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European Transport Workers' Federation  
Fédération Européenne des Travailleurs des Transports  
Europäische Transportarbeiter-Föderation  
Federación Europea de los Trabajadores del Transporte

## **ETF RESOLUTION on the**

### **4<sup>th</sup> RAILWAY PACKAGE**

#### **NO LIBERALISATION OF DOMESTIC RAIL PASSENGER SERVICES! NO FRAGMENTATION OF THE RAIL COMPANIES!**

#### **FOR QUALITY PUBLIC PASSENGER TRANSPORT! FOR INTEGRATED COMPANIES!**

The European Transport Workers' Federation:

- Rejects any proposal to interfere in Member State competence to organise domestic rail passenger transport and to impose liberalisation and competition on all MS by EU law.
- Demands not to modify the Regulation (EC) No. 1370/2007 on public passenger transport rail and road and to maintain the principle of "freedom of choice" of the competent authorities on how to organise public services (direct award / tendering).
- With reference to Article 14 and Protocol 26 of the Treaty, calls for a stop of EU pressure to liberalise public services including public transport services, which are a national responsibility, and condemns the continuing absence of a full and comprehensive evaluation of the impact of the liberalisation of public services.
- Underlines that privatization and competition in rail passenger transport stimulates cherry picking on profitable lines and/or day times to the detriment of an overall network offer for the passengers, disregarding the principles of accessibility and universality of public transport services.
- Believes that the costs associated with fragmentation and the need to pay shareholder dividends increases costs for the taxpayer and fare payer.
- Strongly opposes separation between infrastructure managers and railway operators.
- Is convinced that there cannot be one single model for the railways all over Europe. The transport-geographical conditions, the tasks and the financial possibilities are different from Member State to Member State so that a unique model could create severe damages in some countries.
- Insists on the fact that creating two administrative structures will have enormous financial costs and positive synergies from long term investments in research and



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innovation that take into account both, the state of the infrastructure and the rolling stock, will be lost.

- The ETF is as well deeply concerned of the consequences for safety since the close coordination and communication between rail and train (track and wheel) will disappear and every actor within the system will try to minimize its responsibilities in the case of accidents.

### **The social aspects**

- Insists in a better protection of workers in the case of market opening and competitive tendering. It must be compulsory for the Member States and/or the competent authority to create a social level playing field for all competitors at a high level of social conditions (“publication of tender specifications” and the principle of a “social clause”) and to protect workers’ employment and all acquired rights, working and social conditions in the case of change of operator (“transfer of staff”).
- Stresses on the fact that competition for a contract is taking place on the basis of the lowest price, not on the basis of quality, in particular when there are no compulsory quality and social standards. This encourages underbidding and leads to social dumping.
- Strongly denounces the continuous disregard of the social consequences of market opening such as reduction of number of employees, increase of outsourcing and sub-contracting of services, increase of atypical and precarious employment, more use of agency workers, intensification of work load and work pressure, increase of flexible working hours, split work shifts, overtime, etc...
- Insists on the importance of opportunities for workers to transfer between jobs in different companies of an integrated rail company in order allow a socially responsible restructuring and that gives social protection for workers in specific railway professions who depend on medical criteria such as train divers.
- Denounces the lack of attention for the consequences that liberalisation can have on safety and security because of the cost cutting pressure on safety-related areas such as the maintenance, technical checks, duration of training, number of personnel on board of trains, on stations, maintenance, control, clerical and other railway jobs needed for operating at the highest level of safety.

**THEREFORE THE ETF CALLS UPON THE EUROPEAN PARLIAMENT AND THE COUNCIL OF TRANSPORT MINISTERS TO REJECT THE PROPOSALS ON LIBERALISATION AND SEPARATION (GOVERNANCE) !**

## **SAFETY FIRST - THE EUROPEAN RAILWAY AGENCY IS NOT FIT TO BE THE PROMOTER AND DEFENDER OF RAILWAY SAFETY IN EUROPE**

*The ETF only consider supporting a greater role for ERA regarding a European wide authorisation for placing vehicles into the market if it is responsible solely for safety and not for 'competition', and insists on the highest health and safety at work standards.*

The European Transport Workers' Federation:

- Insists that the ERA's primary role must be the one of a watchdog for railway safety in the European Railway Area. It must not be an agent sacrificing safety to competitiveness.
- Firmly believes that harmonisation of safety standards must never downgrade the national standards. Safety is an asset of the rail sector.
- Is critical to the introduction of a single safety certificate
- Stresses that certification for countries with track gauges of 1520mm must remain a competence of national safety authorities.
- Asks for harmonised binding rules at EU level regarding the intervals for maintenance of freight rolling stock, the certification of that regular maintenance, the monitoring, check and sanctions based on the most severe/strict (national) standards and upgraded on more recent technologies.
- Believes that the Agency should firmly support of a "just culture" that encourages the personnel to report dangers, incidents and accidents without risking being blamed (no-blame-policy).
- Believes that the ERA competences on monitoring and control of respect of safety rules must be strengthened but requires a more neutral role for the Agency, being independent from the European Commission.
- Is convinced that technical and operational interoperability is an important element to improve the performance of European railways. Nevertheless interoperability should never be pursued to the detriment of safety.
- Stresses that each individual country must be allowed to maintain or establish higher national health and safety standards for the working environment onboard the rolling stock than the standards set by the ERA.
- Demands that the ERA establishes a horizontal working group on health and safety at work (OHS) with equal composition of trade union OHS experts and management OHS experts.
- Insists that ERA gets a mandate for proposing regular checks and enforcement rules for driving and rest time for train drivers including defining the technical features for a recording device and including proposals for a system of sanctions in case of non-

