



May 2013  
AK Position Paper

## “The Fourth Railway Package – technical proposals”

Completing the single European railway area to  
foster European competitiveness and growth

## About us

**The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske  
President

Werner Muhm  
Director

# The AK position in detail

## **Communication of the European Commission: “The Fourth Railway Package – Completing the single European railway area to foster European competitiveness and growth”**

In its Communication, the European Commission informs that the railway sector had to undergo fundamental changes. On the one hand, the rail network had to be opened further by

- new rail access criteria (full opening of domestic passenger rail services)
- changes to tendering procedures (ban on directly awarding contracts).

On the other hand, the procedure for vehicle authorisations shall be harmonized. Full legal authority in this case shall be delegated to the EU; national regulations shall be abolished. Holding structures (infrastructure management and transport operation under one roof) shall only be possible when certain conditions are met.

From the point of view of the Austrian Federal Chamber of Labour (Bundesarbeitskammer BAK), neither the efficiency nor the effectiveness of the changes proposed is easy to comprehend. There is no connection between opening up the market and an efficient rail service. Nor is there a connection between the structure of the undertaking and efficient rail service. Both market shares and passenger satisfaction develop independently of the degree of liberalisation, of tendering and of the corporate

structure. In many cases, further liberalisation is responsible for additional costs and deteriorating working conditions.

The BAK generally welcomes the harmonisation of provisions. Unfortunately, the drafts do not give any indication as regards extent (technical, social harmonisation) and level. There is also a lack of regulations in respect of controls (maintenance intervals, random inspections etc.) and of minimum funding of safety authorities.

In general, the parameters presented by the EU Commission appear not to be very objective. The BAK finds it difficult to comprehend a number of parameters, such as the promised savings of 20 to 30 % with regard to tendering or the fundamentally inefficient governance in case of non-liberalised and integrated railway structures.

## **AK Position Paper on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail COM(2013) 28 final**

### Planned changes to content:

The purpose of the draft proposal of the European Commission (EC) is to continue to push forward the internal market in the railway sector, and exactly for that reason, authorities and states almost without exception will lose the compromise solution of being able to choose between tendering or directly awarding rail transport services, which they so fought for so hard prior to voting on the current regulation. This means, according to the proposal of the EC, there should be exclusively mandatory tendering for all transport services, apart from if an authority itself provides these transport services or an internal operator, which is controlled by it, or if it concerns a small-volume contract or emergency measures. It would basically no longer be possible to directly award rail passenger transport in Austria to ÖBB (Austrian Federal Railways) and private railways, but Austria would have to subject her domestic railway market to Europe-wide competitive tendering.

In order to increase competition even more, authorities shall also be able to decide to award contracts to various railway companies, by specifying an upper limit concerning the number of contracts to a railway undertaking. At 10 million train-km resp. a third of the entire transportation volume of a Member State's public transport, the size of service contracts shall also be limited.

The Regulation on the Application of a Transfer of Undertakings - i. e. the responsible authority can commit the selected operator of a public service, to grant employees, which were previously recruited to provide services, the rights to which they would be entitled if a transfer had taken place, even if no such transfer of undertaking has taken place as defined in Directive 2001/23/EC - remains, unchanged, only an optional provision and is thereby left to the discretion of each individual Member State.

According to the proposal, an authority can, apart from quality, also specify social standards, but again, this is only an optional provision, whereby it has become clear in both cases, that the Austrian authorities – in particular the tendering Federal states - do not want to make use of it.

As rolling stock normally outlives service contracts, the authority shall in future be obliged to take over the residual value risk (by guarantee, acquisition or procurement of rolling stock), if this is required by new operators, who want to participate in tenders. Hence, new entrants and also unsuccessful tenderers can be sure, that they are bearing the risk, but that it can be passed on to the public sector.

This clearly demonstrates that the EC's liberalisation efforts are not concerned with improving public transport for passengers, but that the EC is only interested in additional contracts for private railway companies at the expense of state-owned railways and the public sector, which at the same time shall lose all management scope.

According to the draft, from 3 December 2019, public service rail contracts

have to be tendered in accordance with the new Regulation and all metro and tramway contracts have to be tendered by 3 December 2019, unless these concern transport companies, which belong to the community (control comparable to that exercised over their own departments).

Public service contracts for public passenger transport by rail directly awarded between 1 January 2013 and 2 December 2019 may continue until their expiry date; however, they shall, in any event, not continue after 31 December 2022 with the exception of service contracts, which were directly awarded between 26 July 2000 and 3 December 2009. The question remains, which transitional solutions shall apply to the public service contract of the Federation with Austrian Federal Railways (ÖBB) from 12 December 2009.

**BAK strictly rejects the draft Proposal in principle for the following reasons:**

Subsidiarity:

The current Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail (PSO) was an arduous compromise, which had been reached after many years of tough negotiations. It came into force in December 2009. Article 8(2) stipulates that within six months after the first half of the transitional period, Member States shall provide the Commission with a progress report, highlighting the implementation of any gradual award of public service contracts in line with Article 5. Hence, this progress report would have to be submitted in the first half of the year 2015. On the basis of the Member States' progress reports, the Commission may propose appropriate measures addressed to Member States.

After the end of the transitional period specified in Article 8(2), the Commission shall present a report on the implementation of this Regulation and on the developments in the provision of public passenger transport in the community, assessing in particular the development of the quality of public passenger transport services and the effects of direct awards, accompanied, if necessary, by appropriate proposals for the amendment of this Regulation.

The fact that the EC, just three years later – without being able to rely on sufficient experience – and without having available the reports mentioned on the actual effects of the Regulation, is planning massive interventions, is reason enough to strictly reject this from the point of view of subsidiarity alone.

Degree of customer satisfaction versus degree of liberalisation:

It is the general objective of the EC to improve the quality of rail passenger transports and to increase its operative efficiency. The aim of mandatory competitive tendering of public service contracts is to intensify competitive pressure on domestic railway markets in order to increase quantity and quality of passenger transport services.

One could argue that the 2011 Eurobarometer Survey (Flash EB Series #326 Survey on passengers' satisfaction with rail services) clearly shows that the degree of satisfaction of rail passengers is totally independent of the degree of liberalisation of the railway system of the respective country. Taking all criteria into account, Austria, being in the top third, has a good midfield place.

