

## Basic information

**2017/0121(COD)**

COD - Ordinary legislative procedure (ex-codecision procedure)  
Directive

Posting drivers in the road transport sector

Amending Directive 2006/22/EC [2003/0255\(COD\)](#)

See also Directive 96/71/EC [1991/0346\(COD\)](#)

See also Directive 2014/67/EU [2012/0061\(COD\)](#)

### Subject

3.20.05 Road transport: passengers and freight

3.20.06 Transport regulations, road safety, roadworthiness tests, driving licence

3.20.10 Transport undertakings, transport industry employees

4.15.03 Arrangement of working time, work schedules

4.15.04 Workforce, occupational mobility, job conversion, working conditions

Procedure completed

## Key players

European Parliament

### Committee responsible

TRAN

Transport and Tourism

### Rapporteur

KONEČNÁ Kateřina (GUE/NGL)

### Appointed

10/07/2017

### Shadow rapporteur

DELI Andor (EPP)

VITANOV Petar (S&D)

BILBAO BARANDICA Izaskun (Renew)

DELLI Karima (Greens/EFA)

ZŁOTOWSKI Kosma (ECR)

BORCHIA Paolo (ID)

### Former committee responsible

TRAN

Transport and Tourism

### Former rapporteur

KYLLÖNEN Merja (GUE/NGL)

### Appointed

10/07/2017

### Former committee for opinion

EMPL

Employment and Social Affairs  
(Associated committee)

### Former rapporteur for opinion

DLABAJOVÁ Martina (ALDE)

### Appointed

21/09/2017

Council of the European Union	<b>Council configuration</b>	<b>Meetings</b>	<b>Date</b>
	Employment, Social Policy, Health and Consumer Affairs	3569	2017-10-23
	Transport, Telecommunications and Energy	3581	2017-12-05
	Transport, Telecommunications and Energy	3658	2018-12-03
	Transport, Telecommunications and Energy	3623	2018-06-07
European Commission	<b>Commission DG</b>	<b>Commissioner</b>	
	Mobility and Transport	BULC Violeta	
European Economic and Social Committee			
European Committee of the Regions			

Key events			
Date	Event	Reference	Summary
31/05/2017	Legislative proposal published	COM(2017)0278 	Summary
15/06/2017	Committee referral announced in Parliament, 1st reading		
05/12/2017	Debate in Council		
14/12/2017	Referral to associated committees announced in Parliament		
04/06/2018	Vote in committee, 1st reading		
04/06/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
07/06/2018	Debate in Council		
08/06/2018	Committee report tabled for plenary, 1st reading	A8-0206/2018	Summary
11/06/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
14/06/2018	Results of vote in Parliament		
14/06/2018	Committee decision to enter into interinstitutional negotiations rejected by plenary (Rule 71); file to be put on the agenda of the following part-session		
03/07/2018	Debate in Parliament		
04/07/2018	Results of vote in Parliament		
04/07/2018	Decision by Parliament		
04/07/2018	Matter referred back to the committee responsible for reconsideration		
27/03/2019	Debate in Parliament		
04/04/2019	Decision by Parliament, 1st reading	T8-0339/2019	Summary

04/04/2019	Results of vote in Parliament		
24/09/2019	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
09/10/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
21/01/2020	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations	<a href="#">PE646.925</a> <a href="#">PE646.994</a>	
08/04/2020	Council position published	<a href="#">05112/1/2020</a>	<a href="#">Summary</a>
17/04/2020	Committee referral announced in Parliament, 2nd reading		
08/06/2020	Vote in committee, 2nd reading		
10/06/2020	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A9-0114/2020</a>	<a href="#">Summary</a>
08/07/2020	Decision by Parliament, 2nd reading	<a href="#">T9-0184/2020</a>	<a href="#">Summary</a>
08/07/2020	Results of vote in Parliament		
15/07/2020	Final act signed		
15/07/2020	End of procedure in Parliament		
31/07/2020	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2017/0121(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Directive
<b>Amendments and repeals</b>	Amending Directive 2006/22/EC <a href="#">2003/0255(COD)</a> See also Directive 96/71/EC <a href="#">1991/0346(COD)</a> See also Directive 2014/67/EU <a href="#">2012/0061(COD)</a>
<b>Legal basis</b>	Treaty on the Functioning of the European Union TFEU 091-p1
<b>Mandatory consultation of other institutions</b>	<a href="#">European Economic and Social Committee</a> <a href="#">European Committee of the Regions</a>
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	TRAN/9/01264

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		<a href="#">PE615.504</a>	21/12/2017	
Amendments tabled in committee		<a href="#">PE618.064</a>	23/02/2018	
Amendments tabled in committee		<a href="#">PE618.251</a>	23/02/2018	
Committee opinion	<a href="#">EMPL</a>	<a href="#">PE615.267</a>	04/05/2018	