compliance with the driving and rest time rules in particular for mobile personnel in cross-border interoperability services (Directive 2005/47/EC)

- Insists on a European certification of on-board personnel (conductors) similar to the locomotive drivers' certification.
- Is of the opinion that for all professional groups with safety relevance/safety tasks within the railway sector, a harmonized EU definition of tasks, competences and training needs at a high level is necessary.
- Welcomes the integration of workers' representatives in the ERA working parties but denounces however the poor recognition of the opinion of the ETF representatives. Ask for full financial compensation of the work of workers' representatives in the working groups.
- Strongly rejects the proposal for the ERA to have a de-facto veto on new national safety rules.
- Requests that the ERA promotes the creation of national rail safety committees composed equally of representatives of companies and workers to regularly exchange views and opinions on incidents and accidents on national networks.

**THE ETF ASKS THE EUROPEAN PARLIAMENT AND THE COUNCIL OF TRANSPORT MINISTERS TO ANALYSE THE ERA REGULATION, SAFETY AND INTEROPERABILITY DIRECTIVES UNDER THESE ASPECTS AND AMEND THE TEXTS ACCORDINGLY!**

Brussels, 3 May 2013



The ETF notes:

- A proper and non-ideological evaluation of the impact of EU railway policy including the social effects is still missing, like it is missing for the other liberalized public service network industries;
- The total restructuring of the sector (from a self-regulated to an externally regulated sector) and the new structures introduced with the first three package (rail regulators, national safety authorities, independent accident investigation bodies, notified bodies, infrastructure allocation and charging bodies) are not fully functioning yet;
- There cannot be one single model for the railways all over Europe. The transport-geographical conditions, the tasks and the financial possibilities are different from Member State to Member State so that a unique model could create severe damages in some Member States. And furthermore, the principle of subsidiarity as set out in the Treaty must be respected.

The ETF criticizes that the Commission continues with its liberalization ideology, now focusing on rail public services, while other elements proved being more relevant:

- A clear and decisive (national) policy, which gives priority to the development of the railway system as the sustainable transport system of the future;
- A resulting infrastructure development policy (including railway stations) with a sustainable financing;
- A clear commitment for rail public transport services with the allocation of sufficient financial means in order to maintain the level of public transport offers and improve the quality of the services;
- Full internalization of all external costs for all transport modes, notwithstanding the possibility of politically decided inequalities in favor of the railway system in order to reduce greenhouse gas emissions ;
- Interoperability of the railway system across Europe, which could be easier realized within a system with few actors than with a multitude of actors.

Being aware of the statistic based argumentation; the ETF is however concerned about the effects on railway safety

- of continuous liberalization and thus cost cutting pressure on the rail system; this inevitably leads to savings in safety-related areas such as the reduction of maintenance intervals, technical checks, duration of training, number of personnel on board of trains, etc.;
- the lack of proper functioning structures in a number of Member States (National Safety Authorities, implementation of new safety legislation);
- missing rules and structures as well as technical conditions for the registration for control and enforcement of relevant rules like driving and rest time limitations, which have a direct effect on the safety level;
- on the other hand a multitude of actors with an accelerating number of interfaces and thus increasing potential for communication weaknesses and failures;
- Outsourcing, temporary/short term work contracts and the growing number of temporary work agencies within the sector creates unclear lines of responsibilities regarding safety matters;
- No rules and structures for monitoring and enforcement of relevant technical requirements such as minimum intervals for maintenance and minimum inspections of rolling stock in circulation.

**Accordingly, and as recalled by the ETUC in its resolutions “A social compact for Europe” and “EU public procurement framework”, the ETF calls for a stop of EU pressure to liberalise public services, which are a national responsibility. We condemn the continuing absence of a full and comprehensive evaluation of the impact. The ETF demands a stop of unbundling integrated rail companies, leaving both a national responsibility. ETF suggests a JOINT CAMPAIGN of all players concerned in order to safeguard the rail system and to meet the demands expressed by the collectivity. The ETF will organise trade union actions when necessary.**

On the Commission’s project the ETF takes the following positions:

## **2) LIBERALISATION OF DOMESTIC RAIL PASSENGER TRANSPORT**

The Commission currently checks:

- Amendment of Regulation (EC) n. 1370/2007 (PSO Regulation) with the objective to impose competitive tendering for the entire public rail passenger services (competition for the track);
- Amendment of the just adopted Recast Directive and opening of the market for so called self-financed or non-PSO passenger services (open access competition, competition on the track).

