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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Economic and social impact of the Agreement appended to Directive 2005/47/EC concluded on 27 January 2004 between the social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector

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1. INTRODUCTION

The EU policy on rail transport, whose share of the transport market is falling, is intended to revitalise it and make it more competitive within European transport policy. The EU has therefore adopted three 'railway packages' whose objectives include opening up the railway freight and passenger transport markets and encouraging interoperability between high-speed and conventional railway systems¹.

This policy must be supported by social measures intended, in particular, to protect the health and safety of mobile workers by avoiding competition based solely on differences in working conditions. On 27 January 2004, the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) therefore concluded an Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (hereinafter referred to as 'the Agreement'). This Agreement provides for minimum standards concerning working conditions, driving times, breaks and daily and weekly rest periods. Because these standards are more specific requirements under Article 14 of Directive 2003/88/EC concerning certain aspects of the organisation of working time, that Directive does not apply to these particular points. On 18 July 2005, the Council adopted Directive 2005/47/EC (hereinafter referred to as 'the Directive') making the Agreement binding in all the EU Member States.

The Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 27 July 2008, after consulting the social partners.

During the discussions concerning the Directive, particular attention was given to Clause 4 of the Agreement, according to which a daily rest period away from home must be followed by daily rest at home, with the option for the social partners of negotiating a second consecutive rest period away from home at railway company or national level. Some national delegations expressed fears that this provision would act as a brake on development in the sector in view of the length of certain routes and the time necessary for their operation. Pursuant to Clause 4 of the Agreement, the social partner organisations which signed the Agreement at European level have initiated negotiations on the number of consecutive rests away from home and compensation for rests away from home.

In order to monitor the impact of the Agreement and Clause 4 thereof on the development of the market, the Commission undertook in a declaration made at the time of the adoption of the Directive to submit a report to the Council, taking account of the economic and social impact of the Agreement on companies and workers and of the discussions between social partners on all the relevant topics, including Clause 4. The Commission has declared itself willing to take any measures necessitated by any new agreement between the social partners, by proposing an amendment to the Directive.

¹ Train interoperability means their ability to run on all parts of the international network.

To support this Communication, the Commission commissioned a study² from an independent expert, who extensively consulted five European organisations in this sector³, and an analysis based on models for anticipating the development of the railway sector. The expert also carried out six national case studies⁴, which made it possible to consult ten railway companies and six trade unions involved at a national level.

This Communication to the Council is intended to implement the undertaking given by the Commission⁵ when Directive 2005/47/EC was adopted. It endeavours to describe the rail transport market, its development, the social issues facing mobile workers and current practices in the sector. It will also attempt to assess the economic and social impact of the Agreement on the companies and mobile workers affected and report on the negotiations under way between the social partners, including with regard to Clause 4 of the Agreement. Finally, the Communication sets out proposals for policy options regarding Directive 2005/47/EC and the Agreement between the social partners.

2. DESCRIPTION OF THE MARKET SITUATION

A) Economic development

As at the date of the study carried out by the independent expert (2008), 62 railway companies were operating in the international railway sector in the EU, including 19 transporting passengers, 17 carrying rail freight and 23 engaged in both kinds of transport. Rail passenger and freight transport have highly specific features that distinguish them from one another.

Most passenger transport is carried out by state or former state operators. It is difficult for new private companies to enter this market because it is necessary to obtain a licence to transport passengers. The international passenger transport sector will not be liberalised until 2010. Newly-constructed high-speed lines between different European countries are frequently operated by joint ventures founded by the state operators of the relevant countries.

In 2005, cross-border passenger trains mainly operated between Paris, London, Brussels, Amsterdam and the Ruhr region. There were also a large number of cross-border railway routes in the Alps between Switzerland, Austria and northern Italy. The busiest railway links are forecast to remain the busiest between 2005 and 2020. However, journey times will be reduced thanks to the increased use of high-speed railway links. The number of mobile workers (drivers and inspectors) working in cross-border passenger transport amounted to 5 563 full-time-equivalent (FTE) workers in 2005 and is expected to increase by 8% by 2020.

There are more private companies operating in the cross-border rail freight transport market than in the passenger transport market. There are a large number of new entrants to this market, partly as a result of its liberalisation.

