

AGREEMENT ON THE FOUNDATION OF A EUROPEAN WORKS COUNCIL

**Agreement on cross-border information and consultation
of the employees of the DB Group**

between

Deutsche Bahn AG
as the Central Management of Deutsche Bahn Group

(hereinafter: Central Management)

and

the European Works Council of
Deutsche Bahn AG

(hereinafter: EWC)

Preliminary remarks

Under section 33 sentence 1 of the Act on European Works Councils (*Gesetz über europäische Betriebsräte*, EBRG), the EWC has resolved by the majority of its members' votes that an agreement under section 17 EBRG is to be negotiated with Central Management. This agreement is in particular to take account of the changed structure of the undertaking and make it possible for information and consultation to take place closer to the business area decisions. On the basis of section 33 EBRG, the parties have now reached the following agreement.

The new structure of the European Works Council on the basis of an agreement under sections 17 ff. EBRG serves to continue the fair cooperation and the pan-European exchange of information and opinion on the basis of cooperation in mutual trust between employees and employers of the undertakings represented in the Deutsche Bahn Group.

The parties recognize the Core Labour Standards of the International Labour Organization (ILO), confirmed at the 86th Session of the International Labour Conference in 1998, and in particular the right to form free trade unions and the right of those unions to negotiate and enter into collective agreements for the employees. In addition, they recognize the current OECD Guidelines for Multinational Enterprises.

First Section

Area of application, composition

§ 1 Area of application

- (1) This agreement covers all establishments of Deutsche Bahn AG and all establishments of enterprises which are controlled by Deutsche Bahn AG. This shall apply in each case where the establishments are located in a Member State of the European Union, in Norway or in Switzerland.
- (2) Apart from this, the EBRG shall apply as amended on 18 June 2011.

§ 2 Composition

- (1) The EWC shall consist of national representatives. The number of national representatives shall be determined on the basis of the total number of employees in each country and on the basis of the number of business areas in each country.
- (2) From each country where the Central Management has an operating unit or an enterprise section, a minimum of one employee representative shall be delegated or elected to the EWC. If in one country a further business unit is operating with at least 100 employees there shall be one more national representative. In countries with a company with more than 10,000 employees a further national representative shall be delegated or elected. For each additional 10,000 employees or a fraction thereof, there shall be one more representative. From Germany 12 representatives shall be delegated.
- (3) The employees' representatives must be employees of the DB AG Group.
- (4) No substitute members shall be appointed.

Second Section

Bodies of the EWC and membership in the EWC

§ 3 Bodies of the EWC

- (1) The EWC shall consist of its members.
- (2) Bodies of the EWC shall be:
 - a. the Presiding Committee (§ 5),
 - b. the Managing Committee (§ 6),
 - c. the Working Groups (§ 7) and
 - d. all the members of the EWC (EWC Plenum).

§ 4 Election and delegation of members

- (1) The election, the delegation and the term of office of the members of the EWC shall be governed by the national provisions of the respective delegating country.
- (2) The national representatives shall be delegated or elected directly to the EWC Plenum under the provisions of their country of origin. At the same time they shall have a seat in the relevant Working Group. Details can be found in the EWC rules of procedure.
- (3) Until the constitutive meeting of the EWC under this agreement, all current EWC members and the employees' representatives of the earlier ARRIVA EWC shall hold transitional mandates.

Third Section
Management

§ 5 Chairperson, Deputy Chairperson, Presiding Committee

- (1) The EWC shall elect from among its members a Chairperson and three Deputies.
- (2) These shall together form the Presiding Committee and manage day-to-day business.
- (3) Until the new election, the current Presiding Committee of the EWC shall continue to manage the business.

§ 6 Managing Committee

- (1) The EWC shall form from among its members a Managing Committee, which shall consist of the Presiding Committee and other members of the EWC. The other members of the Managing Committee shall be proposed by the Working Groups and shall be elected by the EWC.
- (2) The Managing Committee shall meet as required, but at least twice per year.

§ 7 Working Groups

- (1) Working Groups shall be created for the following business areas:
 - a. DB Arriva/ Regional Passenger Transport Working Group,
 - b. DB Schenker Rail Working Group and
 - c. DB Schenker Logistics Working Group

Further Working Groups can be created as needed in consultation with Central Management.