### **a) Compulsory competitive tendering for railway passenger services (competition for the track)**

#### **Rail passenger transport and public service obligations (PSO)**

Rail passenger transport as part of public transport is a public service (Service of General Interests) that plays an essential role in providing European citizens with mobility. It plays an important role for the inclusion of people and for social cohesion in Europe. As a public service it must be accessible and affordable for every European citizen. And European citizens have the right for quality public transport services, which are performed under fair conditions for workers.

National rail passenger transport is the only segment in European rail sector that is not subject to EU imposed liberalisation. It is the only segment that remains subject of the political decision of national and regional governments.

Public rail passenger transport is governed by Regulation (EC) n. 1370/2007 on public passenger transport by rail and road. This Regulation was adopted in 2007 after 10 years of difficult discussion and compromise finding and after three different Commission proposals and came into force in 2009. The transition period ends in 2019 and the Regulation requires an mid-term report from the Member States on the implementation and on experiences, which is due in 2014.

The ETF is of the opinion that the current PSO Regulation is a balanced compromise, that should not be unilaterally modified and compromised by proposing unnecessary and unacceptable amendments for the rail sector, even before the MSs mid-term reports and return of experiences are required.

The Regulation ensures the **“freedom of choice”** on how to organise public services for the national, regional and local level. The competent authorities can decide on whether to directly award public service contracts or whether to go for competitive tendering.

This “freedom of choice” has been confirmed by the Treaty. Article 14 and Protocol no. 26 of the Lisbon Treaty on ‘Services of general interest” clearly states the importance of such services and underlines the essential role of the national, regional and local level to provide them:

**Article 1 of Protocol no 26**

*“The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:*

- *the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;*
- *the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;*
- *a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.”*

Additionally, Article 36 of the Charter of Fundamental Rights of the European Union, part of the Lisbon Treaty, underlines the role of SGEIs for social and territorial cohesion in Europe.

**In this sense the ETF rejects any proposal to interfere in Member State competences to organise rail passenger transport according to their decision and to impose liberalisation and competition by EU law. The ETF demands not to modify the Regulation (EC) n. 1370/2007 and to maintain the principle of “freedom of choice” on how to organise public services.**

The ETF underlines that it is no coincidence that the Swiss Federal Railways (SBB) developed without competitive tendering as the best railway system in the world. In Swiss, high quality is achieved not through competition, but through proper and long-term transport policy decisions, support by the population, competent management and motivated staff.

On the other hand there is clear evidence of failures of a competitive tendering (or franchising) system like for example in UK:

- Bankruptcy of the East Coast Main Line operator in 2009, which required that the Department of Transport took the operations back under public control and as consequence huge costs for the tax payers;
- Stop of the UK West Coast Line tender procedure due to mistake of the competent authority (Department for Transport) in October 2012, which will cost the British tax payers, estimated 300 million Pounds;
- The fragmented British rail franchising system is three times more expensive than the railways at the European continent and costs the tax payers much more than before liberalization and privatisation.

**Competitive tendering and social dumping** By experience the competition for a contract is taking place on the basis of the lowest price, not on the basis of quality, in particular when there are no compulsory quality and social standards. Often the public authorities don’t have the expertise, neither to manage the competitive tendering nor to check if the invited offers are feasible (see UK West Coast Line disaster). They can’t control if the stipulation of the contracts are observed. This encourages underbidding and the disrespect of awarding criteria.



In order to make a cheaper offer, competitors save to a large extent in personnel costs: lower wages, longer working hours, less number of personnel. This produces a downwards trend not only in the new private operator but also in the entire sector. Contrary to the objectives of the European Union, no quality employment will be created; people will not stay longer in employment, but:

- **Competitive tendering based on a lowest cost principle stimulates social dumping within the sector.**

#### **b) Open access completion (on the track)**

Open access competition stimulates **cherry picking** on profitable lines and/or profitable day times. At the same time it reduces the overall possibilities of the incumbent company to cross finance services on less profitable lines through revenues from profitable lines. A combined package of profitable and not-profitable routes cannot be offered any more. We can assume that the cost saving strategy of the incumbent is closing down lines, thus less offer of public passenger transport for the public, thus reduction of employment.

If the public authorities decide, to keep the level of services offered to the customers also on non or less profitable lines or off-rush-hour-times, they have to replace such former self-financed services by PSO services. The consequence is more compensation by the public budget for rail passenger services, thus more public financing than before.

On the other hand one has to consider that private operators need to generate a profit margin, which is mostly unbearable to the viability of the railways. This is true in open access competition and in competitive tendering. It is a political decision to open up the markets for open access competition and consequently for private profit making on the one hand and to make the public pay more for keeping upright the same level of service offer also on unprofitable lines through increasing public spending for public service obligations.