The market report of the regulation authorities of the Member States (Independent Regulators' Group – Rail,

Annual Market Monitoring Report) from February 2013 states that 27 railway undertakings are active in Austria, a large number for a country this size, and that the distance travelled by rail per inhabitant is the third highest after Switzerland and France.

In addition, the final report "Competitive tendering in European regional rail passenger transport - what can Austria learn from tendering experiences in Europe?" of the Zentrum Transportwirtschaft Logistik Schulungs- & Beratungs-GmbH says: If a small country tenders routes for each region, this is unattractive for potential competitors and inefficient for authorities. If larger sub networks are tendered, this is attractive but could put the incumbent at risk. If in addition, as in the case of Sweden, these implement a price dumping policy, there is a danger that both incumbent and competitors, which previously took over routes of the incumbent, have to be rescued resp. their routes have to be taken over or have to be awarded to other tenderers at a higher cost.

This makes it obvious that mandatory competitive tendering is detrimental to existing operators, including state-owned railways, and all other participating railway companies. In all cases, the relevant costs are borne by the general public.

Enterprises in liberalised markets react above all with cost reductions. In particular, in case of sectors requiring a larger workforce, it seems to be natural for companies to lower their costs by making staff redundant. Hence, it has been proven that mandatory competitive tendering is fraught with dangers, which jeopardize a very large number of jobs.

According to the final report mentioned above, another problem of competitive tendering is associated with long-term falling provider numbers. In Germany, for example, competitive tendering in particular in regional transport, has been going on for years. As an empirical study of the Association of German Transport Companies (Verband Deutscher Verkehrsunternehmen – VDV) shows, competitive tendering is quite often inadequate. Fewer and fewer companies have been participating in individual proceedings over the past years. The declining participation in tenders has already revealed the first tendencies to form oligopolies. This is an indication of high costs and financing difficulties by railway undertakings. Hardly any private undertaking is able to provide the necessary resources for drawing up eligible tenders in the long run.

This tendency can also be observed on the European railway market. For example, most companies on the British market are not part of the private sector. Most providers are former state-owned railways of other states resp. their subsidiaries. In particular state-owned railways from France, Germany and the Netherlands have successfully positioned themselves on the British market over the past years. Due to sometimes significantly lower costs, they are able to put private operators increasingly under pressure. WESTbahn GmbH, which since December 2011, in competition to ÖBB, operates long-distance transport between Vienna and Salzburg, is also to 35 percent owned by state-owned railway operator SNCF.

Hence, the mandatory tendering of rail transport is strictly rejected.



#### Freedom of choice:

Compulsory tendering for public transport services have to be strictly rejected. Municipalities, states or Federation must also in future be free to decide how they want to manage their public transport. The danger is that compulsory tendering results in less flexible traveling and fewer trains, higher prices for customers and a dramatic deterioration of working conditions.

International examples show that private services are no guarantee for better and more cost-effective service provision. Private companies reduce their investments when they take over a public enterprise. In most cases, cheaper prices are only available at the start of the liberalisation, whereas quality is significantly deteriorating at the same time. European examples show: in most cases, the arrival of a new provider resulted only in short term price reductions for customers – if at all. After all, necessary investments, at least in maintenance, cost money.

From the liberalisation of the sector – in particular originating from Great Britain and France – emerged a small number of internationally active private transportation groups, which want to enter the domestic markets.

Other experiences with tendering, made for example by the Munich Transport and Tariff Association MVV, have shown that this system is very expensive and also extremely time-consuming. Recently, the MVV has decided to return to market-orientated direct award of contracts.

Public services must be accessible (in the same way) and affordable for all. Hence, the AK supports the affordable,

high-quality, comprehensive provision of public transport, which can be rendered efficiently and under fair conditions for employees. It cannot be in the interest of consumers, if privatisation takes place at the expense of the workforce. Only satisfied and motivated employees form the basis of well-functioning public services. Public services and services of general interest are the core of an infrastructure, which is required for a business location, which must not be allowed to be put at risk, in order not to affect Austria's and Europe's competitiveness.

We strictly reject the fact that the EC want to take the freedom of choice away from Member States.

#### Change to the state aid regime:

Based on the current regulations, compensation for the operation of public passenger transport services is exempt from the notification requirement, provided they fulfil certain criteria (Article 9 of the Regulation concerning the opening of the market for domestic passenger transport services by rail - PSO). The EC intends to cancel this general exemption in the PSO Regulation and to extend instead the scope of the Enabling Regulation 994/98 of the Council by "State aid for transport". Based on this, the Commission shall be able (but not obliged) to decide whether and under what circumstances it declares - by way of a Group Exemption Regulation - such compensation to be compatible with the common market. Adopting such a Group Exemption Regulation would automatically cancel Article 9 of the PSO Regulation after six months.

Based on the clear reasoning of the EC, the proposal to include certain new categories in the Enabling Regulation

“entails neither the immediate block exemption of all these categories, nor does it mean that all measures within a category would be block-exempted in their entirety”. This differentiated declaration makes it clear already that following the possible cancellation of Article 9 of the PSO Regulation, which exempts compensation granted in agreement with the PSO Regulation unconditionally and directly from the notification requirement, no adequate subsequent regulation shall be applied. This is in particular also expressed by the EC commenting on the proposed amendments to the Enabling Regulation: “The Commission currently expects such a block exemption would however reproduce the substance of the current exemption (Article 9 PSO Regulation), except to the extent that Regulation 1370/2007 is amended by planned legislative proposals relating to the rail sector”. Apart from that there are no specific clarifications in respect of Article 9(2) lit. a) and b) of the PSO Regulation. Hence, a number of uncertainty factors remain.

The approach of the EC to put into question without convincing legal substantiation (Article 108(4) and Article 109 TFEU, which are referred to as a legal basis, are purely optional provisions) and without recognisable factual necessity, the hard-won result of a lengthy discussion process in form the exemption of PSO-conform exemption for transport services from the general state aid regime including the notification requirement, must be strictly rejected within the meaning of legal certainty and proportionality. The accompanying bypassing of the European Parliament, which is a co-legislator of Regulation 1370/2007, also does not seem to be justified in this context.

