

AGREEMENT**concluded by the European Transport Workers' Federation (ETF) and the Community of European Railways (CER) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services**

HAVING REGARD TO:

- the development of rail transport, which requires the modernisation of the system and the development of trans-European traffic and thus interoperable services;
- the need to develop safe cross-border traffic and protect the health and safety of the mobile workers engaged in interoperable cross-border services;
- the need to avoid competition based solely on differences in working conditions;
- the importance of developing rail transport within the European Union;
- the idea that these aims will be met by creating common rules on minimum standard working conditions for mobile workers engaged in interoperable cross-border services;
- the conviction that the number of such workers will increase over the coming years;
- the Treaty establishing the European Community, and in particular Articles 138 and 139(2) thereof;
- Directive 93/104/EC (amended by Directive 2000/34/EC), and in particular Articles 14 and 17 thereof;
- the Convention on the law applicable to contractual obligations (Rome, 19 June 1980);
- the fact that Article 139(2) of the Treaty provides that agreements concluded at European level may be implemented at the joint request of the signatories by a Council decision on a proposal from the Commission;
- the fact that the signatories hereby make such a request,

THE SIGNATORIES HAVE AGREED AS FOLLOWS:

*Clause 1***Scope**

This Agreement shall apply to mobile railway workers assigned to interoperable cross-border services carried out by railway undertakings.

The application of this Agreement is optional for local and regional cross-border passenger traffic, cross-border freight traffic travelling no further than 15 kilometres beyond the border, and for traffic between the official border stations listed in the Annex.

It is also optional for trains on cross-border routes which both start and stop on the infrastructure of the same Member State and use the infrastructure of another Member State without stopping there (and which can therefore be considered national transport operations).

As regards mobile workers engaged in interoperable cross-border services, Directive 93/104/EC shall not apply to those aspects for which this Agreement contains more specific provisions.

*Clause 2***Definitions**

For the purposes of this Agreement, the following definitions apply:

1. 'interoperable cross-border services': cross-border services for which at least two safety certificates as stipulated by Directive 2001/14/EC are required from the railway undertakings;

2. 'mobile worker engaged in interoperable cross-border services': any worker who is a member of a train crew, who is assigned to interoperable cross-border services for more than one hour on a daily shift basis;
3. 'working time': any period during which the worker is at work, at the employer's disposal and carrying out his or her activities or duties, in accordance with national laws and/or practice;
4. 'rest period': any period which is not working time;
5. 'night time': any period of not less than seven hours, as defined by national law, and which must include in any case the period between midnight and 5 a.m.;
6. 'night shift': any shift of at least three hours' work during the night time;
7. 'rest away from home': daily rest which cannot be taken at the normal place of residence of the mobile worker;
8. 'driver': any worker in charge of operating a traction unit;
9. 'driving time': the duration of the scheduled activity where the driver is in charge of the traction unit, excluding the scheduled time to prepare or shut down that traction unit, but including any scheduled interruptions when the driver remains in charge of the traction unit.

Clause 3

Daily rest at home

Daily rest at home must be a minimum of 12 consecutive hours per 24-hour period.

However, it may be reduced to a minimum of nine hours once every seven-day period. In that case, the hours corresponding to the difference between the reduced rest and 12 hours will be added to the next daily rest at home.

A significantly reduced daily rest shall not be scheduled between two daily rests away from home.

Clause 4

Daily rest away from home

The minimum daily rest away from home shall be eight consecutive hours per 24-hour period.

A daily rest away from home must be followed by a daily rest at home ⁽¹⁾.

It is recommended that attention should be paid to the level of comfort of the accommodation offered to staff resting away from home.

Clause 5

Breaks

(a) Drivers

If the working time of a driver is longer than eight hours, a break of at least 45 minutes shall be taken during the working day.

Or

When the working time is between six and eight hours, this break shall be at least 30 minutes long and shall be taken during the working day.

The time of day and the duration of the break shall be sufficient to ensure an effective recuperation of the worker.

Breaks may be adapted during the working day in the event of train delays.

A part of the break should be given between the third and the sixth working hour.

Clause 5(a) shall not apply if there is a second driver. In that case, the conditions for granting the breaks shall be regulated at national level.

(b) Other on-board staff

For other on-board staff, a break of at least 30 minutes shall be taken if the working time is longer than six hours.

⁽¹⁾ The parties agree that negotiations on a second consecutive rest away from home as well as compensation for rest away from home could take place between the social partners at railway undertaking or national level as appropriate. At European level, the question of the number of consecutive rests away from home as well as compensation for the rest away from home will be renegotiated two years after signature of this Agreement.

*Clause 6***Weekly rest period**

Any mobile worker engaged in interoperable cross-border services is entitled, per seven-day period, to a minimum uninterrupted weekly rest period of 24 hours plus the 12 hours' daily rest period referred to in Clause 3 above.

Each year, every mobile worker shall have 104 rest periods of 24 hours, including the 24-hour periods of the 52 weekly rest periods,

including:

— 12 double rest periods (of 48 hours plus a daily rest of 12 hours) including Saturday and Sunday,

and

— 12 double rest periods (of 48 hours plus a daily rest of 12 hours) without the guarantee that this will include a Saturday or Sunday.

*Clause 7***Driving time**

The driving time, as defined in Clause 2, shall not exceed nine hours for a day shift and eight hours for a night shift between two daily rest periods.

The maximum driving time over a two-week period is limited to 80 hours.

*Clause 8***Checks**

A record of daily working hours and rest periods for the mobile workers shall be kept to allow monitoring of compliance with the provisions of this Agreement. Information on actual working hours must be available. This record shall be kept in the undertaking for at least one year.

*Clause 9***Non-regression clause**

The implementation of this Agreement shall not constitute in any case valid grounds for reducing the general level of protection afforded to mobile workers engaged in interoperable cross-border services.

*Clause 10***Follow-up to the Agreement**

The signatories shall follow up the implementation and application of this Agreement in the framework of the Sectoral Dialogue Committee for the railways sector, established in accordance with Commission Decision 98/500/EC.

*Clause 11***Evaluation**

The parties shall evaluate the provisions of this Agreement two years after its signing in the light of initial experience in the development of interoperable cross-border transport.

*Clause 12***Review**

The parties shall review the above provisions two years after the end of the implementation period laid down in the Council Decision putting this Agreement into effect.

Brussels, 27 January 2004.

On behalf of the CER

Giancarlo CIMOLI
President

Johannes LUDEWIG
Executive Director

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*Chairman of the Group of
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Jean-Paul PREUMONT
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On behalf of the ETF

Norbert HANSEN
Chairman of the Railway Section

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*Vice-Chairman of the Railway
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Doro ZINKE
General Secretary

Sabine TRIER
Political Secretary

ANNEX

List of the official border stations located beyond the 15 km limit and for which the agreement is optional

RZEPIN (PL)

TUPLICE (PL)

ZEBRZYDOWICE (PL)

DOMODOSSOLA (IT)