- **The ETF decisively rejects such a transfer of public money to private pockets of shareholders.**

#### **c) Impact on the offer of rail passenger services, quality of passenger services, prices and public budgets**

The ETF notes that the expectations usually promised with market opening, such as higher efficiency, lower costs (lower prices for consumers; lower costs for public authorities) and better quality of services, are not confirmed by reality.

Reality of liberalization of public services including rail passenger services shows:

- Competition based on a deterioration of quality; the users pay;
- Private oligopolies vs public monopolies; tendency of private companies to lower investments for the sake of short-term profit;
- Private-public-partnerships: increase the costs of public services for the tax payers for the profit of the private sector;
- Fragmentation of services (higher costs for related services);
- New price policies (e.g. high prices for flexible tickets; lower prices for tickets bought long hand before departure) and not lower prices for the users;
- Social dumping vs high quality employment;

Just some examples of the impact on services and public finances:

- Cherry picking and potential closing down of services;
- Lower quality of services due to cost saving measures in personnel: eg. impact on passengers' security and feeling of insecurity;
- Risks that companies run into bankruptcy because of underbidding in the tendering process: higher costs for the public;
- Risks due to lack of resources and experiences of competent authorities with tender processes and goods contracts: higher costs; risks for service reliability;
- Higher transaction costs e.g. to provide one recognized ticket for all companies within a rail network;
- Profit margins required by private shareholders, lower re-investment;
- Less renewal of the rolling stocks;
- Risk of destruction (phasing out) of the local rail industry versus a strengthening of few companies creating a sort of European monopoly on the production of technology for infrastructure (rail, signaling, command and control), rolling stock (traction and mechanics, etc) and telecommunication.

#### **d) Social consequences of market opening**

Competition through competitive tendering is characterized by a limitation of the contract duration. This discourages a long term human resource policy, discourages investment in training and health and safety at work, discourages the development of a human resource policy promoting women employment, etc. It encourages short sighted human resource policies and increases insecurity among workers linked to the contract duration with negative effect on motivation and increased psychosocial risks.

The introduction of competition forces railway companies to cost cutting measures to the detriment of service quality. By experience these cost cutting measures are taking place to a large extent on the basis of personnel costs. The consequences are:

- Reduction of number of employees (e.g. on-board personnel in trains, railway station staff);
- Outsourcing and sub-contracting of services (such as cleaning services, ticket selling services, security personnel, infrastructure and rolling stock maintenance);
- Increase of atypical and precarious employment (e.g. in the out-sourced services), more use of agency workers, more fix-term contracts (e.g. when related to tendered services) and even false self-employment (see first tendencies within the locomotive drivers' profession);
- Intensification of work load and work pressure, increase of flexible working hours, split work shifts, overtime;
- A two-tier work force in the same company, different treatment and different conditions for new and old staff in incumbent companies;
- much lower conditions for staff working in subsidiaries of the incumbent company or in outsourced services;
- Emergence of two-tier work force in the sector;
- Less investment in training and health and safety at work (e.g. due to the limited duration of public service contracts);

- Increase in psychosocial risks due to work intensity, restructuring and uncertainty and thus higher health related costs for – in particular the incumbent - companies;
- Less apprentices employed in the incumbent companies and thus less jobs for young workers; new-comers often do not employ apprentices at all;
- Lowering costs in maintenance through longer intervals, less technical inspections with negative effect on employment in this segment;
- Increase in non-compliance with working/driving/rest time rules for safety relevant personnel;

As regards the effect of open access competition on employment and quality of working conditions ETF was informed that 'open access' competitors on profitable lines reduce staff costs by for example redefining the tasks of staff and using different collective agreements – if any – than the railway collective agreement. For example: using the collective agreement for catering personnel in Austria for on-board personnel instead of the railway collective agreement. In Italy the new rail operator NTV applies the collective agreement for commerce workers to the catering personnel on board of the trains while the recently signed collective agreement "Mobility and rail activities" includes auxiliary workers in the same collective bargaining agreement as railway staff. This is direct social dumping.

A negative effect of competition is for example a de-qualification of the on-board personnel (conductors, train accompanying personnel): The operational responsibilities including operational safety tasks of the on board personnel are eliminated, and the staff is used only as commercial, catering and cleaning staff.

It has as well a negative effect on passengers' safety: The on-board personnel is not at all or less trained in operational safety. Such de-qualified personnel has less competences to ensure passenger's safety in the case of accidents, incidents or degraded situations.

We denounce as well the observed reduction of number of personnel on board of trains for cost saving reasons, thus less service for the customer. Additionally competition promotes outsourcing and sub-contracting of services such as cleaning, catering, chouchette attending, again a social dumping measure with less qualified jobs, less job-security, increase in precarious work contracts, less pay and deterioration of working conditions.

Passenger trains should always be accompanied by qualified conductors. That is a concern of the unions, as by "conductor free" rail passenger services and occasional inspections escalations and attacks on train attendants is virtually inevitable. It should also be in the interests of transport operators and passengers, as this reduces vandalism and the subjective feeling of safety of the passengers is increased. This is of great importance especially in emergency situations (evacuation of trains, etc.).