#### **The BAK therefore demands:**

- No further liberalisation of domestic passenger transport services
- No compulsory liberalisation of rail passenger transports, but maintaining the freedom of choice for competent authorities, whether they want to award contracts directly or put them out to tender
- No upper limits for the market share of railway companies
- Compulsory social and quality standards for all possible tenders
- Compulsory Transfer of Undertakings with voluntary offer to employees who should join a new operator
- Not the public sector shall carry the economic risk, but the company itself

#### On the provisions in detail

##### On Recital 11:

Even though the EC admits that employees of transport companies require social protection, it leaves it to the discretion of each individual Member State. It is necessary to insist on embedding social protection as a binding requirement already at EU level.

##### On Article 2 lit c)

The definition of the competent local authority is expanded, however, leaves open the question, whether railway companies, which are owned by a Federal state, which establishes and regularly updates public passenger transport plans covering all relevant transport modes for the territory for which they are responsible, is considered an internal operator.



On Article 2 lit e)

From the point of view of the BAK, the amendment in the draft Proposal “The scope of public service obligations shall exclude all public transport services that go beyond of what is necessary to reap local, regional or sub-national network effects” is not clear and must be revised. It should also be clarified that in case of small Member States the domestic network in its entirety is included to fulfil the services of general interest of a Member State and that as such, a comprehensive national network can fall within this scope.

On Article 2a Paragraph 1 and 5

The BAK welcomes the proposal that in establishing public transport plans, competent authorities shall have to regard in particular applicable rules regarding passenger rights, social, employment and environmental protection. On a critical note one has to say that this proposal too has the character of a non-binding recommendation and that it should be embedded in a binding manner.

The EC also proposes “that the competent authorities shall adopt the public transport plans after consultation of relevant stakeholders and publish them. For the purpose of this Regulation, relevant stakeholders to be taken into consideration are at least transport operators, infrastructure managers if appropriate, and representative passenger and employee organisations”. The same applies to drawing up the specification of public service obligations. The BAK also welcomes this approach.

On Article 2a Paragraph 6

Here the maximum annual volume of a public service contract in terms of train-

km shall be the higher value of either 10 million train-km or one third of the total national public rail passenger transport volume under public service contract.

The current direct award of contracts of rail passenger transport services for the section of routes covered by ÖBB-Personenverkehr AG in the overall network of the federal territory (so-called Contract of the federal government concerning public services of ÖBB – GWL Contract) for local rail passenger transport is 58,371 million train-km and for long-distance rail passenger transport 12,742 million train-km. Apart from the general rejection of the draft Proposal, this limit is also strictly rejected.

On Article 4 Paragraph 5

This draft remains unchanged in the new draft and includes an optional provision for the competent Authorities, to oblige the selected operator of a public service to grant employees who were previously recruited to provide services, the rights to which they would be entitled if a transfer had taken place, even if no such transfer of undertaking has taken place as defined in Directive 2001/23/EC.

Since 2009, this provision has not once been applied in Austria and it is to be feared that this will continue in future. The time has come for the EC to show how serious it is in respect of providing employees with social protection. The optional provision must be changed into a binding requirement and once the selected operator of a public service has made a binding offer of transfer of undertaking to the employees of the previous operator, every employee has to agree voluntarily. Only then can it be ensured that all parties apply the same personnel costs to an offer and that competition is not carried out at the expense of employees.

#### On Article 4 Paragraph 6

It is stated that where competent authorities, in accordance with national law, require public service operators to comply with certain quality and social standards or establish social and qualitative criteria, these standards and criteria shall be included in the tender documents and in the public service contracts. The expansion of quality standards in the current Regulation to include quality and social standards in the draft is welcomed in general; however, this has only created an option, which, is with the exception of Austria not applied by any other Member State. The compliance with social and quality standards and the inclusion of social and qualitative criteria must be a binding requirement for the Member States; otherwise this is just a dead law, which we will be at the expense of employees throughout Europe.

#### On Article 4 Paragraph 8

The draft shall ensure that "competent authorities shall make available to all interested parties relevant information for the preparation of an offer under a competitive tender procedure. This shall include information on passenger demand, fares, costs and revenues related to the public passenger transport covered by the tender and details of the infrastructure specifications relevant for the operation of the required vehicles or rolling stock to enable them to draft well informed business plans. Rail infrastructure managers shall support competent authorities in providing all relevant infrastructure specifications". From the point of view of the BAK, there is also no information on personnel costs for those employees, to whom, in accordance with the Transfer of Undertaking Directive a binding offer has to be made.

#### On Article 4 and 5

The Regulation shall be amended to assert that no competitive tendering procedure has to be organised if the operator is an internal operator. The internal operator is defined in accordance with Article 2 lit j), i.e. that the competent authority exercises a control comparable to that exercised over their own departments.

The BAK strictly rejects the proposal that domestic authorities will lose the currently possible freedom of choice between competitive tendering and directly awarding contracts.

#### On Article 5 Paragraph 3 and 6

In the current Regulation, competent authorities are able to decide whether to directly award public service contracts by rail. Hence, it is up to every Member State, to organise and award its rail services as it considers them to be most appropriate.

The BAK once again strictly rejects the notion to take away from national authorities the currently possible freedom of choice between competitive tendering and directly awarding contracts.

In addition, the draft proposes in Paragraph 6 to determine that there will also be the option of award public contracts to several railway companies, by limiting the number of contracts, which are awarded to the same railway company.

#### On Article 5a

To ensure that all operators are having non-discriminatory access to the market, the EC proposes that the Member States bear the residual value risk of the rolling stock, if operators, who want and

are able to participate in public tender procedure, apply for this in order to be able to participate in tender procedures.

Three options have been proposed:

In accordance with lit a) the authority becomes the owner by acquiring the rolling stock, lit b) by providing a guarantee for the financing of the rolling stock and in lit c) the authority can assume the function of mediator.

Hence, new market participants and also unsuccessful tenderers can ensure that they do not carry the risk but that it is passed on to the public sector. The BAK strictly rejects these changes.

Furthermore, it has to be noted that the present draft does not include any stipulation concerning the responsibility for servicing and maintenance, so that in the worst case, the authority would have to bear these costs as well. Apart from that, there are probably no competent authorities (i.e. states and communities), which would have the competence to assess the technical condition of the rolling stock; hence, here too the risk is either a costly incorrect assessment or further passing on of cost to the public.

