

## ETF position paper

on the planned revision of Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community.

## Origin of the directive - Summary

In 2004, an agreement of the social partners was signed between the European Transport Workers' Federation (ETF) and the Community of European Railways and Infrastructure Companies (CER) on the „European licence for drivers carrying out a cross-border interoperability service. The objective of this agreement was:

- Facilitating driver interoperability as a means to increase international rail transport.
- Maintaining and even increasing the level of safety and, to this end, guaranteeing the quality level of the performance of the train crew by ensuring and verifying compliance with levels of competence adapted to the respective European railroad systems.
- Contributing to the efficiency of the management of train drivers in the interoperability service by railway undertakings.
- Reducing the risks of social dumping.

In 2007, Directive 2007/59/EC "on the certification of train drivers operating locomotives and trains on the railway system in the Community" was adopted.

The introduction to the Directive states: „The aim of these common provisions should be above all to make it easier for train drivers to move from one Member State to another, but also to make it easier for them to move from one railway undertaking to another “.

## Introduction

ETF welcomes the announced revision of Directive 2007/59/EC, as the current Directive was drafted at a time when the dynamics and consequences of the progressive liberalisation of rail freight transport were not yet foreseeable.

Similarly, new opportunities have emerged through the advance of digitalisation, which should be included to safeguard the purpose and objectives of the Directive. The current Directive 2007/59/EC no longer fulfils the purpose set out in the European social partners' agreement or in the Directive.

**On the contrary, in certain cases the Directive helps to undermine existing good training programmes, makes it more difficult to move from company to company and invites social dumping on competence standards both at European and national level.**

It can be seen that the total training duration and contents differ significantly both nationally and internationally. The driving licence, as the only EU-wide standardised certificate, is trained for less than 30 hours in most member states. Particularly striking is the large difference (20 times) across Europe in the training duration for the additional certificates, which must be regulated in the safety management of the companies.

We consider it indispensable that the EU Commission entrusts the European social partners in the Sectoral Social Dialogue on Railways with the coordination of the contents in the run-up to the revision of the Directive, as was the case when the first draft was prepared before 2004.

The now chosen procedure of simple participation in the impact assessment and lack of transparency did not take into account the extensive expertise of the social partner organisations.

**ETF therefore demands the comprehensive involvement of workers in the drafting of the Commission proposal for the revision of the Directive in order to safeguard the purpose and objective of the Directive.**

In our view, the following additions are necessary for safe railway operations, which at the same time bring about the necessary facilitations in cross-border traffic

- 1. the basic requirement regarding training before applying for the licence must be redefined**
- 2. changes in the structure of the European-wide recognised driving licence and the specific complementary certificate**
- 3. category A and B certificates need to be clarified**
- 4. changes in medical / psychological examinations**
- 5. the existing B1 language level must be maintained and must not be lowered under any circumstances.**
- 6. work records must be introduced for efficient control of competences**
- 7. training costs require clear regulation between companies and must not be at the expense of workers**
- 8. remuneration: Regardless of the mode of transport (origin/destination/transit/passenger/freight), workers on the train are covered by the provisions of the Posting of Workers Directive from the moment they cross the border**
- 9. controls and sanctions**

## **1. The basic requirement regarding the training before applying for the licence must be redefined**

The current provision is listed in Article 11, Section 1 of Directive 2007/59/EC and refers to Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community, level 3. This Council Decision is no longer valid and must be replaced.

The existing training programmes are now based on this requirement and it is important that this level is maintained and above all not lowered. Lowering the level would violate the principle of improving safety (cf. recital 5 of the EU Safety Directive 2016/798/EU) in the event of changes. In the case of a change, the existing training programmes would have to be modified, in some cases drastically.

The ETF proposes that in Article 11, section 1 of Directive 2007/59/EC reference is made instead to the Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework (EQF) for lifelong learning, level 4.

Level 4 of the EQF should correspond to the previous Council Decision, level 3, and at the same time takes greater account of existing professional experience when considering levels.