From the ETF point of view the liberalization of rail passenger services stimulates developments, which are in contradiction to a number of other EU policy goals:

- Employment reduction – reduced employment rate (while the EU objective is an increase to 75% by 2020);
- Reduction of labour costs – reduces take home pay and increases income insecurity;
- Growing intensity and insecurity of work – erodes quality of work;
- Worsening working conditions and early retirement – contradicts goal to keep people longer in employment;

- Reductions of vocational education and training – contradicts employability goal.

#### **e) ETF demands compulsory social protection**

ETF has the position that competition on the basis of personnel costs must be excluded. This is social dumping. If an authority decides in favor of competitive tendering, this competition must take place on the basis of the quality level offered to the customers. **Socially responsible procurement** means a level playing field for all participants that must be guaranteed prior to market opening.

Saying this, two stages have to be considered:

##### **Publication of the tender specifications**

It must be ensured that all interested parties participate at the same level playing field:

There should be compulsory sector collective agreements to be respected by all competitors participating in a tender competition. This collective agreement must be based on good standards, which guarantee quality employment and thus quality services for the passengers.

Important is the collective agreement relevant in the place where the service is provided (e.g. ILO Convention 94, PSO Regulation 1370/2007 Recital 17). It is not acceptable that a competitor can choose to apply any collective agreement of his convenience or no collective agreement at all.

Sub-contracting and out-sourcing shall be limited. In the case of sub-contracting and out-sourcing the same conditions have to apply to the staff employed by the sub-contractor and the responsibility must remain with the main contractor.

No bypassing of labor laws and collective agreements by switching to self-employed or other less or not at all protected workers. Minimum wage and working time arrangements must relate to all forms of employment.

Social criteria such as staffing (e.g. number and level of qualification of staff on board of trains for information, comfort, security and safety reasons, etc.) shall be imposed by the tendering competent authority in order to ensure quality of services.

Investment in training and health and safety at work have to be imposed since the limited period of time of the contracts usually result in a lack of investment in mid and long term measures.

##### **In the case of change of operator: Safeguarding employees' rights in the event of transfer of staff**

In the case of competitive tendering security of employment, contractual rights and working conditions have to be guaranteed (the employees concerned have families with children; a wife, husband or partner in employment in the same region, own houses or apartments to be paid etc...).

There must be a compulsory takeover of staff from the previous operator at the same conditions without temporary limits; all acquired rights must be maintained: from the sector collective agreement (if available), the company collective agreement as well as from the work contract. All details of the employee's contractual rights have to be guaranteed, not only basic rights covered by a collective labour agreement (including allowances, age-based pay, etc). Only then the vicious circle of ruinous competition, competitive tendering at the expenses of personnel costs and the employees, can be broken.

Employees have to accept voluntarily to be taken on by new operators. This is relevant in particular in the relation between the incumbent and other operators. If the employee decides to remain with the previous operator, geographical mobility is not excluded. In no way a decision not to move to the new operator must be considered as a resignation from the job or must lead to redundancy. This is the only way to ensure that all competitors have to calculate with the same personnel costs.

The employment security and contractual rights guarantee is preferably given by national legislation and shall not depend on the good will of a competent authority.

### **3) FURTHER SEPARATION OF INFRASTRUCTURE MANAGEMENT AND OPERATIONS ("UNBUNDLING")**

The current EU legislation requires separation of accounting of infrastructure managers and railway operators (and passenger and freight operations) but does not require a legal separation. EU legislation permits integrated companies under the condition of separation of so-called essential functions, which guarantees non-discriminatory access for all. In a number of countries - which railways systems are considered among the most successful ones – the railway companies are integrated companies.

The European Commission wants to impose complete separation of infrastructure and operation in the framework of its liberalisation policy of the railway sector.

The European Transport Workers' Federation (ETF) doesn't want a model to be imposed in all Member States because there is no proof that the unbundling would improve the situation of European railways.

On the contrary, the ETF opposes the separation between infrastructure manager and railway operator because, if this happens:

- It will be more difficult to guarantee safety since the close coordination between rail and train (track and wheel) will disappear and every company will try to minimise its responsibilities in case of accidents;
- An integrated company is generally better suited to quickly implement the necessary innovations and to take responsibility for the investment risk. The existence of several leaders runs the risk of slowing down the development of the railway system. Investments (especially the long-term ones) in research and innovation have to be done taking into account both the state of the infrastructure and the rolling stock and their converging developments. With unbundling in place this necessary synergy is lost;
- Establishing new separated companies has a financial cost in creating the separate administrative structures and in organising the coordination and communication among the different companies;
- Communication and transparency, especially with passengers, will be more difficult and in case of delays, accidents and complaints, it will be problematic to identify which company bears the responsibility;
- The intra-group labour market, thus the possibility of redeployment of some workers (geographical mobility; workers like drivers who cannot practise their job anymore due to lost physical aptitude), would be more complicated or impossible with obvious

consequences in terms of redundancies and possible loss of skilled and experienced workers.

