore involve a reduction in the protection of railway workers.

Consequently, the way in which the non-regression clause will be applied has become highly crucial. However, differing interpretations have been formulated for this clause. In that regard, two contrasting lines of interpretation have basically emerged. One tends to attribute a broad nature to the clause, thus excluding any potential worsening with respect to existing national legislation; the other, however, limits the efficacy range of the clause to the working conditions applicable to interoperable cross-border services, so that the European Agreement implementation would not prevent a modification of the rules on transport within national borders in a way which might penalise workers.

In any case, it should be recalled that according to Art. 2, Point 2, of Directive 2005/47/EC, the implementation of the EC Directive "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".

Considering the lack of unanimous interpretation, the issue is still open, and is a source of uncertainty which probably affects the trade unions' evaluation on the effects of the implementation of the European Agreement.



## Rome, 11-13 February 2009 - Participants

### Working Group

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Michaela Eigenbauer, *ÖBB*  
Raymond Hara, *SNCF*  
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Maria Cristina Marzola, *Filt / Cgil / Italy*  
Serge Piteljon, *CGSP / Belgium*  
Jean-Paul Preumont, *CER*  
Francesca Rango, *Trenitalia*  
Silke Streichert, *DB Mobility Logistics AG*  
Sabine Trier, *ETF*

### Guests

Alessandro Giuseppetti, *Marketing and Business Plan - RFI*  
Mauro Natali, *Trenitalia*  
Giorgio Bernasconi, *Head of the Safety and Quality Systems Department - SBB Cargo Italia*  
Giovanni Mezzogori, *Director of the Technical Department - SBB Cargo Italia*  
Claudio Bargilli, *Representative of ANSF - National Railway Safety Authority*  
Giorgio Usai, *Director of Industrial Relations and Social Affairs - Confindustria*  
Sergio Macciò, *Representative of Federtrasporto*  
Stefano Bellomo, *Professor of Labour Law - University of Perugia*  
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Umberto Nespoli, *Representative of UGL FERROVIE*  
Pietro Serbassi, *Representative of FAST FERROVIE*  
Giulio Moretti, *Representative of Or.S.A. FERROVIE*  
Lamine Diallo, *Representative of the European Commission - DG Employment, Social Affairs & Equal Opportunities - Social Dialogue - Industrial Relations*

## 5.2 Visit to France Paris, 24-25 March 2009

The two-day visit to Paris (24 and 25 March 2009) developed as follows: on the first day, the representatives of railway undertakings and UTPF (the French Association of Public Urban Transport and Rail Transport Companies) presented their reports; while the second day was specifically dedicated to the trade unions' viewpoints.

### Railway Undertakings' Viewpoints

After the short introductory speech by Italo Inglese, Coordinator of the Working Group, Bernard Jamet and Marc Tressol (*SNCF - DRH Département Développement Performance et Rémunérations*) took the floor. Both speakers provided a brief description (Annexe D) of the legal framework of *SNCF*, which, as the former sole rail operator, has inherited a particular system distinguishing the main railway undertaking from the other undertakings now active on the market. Following the opening of the French market to other rail operators in 2003, *SNCF* is still now subject to a special system not applicable to other undertakings, which are otherwise subject to ordinary law.

With regard to the implementation of the European Agreement and Directive 2005/47/EC within nation-

al legislation, transposition occurred in 2008 with the enactment of Decree No. 2008/1198, regarding exclusively *SNCF*.

The *SNCF* representatives then made a comparison between the contents of the European Agreement and the current *SNCF* regulatory framework stressing that, on the whole, the rules applicable in France are more favourable than the European ones. From the undertakings' viewpoint, the only critical aspect regards the European Agreement provision on breaks during night shifts. In this respect, it was pointed out that this Agreement provision, involving the compulsory use of at least part of the break between the third and the sixth hour of the night shift, is viewed unfavourably by both workers and trade unions because it "breaks the rhythm" of work and extends the night shift.

Next to take the floor was Jean-Aimé Mougnot (*SNCF - DDRH - Traction*), who argued on the profile of the driver engaged in various railway activities. In particular, Mougnot focussed on the prospects for skill enhancement, careers and working time, thus leading to the conclusion that almost all the European Agreement provisions are applied by *SNCF*. Mougnot likewise pointed out the need to introduce a possible derogation from the provision on breaks during night shifts, in the event of a future revision of the EC Directive under discussion.

The next speaker was Jean Michel Crandal from the French Ministry of Transport. He illustrated the transposition status of the EC Directive into French legislation. Crandal also pointed out that the process is still incomplete, since, as mentioned above, European laws have not yet been implemented with regard to undertakings other than *SNCF*. In fact, a collective agreement on national rail services (not including cross-border services) has been stipulated for these undertakings, but has not yet been extended – by ministerial order – to all the affiliates of the trade association.

The French Ministry official then opened the debate on checks and sanctions in case of violation of the laws implementing the EC Directive. In this regard, a discussion took place focussing on the legislation applicable in case of violations occurring in the territory of a country other than the country of origin.

The next speaker was Sylvette Mougey (in charge of the Dept. of Social Affairs for *UTPF*), who described the role of the *UTPF*. She also referred to the collective agreement on national rail services signed by the employers' association. With reference to the latter aspect, Pascale De Ville, representative of *Veolia Cargo*, drew attention to some differences between the EC Directive and the French sectoral agreement. De Ville also stated that the most relevant difference concerned rules on rests away from home<sup>10</sup>.