## **2. Modifications in the structure of the European recognised driving licence and the specific complementary certificate**

The current structure, consisting of the European-wide recognised driving licence and the specific complementary certificate, leads to a number of difficulties which need to be taken into account in the revision of the Directive and should be transformed into a tripartite structure.

- Lack of specification of the duration of training for the licence and the complementary certificates to the contents laid down in Annexes IV - VI.
- Despite almost identical national requirements (e.g. regulations on brake calculation, hook load, etc.) by the infrastructure managers, independent of the individual railway undertaking, there are major differences in the design and duration of training, laid down in the safety management systems and safety objectives of the RUs.
- Obstacles in the mobility of train drivers nationally and across borders
- Too high complexity to monitor the level of competence by NSA

Present structure of license and certificate:

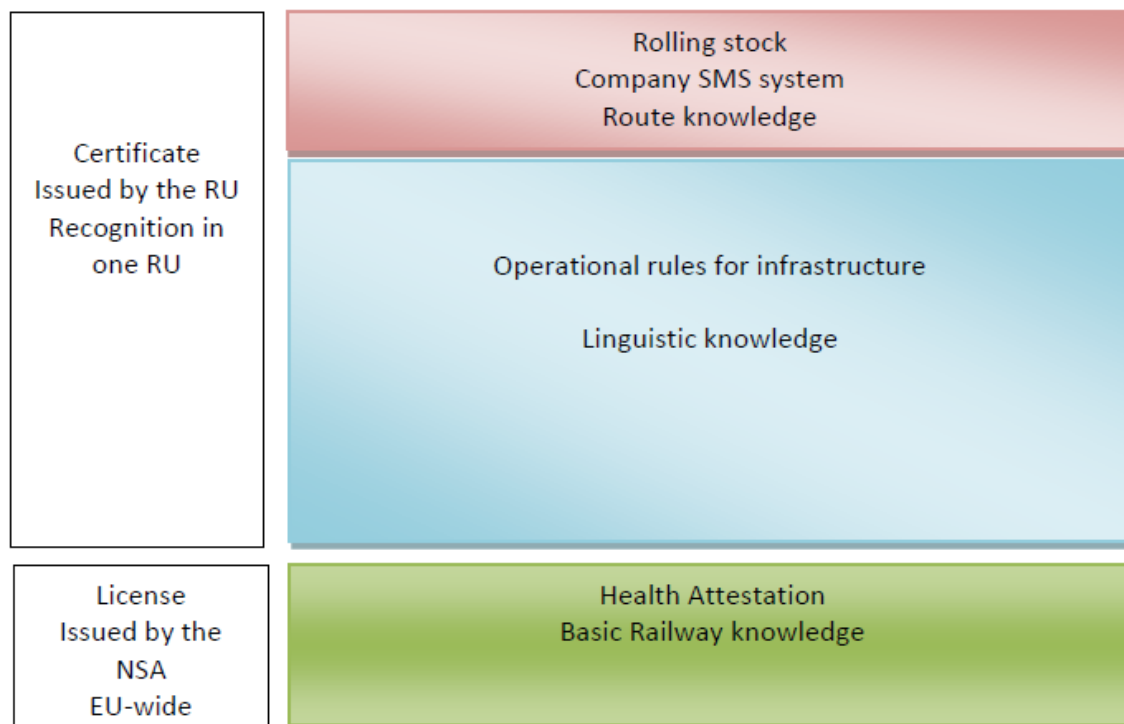


Figure 1

This figure 1 also basically shows the general relationship of the duration of training between the different parts of the driving licence/supplementary certificate.

The licence is recognised throughout Europe, yet the times for training and the quality of training vary significantly. Furthermore, a large part (70-90%) of the complementary certificate is the same for all RUs at the same national level, as it is about the knowledge of the rules (operational and safety rules) set by the infrastructure manager (IM). Similarly, it is about vehicle types whose design has been harmonised by the few manufacturers. The quality and standards of the certificates issued by the RUs can vary considerably within a state (range between 24-600 hours according to Commission SWD (2020) 137), especially if the certificate also includes driving in a neighbouring country.