On Article 7 Paragraph 3

Compared to the current text, this Article has not changed; hence one speaks of directly awarding public service rail contracts, even though in future this shall no longer be admissible. As in the opinion of the BAK, the freedom of choice has to be maintained, this Article is not to be amended, but this and the Articles mentioned above have to be

maintained in their original and currently applicable version.

On Article 8 Paragraph 2, 2a and 3

This determines that public service rail contracts - with the exception of other track-based modes such as metro or tramways - must be awarded in compliance with Article 5(3) by 3 December 2019 at the latest. That means tendering in rail passenger transport from 2019.

On 3 December 2019 at the latest, it must be ensured that all public service contracts, which concern other track-based modes and road transport, have been awarded in compliance with Article 5(3). This means, tendering in respect of metro and tramway transport – provided these are not internal operators – prior to the Regulation coming into force by 2019 at the latest.

Paragraph 2a specifies that public service rail contracts, which are directly awarded between 1 January 2013 and 2 December 2019, may remain valid for the duration intended. However, they may not continue after 31 December 2022.

Paragraph 3 lit d) exempts those public service contracts from the obligation in accordance with Paragraph 2, which were not awarded on the basis of competitive tendering prior to 3 December 2009. This applies to the GWL contract; however, this has been concluded after 3 December 2009, namely on 12 December 2009 and therefore does not come under any transitional periods. This gap must be closed by treating the GWL contract of the Federation like those, which were concluded prior to 3 December 2009.

## Directive to amend Directive 2012/34/EU

### Opening of the market for domestic passenger transport services (Article 10 and 11)

#### Envisaged changes

Apart from changes within the scope of the PSO Regulation, there are also plans to liberalise domestic passenger transport where no awarding or tendering is taking place. This applies for example to city rail routes (Vienna - Salzburg, Vienna - Graz etc.). Currently, only international rail passenger transport has been liberalised. It is true that any number of passengers can board on international routes; however, the main purpose of transport must be the cross-border connection. It is the objective of the European Commission to provide all railway undertakings with access to all rail-related services in Austria. In future, a Romanian licensed railway undertaking, holding a Greek safety certificate and employing Bulgarian train drivers and Hungarian train attendants, shall be able to operate the regional transport between Vienna and Wiener Neustadt, Klagenfurt and Villach, Vienna and Bratislava.

The BAK would like to point out that WESTbahn Management GmbH, which is currently operating in competition with all other transport companies, is not the result of a EU-wide liberalisation, but solely based on domestic law (Austrian Federal Railway Act EisebG). However, the EisebG is able to lay down further conditions (public interest, common good). Westbahn Management GmbH is currently operating just 0.6 % of all trains in Austria. All other passenger transport providers (Linzer Lokalbahn, Salzburger Lokalbahn, ÖBB

[Austrian Federal Railways], Montafonbahn, Achenseebahn, Graz Köflacher Bahnen, Steiermärkische Landesbahnen etc.) are cooperating to generate the best possible yield from possible synergies of the overall network.

#### Competition has brought no improvements

At least according to the (never proven) conception of the EU Commission, competition would - quasi automatically - improve transport services, in both quantitative and qualitative terms. However, the figures provided by EUROSTAT show that these expectations will not be met. **There is neither a connection between passenger satisfaction and the degree of liberalisation. Nor is there a connection between the degree of liberalisation and the performance of rail operators.** Extensively liberalised countries have recorded an increase in the number of rail passengers, but less liberalised countries have also made gains. France, for example (ranking in 23rd place regarding the degree of liberalisation) has gained more passengers (+3 %) than Germany (3rd place and +1 %). Some extensively liberalised countries (CZ) even recorded falling numbers. The countries with the largest decrease occupy the midfield, with Ireland being the only exception, which due to her economic crisis is experiencing a severe economic downturn.

A similar picture emerges from the liberalised freight transport: here too, rail operators have developed independently of the degree of liberalisation. The best performance of the ÖBB (Austrian Federal Railways) freight transport affiliate occurred at a time before anybody even began talking about liberalisation.

**Europe's most successful and most popular railway services, i.e. those of Switzerland, are of course not liberalised.** Nobody in Switzerland would give room to the idea to endanger the win-win situation enjoyed by the public sector, rail companies and passengers because of absurd liberalisation.

### Competing cherry pickers

The Austrian railway system is a network product. It consists of profitable routes (such as long-distance transport from Vienna to the west) and non-profitable routes (such as regional transport). There are also peak times (for example morning and evening rush hours) and times, where trains are less frequented. **At the moment it is a matter of course to compensate loss-making routes (Regio transport, off-peak periods) with profitable routes and profitable times.** Hence, the comprehensive and affordable mobility of the population is guaranteed. The railway system is able to fulfil its indispensable tasks within the scope of services of general interest. Beneficiaries are not least the public sector and customers/passengers. Both benefit from an attractive and high-quality range of railway services.

If, as it is the intention of the EU Commission, individual routes or connections are separated from the system, it will no longer be possible to sustain this made-to-measure range of services. **Competition will result in the fact that passengers will only be able to enjoy services, where profits are guaranteed.** As impressively demonstrated by WESTbahn Management GmbH, new providers are only interested in profitable routes. At best, this cherry picking will actually result in prices coming down on selected trains at

selected times. However, this will have the effect that the current possibilities of cross-subsidisation will be reduced because of generally falling profit margins. However, alongside this tiny number of benefitting passengers are 572,000 daily rail customers, mainly passengers who commute on a daily basis. The consequences are more expensive tickets in the short and medium-term as well as the reduction of the range of services at off-peak periods and in the region.

With regard to inner alpine regions, the ÖBB has already adopted this approach for a number of routes (Klagenfurt-Salzburg, Linz-Graz, Salzburg-Graz). The ÖBB is obviously in need of a well filled "war chest" to be able to stand up to private operators of the in any case well served Westbahn route. Admittedly, following massive protests of the population and regional politicians, trains running at two-hour interval between Salzburg and Graz were reinstated; however, Salzburg and Styria, two concerned Austrian regions, had to provide extra funding. Even though, the quality of railway connections has been re-established, the result has been significantly higher costs for the states' budgets. At the same time, the pressure on regional, regularly scheduled and - under circumstances - even on public services in respect of allocating routes is increasing. Existing services and any expansion of capacity of services (for example in case of the new Salzburg S-Bahn) are made more difficult.

