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Joint Declaration

on the application of the CER - ETF Agreement on a European Locomotive Driver's License

In January 2004 the Social Partners signed the “Agreement on a European Drivers’ License”, applicable to locomotive drivers assigned to cross-border services. This Agreement was an own initiative of the Social Partners and negotiated according to Article 139 of the EC Treaty. It is an autonomous agreement to be implemented by the Social Partners themselves.¹

On 23 October 2007 the European Parliament and the Council adopted the “Directive 2007/59/EC on the certification of train drivers”. It organizes the certification of international drivers as from 4 December 2010 (postponed to 2011)².

★ The Social Partners are of the opinion that the Directive 2007/59/2007 incorporates a large extent of the content of the CER / ETF Agreement. They welcome that the European legislators decided to respect the Agreement as a result of the European Social Dialogue and that this fact underlines the role and importance of the European Social dialogue.

The Social Partners are of the opinion that

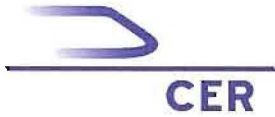
- The parallelism of an autonomous agreement and a European Directive creates a new situation regarding the application of the agreement;
- The EU Directive, however, is not identical with the agreement and does not incorporate all elements of the agreement.

The purpose of this declaration is to clarify the application of the Agreement while the Agreement itself remains valid as an autonomous Agreement.

★ The social partners agree that the EU Directive as a law obviously has precedence to the autonomous social partner agreement and must be applied. This is relevant for the points treated in both texts.

¹ It should be mentioned that originally the social partners intended the agreement to be implemented by a Council decision (art 139 §2) with the objective of making the license applicable to all railway companies.

² The liberalisation of rail services was gradually introduced as from 15 March 2003, fully realised for freight transport as from 1st January 2007.



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★ The following Articles and / or elements of the Agreement are not incorporated in the Directive. For these elements, the text of the Agreement is fully applicable by the Social Partners:

- Annual continuous training (Article 8(2) of the Agreement): The Social Partners agreed that basic occupational knowledge must be developed and refreshed annually.
- Communication of principle operating rules of another Member States to staff representatives (Article 12): The TSI OPE, Annex D (in particular Part I) lists those basic rules, which must be available for the RU.
- Assistance of drivers in the case of accidents or incidents (Article 13): This is related to medical, psychological and legal assistance, which falls under the responsibility of the railway undertakings. It also related to the right of the driver concerned to take the initiative of asking for the help of staff representatives in the country of the railway network where he is travelling.
- Providing elements needed for inspections which includes those supplied by the recorders (Article 14): The TSI OPE, point 4.2.3.5.2 requires among others the recording of working time.
- Information to be provided to staff representatives (Article 15), in the event of incident or accident in another Member State: The driver's representatives shall be assured of an access to the same information as if they were representatives of a driver from an undertaking based in that Member State.
- Monitoring of the implementation of the agreement and discussion on main incidents or accidents (Article 16 of the Agreement).

The CER commits that their members begin issuing the “complementary certificate” to international drivers in due time after the decision of the European Commission on the ‘harmonised format for the certificate’ and the ‘basic parameters for the registers for certificates’³, although this would be prior to the date as fixed in the Directive 2007/59/EC. This is in line with the spirit of the agreement and its status of an autonomous agreement⁴.


³ The Decision of the Commission is expected by end 2009.

⁴ The Social Partners agree to replace the term “European license” by the term “certificate”, which is the term used in the Directive for the same kind of document.

★ This declaration will be annexed to the CER-ETF Agreement. It is a guideline for the CER and the ETF members for the application of the agreement.

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For the CER




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Annex : List of Articles covered by the Directive

The Social Partners identify the following Articles of the Agreement as elements, covered – fully or partly - by the Directive. To the extent to which these Articles are covered by the Directive, the provisions of the Directive are applicable⁵:

- Article 2: Scope of the license (covered by Articles 2 of the Directive);
- Article 3: Issuance of the license (covered by Articles 6(2), 22(2) of the Directive);
- Article 4: Ownership of the license (covered by Article 6(2) of the Directive);
- Article 5: Structure of the license (covered by Annex 1(3) of the Directive);
- Article 6: Required aptitudes and skills (partly covered by Articles 11, 12 in combination with Annexes II, IV, V and VI, Articles 4, 25 of the Directive; see footnote 2 of this text);
- Article 7: Documents the drivers have to provided with when travelling on the network of another Member State (indirectly covered by Art. 29 (1° as concerns the certificate; the other elements are covered by the TSI OPE);
- Article 8: Maintaining aptitudes (partly covered by Article 16(2) in combination with Annex II and Annex VII of the Directive; not covered is the annual continuous training);
- Article 9: Duration and renewal of the license (not regulated in the Directive but covered indirectly by Article 16 in combination with annex VII);
- Article 10: Withdrawal of the license (partly covered by Articles 15, 21(2), 29 of the Directive; the Directive does not legislate a direct appeal mechanism for companies or drivers when the certificate was withdrawn by a competent authority in another country⁶);

⁵ There are discrepancies between the Agreement, the Directive and the TSI OPE. In Article 23(3.a) for example, the Directive requires consistency between the directive and the TSI OPE and the ERA has a mandate. The Social Partners are working on this issue in order to either maintain the provisions in the TSI OPE or to immediately modify the annexes of the Directive accordingly. Those discrepancies concern in particular: psychological support of drivers after an accident involving persons (trauma counselling); the requirements for obtaining route knowledge; the qualification criteria for occupational doctors and psychologists.

⁶ For these cases there is a mechanism involving the European Commission.



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- Article 12: Information that must be available in real time (partly covered by Article 22 of the Directive; the Directive does not cover the issue of communicating principle operating rules to staff representatives);
- Article 14 Inspections (partly covered by Article 29 of the directive);
- Annex I: Health and safety conditions (partly covered by Annex II, the Directive does not specify, that the medical checks have to be carried out by occupational doctors and the psychological checks by graduated psychologists; it does not define the criteria for occupational doctors and graduated psychologists; see footnote 2);
- Annex II Professional qualification requirements (covered by Annexes IV, V and VI).