The ETF proposal is:

The European Train Driving Licence is divided into two parts,

• **Part 1:**

The driving licence (EU-wide recognition) regarding the basic railway knowledge and the health certificate

• **Part 2:**

**2.1:** (national recognition) concerning the generally applicable operating rules for the national infrastructure and language skills.

2.2: The certificate (from the RU concerned) proves the competence of the driver on the rolling stock used by the RU, the SMS system of the RU and the route to be worked.

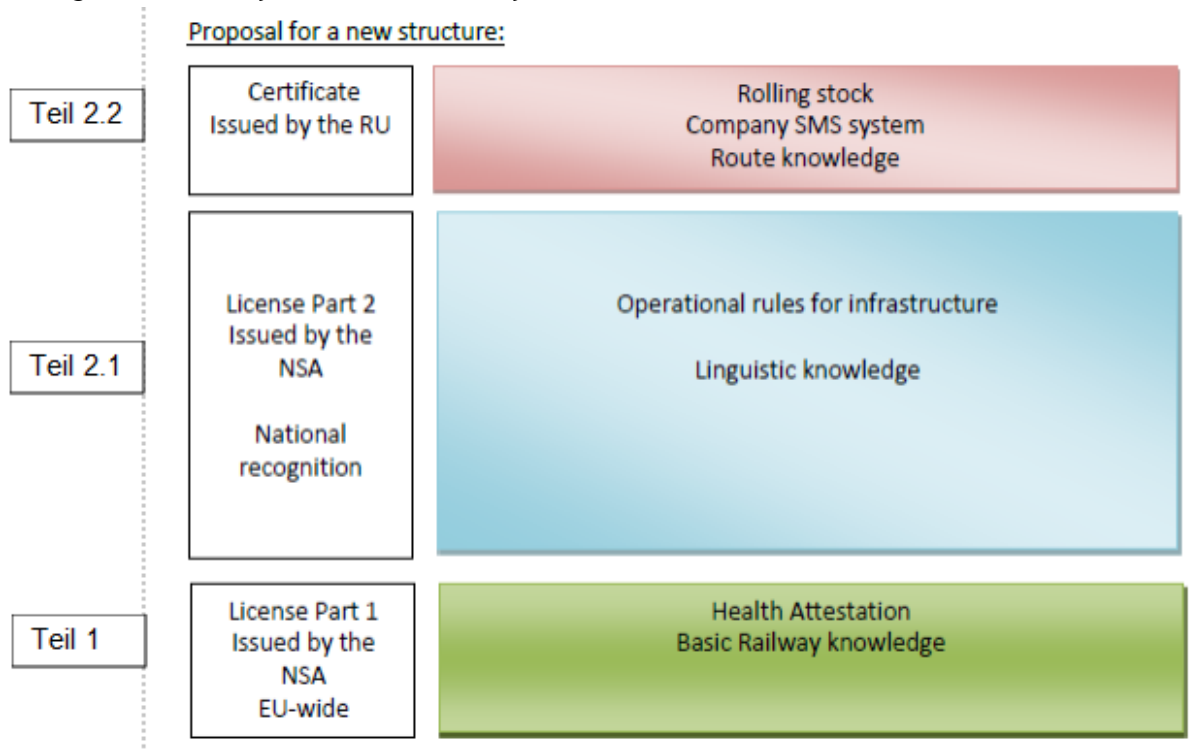


Figure 2

Common training programmes, examination schemes and training duration for licence part 1 (driving licence) should be developed at EU level.

For Part 2.1., the new modified form should regulate the necessary level of competence and the training programmes, examination schemes and training duration for the national infrastructure and for the route to be driven. This will be certified by the National Safety Authority and mutually recognised at national level.

