

# Posting drivers in the road transport sector

2017/0121(COD) - 31/05/2017 - Legislative proposal

**PURPOSE:** to adapt social rules applying to the road transport sector in order to ensure a balance between the drivers' social protection and operators' freedom to provide cross-border services.

**PROPOSED ACT:** Directive of the European Parliament and of the Commission.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

**BACKGROUND:** among the main social rules applying to the transport sector are the following:

- provisions on the organisation of drivers' working time set out in [Directive 2002/15/EC](#);
- minimum requirements for enforcement set out in [Directive 2006/22/EC](#);
- rules on driving times, breaks and rest periods under [Regulation \(EC\) No 561/2006](#);
- provisions on posting of workers established in [Directive 96/71/EC](#) and the [enforcement Directive 2014/67/EU](#).

The current evaluation of the social legislation in road transport in the EU has shown shortcomings in the current legal framework and problems regarding enforcement. Furthermore, a number of discrepancies exist between Member States in interpretation, application and implementation of the rules. This creates legal uncertainty and unequal treatment of drivers and operators, which is detrimental to the working, social and competition conditions in the sector.

The Commission aims to amend the existing rules in order to make the road transport sector fair, efficient and socially accountable, whilst at the same time mitigating the excessive regulatory burdens on operators and preventing distortions of competition.

**IMPACT ASSESSMENT:** four options were considered. The first policy option focused on clarifying the legal framework and increasing cooperation between enforcement authorities. The second focused on strengthening enforcement and improving working patterns for workers. The third proposed substantive changes in the rules, in particular banning performance based pay. The fourth option comprised sector specific criteria and specific enforcement measures for the posting of workers in the road transport sector. Significant savings for operators result mainly from the latter option, and in particular the measures on administrative and control requirements. These savings are in the range of EUR 785 million per year in administrative costs.

**CONTENT:** the proposal makes a limited number of amendments to Directive 2006/22/EC and lays down sector-specific rules on posting of workers in the road transport sector in relation to Directives 96/71/EC and 2014/67/EU.

**Requirements on enforcement:** the Commission proposes to amend Directive 2006/22/EC in order to:

- require that checks carried out by Member States include checking compliance with the working time provisions set out in Directive 2002/15/EC;
- require that the information submitted by Member States to the Commission on the results of checks at the roadside and at premises to include checks on compliance with Directive 2002/15/EC;
- specify that serious infringements giving rise to checks at premises of road transport undertakings shall also include infringements of Directive 2002/15/EC;
- improve administrative cooperation between Member States with regard to the implementation of the social rules in road transport has proven insufficient, making cross-border enforcement more difficult, inefficient and inconsistent. It is therefore necessary to establish a framework for effective communication and mutual assistance, including exchange of data on infringements and information on good practices in enforcement;
- further improve the effectiveness, and consistency of the existing national risk rating systems: the Commission will establish a uniform formula for calculating the risk rating of transport undertakings, and take into account certain criteria, such as the use of the 'smart' tachygraph. Data in the risk rating system must be made available to control authorities.

**Posting of workers:** the Commission proposes that drivers are considered as posted workers if they spend at least 3 days in a given calendar month on the territory of a Member State. All cabotage operations will be considered as posting of workers from day 1 regardless of their duration.

The minimum rate of pay and the minimum annual paid holidays of the host Member State should apply to cabotage irrespective of the frequency and duration of the operations carried out by a driver.

For the purposes of the calculation of the periods of posting:

- a daily working period shorter than six hours spent in the territory of a host Member State shall be considered as half a day;
- a daily working period of six hours or more spent in the territory of a host Member State shall be considered as a full day;
- breaks and rest periods as well as periods of availability spent in the territory of a host Member State shall be considered as working period.

The proposal lays down the specific administrative requirements and control measures for checking compliance with the provisions on posting of workers in road transport.