### Trade Unions' Viewpoints

The session held on 25 March was dedicated to the trade unions' viewpoints. Henri Wacsin (*CGT – Confédération Générale du Travail*) presented a lecture with some slides, copies of which are herein attached

(Annexe D). After illustrating the hierarchical system of legal and contractual sources in the French labour law, he stated that at present three distinct situations may be encountered: 1) the system applicable to *SNCF* personnel; 2) the system applicable to personnel engaged in undertakings subject to the *VFIL* (*Voies Ferrées d'Intérêt Local* - Railway Lines of Local Interest) national collective labour agreement; 3) the system applicable to personnel engaged in undertakings which apply different collective rules or do not apply any rules.

In this context, the most important challenge for the trade unions is to guarantee all railway workers a "harmonised social framework", in order to avoid the effects of social dumping.

Subsequent speakers were Jean Michel Namy, representative of the *FGAAC* (*Fédération Générale Autonome des Agents de Conduite*), Remy Aufrere and Eric de Chateauvieu, representatives of the *CFDT* (*Confédération Française Démocratique du Travail*). Then a driver employed in *Euro Cargo Rail* and representing the *CGT* trade union, likewise illustrated his personal case, providing information on his own working time, wages and, in general, working conditions applicable to interoperable services. The union representative protested against his employer for violating the European Agreement provisions concerning the duration of rests away from home and driving time. He also criticised the tendency of undertakings not to plan shifts sufficiently in advance, and to request excessive working-hour flexibility. There followed a debate focussing, in particular, on the correct application of the non-regression clause and on the distinction between working and driving times.

## Paris, 24-25 March 2009 - Participants

### Working Group

Josef Arminger, *Vida / Austria*  
Michaela Eigenbauer, *ÖBB*  
Raymond Hara, *SNCF*  
Italo Inglese, *FS (Project Management)*  
Maria Cristina Marzola, *Filt / Cgil / Italy*  
Serge Piteljon, *CGSP / Belgium*  
Jean-Paul Preumont, *CER*  
Francesca Rango, *Trenitalia*  
Silke Streichert, *DB Mobility Logistics AG*  
Sabine Trier, *ETF*

### Guests

Bernard Jamet, Marc Tressol, *SNCF-DRH Département Développement Performance et Rémunérations*  
Jean-Aimé Mougenot, *SNCF - DDRH - Traction*  
Sylvette Mougey, *Department of Social Affairs - UTPF*  
Pascale De Ville, *Representative of Veolia Cargo*  
Henri Wacsin, *CGT (Confédération Générale du Travail)*  
Jean Michel Namy, *Representative of the FGAAC (Fédération Générale Autonome des Agents de Conduite)*  
Remy Aufrere, Eric de Chateauvieu, *Representatives of the CFDT (Confédération Française Démocratique du Travail)*  
Jean Michel Crandal, *French Ministry of Transport*

<sup>10</sup> Details: 1+1+1 instead of 1+1



## Conclusive Remarks

The Paris meetings provided the chance to express some brief considerations, both on the results of the previous visit to Rome and the implementation of the European Agreement within the French legal system. With regard to the first aspect, it is possible to point out some similarities between Italy and France mainly as regards the coexistence of several different collective agreements. However, this problem is far more serious in Italy, where the collective agreement cannot be extended through legislative or administrative provisions, while in France this is possible by a ministerial order.

In France, the transposition process of the EC Directive has not yet been fully defined. The issue on the implementation of the EC Directive for undertakings other than *SNCF* is still open. In this regard, it should be pointed out that the collective agreement involving these undertakings has only been signed by three trade unions representing less than 20% of the workers in the railway sector, and only covers national rail services without including cross-border services.

It should also be specified that this Agreement is only partially in compliance with European laws.

The various reports and debates gave rise to some significant issues both from the undertakings' and trade unions' viewpoints. The main issues are listed as follows:

- *SNCF* repeatedly stressed the need to amend the European Agreement clause on breaks during night shifts, introducing a possible derogation;
- The difference between the system applicable to *SNCF* and the one for other undertakings seems to contrast with the need for a uniform implementation of the European Agreement, and therefore with the need to avoid circumstances favouring social dumping. With regard to the latter aspect, the French trade unions' representatives stated to have encountered considerable difficulties in their actions for harmonising working conditions within the various undertakings;
- From a strictly legal point of view, the regulation of working conditions in interoperable rail transport may involve the concurrence/conflict between legislations in different countries: an issue seemingly quite difficult to solve and which requires further study (on the basis of minimum standards);
- Trade unions' representatives strongly emphasised the need for compliance with the European Agreement provisions on the part of CER affiliates, even without the complete implementation of the EC Directive within national legislation;
- Finally, as in the previous visit to Rome, the debate also focused on the following issues: the correct interpretation of the non-regression clause and the consequent safeguarding of the more favourable existing working conditions (e.g., with regard to France, the notion that 'working time' should prevail over 'driving time'; in fact, in France more favourable conditions are applied).

## 5.3 Visit to Austria Vienna, 2-3 April 2009

The two-day visit to Vienna (2 and 3 April 2009) developed as follows: on the first day, the railway undertakings' representatives presented their reports, while on the second day the representatives of the association of rail operators, trade unions and works councils intervened.

### Railway Undertakings' Viewpoints

The meeting was opened by Peter Fesselmar and Bernhard Nebel, representatives of *ÖBB Passenger Service*, who discussed the comparison between European and national rules concerning on-board staff. The speakers highlighted the differences between European rules and the rules applicable to staff assigned only to national services, in particular, the rules on weekly rest period, daily rest at home and rest away from home (Annexe D). These differences seem to lead to a double system: 1) (more favourable) regulations applicable to workers engaged in interoperable services; 2) (less favourable) regulations applicable to workers assigned only to national services.

According to the speakers, the dilemma, however, is not currently relevant, since at the present time no *ÖBB* employees come within the scope of the European Agreement.