Due to the continuing diversity of national regulations and the adaptations and innovations in the operating rules required by infrastructure managers and railway undertakings in the course of the year, a limit of a maximum of 2 Part 2.1 complementary certificates to be acquired should be set.

The training programmes relating to vehicles, the RU's SMS system and the route to be travelled (route knowledge) should be developed by the RUs. There should also be a mutual recognition system for this if the vehicles are identical and the routes travelled remain the same when the RU changes.

For vehicles that already have a European-wide authorisation by the European Railway Agency and no national differences exist, the type knowledge should also be registered in a uniform way and have its validity throughout Europe.

This structure will ensure a much more coherent level of competence for drivers at both EU and national level and will make it easier for NSAs to monitor and control RUs' CSM systems and largely prevent competition between RUs based on different training standards.

It would also strongly support the mobility of drivers between RUs, as most of the competence would be the same for all RUs within one country.

### **3. Category A and B certificates need to be clarified**

The current provision of Article 4(3) of Directive 2007/59/EC does not provide a reasonable justification for the different categories A and B. As it is now described in the Directive, drivers in both categories basically need the same level of competence, as both categories of drivers perform train movements on the national network.

The ETF proposal is:

Category A: Shunting operations within defined areas (shunting areas, sidings or closed working areas).

Category B: All train operations on the national network (passenger and freight).

The competence for category A will only include driving within defined areas and the corresponding training.

### **4. Medical / psychological examinations**

Annex II (Medical requirements), point 3.1 Frequency of regular examinations after the appointment of RL 2007/59EG, requires a physical ability examination after accidents with persons. ETF urge that this requirement is deleted.

**On the contrary, we demanded that railway undertakings be obliged to release operating staff and drivers from duty immediately after accidents for at least 72 hours, calculated from the time at which they no longer have any duties in connection with the accident. After accidents in which persons have been injured, the staff member shall in any case be offered emergency psychological care by internal or external staff trained for this purpose.**

Commission Regulation (EU) 2015/995 of 8 June 2015 amending Decision 2012/757/EU concerning the technical specification for interoperability relating to the subsystem "traffic operation and management" of the rail system within the European Union already states that, in addition to the periodic medical examination, an additional specific medical examination and/or psychological assessment is required if, inter alia, there is a sufficient reason to doubt the medical or psychological fitness of the person. According to the Regulation, this may be the case in particular after a dangerous irregularity or after an accident as a result of human error on the part of the person concerned. Traumatic experiences, such as witnessing death or injury, constitute highly stressful psychological situations or a psychological danger. This is especially true for safety-critical staff after accidents. The employees find themselves under enormous psychological strain after such incidents and find themselves in a wide variety of regulations (further performance of duties prohibited or desired).

To counteract these situations, a uniform approach for the rail sector is indispensable and represents a significant improvement in safety. The duration of 72 hours is based on the

International Statistical Classification of Diseases and Related Health Problems (ICD 10). According to ICD 10, an acute stress reaction is defined as a temporary disorder that develops in a mentally non-manifestly-disturbed person in response to an extraordinary physical or psychological stress. The symptoms range from "numbing", with some narrowing of consciousness and limited attention, an inability to process impulses and disorientation to a withdrawal from the environmental situation, and usually subside after two to three days at the latest.

Regarding further changes to medical and psychological examinations and requirements, the ETF supports the proposals arising from the report of the European Union Railway Agency Task Force.

#### **5. the existing B1 language level must be maintained and must not be lowered under any circumstances**

ETF opposes any proposal to lower the existing level of requirements for the necessary language skills (B1). Safe train operation on a country's network can only function if communication between drivers and traffic controllers works well, especially in disturbed/emergency situations.

Any inclusion of automatic translation aids and predefined language patterns can only be seen as a supplement, but the prescribed language level B1 must be maintained and demonstrated accordingly before issuing Part 2.1 in the proposal included (point 2). Safety and time-critical procedures, whether in the railway sector or, for example, in the operating room of a hospital, where people's lives are at stake, must be designed in such a way that smooth and immediate communication in a common language is possible.