**Separating individual routes results in the deterioration of overall range of services or in generating higher costs for the public sector.** This transfer of additional public funds must be strongly opposed.

## Impact on workforce

Admittedly, there is no connection between degree of liberalisation, passenger satisfaction and rail effectiveness. However, **the connection between the deterioration of working conditions and liberalisation is undisputed.** Apart from the daily railway customers, it is the employees who suffer the most from further liberalisation. The consequences include

- enormous staff reduction,
- new working time regimes: flexibilisation, consolidation and extension, growing intensification of work and stress, introduction of precarious and atypical forms of employment,
- pay cuts: reduction of pay rises, poorer or no collective agreements (for example in case of outsourcing) – wage reduction of up to 25 % for new employees, lower wages in case of outsourcing and new providers, reduction of allowances and bonuses, move towards wage dumping – risk of low-pay sectors being established, individualisation of employment relationships: income uncertainty,
- reduction of apprenticeships and further training.

In doing so, the Directorate General for Mobility and Transport of the European Commission makes a mockery of the efforts of the other DGs, in particular of the Directorate General for Employment, where attempts are made

- to keep people in work for longer,
- to create quality jobs,
- to enhance the ability to work.

## Toothless protection of the public sector

Even though the intention is to protect public transport (compare Article 11), these protective regulations have been formulated in a completely nebulous way, which renders them useless. They only lay down that they have to be defined in advance and that they will be monitored by the rail regulator. Which criteria will be applied and who will define them is as ambiguous as the scope of discretion of Member States and regional authorities. In respect of drafting the criteria it is to be expected that these are either drawn up by the Commission itself or by the Member States. Should the European Commission prepare the criteria, they - as shown from previous experience - will be borne exclusively by the liberalisation efforts of the Commission. If the criteria are prepared by others, the European Commission has already de facto secured an ultimate right to veto based on its other Directives and draft Regulations (Interoperability, Agency and Safety). The European Commission is able to cancel any proposal, which it regards as too ambitious, via its downstream executing authorities (rail regulator and Railway Agency). **In both cases, the protection of services of general interests would be a thing of the past.**

## Examples of Great Britain and Sweden

The pioneers of the liberalisation in Europe are Great Britain and Sweden. Both countries clearly demonstrate: the promises initially made by the market openers, such as improved quality, with ticket and overall costs being reduced at the same time, did not materialize.



Even though studies clearly show that both the British and Swedish way have led into a cul-de-sac, this way is now on course of being implemented all across Europe. This is unacceptable.

As early as 2004, only a few years after the liberalisation, it became clear that the British way had been the wrong one: significantly risen subsidies (from £ 1,600 million in the 1990ies to no less than £ 3,800 million following the liberalisation) only produced moderate success. Even then, much more taxpayers' money was spent on a larger, but in the end more inconsistent number of trains, which, even though new, were less likely to be on time. The study "Realising the Potential of GB Rail" (McNulty 2011) comes to the conclusion that the **overall costs of the liberalised British railway system are about 40 percent higher than in other comparable European countries**. Apart from that, compared to the rest of Europe, British passengers pay the most for their tickets. According to calculations by Just Economics, British rail passengers would save € 5.3 billion p.a. if ticket prices were at the same level as those purchased in France. As reported by the BBC in November 2009, even the infrastructure operator Network Rail would prefer its employees to travel by bus, as railway tickets were just too expensive. Furthermore, the degree of complexity of the British system is also increased by the inconsistent discount system. Every year, several million (!) tariffs are defined, reviewed by the Ministry of Transport and offered to passengers. However, most of these tariffs are never used as the fragmented structure results in the fact that passengers do not enquire about cross-section transport services (those, involving several operators) and

that journeys are individually planned with several providers. It is very difficult for rail passengers to understand this complex price system.

Sweden too was not able to meet expectations. As current studies show (Kummer 2013, Alexandersson 2012), from an economic point of view, the Swedish model only enjoyed short-term success. One of the key targets of the liberalisation, the reduction of costs, could not be achieved. On the contrary, the need for subsidies by the public sector has significantly risen. Even though in 1988, passenger kilometres increased by 58 percent from 6.5 billion to 10.3 billion in 2009, **the costs for the Swedish state during the same period rose by 464 percent** from € 336 million to about € 1.56 billion. Apart from higher investments in the infrastructure, the reasons cited include above all the fragmentation and distribution of tasks to several operators as well as establishing a cost-intensive administrative system for dealing with competitive tenders. In addition, the liberalisation and breaking up of the previous structures have strongly increased the complexity within the railway system.

This means that Swedish taxpayers have to pay far more for both the liberalised rail sector and tickets than at times of the Swedish State Railways. In order to be able to deal with competitive tenders, the country also needed to establish an expensive administrative system. Similar to Great Britain, due to the increasing consolidation process, the danger exists that the rail sector will be oligopolized, which carries a significant potential to increase costs. The Swedish Rail Administration Banverket has examined how ticket prices de-

veloped between 1988 and 2003 and concluded that they increased by 125 %, whilst during the same period the consumer price index only rose by 57 %. A small part of this price increase can be explained by the introduction of Value Added Tax in 1991. Another part is based on the greater differentiation of the price structure between more expensive high-speed and cheaper Inter-City trains. However, even both factors combined do not explain the immense price increases since the liberalisation of the Swedish rail sector.

### Conclusions - Demands

Based on rational criteria, it is difficult to understand the improvements of the rail system advised by the European Commission. In fact, the opposite is the case. Those who “carry the can” of liberalisation are employees, rail customers and public bodies. In the end, further liberalisation means:

- The end of financial compensation between profitable and non-profitable railway line sections and associated with it the end of comprehensive supply,
- Additional expenditure for regional or local authorities
- Massive pressure on the rail as an element of services of general interest
- Additional costs for employees
- Additional costs for rail passengers

Instead of only relying on (obviously completely unsuccessful) competition, the Commission should consider those issues, which can really influence the appeal of railways: regional planning, quality criteria, price transparency for transport, social criteria, infrastructure and the protection of the environment. Here in particular, the Commission would be able to take steps, which have long been considered important. We refer in particular to the Directive on

the charging of heavy goods vehicles for the use of certain infrastructures (1999/62/EC). Currently for example, the carriage of goods by road in Austria – in spite of high tolls compared to other EU Member States – only bears a third of its costs. We also refer to the catastrophic developments concerning the rail infrastructure in the East European countries.