The subsequent address by Martin Figerl concerned drivers assigned to cross-border activities. In this regard, after indicating the number of drivers engaged in cross-border services (Annexe D), Figerl, like his colleague who spoke previously, stated that the Agreement provisions cannot be applied to *ÖBB* staff, considering that no drivers are engaged in cross-border services for at least one hour of their daily working time. Figerl also pointed out that the application of the European Agreement would lead to a problem linked to the weekly rest period, since it would significantly limit the possibility of an economically feasible scheduling of shifts. As also pointed out for on-board staff, an issue on the unequal treatment between drivers engaged in cross-border services and drivers assigned only to national services would arise as well.

Next to take the floor was Christian Kaiser, who illustrated the position of *Rail Cargo Austria* (Annexe D). He likewise added that *Rail Cargo Austria* would not be affected by European rules, and the same applied to the *Rail Cargo Austria* wholly-owned undertakings which operate throughout some countries bordering Austria.

As representative of the rail infrastructure manager, belonging to the *ÖBB* Group, Stefan Wiederin briefly explained the effects of liberalisation enacted since April 2001 (Annexe D). Currently 23 undertakings are operating on the market, although an actual *ÖBB* monopoly still exists in passenger transport, apart from some exceptional cases, such as *CAT*-run passenger transport between Vienna airport and the

city centre.

With regard to freight traffic, 11% of the market share is held by new undertakings.

The undertaking which manages the rail infrastructure counts 11,000 employees. The ÖBB Group employs a total of 40,000 people.

Finally, Robert Woppel took the floor as representative of the association of rail operators. After briefly recalling the procedures adopted for the transposition of the EC Directive into Austrian legislation in 2008, he explained the contents of laws, highlighting the differences between the law applicable to workers engaged in interoperable services and the law applicable to staff assigned to national services (Annexe D).

From the various reports and subsequent discussions, it basically emerged that the undertakings' representatives expressed less than positive opinions on the European Agreement pointing out, in particular, that:

- the European rules could further widen the existing competitive disadvantage with respect to road freight transport (Jicha);
- the European Agreement clause on rests away from home limits market growth (Woppel);
- it would be sought-after to extend European laws to workers operating "around trains"; in other words, "people working in the safety-related areas" should clearly come within the scope of the EC Directive (Nebel).

### Trade Unions' Viewpoints

Johann Ellersdorfer, as VIDA representative, described the transposition process of Directive 2005/47/EC into national legislation; today European laws are to be considered as fully adopted by the Austrian legal system (Annexe D). The comparison between European and national laws shows that European regulations ensure workers a protection that is, on the whole, better with respect to national laws. This also applies to ÖBB employees, originally excluded from ordinary law, to whom general legislation has gradually been applied. The collective agreement signed in 2004 is applicable to all railway undertakings, including ÖBB, except for employees who still have the status of public employees.

Some representatives of the works councils then illustrated the corporate structure of the ÖBB Group (Annexe D). The ÖBB Group (also called ÖBB) is organised as an undertaking under the roof of a holding company.

With regard to the identification of workers coming within the scope of the European Agreement, it was pointed out that in Austria interoperable services are carried out in cooperation with other railway undertakings, and Austrian staff normally drive trains up to the border, though without crossing it (Gerhard Tauchner). Precisely defining the staff coming within this scope is furthermore complicated by the fact that in ÖBB, workers engaged in interoperable services also perform services throughout the national

railway network. In other words, no mobile staff are exclusively engaged in interoperable services (Helmut Radlingmayr).

Finally, Werner Harrer, as representative of ÖBB's works council, described the task of the council within the Austrian railway undertaking, pinpointing that this body contributes to the decision-making process inasmuch as it is a member of ÖBB's supervisory board.

### Conclusive Remarks

From the information acquired during the visit, the situation in Austria proved to be quite different with respect to Italy and France.

This is mainly due to the fact that in Austria the Agreement is applied by law to all the undertakings in the sector (except employees with public law status who do not come within the railway sector). There are some collective agreements on working time (but not only) which substantiate the working conditions of employees in the railway sector. The workers are represented by only one trade-union organisation.

From this point of view, Austria had not experienced the difficulties characterising other industrial relations systems and therefore the risk of social dumping appeared to be remote.

Nevertheless in Austria some aspects were considered critical, with particular reference to the implementation of the European regulations on the working conditions of mobile workers engaged in interoperable services.

A particularly significant aspect was that European regulations are more favourable to workers with respect to national ones, as highlighted both by the representatives of railway undertakings and trade unions. This factor, obviously appreciated by trade unions, was viewed critically by railway undertakings as a possible source of greater economic outlays.

The following are among the most important issues emerging during the Vienna meeting:

- There was uncertainty on the interpretation of the definition of the "scope" contained in the European Agreement. ÖBB representatives sustained an interpretation according to which only workers engaged in interoperable services every day for at least one hour per day come within that scope. According to this interpretation, the representatives concluded that currently no workers come within the scope of the European Agreement;
- The identification of workers coming within the scope of the European Agreement was even more challenging due to the fact that these workers were assigned to mixed services, partly to interoperable services and partly to national transport services;
- There was also some uncertainty regarding the interpretation of the rule on driving time. In this regard, the need was pointed out to clarify the concept of "scheduled working time".

