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Brussels, 20 May 2008
Case No: 62078
Event No: 477665

EFTA SURVEILLANCE
AUTHORITY

Norwegian Mission to the EU
Rue Archimède 17
1000 Brussels

Dear Sir,

Subject: Implementation of Directive 2005/47 - Working conditions of mobile workers - cross border services in railway sector

By EEA Joint Committee Decision No. 31/2007 of 27 April 2007, Annex XVIII to the Agreement on the European Economic Area (hereafter “the EEA Agreement”) was amended by adding, as point 32i, the following Act:

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

According to Article 7 of the EEA Agreement, acts referred to in the Annexes to that Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal orders.

The attention of the Norwegian Government is drawn to the fact that 27 July 2008 is the final date by which the measures necessary to implement the Act referred above must be taken.

In order for the EFTA Surveillance Authority to fulfil its obligations under the EEA Agreement and the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice of ensuring that the EFTA States respect their obligations arising from the EEA Agreement, the Norwegian Government is asked to notify the Authority as soon as possible, and by 27 July 2008 at the latest, of the measures it takes to implement the Act.

To ensure the smooth handling of the notification, and to avoid unnecessary supplementary requests for information, the attached *Form 1* should be completed. The notification should contain all the information requested in the *Form 1*, especially that mentioned in point 2 thereof.

As provided in point 3 of *Form 1*, a so-called “frame for a table of correspondence” has also been enclosed, which should be completed and submitted together with the *Form 1*. We should be grateful if you would forward the completed table of correspondence to us by electronic means.

Should you have any questions regarding completing the table of correspondence, please do not hesitate to contact Ms Eeva Kolehmainen.

Yours faithfully,

On behalf of Eeva Kolehmainen, Senior Officer

Tuija Ristiluoma
Assistant



Form 1.doc



Table_of_corresp
ondence_Directive

Form 1

NOTIFICATION OF NATIONAL MEASURES IMPLEMENTING ACTS REFERRED TO IN THE ANNEXES AND PROTOCOLS TO THE EEA AGREEMENT

This form is to be used for the notification of national measures considered to ensure fulfilment of the obligations under Article 7 of the EEA Agreement in respect of EEA acts - directives and decisions, and also, as regards Iceland and Norway, regulations - referred to in the Annexes to the Agreement.

One form should be used for each act.

From: - Please indicate name of the national administration

.....

.....

.....

Earlier notification(s) of implementation of the act: - Where appropriate, please indicate date(s)

.....

EEA act that has been implemented: - Please indicate title of the act and its EC and EEA References

.....

.....

- (1) **Please indicate the *title(s)* of the national law(s) and/or regulation(s) and/or administrative provision(s) implementing the act or amending/replacing previously notified national measures. Amended/replaced national measures must be identified. If necessary, use a separate sheet:**

Full titles of *all* relevant measures, whether adopted with a view to implementing the act or already existing and considered to ensure compliance with the act, should be indicated.

Please also give a translation into *English* of the title(s).

Title:

.....

In English:

.....

Title:

.....

In English:

.....

Please do *not* list national measures which are only intended to be adopted at a future date here. Where appropriate, such measures should be reported under point 4 below.

(Please turn over)

(2) **Please enclose the *text of each* national measure referred to under item 1.**

Whenever available, please also attach translations of the texts into English.

(3) **As regards directives, please enclose detailed information which is structured so that it enables the Authority, with regard to each Article and, if necessary, each paragraph, sub-paragraph or sentence of the act, to identify and assess the corresponding national measures for conformity.**

Whenever appropriate, the information should be in the form of *tables* indicating the corresponding national measure. Where the Authority has submitted a so-called "frame for a table of correspondence" regarding the act, or other guidelines indicating the kind and/or structure of the information deemed necessary for the Authority properly to carry out its tasks to your Government, such frames or guidelines should be used.

(4) **Please indicate the type of implementation which the notified measures are considered to ensure:**

☐ Full implementation of the act, with entry into force on (date) :

☐ Amendment of measures previously notified as ensuring full implementation,

☐ Replacement of measures previously notified as ensuring full implementation,

☐ Implementation of the following provisions of the act:¹

.....

.....

(5) **The EFTA Surveillance Authority will be informed of any further measures adopted to complement or amend the implementation and of any amendments to the notified measures.**

Place and date:

Signature(s):

¹ Please specify in these lines the provisions (articles) of the act which have been implemented by the notified measures. Otherwise, the notification of partial implementation will not be taken into account.

Table of correspondence

Working conditions of mobile workers - cross border services in railway sector

2005/47

Date of entry:

National Officer:

Authority Officer: Eeva Kolehmainen

Telephone number: +32 (2) 286 1832

Laws and other national transposition measures

A.

B.

C.

Transposition

Article 1	Reference	Remarks
<p>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.</p> <p>The text of the Agreement is annexed to this Directive.</p>		

Article 2	Reference	Remarks
<p>1. Member States may maintain or introduce more favourable provisions than those laid down by this Directive.</p>		
<p>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.</p>		

Article 3	Reference	Remarks
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.		

Article 4	Reference	Remarks
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	Reference	Remarks
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	Reference	Remarks
This Directive shall enter into force on the date of its publication in the Official Journal of the European Union.		

Article 7	Reference	Remarks
This Directive is addressed to the Member States.		

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

Clause 1	Reference	Remarks
<p>Scope</p> <p>This Agreement shall apply to mobile railway workers assigned to interoperable cross-border services carried out by railway undertakings.</p>		
<p>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.</p>		
<p>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).</p>		
<p>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.</p>		

Clause 2	Reference	Remarks
<p>Definitions</p> <p>For the purposes of this Agreement, the following definitions apply:</p>		
<p>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;</p>		
<p>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;</p>		
<p>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;</p>		

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	Reference	Remarks
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	Reference	Remarks
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	Reference	Remarks
<p>Breaks</p> <p>(a) Drivers</p> <p>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.</p> <p>Or</p> <p>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.</p> <p>The time of day and the duration of the break shall be sufficient to ensure an effective recuperation of the worker.</p> <p>Breaks may be adapted during the working day in the event of train delays.</p> <p>A part of the break should be given between the third and the sixth working hour.</p> <p>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.</p>		
<p>(b) Other on-board staff</p> <p>For other on-board staff, a break of at least 30 minutes shall be taken if the working time is longer than six hours.</p>		

Clause 6	Reference	Remarks
<p>Weekly rest period</p> <p>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.</p>		
<p>Each year, every mobile worker shall have 104 rest periods of 24 hours, including the 24-hour periods of the 52 weekly rest periods,</p>		
<p>including:</p> <ul style="list-style-type: none"> - 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	Reference	Remarks
<p>Driving time</p> <p>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.</p>		
<p>The maximum driving time over a two-week period is limited to 80 hours.</p>		

Clause 8	Reference	Remarks
<p>Checks</p> <p>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.</p>		

Clause 9	Reference	Remarks
<p>Non-regression clause</p> <p>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.</p>		

Clause 10	Reference	Remarks
<p>Follow-up to the Agreement</p> <p>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.</p>		

Clause 11	Reference	Remarks
<p>Evaluation</p> <p>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.</p>		

Clause 12	Reference	Remarks
<p>Review</p> <p>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.</p>		

[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.