Higher market shares are not the automatic result of granting access to markets, but they are based on a transport policy, which takes economic, social as well as ecological aspects into account. However, the EU Commission proposes to substitute sustainable transport policies with private competition. This is a declaration of bankruptcy which affects all efforts to shape policy.

### Restrictions for holding structures (Art 7)

According to the European Commission, some Member States would have intransparent access to the rail infrastructure. Therefore, according to the Commission, infrastructure managers had to become more independent. Hence, the amendments to Directive 2012/34/EU, proposed by the Commission, interfere massively in existing rail structures. Even though holding structures, which combine infrastructure management and transport operation (providing transport services in freight and passenger transport) shall also be permitted in future, far-reaching conditions are defined, which make **the benefits of the holding almost completely disappear** (compare Article 7, 7a to 7e). However, the Commission is overlooking the fact that neutral access is guaranteed by the regulator and breaking up rail operators does not create additional rail capacities. Bottlenecks in the rail network can only be remedied by investments and not by

separating strictly controlled integrated undertakings.

The BAK rejects the planned restrictions of integrated undertakings for the following reasons.

- By doing away with synergies for joint procurement, joint human resource planning, joint system planning etc., the rail system will become more expensive. The Association of the European Railway Industry comes to the conclusion that - depending on future rail transport development - Europeans will be faced with additional costs of between 5.8 and 14.5 billion p.a. And domestic rail services will not escape an increase either. Concerning its only 30 km long network, Wiener Lokalbahn expects additional costs of € 600,000 p.a.
- Human resource planning is made much more difficult because of the disappearing Group labour market; how employees will be transferred to individual companies in case of a breakup is still unclear.
- Railways operate optimally where "everything is under one roof" (system road / rail). In many cases, investments (safety, rolling stock, track adaptations) only pay off if both systems (i.e. infrastructure management and transport operation) are taken into account. New technologies were always the result of integrated rail systems (TGV, ICE, AVE).
- Access cannot become "fairer" as it is already guaranteed by the regulator.
- There is no connection between the degree of fragmentation of undertakings and high market shares

resp. satisfied customers. More rail (market shares) and better rail (passenger satisfaction) only exist, where policy has put its mind to it and not where separation and liberalisation were the order of the day. The most successful passenger and freight transport railways are all integrated.

Finally, the BAK would like to point out that the European Commission has been trying for over twenty years to rush through the full opening of the market for domestic passenger transport services by rail as well as to break up the railways. The present package even intends to introduce amendments to Directives without any requirement of these being implemented. It is highly unacceptable that the Commission appears not to take the continuity of planning and the law-making process seriously.

**Hence, from the point of view of the BAK, the amendments to Directive 2012/34/EU have to be rejected.** The Member States are urged to shape the rail as an element of services of general interest themselves. Due to the heterogeneous nature of the requirements and based on previous liberalisation failures, this is urgently required.

### **Regulation on common rules for the normalisation of the accounts of railway undertakings in the EU**

Austria is not affected by this Regulation. The BAK takes note of the draft.

**Technical Directives and Regulations: Directive on the interoperability of the rail system within the European Union (COM 2013 30), Directive on railway safety (COM 2013 31), Regulation on a European Railway Agency Railway Agency (COM 2013 27/2) – general remarks**

It is planned to delegate a number of competencies, which are currently mainly held by the Member States, to the European Commission. The objective is to harmonise the technical specification of carriages, the registration of vehicles and the registration of parts of the infrastructure.

The Austrian Federal Chamber of Labour generally welcomes a harmonisation at European level. However, the drafts presented are not suitable to create a sustainable railway area. Important Regulations do not exist and clarifications are required. It is therefore necessary

- to lay down a clear framework for developing European regulations; current requirements have to be amended.
- not to endanger and to retain in future important national regulations concerning safety, working conditions and passengers,
- to revise the right to veto in respect of national provisions; otherwise the Commission would be able to almost randomly overrule any provisions, which would result in a regulation vacuum,
- to certify the entire safety-relevant personnel; to push forward social in addition to technical harmonisation;
- to lay down minimum checks,
- to lay down minimum intervals for inspections.

**The BAK believes that railways require technical and social harmonisation. However, it is unacceptable that national states are robbed of the opportunity to have their say in respect of drawing up and revising regulations.**

Basically a model has to be chosen that permits a high degree of harmonisation, but which also corresponds to the heterogenous nature of the European railway area. It is necessary to define a basic framework of common features, whereby the Member States may have deviating regulations. In road traffic, for example, this model has been successful for decades. Building on a common basis, Member States may apply special regulations in sections (legal alcohol limits, driving bans, speed levels, age etc.) according to national requirements.

**The BAK strictly rejects any harmonisation at low level.** Unfortunately, the drafts give no indication as to the future safety level. It is clear, however, that important regulations (vocational training, controls, review periods) are missing.

## **Directive on the interoperability of the rail system within the European Union (COM 2013 30)**

### **Recital 5**

Due to the fact that the technical specifications apply to the entire railway sector, their application must of course also consider "training provisions, passenger rights, labour regulations and staff working conditions". The Recital has to be amended accordingly.

### **Recital 33**

The Recital must be amended to explain that the suitability for use of the most critical constituents also includes health protection and is not only restricted to "Safety, Functionality and Profitability".

### **Art 1 Scope**

It is required that the scope does not only consider the "Health and safety conditions of the staff who contribute to its operation and maintenance". Of course, passengers, in particular passengers with reduced mobility, must also be considered.

### **Art 2 Definitions**

The definition of urban and/or sub-urban rail transport does not apply to Austria. A clear definition is required whether specific rail transport such as city train systems (such as in Vienna, Salzburg, Graz etc.) or local railways (Wiener Lokalbahn, Linzer Lokalbahn, Salzburger Lokalbahn) have to be subsumed under "urban and/or sub-urban rail transport" or not.

The BAK welcomes that "disabled persons and persons with reduced mo-

bility" are included for the first time. However, it is necessary to be able to adequately implement any regulations resulting from this and to define "the desired accessibility". The BAK proposes to adopt the definition from the Austrian Equal Opportunities for People with Disabilities Act.

### **Article 4 Content of Technical Specifications for Interoperability TSIs**

This Article lays down, which requirements the European specifications have to meet.