## Vienna, 2-3 April 2009 - Participants

### Working Group

Josef Arminger, *Vida / Austria*  
Michael Bartl, *Transnet / Germany*  
Michaela Eigenbauer, *ÖBB*  
Raymond Hara, *SNCF*  
Italo Inglese, *FS (Project Management)*  
Maria Cristina Marzola, *Filt / Cgil / Italy*  
Serge Piteljon, *CGSP / Belgium*  
Silke Streichert, *DB Mobility Logistics AG*  
Roberta Tomassini, *FS*  
Sabine Trier, *ETF*

### Guests

Bernhard Nebel, Peter Fesselmar, *Representatives of ÖBB-Personenverkehr AG*  
Wolfgang Jicha, Martin Figerl, *Representatives of ÖBB-Traktion GmbH*  
Christian Kaiser, *Representative of Rail Cargo Austria AG*  
Stefan Wiederin, *Representative of ÖBB-Infrastruktur Betrieb AG*  
Robert Woppel, Carmen Langer, *Representatives of the Austrian Federal Economic Chamber*  
Johann Ellersdorfer, Roman Hebenstreit, Rudolf Kaiser, Bernd Brandstetter, Herald Voitl, *Representatives of VIDA*  
Roman Hebenstreit, Helmut Radlingmayr, Werner Harrer, Gerald Tauchner, *Representative of the works councils of the ÖBB Group*  
Erich Edelmaier and others, *Representative of the works councils*

## 5.4 Visit to Germany Berlin, 30 June - 1 July 2009

The two-day visit to Berlin (30 June and 1 July 2009) developed as follows: on the first day, the representatives of *DB*, the works council and a small- and medium-sized rail enterprise association presented their papers; while on the second day, other rail operators and trade unions intervened.

### Topics of the Papers

Representatives of *DB*, employers' associations and trade unions intervened as speakers in the meeting. The papers covered the following topics (Annexe D):

- Current *DB* organisational chart and corporate structure (Annette von Wedel);
- The most relevant issues from the European legislative policy on rail transport (Johann Metzner);
- The co-determination model in Deutsche Bahn (Michael Bartl);
- The status of implementation of the CER-ETF Agreement with reference to the structure of German Regulation on Working Time (Lars Hünninghausen - Stefan Gottschlich; the transposition of the EC Directive is approaching through the Mobile Railway Workers Ordinance - *EFPV*);
- The impact of the European Agreement implementation on the working conditions of workers engaged in cross-border services (Dieter Zöll);
- The relevance of the Agreement from the viewpoint of an association of small- and medium-sized rail enterprises (*VDV*) particularly interested in the

development of cross-border transport (Hans-Steffen Kerth);

- The significance of the European Agreement from the viewpoint of an undertaking (*DB Schenker Rail*) for which cross-border transport services are constantly expanding (Andreas Heid);
- The structure of the European Works Council at *DB* (Michael Bartl).

### Evaluation of the European Agreement Implementation

With regard to the implementation of the European Agreement and Directive 2005/47/EC, essential provisions have already been established. Furthermore driving time, consequences of rest periods away from home and rest days have also been regulated in the Law on Working Time or wage agreements for all workers (including those also assigned to national services). In addition, the provisions have already been extensively implemented and practically applied.

As legal certainty abroad can only be safeguarded with implementation of the EC Directive within national legislation, implementation will only completely take place after the Mobile Railway Workers Ordinance has come into effect. This was expected for summer 2009<sup>11</sup>.

### The Debate: Major Issues and Needs

Some speakers (Hünninghausen, Heid) stressed the growing interest from undertakings in increasing legal certainty, being the premise for the development

<sup>11</sup> Meanwhile, Directive 2005/47/EC was transposed into German legislation. The "Eisenbahnpersonal-Verordnung" was published in the Official Journal (*Bundesgesetzblatt*) on 28 August 2009. It entered into force on 29 August 2009.

of cross-border transport. Legal uncertainty could only be overcome with the transposition of Directive 2005/47/EC, but not with the implementation of voluntary agreements.

At present no sufficient certainty is attainable due to the considerable differences between national laws, and the principle of territoriality adversely affects the working conditions of workers engaged in cross-border transport services.

The above-mentioned speakers assumed that the implementation of the EC Directive in the various countries would tend to produce the harmonisation of working conditions and, in reality, the overcoming of the principle of territoriality (except for Switzerland), with positive effects on interoperability development. Likewise pointed out was the need to safeguard the principle of subsidiarity in the relationship between the European and national level, also with regard to the European social dialogue (Metzner).

Four critical points of the implementation process were stressed by *DB*:

- Differentiation between interoperable and national services, and the corresponding application of the provisions;
- Different responsibilities of supervisory authorities. Whereas the state departments for industrial health and safety act as supervisory authorities responsible for the law on working time, the Federal Railway Authority (*EBA*) will be responsible within the context of Directive 2005/47/EC;
- Definition of "home". Its lexical translation into German leads to different meanings between the original Agreement and the German text. In accordance with the European Social Partners, this problem will be solved;
- Transit services throughout Switzerland. These services would still not come within the scope of the EC Directive.

*DB* representatives explained that, in order to establish precise and clear internal guidelines for the operational HR manager and works councils, common interpretations of employers and trade unions are envisaged to be concluded on the application of the provisions of the European Agreement/EC Directive respectively the new German Ordinance implementing the Directive 2005/47/EC.

A criticism toward the CER-ETF Agreement clause on rests away from home was raised. In this regard, it was observed that it is contradictory to put a limit on consecutive rests away from home in cross-border transport, since this limit does not exist in national laws on domestic transport (Kerth).

With reference to the Agreement clauses leading to differing interpretations, it was stated that the signatories are responsible for better clarifying the meaning of these clauses (Trier).

As for the relationship between European and national regulations, it was pinpointed that the non-regression clause prevents changes leading to a worsening of national working conditions, and that this is a constraint both for lawmakers and Social

Partners (Trier).

In the contribution presenting the German co-determination model, the positive effects of this model were highlighted; in addition, it was stressed that these effects were not only social but also economical (Bartl). The cooperative method also motivates EC Directive 94/45 concerning the European Works Councils. Since the *DB* Group has branches in many countries, *Deutsche Bahn* has set up the European Works Council in compliance with the provisions contained in this Directive.