- An integrated railway guarantees for safety and quality from a single source. The railway system is a technologically sophisticated system, which - regardless of the organizational solution - in any case requires intensive cooperation. Safety is guaranteed to a particularly great extent, if an integrated company has overall responsibility for the system wheel / track. With complete separation, in contrast, new interfaces with new risks would develop.

There is no correlation between the degree of fragmentation of the corporate company, the level of market shares and/or the satisfaction of customers. More railways (market share) and better railways (customer satisfaction) is taking place there, where it is wanted by politics and the necessary financial means are provided and not there, where railways have been separated or liberalized. The most successful railways in passenger transport (CH) and freight transport (USA) are all integrated systems.

#### **4) FUTURE TASKS OF THE EUROPEAN RAILWAY AGENCY**

##### **a) INTRODUCTION**

The ETF supported the establishment of the European Railway Agency as a safety agency in order to maintain and improve railway safety in Europe, in particular within the single European railway area. Today, ERA has three departments dealing with interoperability issues (Interoperability, cross-acceptance of rolling stock, ERTMS) and only one safety department. The European Railway Agency has a clear focus on promoting technical interoperability. As railway safety is concerned, ERAs tasks are concentrated on the harmonization of the safety culture in Europe with the inherent danger of downwards harmonization.

The ETF demands that the European Railway Agency becomes a watchdog for railway safety in the European single railway area. The ETF demands that staff competences, training, acceptable working time rules, compliance with those rules as well as quality health and safety standards at work are considered as an essential element for railway safety (human factor) and that ERA becomes a watchdog in ensuring high quality level standards for the sake of railway safety. The ETF is of the opinion that ERA shall have a more neutral status, being independent from the European Commission and accountable only to the European legislator.

##### **b) SAFETY**

The high level of safety is an advantage and an indispensable condition for the development of the railway sector in the European transport market and must not be jeopardized. To maintain and improve the high level of safety must be a first priority for the European legislators and the European Railway Agency.

No changes in safety regimes should be imposed on the national safety authorities through TSI's or by other means if the changes do not improve safety - or at least maintain the railway safety at the same level. This should be documented by risk assessments.

The ETF strongly criticizes an attitude that considers the safety argument as an argument for protectionism or that denounces an alleged over-quality in terms of safety. The ETF strongly criticizes the approach to national safety rules as barriers for the internal railway market. The ETF is critical towards a cost-benefit-approach when deciding on safety measures and demands in any case not to allow lowering the safety level on the basis of cost-benefit-assessments. We also cannot accept that good national safety rules will be deteriorated for the sake of harmonization.

The first task of the Railway Agency shall be to **detect safety risks** within the now open railway system in Europe. The focus on harmonizing the railway safety systems in Europe bears the danger of overlooking new risks arising from a multi-actor system with many interfaces.

A very important focus point should be to identify new safety risks emerging from the present open access policy. This is for example when safety critical tasks are contracted out, for example important operational tasks as train driving, but also maintenance. Equally important are the numerous interfaces appearing between the different actors in the railway sector like safety authorities, infrastructure managers, train operating companies and sub-contractors on different levels.

The focus of the European Railway Agency should be to find the weaknesses and problems, which are not reported according to the rail statistic regulation or the safety directive reporting requirements.

The number of staff in safety critical areas, the amplitude of working time and/or the number of overtime work, for example, should be considered as an indicator and be examined as safety critical points. The drastic increase of sick days and of burnout cases, due to staff shortages and overload should be another indicator. Also the compliance or non-compliance with working, driving and rest time rules and the number of rests away from home are as well indicators.

The Agency's task should be to strongly support a "just culture" in the rail companies, a no blame policy against staff members who report incidents and almost accidents. It should propose procedural and legal requirements in order to enforce a "just culture".

**The ETF expects the European Railway Agency to be a watchdog for railway safety and not an agent for putting safety against competitiveness.**

In this sense the ETF is critical regarding the intention to introduce a single safety certificate for railway undertakings, which will be recognized in all EU Member States and allow operations across Europe and in all European countries without a pre-check of the respective National Safety Authorities that the company has the necessary specific competences for operating safely on the specific network.

As regards railway safety the ETF is of the opinion that the ERA competences shall be strengthened regarding monitoring and control of the respect of safety rules. ERA must be given the opportunity to operate independently from European or national policy makers. The ETF is of the opinion that the ERA is still too much in the shadow of the EU Commission.

### c) INTEROPERABILITY – VEHICLE (TYPE) AUTHORISATION

The ETF believes that technical and operational interoperability is one important element to improve the performance of the railways in Europe. The other elements are a proper financing of infrastructure development, a proper public service financing and a decisive political commitment in favour of a modal shift via the integration of all external costs into the user charges for the other transport modes. The ETF believes that these elements are more effective for promoting the rail transport system in Europe than market opening and destructive competition.

The ETF insists, however, that technical and operational harmonization must not be pursued to the detriment of operational safety and in particular not jeopardize health and safety at work of the concerned railway staff. Health and safety at work must remain the full responsibility of the employer.