² 'Economic and social impact of the agreement concluded between social partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector', TNO Quality of Life, September 2008. The report is available at: http://ec.europa.eu/employment_social/labour_law/docs/2008/final_report_r08678_en.pdf

³ Community of European Railway and Infrastructure Companies (CER - Communauté européenne du rail et des compagnies d'infrastructure); European Transport Workers' Federation (ETF - Fédération européenne des travailleurs des transports); European Rail Infrastructure Managers (EIM); Autonome Lokomotivführer-Gewerkschaften Europa (ALE); European Rail Freight Association (ERFA - Association européenne du fret ferroviaire).

⁴ Germany, Netherlands, Hungary, Romania, United Kingdom and France.

⁵ PV/CONS 46, Addendum to draft minutes, 2676th meeting of the Council of the European Union held in Brussels on 18 July 2005.

In terms of the routes used, in 2005 most cross-border freight trains operated in the corridor comprising the Netherlands, northern Italy and Germany, central Europe and the Baltic States. Rail freight is forecast to intensify throughout Europe up to 2020, especially between the countries of north-western and central Europe. The number of drivers working in the European freight sector in 2005 is estimated at 4 677 FTE, and this figure is expected to increase by 200%, i.e. by over 14 000 FTE, by 2020. These figures may change as a result of the proportion of working time accounted for by driving or any productivity gains resulting from the development of the rail freight network, corridors and signalling systems.

B) Prospects for the labour market.

The total number of people working in the passenger and freight rail transport sector currently amounts to 10 240 FTE and is expected to rise by 98% between 2005 and 2020, resulting in a need for an additional 10 000 mobile workers. This could produce strains on the market, since the work in question requires special qualifications and a long period of training. Nor should it be forgotten that because of an imbalance in the age pyramid, many train drivers are expected to retire in the next ten years with no provision having been made for their replacement, even though traffic is expected to increase. This situation may require employers to work harder at making the occupation more attractive, in particular by improving working conditions.

3. HEALTH AND SAFETY ISSUES FOR MOBILE WORKERS

A) Health and safety issues

The working conditions of mobile workers (drivers and inspectors) in the cross-border rail transport sector may give rise to a number of occupational health and safety risks. This sector is characterised by long shifts, night work and irregular working hours. The risks incurred include disruption of the biological clock and social life, and many other physical and psychological illnesses described in the specialist literature⁶.

A large number of factors must be taken into account, in addition to driving and working time and rests, in order to organise working time in such a way as to avoid placing the health and safety of mobile workers at risk.

A number of factors directly relating to working time are covered by the Agreement between the social partners: length of shifts, weekly working time, break time during a shift, the amount and quality of sleep before a shift, day or night work, the starting time of a shift, working time regularity and predictability, the number of consecutive shifts and the way in which working time is organised.

Other features of working conditions include monotony of tasks, physical and psychological stress and environmental factors (noise, light, weather). It is also necessary to take account of workers' scope for organising their own working time (use of time and breaks). Finally, the characteristics of the workers themselves (age, sex, lifestyle, etc.) are a crucial factor.

The following occupational risks are most frequently cited in existing studies and the field quality survey (interviews with employers and trade unions)⁷: long driving times followed by long working hours; lack of breaks during and between shifts; unpredictable rostering; and working during the night, early in the morning and at weekends. In addition, the cross-border

⁶ See TNO Report, Annex 6 p. 49.

⁷ See TNO Report, Annex 8, p. 73 et seq.

transport sector in particular also has poor working conditions, severe time pressure to meet deadlines and monotony of tasks.

B) Summary of working time practices in rail transport companies

Interviews conducted at a national level suggest that the driving time and rest time practices of companies in the European railway sector already comply with the main provisions of the Agreement.

The national collective rules and agreements in force before the Agreement was concluded in some cases provide better protection than the European Agreement. This conclusion will, of course, not be confirmed or disproven until the Commission has carried out a detailed analysis of the way in which Directive 2005/47 is implemented in the Member States. Since the deadline for implementation was 27 July 2008, assessment of implementation is already under way.

The information obtained from railway companies concerning their actual working time arrangements has revealed an average working week of between 35 and 40 hours for both passenger and freight transport. The Agreement limits driving time to nine hours per day shift and eight hours per night shift. The average length of shifts is between 8 and 10 hours of working time and between 6.5 and 10 hours of driving time. Most railway companies observe the rules concerning minimum average daily rest (eight out of ten respondents).