- (2) The EWC may devolve tasks on the Working Groups which they deal with independently.
- (3) The Working Groups shall be entitled to invite experts to attend their meetings for the purpose of consultation. In carrying out their duties, the experts shall enjoy protection and security in compliance with the legal provisions laid down for members of the EWC in this agreement.
- (4) The Working Groups shall meet at least twice per year and as needed in consultation with the Managing Committee. Details can be found in the EWC rules of procedure with the following minimum content:

- a. The agendas of the meetings shall be agreed between the spokesperson of the Working Group in question and the Managing Committee in good time before the meetings.
 - b. A representative of the Central Management from the business area in question and an authorized representative of the Managing Committee shall be invited to the meetings. The participation of the Central Management is restricted to providing information and consultation on specified items on the agenda.
 - c. The results of the work of the Working Group shall be communicated to the Managing Committee through the EWC Office without undue delay after the meeting.
 - d. The working languages of the meetings shall be German and English. If necessary, translations into further languages required shall be made.
- (5) The spokespersons of the Working Groups shall report regularly to the EWC plenum on the activities of their group.
- (6) Disputes on the correct conduct of the information and consultation in the Working Groups and on invitations to the meetings shall be settled between a representative of the Central Management and the Presiding Committee of the EWC.

§ 8 Office

- (1) The Managing Committee shall be assisted in its work by the Office. The Office shall be headed by a manager subject to the instructions of the Managing Committee. The number of personnel necessary shall be determined in consultation between Central Management and the Presiding Committee.
- (2) The seat of the Office shall be at the seat of Central Management.
- (3) The Central Management shall ensure that matters presented for discussion by the employer are supplied through the EWC Office to the competent body of the EWC to be dealt with. After the meetings of the Working Groups and of the EWC plenum, the Managing Committee through the EWC Office shall provide the Central Management with a final report on the discussion of the matters presented. If the Central Management through the EWC Office has supplied the matter for discussion to a Working Group to be dealt with, the participation of the Working Group shall be deemed to be the participation of the EWC plenum, unless the Managing Committee of the EWC within a period of fourteen days after the discussion in the Working Group informs the Central Management of the necessity of additional discussion by the EWC plenum.

Fourth Section

Competence and consultation rights

§ 9 Principles of information and consultation; consultation rights

- (1) The EWC Plenum shall meet for its annual general meeting once per year. If the Managing Committee considers that another regular meeting is necessary, it may convene this. The Managing Committee may convene further extraordinary meetings only after consultation with Central Management.
- (2) In the meetings of the EWC Plenum the working languages shall be German and English. If necessary, translations into further languages required shall be made.
- (3) The meetings of the EWC Plenum shall usually last for three days, including travel to and from the venue. The information and consultation session within the meaning of section 29 EBRG shall take place on the second day of the meeting.
- (4) The agenda for the information and consultation of the EWC Plenum by Central Management shall be agreed between Central Management and the Managing Committee in good time before the meeting.
- (5) Central Management shall ensure that the documents and information necessary for this information and consultation are provided in good time and comprehensively in German and English. Translations into further languages required shall be prepared in consultation with Central Management and the Managing Committee. The same applies with regard to the interpreting of the languages of the meeting.
- (6) The Chairperson of the EWC may invite guests to the meetings of the EWC Plenum and shall for this purpose inform Central Management in advance.
- (7) Central Management must provide information in such good time and so comprehensively that the members of the EWC Plenum are able to discuss the situation appropriately and objectively on this basis and the positions reached in discussion by the EWC Plenum can be included in the formation of opinions in Central Management's decision.
- (8) In the case of differences of opinion between the EWC Plenum and Central Management on the manner of information and consultation on agreed agenda items, the EWC Plenum shall again be informed in writing on the agenda items in question within one month. If the Managing Committee decides that the documents presented make a further supplementary meeting of the EWC necessary, the Managing Committee may issue invitations to such a meeting after consultation with the Central Management.
- (9) The regulations on the principles of the information and consultation also apply to the participation of the Working Groups.

§ 10 Subject matter of information and consultation

- (1) The EWC shall be informed by Central Management in the cases of § 10 (3) and (4) if at least two establishments of Deutsche Bahn AG or controlled undertakings in two different countries as defined in § 1 (1) are affected by a planned measure.
- (2) In the course of the cooperation based on mutual trust, Central Management shall inform the EWC without undue delay on decisions of Central Management which in only one country as defined in § 1 (1) result in circumstances which have substantial effects on the interests of the employees in that country. This same applies to the information and consultation of the respective Working Groups. This shall not apply to decisions of Central Management which only have effects on the interests of the employees who are within the scope of application of the German Works Constitution Act (*Betriebsverfassungsgesetz*). The rights and duties of the employee representation bodies at national level shall not be affected by the participation of the EWC.
- (3) The subjects on which Central Management is to inform and consult with the EWC are set out in particular in sections 29 and 30 EBRG.
- (4) There shall also be information and consultation on further important and relevant topics which are based on decisions of Central Management. These include *inter alia*:
 - the purchase and sale of companies and parts of companies,
 - the principles of human resource management,
 - the principles of industrial safety,
 - the principles of training and further training,
 - the principles of the equal treatment of women and men.