In this sense the ETF supports the intention to make the placing into service of rail rolling stock more effective, faster and cheaper and to allocate to the Agency the competence of vehicle (type) authorization like it is the case with the European Aviation Safety Agency EASA.

We insist however, that the health and safety requirements for the design and the equipment of passenger and freight locomotives and rolling stock follow the highest level of protection. Experiences with the homologation of locomotives in several member states showed, that health and safety at work standards were different in different member states. They were among those elements, which required adaptation of the design. And we are not talking about the position of the fire extinguisher within the locomotive. We are talking about noise and climate conditions in the driver's cabin, ergonomics at the workplace, vision requirements etc...

**The ETF insists that the European wide authorization of vehicles through ERA has to follow the chief safety and health and safety at work standards. We insist that the TSI requirements follow the highest standards and where there are no European standards, the highest national standard has to be used for a European wide homologation of rolling stock.**

### d) HEALTH AND SAFETY AT WORK

The establishment of a harmonized approach to railway safety as well as harmonization through technical and organizational interoperability also effects health and safety at work.

Although the interoperability directive 2008/57/EC Article 5(3)g requires the respect of health and safety at work (OHS) when drafting the Technical Specifications Interoperability (TSI), the OHS chapters (chapter 4.7 of each TSI) are drafted with a technical focus and not from an occupational health and safety at work point of view. They often just comprise one paragraph and make reference to the general EU health and safety at work legislation. The experts in the ERA working groups are technical experts but have no expertise in OHS at work or in human resource issues.



A study from a network of rail OHS experts<sup>1</sup> which analysed the drafting of CEN and CENELEC standards for the rail sector came to the same conclusions: those standards do not sufficiently consider OHS requirements because they were drafted by technical experts without the specific expertise.

ETF demands since the beginning of the establishment of the ERA to set up a horizontal working group on health and safety at work and interoperability with equal composition of trade union OHS experts and company OHS experts. This was always refused by ERA with the argument of

- a) Lack of human resources;
- b) Lack of a mandate;
- c) Lack of competences since health and safety at work issues are a matter of the Commission's Advisory Committee on Health and Safety at Work and the Bilbao OSH Agency.

However, Directive 89/654/EEC on health and safety at the work place, for example, excludes locomotives or any work place in a transport vehicle from the scope of the Directive.

The work in maintenance workshops for locomotives and other rolling stock is totally different and with specific hazards than the work in usual workshops. Another example is infrastructure maintenance work, which has specific hazards different to other construction sites due to the running trains. There are a number of specific OHS hazards in the rail sector, which require specific attention and are not covered by general legislation.

Additionally both, the rail safety directive and the interoperability directive, forbid Member States to establish new rules including health and safety at work rules. On the other hand the objective to "improve the competitiveness of the sector", the use of cost-benefit-analysis even for safety measures, technical and operational harmonization and the cost reduction objective of cross-acceptance of rolling stock all have the tendency to harmonize health and safety standards in the rail sector down to a minimum level, in particular when defined by non OHS experts; an immense threat to railway safety in general.

And last but not least due to growing cross-border operations of the railways and cross-border use of mobile railway personnel, additional operational and occupational health and safety problems are arising.

**ETF demands** that ERA gets from the European Commission a clear mandate without ambiguity to establish a horizontal working group on health and safety at work, which is composed equally of trade union OHS experts and company OHS experts. This working group has to work transversal, independent and has to examine all ERA draft form an OSH point of view and make own proposals.

**The ETF demands** that ERA gets competences in:

- Studies on fatigue and other OHS hazards in cross-border driving, in particular when driving in different safety systems with different operational rules and using different languages;
- Define the features for a technical recording device that records driving and rest time and breaks for control purpose (digital tachographs);

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<sup>1</sup> Association for the promotion of safety at work in Europe (VFA), KAN report 27e "Standardization relating to occupational health and safety in the field of rail traffic (2002) by the Commission for Occupational Health and Safety and Standardization (KAN),

- Develops a (legislative) proposal on regular checks for cross-border driving including a proposal for the organization of control and enforcement of working, driving and rest time in cross border driving, including the role and cooperation of the National Safety Authorities, labour inspectorates and other control and enforcement bodies within the railway system;

#### e) TRAINING AND VOCATIONAL COMPETENCES

The Interoperability Directive 2008/57/EC Article 5(3)g also requires to tackle the question of vocational competences when drafting the TSIs (Chapter 4.6 of each TSI).

The ERA Regulation (amended Regulation 1335/2008/EC) says in the new

*“Article 17 Vocational competences and training*

*(1) The Agency shall make recommendations on specifying common criteria for defining vocational competences and assessing staff in the case of staff involved in the operation and maintenance of the rail system but which is not covered by Articles 16b or 16c.”*

(Articles 16b and 16c are dealing with locomotive drivers and other crew members.)

Although ERA has a specific working group on vocational competences, this working group is only dealing with the implementation of the locomotive drivers' certification Directive 2007/59/EC.

