

COUNCIL DIRECTIVE 2005/47/EC

of 18 July 2005

on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector

THE COUNCIL OF THE EUROPEAN UNION,

persons working in the rail transport sector on board trains.

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) This Directive complies with the fundamental rights and principles set out in the Charter of Fundamental Rights of the European Union and is designed to ensure full compliance with Article 31 thereof, which provides that all workers have the right to healthy, safe and dignified working conditions, to a limit on their maximum working time and to weekly and daily rest periods and an annual period of paid holidays.

(2) The social partners may, in accordance with Article 139(2) of the Treaty, jointly request that Agreements concluded at Community level be implemented by a Council Decision on a proposal from the Commission.

(3) The Council adopted Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time⁽¹⁾. Rail transport was one of the sectors of activity excluded from the scope of that Directive. The European Parliament and the Council adopted Directive 2000/34/EC⁽²⁾ amending Directive 93/104/EC in order to cover the sectors and activities which had previously been excluded.

(4) The European Parliament and the Council adopted Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time⁽³⁾, which codified and repealed Directive 93/104/EC.

(5) Directive 2003/88/EC provides for derogations from Articles 3, 4, 5, 8 and 16 thereof in the case of

(6) The Community of European Railways (CER) and the European Transport Workers' Federation (ETF) have informed the Commission of their desire to enter into negotiations in accordance with Article 139(1) of the Treaty.

(7) On 27 January 2004 those organisations concluded an Agreement on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services, hereinafter referred to as 'the Agreement'.

(8) The Agreement included a joint request for the Commission to implement the Agreement by a Council Decision on a proposal from the Commission in accordance with Article 139(2) of the Treaty.

(9) Directive 2003/88/EC applies to mobile workers engaged in interoperable cross-border services, except where more specific provisions are contained in this Directive and in the Agreement annexed thereto.

(10) For the purposes of Article 249 of the Treaty, the appropriate instrument for implementing the Agreement is a Directive.

(11) Since, in the light of completion of the internal market in the rail transport sector and the competition in the sector, the objectives of this Directive, which is intended to protect health and safety, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

⁽¹⁾ OJ L 307, 13.12.1993, p. 18. Directive as amended by Directive 2000/34/EC.

⁽²⁾ OJ L 195, 1.8.2000, p. 41.

⁽³⁾ OJ L 299, 18.11.2003, p. 9.

- (12) The development of the European railways sector requires close monitoring of the role of current and new actors, in order to ensure harmonious development throughout the Community. The European social dialogue in this field should be able to reflect this development and to take it into account as far as possible.
- (13) This Directive leaves the Member States free to define those terms of the Agreement that it does not specify in accordance with national legislation and practice, as is the case for other Directives on social policy matters using similar terms, as long as the definitions used are compatible with the Agreement.
- (14) The Commission has prepared its proposal for a Directive in accordance with its Communication of 20 May 1998 entitled 'Adapting and promoting social dialogue at Community level', taking into account the representative status of the contracting parties and the legality of each clause of the Agreement; the signatories are sufficiently representative of the mobile railway workers assigned to interoperable cross-border services run by the railway companies.
- (15) The Commission has drawn up its proposal for a Directive in accordance with Article 137(2) of the Treaty, which provides that Directives in the social domain shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
- (16) This Directive and the Agreement lay down minimum standards; the Member States and/or the social partners should be able to maintain or introduce more favourable provisions.
- (17) The Commission has informed the European Parliament, the European Economic and Social Committee and the Committee of the Regions by sending them the proposal for a Directive for implementing the Agreement.
- (18) The European Parliament adopted a resolution on the Agreement of the social partners on 26 May 2005.
- (19) Implementing the Agreement will contribute to achieving the aims set out in Article 136 of the Treaty.

- (20) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making ⁽¹⁾, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to implement the Agreement concluded on 27 January 2004 between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services.

The text of the Agreement is annexed to this Directive.

Article 2

1. Member States may maintain or introduce more favourable provisions than those laid down by this Directive.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are complied with.

Article 3

Without prejudice to the provisions of the Agreement on the follow-up and evaluation by the signatories, the Commission shall, after consulting management and labour at European level, report to the European Parliament and the Council on the implementation of this Directive in the context of the development of the railways sector, before 27 July 2011.

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

Article 4

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed and shall take all necessary measures to ensure that they are implemented. The penalties must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by 27 July 2008 and any subsequent amendments thereto in good time.

Article 5

Member States shall, after consultation with the social partners, bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 July 2008 or shall ensure that the social partners have adopted the necessary provisions by means of an Agreement by that date. They shall immediately forward the text of the provisions to the Commission.

Member States shall take all necessary measures to enable them to guarantee at any time the outcome required by this Directive and shall inform the Commission thereof immediately.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 6

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Article 7

This Directive is addressed to the Member States.

Done at Brussels, 18 July 2005.

For the Council
The President
M. BECKETT