### **Brief Appraisals**

As in previous visits, the debate developed in Berlin highlighted the issues open to different interpretations from a legal perspective, and requiring further in-depth study. Some of these issues are detailed below.

- As pointed out above, according to the opinion of some participants in the meeting, the added value of the European Agreement and Directive 2005/47/EC basically consisted in providing a certain regulatory framework on certain aspects of working time for undertakings which manage interoperable cross-border services.

Nevertheless, public policy rules continue to exist in each Member State and are applicable to every worker, even those coming from another country, who undertake work within national borders. This brought to mind the problem of the relationship between the provisions of the EC Directive and the mandatory rules applied in the various countries. In this regard, it should be recalled that the EC Directive, once transposed into national legislation, can be translated into mandatory rules and may be more favourable to workers. Hereof, it should be called to mind that with reference to working conditions, the transposition of directives may not lead to a reduction of more favourable conditions applied nationally (see Article 137 of the Treaty on European Union and "Having regard" 16 and Article 2 of Directive 2005/47/EC).

However, it should be stressed that the intention of the signatories to the European Agreement was undoubtedly to introduce homogeneous rules concerning certain aspects of working time for all the railway undertakings operating in cross-border traffic. This intention would be annulled if national rules, different from the provisions of the Agreement, were still applied.

- From the strictly legal perspective, there did not seem to be a "monopoly" of the signatories on the interpretation of the European Agreement clauses. The Agreement, after being incorporated into a directive which, in turn, will be subsequently transposed into national legislation, would in fact no longer be limited to the competence of the signatories, though the parties would still be entitled to stipulate new European agreements amending the previous one.

Notwithstanding the above, the opportunity for the signatories to agree on the interpretation of the Agreement clauses was not excluded; if there is no agreed interpretation, the legal certainty and influ-



ence of the social dialogue could be weakened.

- With regard to the definition of the "scope" of the European Agreement, various criteria could be hypothesised for identifying mobile workers, in relation to their working time, assigned to cross-border traffic. Taking into account this difficulty of interpretation, the number of workers involved could only be theoretically determined with reference to personnel trained and authorised for this purpose.

- The issue of the interpretation of the non-regression clause was again stressed by the project group.

Undoubtedly, this clause prevents national lawmakers from adopting the EC Directive, thus introducing amendments leading to a worsening of the working conditions regulated by the same Directive.

In this regard, however, some issues are still open:

- Does this constraint have permanent validity or could it be eliminated over time?

- Are changes less favourable for workers still possible with regard to the aspects of working time not regulated by the Directive?

- If the Directive is transposed through a law or administrative act, how much room is left for collective bargaining?

- From a more general viewpoint, the meeting highlighted the positive effects of the co-determination system. This system, consolidated in Germany, has nevertheless been challenged by some undertakings, and in other countries also by some trade-union associations.

Currently, it does not seem easy to transfer this model to other European countries where, nevertheless, other forms of participation also exist and which, in any case, ensure that trade unions have a considerable degree of control over and sharing of the undertaking's choices and related agreements.



## Berlin, 30 June - 1 July 2009 - Participants

### Project Group

Josef Arminger, *Vida / Austria*  
Michael Bartl, *Transnet / Germany*  
Michaela Eigenbauer, *ÖBB*  
Raymond Hara, *SNCF*  
Italo Inglese, *FS (Project Management)*  
Serge Piteljon, *CGSP / Belgium*  
Jean-Paul Preumont, *CER*  
Francesca Rango, *Trenitalia*  
Silke Streichert, *DB Mobility Logistics AG*  
Sabine Trier, *ETF*

### Guests

Stefan Gottschlich, *Agv MoVe, Employer's Association of the Mobility and Transport Service Providers, Department of Tariff Law, Focus Working Time*  
Andreas Heid, *DB Schenker Rail, Team Employment Conditions*  
Lars Hünninghausen, *Head of Group Collective Agreements, Tariff and Social Policy - DB AG*  
Hans-Steffen Kerth, *Head of the Regulatory Policy Department in the Railway Sector, Coordinator of the Rail Freight Transport Division - VDV*  
Johann Metzner, *Head of European Affairs/International Associations - DB AG*  
Annette von Wedel, *Head of DB Mobility Logistics AG, HR and Services Programmes and Projects*  
Dieter Zöll, *Head of Operations/Rail Operations Manager (Eisenbahnbetriebsleiter) - DB Fernverkehr AG*  
Karl-Heinz Zimmermann, *TRANSNET Union*  
Sebastian Rüter, *TRANSNET Union, Transport Policy and International Affairs*  
Helmut Mundt, *Works Council - DB Fernverkehr AG*  
Markus Gamisch, *Works Council C 03 DB Schenker Rail*  
Ingo Naumburger, *TG TRANSNET / GDBA*

## 5.5 Visit to Romania Predeal, 22-24 September 2009

On 22, 23 and 24 September 2009, the fifth visit of the working group took place in Predeal (Romania).

### Competitiveness and the Economic Crisis

After an initial meeting with representatives of the railway undertakings and trade unions, held on the afternoon of 22 September, the following two visit days were developed as follows: the 23 September was dedicated to the papers by railway undertakings' representatives, while the 24 September to the interventions by trade unions' representatives.

First of all, the speakers illustrated insight into the rail transport situation, currently characterised by strong competition among railway undertakings.

In Romania, besides *CFR*, 28 private undertakings account for 51% of the market share in the rail freight market. In this regard, both the representatives of the railway undertakings and trade unions observed that the private undertakings enjoy a competitive advantage situation (Mariana Florea, Gheorghe Popa). Particularly as regards working conditions, the competing undertakings benefit from lower costs: only two of the private undertakings apply collective agreements (the others only apply individual contracts). The competing undertakings also tend to violate legal provisions, in particular with regard to working time (Iulian Mantescu).