Five out of ten companies think that it is not always possible to observe the rule obliging them to grant workers a daily rest at home after a daily rest away from home (Clause 4 of the European Agreement), one company considering it to be impossible. Companies follow three different strategies in order to comply with this rule:

- transporting staff home after a work period;
- reorganising rosters to ensure that staff always finish shifts at their place of residence;
- allocating staff to different regions or countries (in order to ensure shorter journeys for workers). It should be noted that this solution may also be applied by necessity, because drivers do not have all the authorisations needed to work in all the countries covered by the network.

The observance of this part of the Agreement seems to be more difficult for freight transport, which is less regular and more vulnerable to the unexpected than passenger transport, and does not have priority, which may cause numerous delays.

The companies seem to provide sufficient breaks during shifts to comply with Clause 5. However, workers do not always seem able to take their breaks at the exact time necessary or to leave their workstations to rest.

4. IMPACT OF THE AGREEMENT

A) Social impact of the Agreement

The social impact of the Agreement first of all depends on its effect on the quality of work (intrinsic job quality) and health and safety at work, which are the two main areas targeted. Other aspects, such as the balance between work and family life, equal opportunities and the creation of employment in the sector, must also be examined.

Since the current rules already seem to comply with the provisions of the Agreement, its short-term social impact should be limited. Under the Agreement, maximum driving time is limited to nine hours for a daytime shift, eight hours for a night shift and 80 hours over a two-

week period. There is no specific limit on weekly working time, however. It is necessary to ensure that Member States do not tend to use minimum driving time rules as a basis for implementation of the Agreement, since this would lengthen the weekly working time, which is not limited. The non-regression clause (Clause 9 of the Agreement and Article 2(2) of the Directive) should prevent such a ‘perverse effect’ in principle. The limits imposed by the Agreement on night shifts and the minimum break periods to be observed should be beneficial for mobile workers.

Opinions differ concerning the social impact of Clause 4 and the obligation for a daily rest away from home to be followed by a daily rest at home. This provision of the Agreement is clearly beneficial in terms of the balance between work and family life. However, the benefit in terms of health and safety is less clear, since the literature on this subject seems to indicate that the quality of rest is more important than where it is taken: Even at home, workers may experience problems concerning the quality of rest if the environment is insufficiently quiet. Some trade unions also would like the Agreement to be more specific about the quality of the place of rest. Employees would seem to want to be able to choose the compensation offered (payment, additional days of leave) if the number of consecutive rest days away from home is increased. This is also the wish of most of the responding companies. In this particular case, the Agreement limits the possible ways of responding to any requirement for employment relationships to be more diverse and tailored to individual needs. Finally, there is a risk that mobile workers may be allocated to fewer different routes because of the need for them not to be far from home for a long period.

Increasing the scope for employees to organise their own working time may reduce the impact of working time on the balance between work and family life. Social dialogue within companies and taking account of personal wishes regarding rostering may be beneficial in this respect.

Half of the responding trade unions and company representatives seem to consider the Agreement to have a positive impact on both the quality of work and the health and safety of mobile workers. Most of the others do not think that it has any impact. Most of the responding trade unions do not consider the Agreement to have any particular impact on the balance between work and family life.

Most of the respondents consider that it will have a positive impact or no impact at all on the creation of employment in the railway sector. Some companies think that they will need to recruit more staff following implementation of the Agreement. The need for companies to recruit more staff and/or raise productivity would appear to be due to the growth expected in the sector, however.

B) Economic impact of the Agreement

Growth is expected in the rail freight sector throughout Europe in the period up to 2020. It is therefore interesting to look at whether the Agreement might have an impact on this development, in particular on operating costs, corporate management and innovation.

According to an estimate based on an economic projection model specialising in the railway sector, human resources account for 8.5% of the total operating costs of a cross-border rail freight business. Other more significant expenses are motive power, wagons, infrastructure, energy, administration and insurance. Because the cost of labour is relatively small in comparison with the other operating costs, the Agreement seems unlikely to have any future impact on the operation of routes.

The sector is experiencing a number of trends affecting the development of routes, such as new technologies, increased infrastructural capacity, greater interoperability, etc. Fixing

driving time limits per person is only a minor aspect of the sector's overall development. It is important to note that a mobile worker must have the necessary authorisations to provide a cross-border interoperability service. Furthermore, the fact that the rules on driving time and break time already seem to be compliant with the provisions of the Directive at a national level or provide better protection also makes it likely that the economic impact of the Agreement will be limited.