Committee report tabled for plenary, 1st reading/single reading		<a href="#">A8-0206/2018</a>	08/06/2018	<a href="#">Summary</a>
Text adopted by Parliament, 1st reading/single reading		<a href="#">T8-0339/2019</a>	04/04/2019	<a href="#">Summary</a>
Committee letter confirming interinstitutional agreement		<a href="#">PE646.925</a>	23/01/2020	
Text agreed during interinstitutional negotiations		<a href="#">PE646.994</a>	31/01/2020	
Committee draft report		<a href="#">PE650.437</a>	17/04/2020	
Amendments tabled in committee		<a href="#">PE650.724</a>	13/05/2020	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A9-0114/2020</a>	10/06/2020	<a href="#">Summary</a>
Text adopted by Parliament, 2nd reading		<a href="#">T9-0184/2020</a>	08/07/2020	<a href="#">Summary</a>

#### Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	<a href="#">01985/2020</a>	07/04/2020	
Council position	<a href="#">05112/1/2020</a>	08/04/2020	<a href="#">Summary</a>
Draft final act	<a href="#">00024/2020/LEX</a>	09/07/2020	

#### European Commission

Document type	Reference	Date	Summary
Legislative proposal	<a href="#">COM(2017)0278</a> 	31/05/2017	<a href="#">Summary</a>
Document attached to the procedure	<a href="#">SWD(2017)0184</a> 	31/05/2017	
Document attached to the procedure	<a href="#">SWD(2017)0185</a> 	31/05/2017	
Document attached to the procedure	<a href="#">SWD(2017)0186</a> 	31/05/2017	
Document attached to the procedure	<a href="#">SWD(2017)0187</a> 	31/05/2017	
Commission response to text adopted in plenary	<a href="#">SP(2019)443</a>	12/06/2019	
Commission communication on Council's position	<a href="#">COM(2020)0151</a> 	15/04/2020	
Follow-up document	<a href="#">COM(2026)0061</a> 	09/02/2026	

#### National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	<a href="#">NL_CHAMBER</a>	<a href="#">COM(2017)0278</a>	13/07/2017	
Contribution	<a href="#">PT_PARLIAMENT</a>	<a href="#">COM(2017)0278</a>	25/07/2017	

Contribution	<a href="#">FR_SENATE</a>	<a href="#">COM(2017)0278</a>	03/08/2017	
Contribution	<a href="#">IT_SENATE</a>	<a href="#">COM(2017)0278</a>	04/08/2017	
Reasoned opinion	<a href="#">PL_SENATE</a>	<a href="#">PE609.568</a>	31/08/2017	
Contribution	<a href="#">RO_SENATE</a>	<a href="#">COM(2017)0278</a>	02/10/2017	
Contribution	<a href="#">CZ_SENATE</a>	<a href="#">COM(2017)0278</a>	16/10/2017	
Contribution	<a href="#">CZ_CHAMBER</a>	<a href="#">COM(2017)0278</a>	16/10/2017	
Contribution	<a href="#">FR_ASSEMBLY</a>	<a href="#">COM(2017)0278</a>	13/03/2018	
Contribution	<a href="#">FR_SENATE</a>	<a href="#">COM(2017)0278</a>	23/03/2019	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	<a href="#">CES2852/2017</a>	18/01/2018	

#### Additional information

Source	Document	Date
EP Research Service	<a href="#">Briefing</a>	
European Commission	<a href="#">EUR-Lex</a>	

#### Final act

[Directive 2020/1057](#)  
[OJ L 249 31.07.2020, p. 0049](#)

## 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.

## **Posting drivers in the road transport sector**

2017/0121(COD) - 08/07/2020 - Text adopted by Parliament, 2nd reading

The European Parliament approved, in accordance with the ordinary legislative procedure, the Council's 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.

The proposed Directive aims to ensure a level playing field by avoiding diverging national approaches and to guarantee fair remuneration for road drivers. Its aim is to ensure proportionate enforcement of the rules on posting, to strengthen enforcement and to improve the structure and effectiveness of administrative cooperation between Member States.

The draft legislative act:

- introduces a derogation from the general posting rules owing to a high degree of mobility: the posting rules shall apply to cabotage and international transport operations, with the exception of transit, 'bilateral transport operations' (both in goods and passenger transport), and bilateral operations with two additional carriage-related stops. The derogation shall be limited to cases where a service contract exists between the employer sending the driver and a party operating in the host Member State;
- clarifies that reinforcing posting rules for EU drivers must not create a competitive advantage for third country operators having access to the EU road transport market;
- lays down the administrative requirements relating to posting, control and enforcement: hauliers will have the possibility, and the obligation, to use the Commission's Internal Market Information System (IMI) for sending posting declarations and the requested information;
- lay down penalties in the event of infringements of the provisions of *lex specialis*, and to sanction actors of the logistics chain if they know or ought to know about the infringements;
- introduces a provision on 'smart enforcement' obliging Member States to integrate the control of posting rules into an overall control strategy;
- introduces a special rule on the host Member State's duty to provide transparency about its terms and conditions of employment, including those determined by certain collective agreements;
- incorporates Directive 2002/15/EC into the enforcement rules relating to social legislation as regards, for example, national checking systems, the minimum number of checks, the national risk rating systems, or information exchange;
- improves a company's risk rating system;
- provides for an obligation for Member States to transpose the Directive within 18 months of its entry into force, as well as an assessment by the Commission of the implementation of the Directive by the end of 2025.

