

Posting drivers in the road transport sector

2017/0121(COD) - 08/04/2020 - Council position

The Council adopted its position at first reading with a view to the adoption of a directive of the European Parliament and of the Council laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012.

This proposal was presented as part of the first mobility package. Its general objective is to:

- ensure decent working conditions and adequate social protection for drivers and;
- clarify, harmonise and reduce the administrative requirements imposed on operators, enabling them to provide services in an environment of fair competition.

The proposal also responds to the need, expressed during the revision of the Posting of Workers Directive by means of Directive (EU) 2018/957, to establish sector-specific rules on the posting of drivers in the road transport sector.

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament. It includes the following main elements:

Exemptions from the posting regime for workers engaged in international road transport

The Council's position concerns the introduction of an exemption from the general posting rules owing to the high degree of mobility, and the scope of that exemption.

According to the Council's position, the limitation of the exemption to the situation where a service contract exists between the employer sending the driver and a party operating in the host Member State, own account operations not covered by service contracts are therefore not excluded.

During the journey to the country of destination and the return journey, one additional activity of loading and/or unloading of goods shall be allowed in each direction without falling under the posting situation. It should be clarified that international carriage in transit across the territory of a Member State does not constitute a posting situation.

For all other types of operations, including the provision of national transport services in another Member State (cabotage), the posting situation shall apply in full from the first day of operations. Similar rules shall apply to passenger transport, with an additional stop in the case of bilateral operations.

For control purposes, the limited flexibility as regards additional transport stops shall depend on the registration of border crossings in the vehicle and, at a later stage, on the registration of loading and unloading activities.

The Council's position clarifies that a driver transiting through the territory of another Member State is not a posted worker. It also states that the sum of the interrupted presence of a driver in a host Member State does not constitute a long-term posting.

Third country operators

The Council's position specifies that transport undertakings established in a non-Member State cannot obtain more favourable treatment than undertakings established in a Member State, including when they carry out transport operations under bilateral or multilateral agreements giving access to the Union market or parts thereof.

Transparency regarding working and employment conditions

The Council has introduced a special rule on the host Member State's duty of transparency with regard to its working and employment conditions, including those laid down in certain collective agreements.

Administrative requirements relating to posting, monitoring and enforcement

Member States may only impose the following requirements:

- an obligation for the road transport operator established in another Member State to submit a declaration via the Internal Market Information System (IMI) to the national competent authorities of the Member State in which the driver is posted no later than the start of the posting. This declaration shall contain, in particular, information on the identity of the operator, the contact details of a transport manager, the identity, address of the residence and the number of the driver's driving licence, the start and end date of commencement of the driver's employment contract and the law applicable to that contract, and envisaged start and end date the dates foreseen for the commencement and end of the posting;
- the obligation for the transport operator to ensure that the driver has at his disposal, on paper or in electronic format, when requested during a roadside check, proof of the transport operations taking place in the host Member State and the records of the tachograph;
- the obligation for the transport operator to provide, after the posting, at the direct request of the competent authorities of the Member State in which the posting took place, the documents relating to the driver's remuneration for the posting, the employment contract, the time sheets relating to the driver's work and the proof of payments.

Sanctions

The Council's position obliges Member States to lay down rules on penalties applicable to infringements of the provisions adopted pursuant to the Directive, and to sanction actors in the supply chain where they have or should have had knowledge of such infringements. In addition, it introduces a provision on 'smart enforcement', which obliges Member States to ensure that a coherent national enforcement strategy is applied on their territory. This strategy shall focus on undertakings with a high-risk rating.

Administrative cooperation on enforcement

The rules on administrative cooperation are amended in order to better distinguish them from the exchange of information under Regulation (EU) No 1071/2009, which is already carried out through a specific electronic system. For other cases, the Council text provides for the use of the IMI system and sets deadlines for national authorities to reply.

Integration of Directive 2002/15/EC into the implementing rules on social legislation

Directive 2002/15/EC complements the Regulation on driving times, breaks and rest periods to be observed by drivers working in the transport sector, for example by limiting the overall maximum weekly working time of drivers and night work.

The integration of this directive into the enforcement standards concerns several aspects: national enforcement systems, the minimum number of checks and the transmission of results, carrying out checks at premises following serious infringements, national risk classification systems and the exchange of information.

Revised implementing standards for social legislation

The risk rating system, in addition to being extended to national rules under the Working Time Directive, shall be subject to two changes: 1) the Commission shall introduce a common formula for calculating the risk level of an undertaking and 2) national information on the risk level shall be accessible to enforcement authorities throughout the EU, including in the context of carrying out roadside checks.

Transposition and evaluation

Member States shall transpose the Directive within 18 months of its entry into force. An evaluation by the Commission of the implementation of the Directive, and in particular of the special provisions on posted drivers, is foreseen by the end of 2025.