

# Posting drivers in the road transport sector

2017/0121(COD) - 04/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 317 votes to 302 with 14 abstentions a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

## Control systems

Given the high mobility of workforce in the road transport sector, the aim of this Directive is to provide legal certainty and clarity, to contribute to the harmonisation and fostering of enforcement and to the fight against illegal practices and lower administrative burden.

Members stressed the need to ensure adequate, effective and consistent compliance with the provisions on working and rest time to improve road safety and to protect the working conditions of drivers and to prevent distortions of competition arising from non-compliance with the rules. In order to tackle illegal practices such as the use of letterbox companies, the focus should be on combating undeclared work in the transport sector.

Adequate, effective and consistent enforcement of the working time and rest time provisions is crucial for improving road safety, protecting the working conditions of drivers and preventing the distortions of competition resulting from non-compliance. Therefore it is desirable to extend the existing uniform enforcement requirements set out in Directive 2006/22/EC to controlling compliance with the working time provisions set out in Directive 2002/15/EU.

The possibility of combining checks on driving time and working time with checks on rules on posting of drivers should be also available without additional administrative burden. Checks of compliance with working time should be limited to checks carried out at the premises of transport operators until technology is available that allows the checks on working time to be carried out effectively at the roadside.

With a view to fostering effective administrative cooperation and an effective exchange of information, Member States shall interconnect their national electronic registers (NER) through the European Register of Road Transport Undertakings (ERRU) system.

The Commission shall develop an electronic application common to all EU Member States that will provide inspectors direct real-time access to the ERRU and IMI during roadside checks and premises by 2020. This application shall be developed via a pilot project.

## Posting of workers

A driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations. A bilateral transport operation in respect of goods is the movement of goods, based on a transport contract, from the Member State of establishment to another Member State or a third country, or from another Member State or third country to the Member State of establishment.

Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the exception shall apply for up to two additional activities of loading and/or unloading,

A driver engaged in international occasional or regular carriage of passengers, as defined in Regulation (EC) No 1073/2009, shall not be considered to be posted for the purpose of Directive 96/71/EC when: (i) picking up passengers in the Member State of establishment and setting them down in another Member State or a third country; or (ii) picking up passengers in a Member State or a third country and setting them down in the Member State of establishment; or (iii) picking up and setting down passengers in the Member State of establishment for the purpose of local excursions.

A driver shall not be considered to be posted to the territory of a Member State that the driver transits through without loading or unloading freight and without picking up or setting down passengers.

For all other types of operations, including cabotage, EU rules on posted workers based on the principle of equal pay for equal work would apply fully from the first day of operations. This means that the same remuneration rules would apply to a lorry driver who delivers goods to another Member State after a cross-border supply as to drivers in the host country.

Member States shall ensure that the terms and conditions of employment referred to in Directive 96/71/EC, which are laid down in collective agreements are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. The relevant information shall, in particular, cover the different remunerations and their constituent elements, including elements of remunerations provided for in the locally or regionally applicable collective agreements, the method used to calculate the remuneration due and, where relevant, the qualifying criteria for classification in the different wage categories.

Transport undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State.

## Administrative requirements

By way of derogation from Directive 2014/67/EU on the implementation of Directive 96/71/EC on the posting of workers in the context of the provision of services, Member States may only impose the following administrative requirements and control measures:

an obligation for the road transport operator established in another Member State to submit a declaration and any update to it in electronic form via the Internal Market Information System (IMI) to the national competent authorities at the latest at the commencement of the posting, in an official language of the European Union. This declaration may contain information about the posted driver including the following: the

identity, the country of residence, the country of payment of social contributions, the social security number and the number of the driving licence;

an obligation for the road transport operator to ensure that the driver has at his/her disposal, where requested at the roadside control, in paper or electronic form: (i) a copy of the declaration and evidence of transport operation taking place in the host Member State; (ii) the tachograph records;

an obligation for the road transport operator to deliver, after the period of posting, in paper or electronic form, within a reasonable period of time, documentation of the remuneration of posted drivers which relate to the period of posting and their employment, time-sheets relating to the driver's work and proof of payments.

#### Penalties

Member States shall provide for penalties against consignors, freight forwarders, contractors and subcontractors for non-compliance with Article 2 of this Directive, where they know, or, in the light of all relevant circumstances ought to know, that the transport services that they commission infringe of this Directive.

#### Smart enforcement

Member States shall ensure that a coherent national enforcement strategy is applied on their territory. That strategy shall focus on undertakings with a high risk rating. The checks shall include, where relevant, a check on posting and these check shall be carried out without discrimination, in particularly without discrimination based on the number plates of vehicles used in posting.

Member States shall have access to relevant information and data recorded, processed or stored by the smart tachographs, posting declarations in electronic transport documents, such as electronic consignment notes under the Convention on the Contract for the International Carriage of Goods by Road (eCMR).

Member States shall, at least three times per year, undertake concerted roadside checks on posting.