



The Voice
of European
Railways



Social aspects and the protection of staff in competitive tendering of rail public transport services and in the case of change of railway operator

JOINT OPINION CER/ETF

PREAMBLE

As part of an evaluation of different social rules in railway passenger transport linked to the Regulation 1370/2007 „PSO“, CER and ETF decided to conduct a study on the Social aspects and the protection of staff in competitive tendering of rail public transport services and in the case of change of railway operator“. The project developed by the social partners gives a picture of the situation on the protection of personnel in the member states of the EU.

Good social standards are - both from employees' and from employers' view - a condition sine qua non for delivering good quality services and are an important factor for maintaining or improving the attractiveness of jobs in the railway sector, which becomes a major challenge due to the demographic change in nearly all EU Member States.

The project has shown that there are very different national situations in terms of social aspects and protection of staff in case of change of operator and especially concerning the application of articles 4(5) and 4(6) in conjunction with recitals 16 and 17. On the one hand some Member states established on a national level similar rules concerning binding social standards and/or compulsory transfer of staff before the Regulation 1370/2007 came into force. In fact, some countries decided to create such social rules by national laws or regulations or they established a framework for the social partners to conclude agreements for adequate social standards in the sector. On the other hand there are still Member States where the social aspects of the market opening seem to be not sufficiently or not at all taken into account.

PRINCIPLE STATEMENTS

1. Although the European social partners differ in their view on the need for further liberalisation and market opening, they share the conclusion that the consequences of competition should not affect the working conditions of staff providing services by requiring on national, regional or local level binding social standards and/or the compulsory transfer of staff in case of change of operator.
2. The social partners insist that it must be compulsory for every EU Member State, where such protection doesn't exist, to create a social level playing field by setting binding social standards (on a national, regional or local level) in order to protect working conditions existing at the moment of change of operator and/or by requiring a transfer of staff previously taken on to provide services. This should be done according to the national or regional specificities either by the legislator and/or the social partners by sector-wide collective agreements (including the rules for civil servants or staff with a specific employment status similar to civil servants) at the latest at the opening of the domestic railway passenger market.
3. Such social standards have to include at least provisions on wages, working time, Health & Safety and training.
4. A compulsory transfer of staff in case of change of operator will also ensure the continuity of the service for the passengers and the transport authorities. When transfer occurs, it has to apply to railway staff previously taken on to provide services by the previous operator and grant them the rights to which they would have been entitled if there had been a transfer within the meaning of Directive 2001/23. Nevertheless, the previous operator has the possibility to offer new positions to the involved employees with continuing the existing contract.
5. ETF and CER recommend to use the experience and knowledge of the social partners in the whole tendering process.

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