**The ETF is of the opinion** that for all professional groups with safety relevance/safety tasks within the railway sector, a harmonized EU definition of tasks, competences and training needs is necessary. We insist that this harmonisation has to take place at a high level and must ensure quality in order to avoid that in the course of the establishment of the Single European Railway Area - as pursued by the European Commission and supported by the European Parliament - a downwards pressure on vocational training and competences is taking place.

The ETF's affiliates are currently experiencing that companies are reducing investment in training, redefining professions, downsizing tasks and so contribute to a reduction of skills in the rail sector.

This tendency is supported by the European approach to safety rules, which hinders Member States and/or National Safety Authorities to establish new rules or even tends to interpret existing rules on professional competences and required vocational training for safety relevant rail professions as a barrier for the internal market (see report on on-board personnel).

**The ETF demands** to review the policy on professional competences for railway staff with safety relevance and to ensure that also in a European internal railway market a high level of competences and training for safety relevant personnel are ensured and thus railway safety for the rail users and the environment.

For ETF the ERA seems the right body with the railway specific knowledge to work on this. However, the ETF insists that the mandate must clearly require high level standards and exclude downward harmonization.

In addition, national governments and companies shall not be stopped to make additional efforts in education and training.

**The ETF demands** a European wide certification system for on-board staff with safety tasks similar to the certification of locomotive drivers (two parts), which is delivered by a national authority.

The ETF decisively rejects any temptation to forbid existing national rules for safety relevant railway professions with the argument that those rules would be a barrier for the Internal Market. For example the parameters and quality of national infrastructure are very different in the different Member States. This still requires a definition of rules and requirements for safety relevant professions by the respective Member States.

#### **f) WORK OF TRADE UNION REPRESENTATIVES WITHIN ERA**

The ETF highly welcomes the provision in the Agency's Regulation Article 3(1) that workers' representatives can be nominated to the working parties of the European Railway Agency.

The ETF nominated workers' representatives to three working parties within the Safety Unit, to one working party within the ERTMS Unit, to the WP of the Cross-Acceptance Unit and to 5 WPs within the Interoperability Unit. Currently our affiliates are actively working in 10 WP with a total number of 14 trade union experts.

It is highly important to integrate workers' representatives in the ERA working parties since the huge majority of proposals on technical, operational and safety harmonization affects directly and indirectly the work place of the railway staff and/or the human factor in operational and safety questions. The expertise of the workers representatives is indispensable.

However, there are a number of problems related to guaranteeing workers' representatives expertise within the drafting work of the Agency:

The workers' representatives with the necessary expertise to work in the specific working parties of the Agency are usually NOT trade union employees or permanent trade union representatives. They are actively working railway staff, often elected to the company's works council. They do not receive free days from their companies and they are not paid by their employers for their work in the ERA working parties. In order to follow the ERA work and participate in meetings they have to use their annual contingent of days foreseen for their works council work. This is to the detriment of their work as elected workers' representatives within their companies.

This is totally different from the situation of the representatives from the rail industry (CER, UNIFE, EIM, ERFA etc.). They are sent to the ERA working parties by their employers, they are paid for that work within their normal salaries and the ERA expert work is part of the job description. Since the ERA expert work is part of the job description of the company representatives, those organizations were able to establish structures, the Group of Representative Bodies, which prepares the ERA working group work and provides the experts in the ERA WP with a mandate; something that cannot be provided by the workers' representatives and their European organization.

Additionally, the fact that ERA is working in English only creates huge difficulties since trade union and work council representatives are deeply involved at company level and are experts in their fields but do not have the language capacities.

**Therefore the ETF demands** to establish a system to finance the work of the workers' representatives in the ERA working parties. Additionally to travel and accommodation costs, the ERA budget or another EU budget line must financially compensate the working time allocated to the ERA expert work including preparatory and coordination work, which are not paid by their employers, the railway companies. This could be in form of a consultancy fee or a direct reimbursement of partial salary to the expert's employer.

Additionally, English language courses and simultaneous interpretation at the meetings should be financed by the ERA budget for the workers' representatives.

The ETF is of the opinion that the establishment of the European Railway Agency with all its harmonization work cannot be done by the industry representatives and by consultants only. It must include the workers' perspective and expertise. But this must be financed by the EU budget.

#### **g) NO TASKS FOR THE EUROPEAN RAILWAY AGENCY**

Within the discussion on the future role of the European Railway Agency other functions like a European rail regulator, European infrastructure allocation and charging agency or tasks like interoperability questions related to commercial issues (ticketing, time tables etc.) are discussed.

#### **The ETF warns against establishing a European super body for the railway sector.**

The ETF strictly opposes to allocate tasks of a **rail regulator** to ERA. The ERA is a safety agency. From an ETF point of view the two responsibilities shall not be united in one agency. It can create a conflict of interests within the same organization and there is too much the danger that competition prevails to the detriment of safety. Safety on the one hand and competition supervisory functions on the other hand have to be independent functions.

The ETF is of the opinion that the Agency shall not have tasks within the **allocation of infrastructure slots or the charging**. These are tasks that have to take into consideration the local and regional situation and cannot be managed at European level.