This situation is aggravated by the competition from operators coming from other countries, and especially from road transport enterprises, which also benefit from more favourable regulatory conditions (Mantescu, Popa, Florin Dobrescu).

The competitive imbalance is also due to government policy seemingly favouring private transport operators (Popa).

The trade unions also pointed out that in private undertakings a low rate of union membership is recorded, owing to the fact that the employees of these undertakings are generally retired employees who previously worked in *CFR* (Mantescu).

In this highly critical situation, *CFR* has had to undertake a restructuring process, involving the outsourcing of some activities and a considerable reduction of personnel. In fact, the cargo undertaking *CFR Marfa* reduced staff by 1,100 employees from January to September 2009, and a further reduction totalling 6,350 staff members has been envisaged for the end of the year. In September 2009, *CFR Marfa* had 17,000 employees (Ioan Paun, Florea).

In the *CFR* passenger undertaking *Calatori*, staff was reduced by about 1,000 employees, falling from 17,000 to 16,000 during 2009. To alleviate the social impact of the restructuring, until now forms of early retirement have been applied. Lawmakers are currently evaluating a proposal to establish a 24-month period during which the workers excluded from the production cycle would receive a state-paid subsidy (Florea).

### Evaluation of the European Agreement Implementation

With regard to the implementation of both the European Agreement and Directive 2005/47/EC, representatives stated that the European regulations had been largely, but not fully, transposed into Romanian law. Some provisions concerning weekly rest at home had not yet been introduced in Romanian legislation (Mantescu).

The procedure for transposing the EC Directive into national legislation had taken place without the involvement of the Social Partners.

As concerns the number of workers involved by the application of regulations, it was pointed out that currently no train drivers come within the scope of the European Agreement (Florea).

It was also pointed out that the Agreement provisions would apply to approximately 70 mobile workers, not train drivers (Popa).

The trade unions expressed appreciation for the European regulations (Mantescu); according to a representative from the railway undertakings, on the whole, the European regulations would be more favourable to workers than national regulations (Adrian Taban).

### Critical Aspects

The main critical issue highlighted by the speakers was unfair competition, placing the *CFR* in an inferior position compared to private undertakings. In this regard, there was concern over the effective application for all operators of the rules concerning working conditions, thereby requiring the stricter organisation of inspection activities by public authorities.

As also in previous visits, a difference in opinions seemed to emerge with regard to the scope of the agreement and the definition of "mobile workers engaged in interoperable cross-border services". In particular, the issue arose with reference to on-board catering and cleaning staff. The working group was informed that the Romanian "Wagon lit" staff slept during the day in the waiting wagons in the Venice railway station before leaving for the return journey to Romania.

As to the EC Directive transposition process, it was pointed out that the failure to involve the Social Partners is in contrast with Article 5 of the Directive itself; it is necessary to specify "after consultation with the Social Partners."

However, it is not clear what the practical consequences of this violation would be, having to exclude that this would invalidate national transposition law, especially when this latter complies with the contents of the EC Directive.

## Predeal, 22-24 September 2009 - Participants

### Working Group

Josef Armingier, *Vida / Austria*  
Michael Bartl, *Transnet / Germany*  
Michaela Eigenbauer, *ÖBB*  
Raymond Hara, *SNCF*  
Italo Inglese, *FS (Project Management)*  
Maria Cristina Marzola, *Filt / Cgil / Italy*  
Serge Piteljon, *CGSP / Belgium*  
Jean-Paul Preumont, *CER*  
Francesca Rango, *Trenitalia*  
Silke Streichert, *DB Mobility Logistics AG*  
Sabine Trier, *ETF*

### Guests

Ioan Paun, *Director of Human Resources - CFR Marfa*  
Liviu Răican, *Traffic Director - CFR Marfa*  
Adrian Taban, *Operations Director - CFR Marfa*  
Serban Lacriteanu, *International Affairs Advisor - CFR Marfa*  
Martha Petcu, *Head of Marketing Service - CFR Marfa*  
Mariana Florea, *Director of Human Resources - CFR Passengers*  
Carmen Filipescu, *International Affairs Director - CFR Passengers*  
Florin Dobrescu, *President, National Union Federation "Drum de Fier"*  
Iulian Mantescu, *President, Union Federation of Locomotive Drivers*  
Gheorghe Popa, *President, Union Federation "Operation - Commercial"*  
Ellen Durst, *Representative of the European Commission - DG Employment, Social Affairs & Equal Opportunities - Social Dialogue - Industrial Relations*





## 5.6 Visit to Luxembourg Luxembourg, 5-6 November 2009

On 5-6 November 2009, the last visit of the working group was held in Luxembourg at the *CFL* premises. On this occasion, as in the previous ones, the working group took the opportunity to collect information on the viewpoints illustrated by the undertaking's and trade unions' representatives, and to ask about the implementation of both the European Agreement and Directive 2005/47/EC.

### European Regulations and National Legislation

During the meeting's first session, the *CFL* representatives illustrated the current situation in Luxembourg regarding working conditions, with particular reference to working time (Annexe D).

Currently, the EC Directive can only be considered partially adopted, since transposition occurred through a Grand Ducal regulation only for *CFL*.

In several respects, the transposition of the EC Directive occurred with more favourable provisions for workers (e.g., as concerns rests at home, rests away from home and weekly rest periods).

The process of transposing the EC Directive into national legislation should be completed by next December.

In consideration of legal rules governing *CFL* staff, these employees are regulated by public statute, and are therefore regarded as state officials, in accordance with the staff regulations dating back to the 1920 law. Legal rules have been integrated over time by trade-union agreements, the contents of which have been incorporated in the staff regulations.

Finally, in 1996 a legislative amendment excluded *CFL Cargo* from being regulated by public statute.