The various organisations in the sector take a generally positive view of the overall economic impact of the Agreement. National stakeholders approve of the fact that the Agreement defines a common framework and clear rules for all the parties in question.

The interviews conducted with employers and trade unions indicate that the rule for rest away from home to be followed by rest at home (Clause 4) creates more problems for freight transport companies. Five out of six of the responding freight transport companies are still unable to take their staff home after a rest away from home. Companies sometimes organise rosters by requiring drivers to work for a whole week and then letting them return home only at the weekend. It is difficult to determine the extent to which such cases are representative, however. Freight transport companies mention periods away from home of between three days and two or three weeks. It should be noted, however, that no trade union mentions being aware of periods away from home in excess of two days.

These different practices will no longer be permitted when the Agreement has been implemented. Some railway companies will need to change their staff management in order to be able to continue to operate on certain routes. There will certainly be additional costs as a result of the recruitment of new staff and improvement of the quality of rest facilities along routes, unless they are offset by productivity gains. Very few companies have entered into negotiations, at company level, for a second consecutive day of rest away from home as permitted by the Agreement. They appear to be waiting for clearer European rules to make the way in which work is organised more predictable.

Companies have an interest in developing new future recruitment strategies in collaboration with their staff in order to determine measures to improve the quality of employment in an increasingly strained labour market.

5. OUTCOME OF NEGOTIATIONS

Under Clause 4 of the Agreement, the social partners at European level have initiated negotiations on the number of consecutive rests away from home and on compensation for rests away from home.

To improve representation of the interests of private freight companies during negotiation of the Agreement, the CER has decided to include a representative from the European Rail Freight Association (ERFA) in the CER delegation.

The negotiations are still under way. One of the problems raised by the social partners is the lack of information concerning interoperable cross-border transport operations. The signatories had agreed to evaluate the provisions of the Agreement two years after it had been signed (Clause 11 of the Agreement) in the light of initial experience in developing interoperable cross-border transport, but the evaluation has not yet been completed.

6. STATUS OF TRANSPOSITION OF THE DIRECTIVE IN THE MEMBER STATES

Article 5 of the Directive requires the Member States to bring into force the national laws, regulations and administrative provisions necessary to comply with the Directive by 27 July

2008, after having consulted the social partners. Alternatively, they may ensure that the social partners have adopted the necessary provisions in an Agreement by that date. The Member States must immediately forward the text of such provisions to the Commission.

The Commission is currently monitoring implementation of the Directive. At this stage, it is checking whether the implementing provisions have been forwarded by the Member States as required and whether full transposition into national law has been achieved. To date, eight Member States (BU, RO, DK, NL, PL, SI, SK and SE) have fully transposed the Directive and sent the Commission their national implementing measures. Thirteen Member States (BE, DE, EE, IE, EL, ES, FR, IT, LT, LV, HU, PT and FI) have not yet sent the Commission their national implementing measures, and four Member States (CZ, LU, AT and UK) have only partly and to an insufficient extent communicated their measures to implement the Directive. Under Article 226 of the EC Treaty, the Commission has sent letters of formal notice to the 17 Member States in question.

7. CONCLUSION

The Commission is closely monitoring developments in the rail transport market and in particular the negotiations currently under way between the social partners in order to adapt the rest conditions of workers to the developing needs of this sector while at the same time ensuring a high level of health and safety for workers.

To support this development, the Commission will:

- encourage the social partners to continue with their negotiations on Clause 4 and to achieve a well-balanced result that reflects companies' need for flexibility in the running of operations, particularly in the freight market, and the need to protect the health and safety of mobile workers and respect the balance between work and private life;
- draw the attention of the social partners to the importance of taking an integrated approach which incorporates all aspects of significance to the health and safety of mobile workers, including the quality of rest away from home, and which can encourage workers to be more involved and more independent in the organisation of their working time, whether at collective or individual level;
- carefully monitor how the Member States implement the European Agreement under national law. Special attention must be given to monitoring the length of shifts and the length of the working week;
- take care to encourage an improvement in the conditions and quality of work for mobile workers in the rail sector, which can help to preserve the appeal of the profession in a labour market context which is likely to be strained in the coming years.