Resolution on the proposal for a Council directive 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 assigned to interoperable cross-border services

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The Commission presents a report on Member States' implementation of Council Directive 2005/47/EC, the purpose of which 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. It notes that all Member States have transposed the Directive, with the exception of those Member States with no railway sector (Malta and Cyprus) or no cross-border service with other EU Member States (Finland).

The report contains a clause-by-clause description of the substance of transposition and conformity with the Directive. The Commission intends to take appropriate measures regarding the issues and problems identified there.

The economic and social impact of the Directive: generally speaking, the social and economic impact appears to be **limited**. The main impact of Directive 2005/47/EC lies in its role as a safety net. It prevents a race-to-the-bottom on working conditions, particularly working time, by imposing a harmonised floor below which no operator may go. It ensures a level playing field and prevents unfair competition.

Clause 4 on rest away from home: this clause is the most important in terms of social impact. To recall, daily rest away from home must be for at least 8 consecutive hours per 24-hour period and a rest away from home must be followed by a daily rest at home, unless the social partners of a railway undertaking or at national level have concluded an agreement on a second consecutive rest away from home (with compensation).

This second rest away from home has been negotiated in only eight Member States: Germany, Hungary, Romania, Slovenia, the Netherlands, France, Italy and Portugal. However, it often only covers some operators in those countries. **This issue has proved divisive among social partners in the railway sector and no agreement has been possible at EU level.**

The restriction on the number of daily rests away from home is felt in particular by smaller operators wishing to exploit long routes. Larger operators appear to have more staff resources. They often have staff on either side of the border or 'traditional cooperation agreements' with other operators in other countries. These alternatives reduce the impact of this constraint. For most employers, any increase in the number of permitted consecutive rests away from home would boost managerial freedom and flexibility. For others, based in countries with lower salaries, it would also make it easier to extend their geographical reach and compete in more regions. For most employee representatives, the period spent away from home is

regarded as having a particularly negative impact on work-life balance. However, in those countries where domestic routes are long and it is common to spend several days away from home for domestic rail services, the impact of any change with respect to this issue would be comparatively lower. In addition, according to some trade union representatives, opportunities to earn higher pay while manning services abroad could increase the attractiveness of working abroad for a longer continuous period of time.

Impact on the further economic development of railway transport: the regulatory changes resulting from the Directive play a much smaller role than factors such as technical developments in the rail sector, the process of liberalising the rail market or the free movement of workers within the EU.

The Commission notes that there are much more important factors for the organisation of the rail sector and the allocation of personnel on cross-border services than the Directive. However, where technical barriers are removed and markets liberalised, operators, in particular smaller freight railway operators, may feel constrained by the restrictions set out in Clause 4 with respect to rest away from home. This could be an indication that the full impact of the Directive will only manifest itself when technical barriers have been further reduced and more international services actually emerge.

Although the economic impact may therefore be considered to be limited, the Directive has created a minimum standard, established by an agreement of the social partners. The Directive ensures a level playing field, which is an important goal in itself and, by supporting job quality for mobile workers, the Directive also helps improve the quality of service.

On the issue of Clause 4, **the Commission is of the view that the existing margins for flexibility have not been fully exploited by both sides of industry, as there have been fewer collective agreements than expected**. The Directive allows for such agreements to specify more flexible conditions with regard to the number of rests away from home, which may contribute to enhance the interoperability of cross-border services in the railway sector and create market opportunities in particular for SMEs. The Commission therefore urges the social partners at national and EU level to make full use of this possibility where required and to resume the negotiation process at EU level which is laid down in the footnote in Clause 4 of the Agreement. In this respect, the Commission invites the social partners to take into account in their negotiations the different conditions under which the passenger and freight railways operate, notably in terms of commercial speeds, journey distances and time requirements. The Commission will closely follow the evolution of such negotiations and reassess the situation in two years' time.

Interoperable cross-border services: the report states that there is no evidence to show that interoperable cross-border services in the railway sector are significantly hampered by the rules established by the Directive. This may partly be explained by the limited incidence of situations where such rules (staff crossing a border with the train) actually apply at the moment. Where the company’s own staff does not cross the border, the Directive is not applicable. The company is therefore only bound by domestic rules. Forecasts suggest a **steady increase in cross-border services,** as a result of reductions in technical barriers and an increase in interoperable rolling stock. This is taking place not just with a view to cross-border services but also as part of the normal process of renewal and replacement of old equipment. However, a key factor for the future level of cross-border railway services will be the extent to which this mode of transport will be able to gain a share of the market from other modes, such as air travel or road transport.

The Commission intends to take appropriate measures regarding the issues and problems identified in relation to the implementation of the Directive as well as the suggestions made to improve the application of the Directive in practice.