*CFL* exclusively manages passenger transport services within national borders as well as – as stressed by *CFL* representatives – regional cross-border services. Long-distance freight transport services are also provided by *CFL Cargo*.

No private railway undertaking operates in Luxembourg with the sole exception of *CFL Cargo*, which is, however, connected to *CFL*, although the latter is regulated by an autonomous statute. A joint-venture between *SNCF*, *CFL Cargo* and *SNCFB* called *SIBELIT*, which manages cross-border freight services, has its seat in Luxembourg.

In *CFL Cargo*, which was set up by a merger of the former cargo operator *CFL* and *ARCELOR Mittel*, staff mostly consists of employees coming from the *CFL* undertaking and – in a smaller number – from former *ARCELOR* employees. Approximately 50 drivers are currently engaged in cross-border services.

### Comparative Viewpoints

*CFL* representatives particularly stressed the difficulty in the application of the Agreement clause on breaks. Concerning this, it was observed that the clause is not clear both as regards the possibility of

splitting breaks and the relevant application procedures.

It was also stated that the European Agreement implementation, attained with the adoption of provisions more favourable for some issues and less favourable for others, should not be considered, on the basis of a comprehensive evaluation, as conflicting with the non-regression clause.

An undertaking's representative, intervening on the issue on the number of rests away from home, affirmed that two consecutive rests away from home would be useful, since this would lead to benefits for productivity.

It was finally pointed out that the transposition of the EC Directive in various countries, at different times and in different ways, could imply negative consequences for the railway undertaking.

Georges Bach, Luxembourg member of the European Parliament, presented his contribution by expressing support for a regulatory standardisation in the various countries, and by highlighting the importance of intermodal transport and logistics development.

Georges Bach added that a European-level solution should be definitively found for the issue of external costs, according to the "polluter pays" principle.

Trade unions, on their part, stressed the following critical aspects of the Agreement:

- The lack of provisions on checks and sanctions (as particularly regards checks, the trade unions call for the adoption of the tachograph);
- The comfort of the accommodation offered to drivers resting away from home;
- The insufficient clarity in the clause on breaks;
- The duration of rest away from home should be suited to the actual rest without including the time needed to travel to and from the accommodation and the workplace.

In disagreement with the viewpoints illustrated by the undertaking's representatives, the trade unions expressed definite opposition to the proposal of consecutive rests away from home.

### Outstanding Issues

In this visit as well, the debate emphasised some issues still open to different interpretations.

Some contrasting opinions still persist on the possibility of splitting breaks: ETF argued only 45-minute breaks should be split in two parts, while CER representatives observed that the clause is deliberately ambiguous since no agreement has been effectively reached between the parties.

Another aspect challenged in the debate regards the interpretation of the second sentence of Clause 1 of the Agreement. In this regard, there is no consensus of opinions on the application of a 15-km limit not only to freight traffic, but also to cross-border local and regional passenger transport.

As mentioned above, even in this visit, the interpretation of the non-regression clause was a source of contrasting interpretations.



## Luxembourg, 5-6 November 2009 - Participants

### Working Group

Josef Armingier, *Vida / Austria*  
Michael Bartl, *Transnet / Germany*  
Michaela Eigenbauer, *ÖBB*  
Raymond Hara, *SNCF*  
Italo Inglese, *FS (Project Management)*  
Maria Cristina Marzola, *Filt / Cgil / Italy*  
Jean-Paul Preumont, *CER*  
Francesca Rango, *Trenitalia*  
Silke Streichert, *DB Mobility Logistics AG*  
Sabine Trier, *ETF*

### Guests

Nico Bollendorff, *CFL*  
Albert Gerard, *CFL*  
Danielle Licciardi, *CFL*  
Bob Lary, *CFL*  
Alain Henx, *CFL*  
Chantal Diederich, *CFL Cargo*  
Romain Schintgen, *CFL Cargo*  
Charles Schlessler, *CFL Cargo*  
Camille Bocker, *Representative of SYPROLUX*  
Mylène Wagner, *Representative of SYPROLUX*  
Marc Weydert, *Representative of SYPROLUX*  
Guy Greivelding, *Representative of F.N.C.T.T.F.E.L.*  
Jean-Marie Thoma, *Representative of F.N.C.T.T.F.E.L.*  
Georges Merenz, *Representative of F.N.C.T.T.F.E.L.*  
Vito Fasano, *Representative of F.N.C.T.T.F.E.L.*  
Georges Bach, *Member of the European Parliament*





**Alta Velocità**

Accorcia le distanze.  
Fa crescere il Paese.

**TRENITALIA**  
GRUPPO FERROVIE DELLO STATO

## **Annexes**

### **Annexe A**

CER – ETF Agreement of 27 January 2004 on Certain Aspects of the Working Conditions of Mobile Workers Engaged in Interoperable Cross-Border Services in the Railway Sector and Directive 2005/47/EC of 18 July 2005

### **Annexe B**

Questionnaire

### **Annexe C**

Responses to the Survey Questionnaire (CD)

### **Annexe D**

Collection of Slides Presented in the Visits (CD)

**COUNCIL DIRECTIVE 2005/47/EC**

**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,

persons working in the rail transport sector on board trains.

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

Having regard to the proposal from the Commission,

- (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.

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.

- (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'.

(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.

- (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.

(3) The Council adopted Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time<sup>(1)</sup>. 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/EC<sup>(2)</sup> amending Directive 93/104/EC in order to cover the sectors and activities which had previously been excluded.

- (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.

(4) The European Parliament and the Council adopted Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time<sup>(3)</sup>, which codified and repealed Directive 93/104/EC.

- (10) For the purposes of Article 249 of the Treaty, the appropriate instrument for implementing the Agreement is a Directive.

(5) Directive 2003/88/EC provides for derogations from Articles 3, 4, 5, 8 and 16 thereof in the case of

- (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.