The transfer of powers to the Commission (Paragraph 2) in respect of delegated acts is too far-reaching. The requirements stated (Paragraph 3) do neither mention passengers, nor persons with reduced mobility. This has to be added. The list of possible specific cases (Paragraph 6) must also address staff training and passenger-specific requirements.

### **Article 5**

Article 5 lays down the procedure for drawing up specifications, whereby the rights of the Member States (compare new Paragraph 4) are restricted. This has to be rejected as important information, for example with regard to defining required specific cases (Paragraph 3) is being lost. It will then no longer be possible to cover all the whole of the rail network.

### **Article 7 in connection with Article 14**

This Article lays down when European specifications are not to be applied. In general, Member States shall only be granted "specific paths" in case of natural disasters or if the economic viability

would be compromised. Here, the fundamental problem of the harmonisation efforts, which are obviously predominantly targeted towards the vehicle industry, becomes apparent. In connection with the restrictions of Article 5 of the present Directive and in connection with the testing regime (Article 21) of the Agency Regulation, which deprive Member States of any right to veto decisions of the European Commission, Member States are completely disempowered. This is probably to be welcomed in a number of areas. It applies for example to general technical railway requirements (harmonised European platform height etc.).

However, there are (national) regulations in other areas, which are essential for the safety of rail transport. To give an example, we refer to österreichische Eisenbahneignungs- und Prüfungsverordnung EisbEPV [Austrian railway industry qualifications and examination regulations] or to individual regulations of the German Railway Construction and Operation Regulations. It has to be expected that the EU Commission will take steps to cancel these special regulations, even though they are relevant to safety issues. This has to be rejected.

It has to be ensured, both in the Directive via interoperability and in the Regulation via the Railway Agency, that proven and safety-relevant or passenger-relevant national regulations are not cancelled by a stroke of the pen.

### **Article 8**

"The Commission shall establish, by means of implementing acts, the scope and the content of the EC declaration of conformity and suitability for use of inte-

roperability constituents, its format and the details of the information included in it." To avoid that these are only based on purely economic optimizations, the Commission should be given a clear framework. Particular consideration has to be given to safety, passenger requirements and occupational health and safety.

### **Article 20 and 21**

Here exclusive powers are transferred to the Commission, to grant authorizations for rolling stock and parts of the infrastructure. However, no clear examination criteria have been provided. Analogue to the statements under Article 1, Article 7, Article 8 and Article 14, it is necessary to create a clear framework.

The BAK would like to point out that a European authorization might create the impression that rolling stock could be used unrestricted and directly across Europe. In many cases, the infrastructures, which can be accessed, are not yet adequately prepared. Hence, special national regulations will be required and special national infrastructure designs will continue to exist. This must also be permitted in future. Otherwise, unnecessary pressure will be created to (completely) reconstruct existing systems. This must be rejected for financial reasons.

As indicated above, the option must exist to determine specific national features (higher standard, clearer definitions, infrastructure specifications, specifications of the combination vehicle/track, requirements on staff etc.). The BAK strictly rejects any harmonisation on a low level.



## Annex III

Annex III defines the scope for the requirements on components. From the point of view of the BAK additional information has to be provided.

### 1.1.5. Safety (general) in connection with 2.4.1. Safety (rolling stock)

To determine that only access doors, which incorporate an opening and closing system, guarantee passenger safety, misjudges the boarding and alighting situation. We would like to refer to additional safety-relevant factors during boarding and alighting trains (platforms, platform gap/stepping distance, markings, signage etc.). Only to regulate the locking mechanism is therefore absurd and inadequate. We propose the following wording:

“Passengers must be able to board and alight trains in a safe manner. The door locking and opening mechanisms, the width of the platform gap and the train dispatch procedure must guarantee passenger safety. Trains must be designed in such a way that passengers cannot get caught or become entangled. Passengers must be informed about necessary local regulations both at stations as well as on trains (no entry, entries and exits, codes of behaviour, options for persons with reduced mobility, meaning of markings, danger zones etc.) in an easy understandable and comprehensive manner”.

### 2.4.1. Safety (vehicles)

Not only emergency exits should be provided and indicated on trains. The following should be added:

“Passengers must be able to alight trains safely at any time. Trains must not be overcrowded.”

### 2.4.3. Technical compatibility

Not only relevant climatic conditions must be taken into account but also topography (gradients, slopes, tunnels).

### 2.6.1. Safety (Operation and traffic management)

With regard to ensure safe operation, only drivers, on-board staff and the staff in the control centres are mentioned. This is by no means adequate. Other occupational groups such as train dispatchers, railway supervisory bodies, train maintenance and shunting workers, etc. have to be added.

## Directive on railway safety (COM 2013 31)

### Article 3 Definitions

Definitions only consider an accident (lit k) with personal injuries when a train is in motion. This restriction is difficult to comprehend as accidents can also occur when a train is stationary, for example in case of construction work.

It has to be ensured that suicides are stated separately. On the one hand, this complies with current European legislation, whereas wrong conclusions as to the safety of travelling by rail will be avoided on the other.

The definition of urban and/or sub-urban rail transport (lit p) must be amended in the same way as in respect of the Interoperability Directive.

### Article 4 Role of the actors of the rail system in developing and improving railway safety

According to the draft, the system-based approach with regard to developing and improving railway safety (deleted Paragraph 2) shall be abolished. This results in the fact that processes can no longer be viewed in their entirety, even though safety-relevant regulations, for example via the TSI, are not automatically developed in a system-based manner. Hence, the definition of responsibilities is no longer clear. This has to be rejected.

Apart from that it is the intention that Member States no longer need to ensure that regulations shall ensure that safety rules are laid down, applied and enforced in an open and non-discriminatory manner (Paragraph 1). This means in combination with the regulati-

ons of the new Paragraph 2 that the authority no longer has the responsibility for supervising railway safety. Instead, this responsibility shall be delegated to infrastructure managers and rail companies. Even though the Commission can lay down methods of supervision for national safety authorities (Article 6), supervision is delegated to the railways. A sovereign system shall become a self-regulating and supervising system.