## **Posting drivers in the road transport sector**

2017/0121(COD) - 10/06/2020 - Committee recommendation tabled for plenary, 2nd reading

The Committee on Transport and Tourism adopted the recommendation for second reading contained in the report by Kateřina KONEČNÁ (GUE/NGL, CZ) with a view to the adoption of a directive of the European Parliament and of the Council laying down specific 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.

The committee responsible recommended that the European Parliament approve the Council's position at first reading without amendment.

In the short justification accompanying the recommendation, the rapporteur considered that the compromise reached represents a balanced outcome. The general agreement reached by Parliament with the Council has further strengthened the proposal with a view to ensuring balanced conditions of fair competition and rigorous enforcement.

The main elements of the agreement are as follows:

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

Exemptions from posting rules relates in particular to 'bilateral transport operations' both in goods and passenger transport, and entail a very limited flexibility for additional carriage-related stops.

Parliament obtained the limitation of exemptions to the situation where a service contract exists between the employer sending the driver and a party operating in the host Member State. In addition, it is clarified that interrupted presences of a driver in a host Member State do not add up to a long-term posting situation.

### ***Third country operators***

The Council accepted the Parliament's view on third-country operators to ensure that reinforcing posting rules for EU drivers would not lead to a competitive advantage for operators from third countries having access to the EU's road transport market.

### ***Administrative requirements for posting, control and enforcement***

Transport operators shall be able, and obliged to use the Commission's Internal Market Information System (IMI) for sending posting declarations and information requested.

The Council accepted the Parliament's requirement to:

- lay down penalties in the event of infringements of the provisions of *lex specialis*, and to sanction actors of the logistics chain if they know or ought to know about the infringements;
- introduce a provision on 'smart enforcement' obliging Member States to integrate the control of posting rules into an overall control strategy.

### ***Transparency on terms and conditions of employment***

The Council accepted the Parliament's request for a special rule on the host Member State's duty to provide transparency about its terms and conditions of employment, including those determined by certain collective agreements.

The Agreement also provides for:

- the incorporation of Directive 2002/15/EC into the enforcement rules relating to social legislation as regards, or example, national checking systems, the minimum number of checks, the national risk rating systems, or information exchange;
- the introduction of two amendments to improve a company's risk rating system;
- powers for the Commission to adopt delegated acts to amend the Annexes and implementing acts as regards a common formula for risk rating, a common approach to the recording and control of periods of 'other work' and the development of the functionalities of the IMI communication tool to be used for posting declarations;
- the obligation for Member States to transpose the Directive within 18 months of its entry into force, as well as an assessment by the Commission of the implementation of the Directive by the end of 2025.

## **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.

# 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.

# Posting drivers in the road transport sector

2017/0121(COD) - 08/06/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Transport and Tourism adopted the report by Merja KYLLÖNEN (GUE/NGL, FI) on the proposal for a regulation 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 Committee on Employment and Social Affairs, exercising its prerogatives as an associate committee under [Rule 54 of the Rules of Procedure](#) of the European Parliament, also gave its opinion on this report

The committee recommended that the position of the European Parliament adopted at first reading in the ordinary legislative procedure amend the Commission proposal as follows:

**Enforcement:** the Directive must aim 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. The focus should be on combating undeclared work in the transport sector.

**Roadside checks** on the implementation of Directive 2002/15 / EC (monitoring of working time) will be organised only after the introduction of a technology that allows for effective controls. In the meantime, these checks will be carried out exclusively at the **premises of transport undertakings**.

Member States must **interconnect their national electronic registers** (NER) through the European Register of Road Transport Undertakings (ERRU) system, so that the competent authorities of the Member States can have direct real-time access to the data and information in the ERRU.

**Posting of workers:** Members proposed that the EU rules on posted workers (Directive 96/71/EC) based on the principle of "equal pay for equal work" apply to **cabotage operations**. This means that the same remuneration rules would apply to a truck driver who delivers goods to another Member State after a cross-border delivery as to drivers in the host country. Furthermore, the rules on posting must also apply to the road leg of the combined transport, provided that the road leg is carried out within the same Member State.

Member States shall not apply Directive 96/71/EC to drivers in the road transport sector when performing international carriage operations and transit operations when a driver transits through a Member State without loading or unloading freight and without picking up or setting down passengers.

Member States shall not apply the provisions on the duration of posting in Directive 96/71/ EC to road transport operations falling within the scope of this Directive.

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) established by Regulation (EU) No 1024/2012 to the national competent authorities at the latest at the commencement of the posting, in an official language of the European Union;
- 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.

**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.