§ 11 Confidentiality, secrecy

The members of the EWC shall treat trade and business secrets made known to them in the course of their activity, and all circumstances which have been expressly described as confidential by Central Management, in strict confidence. This shall continue to apply even after the end of their terms of office and after the end of their employment relationships. Exceptions shall apply to the communication between the members of the EWC themselves and with local workers' representatives of the companies, under this agreement, concerning the information and consultation and with experts called in and bound to secrecy by themselves, provided the circumstances have not been expressly described as confidential.

Fifth section
Other provisions

§ 12 Legal position and protection of elected representatives and committee members

- (1) In the exercise of their duties, the members of the EWC shall enjoy protection and security in conformity with the legal provisions laid down for employees' representatives of the EWC by the country in which they are employed. The members of the EWC may be neither favoured nor disadvantaged on account of their office. Central Management shall inform the Managing Committee in good time, stating the grounds, when a member of the EWC is to be served with a notice of termination or is affected by any other measure relating to labour law.
- (2) To carry out their duties, the members of the EWC shall be released from their work while continuing to receive their salary, under their national legal provisions; at minimum, however, they shall be paid for the working hours used for preparation and follow-up as well as the participation in the meetings provided under this agreement and for other activities under this agreement.
- (3) The members of the EWC must have suitable premises to conduct their activities, with access to the media and telecommunications technologies (telephone, fax, PC, internet, intranet) customary in the respective undertakings. It must be possible for the use of the media and telecommunications technologies to be confidential.
- (4) All members of the EWC shall be given access to language courses in German and English. The costs of the language courses shall be borne by Central Management, after consultation. In order to take part in the language courses, the EWC members shall be released from their employment duties without reduction of pay.
- (5) The members of the Managing Committee and their authorised representatives, after consultation with Central Management, shall have a right of access to all undertakings and subsidiaries of DB AG.

§ 13 Entry into operation, termination, adaptation, transitional provisions

- (1) This agreement shall enter into operation upon signing; it may be terminated by any party with six months' notice, but at the earliest at the end of one year after the agreement is signed, with notice to the end of the year. Notice of termination must be in writing.

- (2) In the event of termination, the agreement shall continue in effect until the parties have agreed to enter into a new agreement. Negotiations for the employees shall be conducted by the EWC which most recently held a mandate under this agreement.
- (3) In the case of material changes of structure in the Deutsche Bahn Group, the parties shall enter into negotiations on an adaptation of this agreement. In other respects, section 37 EBRG shall apply.

§ 14 Final provisions

- (1) For the settlement of disputes which arise in connection with or on the basis of this agreement, the Managing Committee and Central Management shall conduct talks with a serious intention to reach agreement.
- (2) This agreement shall be translated into all required national languages of its area of application. The German version of this agreement shall be authoritative.
- (3) Unless this agreement contains any more specific provisions or no provisions, the German EBRG shall apply in supplement in its current version. This shall not apply where reference is made to the national legal provisions and or customs. In this case, the national statutes as amended from time to time shall govern.
- (4) Legal disputes which arise in connection with or on the basis of this agreement shall be dealt with under German law, with the exception of § 15 (4) sentence 2. The general place of jurisdiction shall be the seat of Central Management.
- (5) If a clause in this agreement should be or become invalid, this shall not affect the validity of the other provisions of this agreement. Clauses of no legal effect shall be replaced by a provision which approaches most closely the objective intended and which corresponds to the intention of both parties.
- (6) There are no oral collateral agreements. Alterations or additions to this agreement, including this provision, shall be valid only if made in writing.
- (7) Upon the signing of this agreement, the Agreement on the Management and Responsibility of the European Works Council within the DB Group of 19 July 2006 shall cease to have effect. The provision in § 4 (3) of this agreement shall be unaffected.

Berlin, 21.03.2012

signed by Mr. Weber

signed by Mr. Fritz

Signature of Central Management

signed by Mr. Kirchheim

signed by Mr Vögele

signed by Mr. van Oort

Signature of EWC