Transferring this scenario to road traffic would mean that policemen and women would no longer be in charge of monitoring traffic. They would be replaced by traffic wardens and supervising employees of infrastructure managers and lorry and car drivers. In this case, a driver, with the assistance of the mayor of a remote mountain community, would have to ensure appropriate speed limits and that semi-trailers are loaded correctly. Both, driver and mayor, would also have to monitor vocational and further training, the compliance with driving time and rest periods, the correct storage of dangerous goods, brake system efficiency, emission values, axle load, tyre pressure, the adherence of maintenance intervals, the adequate condition of axles (hairline cracks etc.). This applies even if the community depends on the income generated by the semi-trailers (based on infrastructure tolls). This economic dependency of the infrastructure manager on railway undertakings based on infrastructure tolls applies to railways across the entire network. **Any self-regulation in an area of services of general interest must be vehemently rejected.**

### Article 8 National rules

In future, Member States shall only be

able to lay down very restricted national rules. This, for example, applies to urgent preventive measures (following an accident).

National rules may also be laid down for other reasons. However, these are specified in such a way, that persons subject to these rules are not adequately informed what these reasons are. The Commission proposes that national rules are permitted where "rules concerning existing safety methods are not covered by a CSM". CSM – Common Safety Methods – means "the methods describing the assessment of safety levels and achievement of safety targets and compliance with other safety requirements" (Article 3 lit f).

Whether important regulation will continue to apply or may continue to be laid down is a mystery, as the rule is simply incomprehensible. **The BAK believes that harmonisation is required. However, it is unacceptable that national states are robbed of the opportunity to have their say.** Here too, we refer to road traffic, which defines a basic structure of common features, where, however, it is possible that Member States have deviating regulations. This applies among other to legal alcohol limits, speed limits, load capacity, driving with lights on, etc.

It has to be ensured that the Commission cannot cancel important national regulations (as the EisbEPV, EisbBBV in Austria) by a stroke of a pen (compare Article 21 of the Agency Regulation and Article 7 and 14 of the Interoperability Directive).

#### **Article 9 Safety management systems in connection with Chapter III Safety certification and authorisation**

Safety management systems (SMS) should not, as laid down in Article 9 Paragraph 3, only coordinate emergency procedures of the infrastructure manager with all railway undertakings. Coordination is of course also required as regards regular services, as otherwise a safe railway service cannot take place.

So far, the SMS contents were defined in the Annex of the Directive. This Annex shall now be deleted as the definition of SMS contents shall be delegated to the Commission by means of a delegated act. Hence, it is no possible to derive future SMS content from the present draft. Another consequence is that it is not possible to evaluate the safety certification and authorisation (Chapter III) – which is based on the SMS.

The BAK recommends **retaining and amending the Annex**. Similar to the SMS, it is an important part of the Directive. Both should not be delegated.

#### **Article 14 Maintenance**

Regarding the maintenance of vehicles, no intervals have been laid down, within which vehicles have to be serviced. Mandatory checks, which are a matter of course concerning road vehicles (as the so called § 57a Inspection), are not consistent with regard to trains. The Commission relies on manufacturer information. From the point of view of the BAK, this prejudices safety; after all, it is beneficial to the companies involved (manufacturers of vehicles and rail companies) to state resp. lay down, long periods. Furthermore, experiences show that this self-regulating system has massive gaps. We refer to the German ICE as an example. In this case, manufacturer information on mainte-

nance intervals with regard to axles had led to hazardous cracks. As a result intervals had to be reduced drastically.

The BAK therefore demands to lay down **minimum intervals for checks**.

### **Minimum checks**

If one is serious about establishing a safe railway system, it is of course necessary to include relevant control measures. Unfortunately, this is not the case. The regulations of Article 4 even take opposite steps. From the point of view of the BAK, minimum checks (technical roadside inspections of the rolling stock, roadside inspections of the load, control of the compliance with the basic requirements of the TSI, checking the compliance of rail access criteria such as training, qualifications, concessions etc.) have to be defined. This also applies to the minimum funding requirements of the authorities in charge.

## **Regulation on a European Railway Agency Railway Agency (COM 2013 27/2)**

The Regulation defines the future role of the European Railway Agency. According to the Interoperability Directive and the Safety Directive, it shall play a more important role. Apart from approving and checking national rules, the Agency shall also register infrastructures and vehicles and issue declarations of safety certificates for infrastructure undertakings and transport companies.

### **Article 1 "Context" in connection with Article 32 "Railway staff"**

The Regulation shall apply to the certification of train drivers. From the point of view of the Chamber of Labour this is too limited; after all the safety of railways depends on the interaction of all occupational groups. Apart from train drivers, train dispatchers, on-board staff and train maintenance workers play an important role. Hence, the Commission should therefore be urged to present in Article 32a proposal on the certification of the entire safety-relevant staff. This has to be developed in transparent co-operation with the social partners.

### **Article 4 "Working parties" in connection with Article 5 "Consultation of the social partners" and in connection with Article 15 lit g "Technical support"**

These Articles lay down the operating methods of the working parties of the Agency. They also decide those technical and social standards, which must be applied Europe-wide. A large number of working parties have been performing their tasks for years. According to the present Regulation, it is necessary to take both social environment and

working conditions into account. This consideration requires the consultation of the social partners.

However, previous experiences show that even though this consultation is taking place, its execution leaves plenty of room for improvement. For one, the suggestions of employees are only rarely taken into account, which expresses itself in partly non-acceptable working conditions. For example, many traction vehicles - in spite of long working hours of the staff - still have no toilets. On the other hand, there is a lack of a horizontal cross-divisional working party, which focusses on addressing working conditions. Currently, the Agency restricts health and safety conditions in many cases on material properties in interoperability components (toxicity, anti-glare shield etc.). This is certainly important, but not sufficient. Apart from the composition for safe rail operations, the interaction of components is equally decisive for a safe operation. A large number of components are certainly excellent as individual components. However, using them in combination with other – also certified – components can also result in the overall system developing in a suboptimal manner. This expresses itself for example in excessive demands on employees resulting from a vast number of as a whole confusing control elements etc.

The BAK therefore requests the **establishment of a dedicated horizontal working party for the adequate consideration of working conditions**.

#### **Article 21 National rules**

This Article allows the Agency to check national rules and to decide whether these conform to its ideas. There is no

option challenge it or appeal it. As already noted under the Interoperability Directive (Article 7 and Article 14) and Article 8 of the Safety Directive, it cannot be the objective to completely abolish national regulations.

Should you have any further questions  
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