Similarly, it must be ensured that the provisions of Recommendation 2011/766 are applied accordingly in all Member States and that the training institutions and examiners of the level of language and specific communication and terminology for railway operations and safety procedures are certified and recognised for this purpose.

#### **6. Working records must be implemented for efficient control of competences**

ETF strongly supports the development and introduction of a tool to measure working and driving times of train drivers. Such a system should also be introduced for all other safety-relevant activities on the train.

The above must go hand in hand with the implementation of an interface to monitor and keep track of drivers' working and driving time, so that, in the case of an infringement, the competent authorities could be notified and, in necessary, the continuation of the driving can be prohibited.

Currently, there is no adequate or efficient way to check the level of competence of individual train drivers through inspections. The format of the driver's licence and certificate are based on outdated paperwork and are difficult to update.



ETF would strongly recommend that the NSA's task of checking whether individual drivers have the right level of competence is carried out in a better way. Likewise, the change would mean the benefit of ending the current practice of drivers having to carry different paper documents even within their own company. This could be in the form of a European Train Driving Licence, according to our proposal (Part 1 and Parts 2.1 and 2.2), that should be combined in a smart card with an electronic chip containing the required data.

#### **7. Training costs require a clear regulation between the companies and must not be at the expense of the employees**

Article 24 of Directive 2007/59/EU provides that Member States must adopt rules to ensure that

*... „ investments made by a railway undertaking or infrastructure manager for the training of a driver do not unduly benefit another railway undertaking or infrastructure manager in the case where that driver voluntarily leaves the former for the latter railway undertaking or infrastructure manager.”*

With reference to Article 33 Directive 2007/59 EC (in particular under point f), compliance with this provision should also have been included in the report provided. Another practice has, instead, become established in dealing with training costs, which runs counter to the objective of increasing the mobility of train drivers.

Usually, railway undertakings require those employees who leave their company within a certain period of time to repay the training costs. Regardless of whether they move to another RU or leave the company for other reasons. This financial hurdle also has a negative impact on safety in railway operations, as it represents a barrier to voluntary reporting in case of loss of eligibility through no fault of the employee. The fact that the most varied handling of Art. 24 of Directive 2007/59/EC in the Member States and in the RUs also means an obstacle to the mobility of employees is also noted in the EU Commission's evaluation report SWD (2020) 137.

ETF therefore calls for Article 24 to be amended so that the responsibility is transferred more clearly to the member states to establish a system that provides for regulation between the companies and makes it impossible to circumvent it by transferring it to the workers.

#### **8. Remuneration: Irrespective of the mode of transport (source/destination/transit/passenger/freight), employees on the train are subject to the provisions of the Posting of Workers Directive from the moment they cross the border**

Regardless of the type of transport (origin/destination/transit/passenger transport/goods transport), employees on the train are subject to the provisions of the Posting of Workers Directive from the moment they cross the border to provide a service. Exceptions are not permitted.

#### **9. Controls and sanctions**

According to Article 29 of Directive 2007/59/EC, the competent authority may at any time make arrangements to check on board trains operating in its area of jurisdiction that the driver is able to produce the documents issued in accordance with Directive 2007/59/EC.

Due to the liberalisation of the railway sector, there has been an explosion of railway undertakings in some Member States in recent years. Such an inspection is no longer consistently possible in view of the previous staff resources in the competent authorities.

ETF demands a compulsory inclusion of staff in the competent national authority, which is constantly increasing with the licensing of new railway undertakings. In addition, a minimum control directive must be issued to ensure railway safety, the provision of social law and compliance with the regulations on conditions of use.

Analogous to road transport, a list of black sheep must be made available on the internet, listing railway undertakings that do not comply with the requirements. These companies are to be inspected by the competent authorities more frequently than the minimum inspection guideline. This measure will significantly improve the safety of the railway as a mode of transport.