<sup>(1)</sup> OJ L 307, 13.12.1993, p. 18. Directive as amended by Directive 2000/34/EC.

<sup>(2)</sup> OJ L 195, 1.8.2000, p. 41.

<sup>(3)</sup> OJ L 299, 18.11.2003, p. 9.



(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<sup>(1)</sup>, 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.

<sup>(1)</sup> OJ C 321, 31.12.2003, p. 1.

*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.

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 home <sup>(1)</sup>.

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.

<sup>(1)</sup> 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 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.

*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)

## “FOLLOW-UP OF THE AGREEMENT ON THE WORKING CONDITIONS OF MOBILE WORKERS ENGAGED IN INTEROPERABLE CROSS-BORDER SERVICES”

Name of the company / trade union

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Business (passengers – freight – both)

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Country

---

Name of contact person

---

E-mail

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Phone and fax

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### Questionnaire<sup>1</sup>

#### SECTION A

On 27 January 2004, an agreement was reached between CER (Community of European Railways) and ETF (European Transport Workers' Federation) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services.

The agreement defines interoperable cross-border services as cross-border services for which at least two safety certificates are required according to Directive 2001/14/EC. The agreement also defines mobile workers engaged in interoperable cross-border services as workers who are members of a train crew assigned to interoperable cross-border services for more than one hour on a daily shift basis.

Considering the above:

**1. In your undertaking, how many mobile workers come within the scope of the agreement?**

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**2. Within this framework, can you specify the number of locomotive drivers and on-board staff?**

Number of locomotive drivers: \_\_\_\_\_

Number of on-board personnel: \_\_\_\_\_

<sup>1</sup> The project is financed with EC funds. The sole responsibility for the content of the questionnaire lies with the author. The European Commission is not responsible for any use that may be made of the information contained therein.

**2. During recent years (since January 2004), has there been an increase in the number of mobile workers who come within the scope of the agreement?**

a)  Yes

b)  No

## **SECTION B**

The CER / ETF agreement concluded on 27 January 2004 was transferred into European law (Directive 2005/47/EC of 18 July 2005) and so has become generally applicable for the whole railway sector. Article 5 of the Directive states that Member States are required to transpose the provisions of the agreement into national law until 27 July 2008. However also without the transposition of the Directive / agreement into national law, it is possible that the European agreement is implemented within a railway undertaking (autonomous agreement of the European social partners CER and ETF).

Considering the above:

**1. What is the status of implementation of the clauses contained in the CER/ETF agreement?**

a)  fully implemented

b)  partially implemented

c)  not implemented

**2. In case of answer a) or b), has the agreement been implemented (several answers are possible):**

a)  by law

b)  with the sectoral collective agreement

c)  with an in-company agreement

**3. In case of answer c) to the question B.1 of this section, what are the reasons behind the non-implementation of the agreement?**

a)  apathy of the State

b)  apathy of the Social Partners

c)  failure to reach an agreement among the Social Partners

**4. If the agreement has been transposed by national law, have the Social Partners been consulted or anyhow involved in the legislative process?**

a)  Yes

b)  No

## **SECTION C**

In accordance with Art. 2 of Directive 2005/47/EC and Clause 9 of the CER / ETF agreement, the implementation of European legislation shall not constitute valid grounds for reducing the general level of protection of workers in the fields covered by the Directive , while it is possible to maintain and introduce more favorable provisions.

Considering the above:

**1. In the case of implementation of the Directive/CER/ETF agreement via collective agreement:**

**1.1 Has the directive / agreement been implemented via a sector collective agreement or via a company collective agreement?**

a)  sector collective agreement

b)  company collective agreement



**1.2 Is the collective agreement or amendment of an existing collective agreement limited to reproducing the contents of the European agreement?**

a)  Yes

b)  No

**1.3. If Yes, on what issues?**

a)  Daily rest at home (Clause 3)

b)  Daily rest away from home (Clause 4)

c)  Breaks (Clause 5)

d)  Weekly rest period (Clause 6)

e)  Driving time (Clause 7)

f)  Checks (Clause 8)

**1.4. Have the implementation rules affected other working time aspects not regulated by the European agreement?**

a)  Yes

b)  No

**1.5. If Yes, which?**

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**1.6. If the agreement is implemented with an in-company agreement, what aspects have raised the most controversy between the management of the undertaking and trade-union organizations?**

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**1.7 In which areas did the sector and/or company collective agreement fix more favorable provisions than the minimum provisions defined in the CER/ETF agreement?**

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**2. In the case of implementation of the Directive/CER/ETF agreement via amendment of the national labor law/working time law (or railway law):**

**2.1 Is the amendment of the national law (labor, working time or railway law) limited to reproducing the contents of the European agreement?**

a)  Yes

b)  No

**2.2. If Yes, on what issues?**

- a)  Daily rest at home (Clause 3)
- b)  Daily rest away from home (Clause 4)
- c)  Breaks (Clause 5)
- d)  Weekly rest period (Clause 6)
- e)  Driving time (Clause 7)
- f)  Checks (Clause 8)

**2.3. Have the implementation rules affected other working time aspects not regulated by the European agreement?**

- a)  Yes
- b)  No

**2.4. If Yes, which?**

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**SECTION D**

In accordance with Clause 11 of the CER / ETF agreement, the parties are asked to evaluate the provisions of the agreement in light of initial experiences in the application and development of interoperable cross-border transport. Considering the above:

**1. With regard to the development of interoperable cross-border transport, are there aspects in the agreement that require in your opinion further attention? If yes, which?**

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**2. In your opinion, are there issues not regulated by the CER/ETF agreement which should be discussed within the European Social Dialogue?**

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**Please send the questionnaire back to:**

*Italo Inglese*  
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