

ORDINARY LEGISLATIVE PROCEDURE – First reading

Follow up to the European Parliament 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

(Posting drivers in the road transport sector)

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2. **Reference numbers:** 2017/0121 (COD) / A8-0206/2018 / P8_TA-PROV(2019)0339
3. **Date of adoption of the resolution:** 4 April 2019
4. **Legal basis:** Article 91(1) of the Treaty on the Functioning of the European Union
5. **Competent Parliamentary Committee:** Committee on Transport and Tourism (TRAN), Employment and Social Affairs (EMPL) (joint committee procedure)
6. **Commission's position:** The Commission can accept certain amendments, whereas others should be rejected. The Commission keeps a reserve on all points not addressed here.

Posting model based on type of operation (amendment 837)

The Commission proposed a time based model that would exempt international operations, whose duration does not exceed 3 accumulated days per calendar month, per host Member State, from the application of certain posting rules (minimum paid annual holidays and the minimum rates of pay). The European Parliament proposes a different model under which all bilateral operations (between the Member States of establishment and host Member States) are not considered to be posting situations whilst cross trade operations (between two host Member States) are in principle covered by the posting rules. The European Parliament's proposal only provides for a very limited exception for two additional cross-trade activities that should be linked with a bilateral operation and only for drivers with vehicles equipped with a smart tachograph. In both Commission and European Parliament models, cabotage is always fully covered by posting rules. Transit is not regarded as a posting situation.

The Commission can in principle support this new model which was also retained by the Council in its General Approach of December 2018. It promotes the same principle, which was behind the Commission's proposal, namely maintaining a balance between the protection of social rights of drivers and the freedom of cross-border provision of services by operators. The non-application of the posting rules to the bilateral operations is justified by the fact that the driver keeps a close link with the Member State of establishment of the haulier where he/ she regularly returns. On the contrary this link is much looser where a driver carries out cross trade, which justifies the application of certain rules of the host Member States where the transport operations take place, in particular the national minimum wage.

Closed list of administrative and control requirements for controlling posting (amendments 843 to 860)

The European Parliament proposes to create a dedicated module of the Internal Market Information system (IMI) and use it for: (a) sending and updating posting declarations by operators, and (b) exchanging all other relevant documents between competent national authorities for controlling posting. The European Parliament extends the list of data which shall be included in posting declarations by adding also information on social security, applicable law to employment contract, driving licence, Community licence, identity of consignees, addresses of loadings and unloading.

The Commission welcomes the proposed use of the IMI system, which would further facilitate the administrative work for operators and make controls by national authorities more effective and efficient. However, the proposed requirement for additional data to be communicated by operators to the host Member State, as proposed by the European Parliament, should be carefully assessed taking account of the objective of the proposal to reduce administrative burdens and to simplify controls. On the basis of the information available, this does not appear to be the case in respect of some of the requirements suggested by the European Parliament. To be acceptable, any requirements in this area should be limited to what is necessary to control the application of the posting rules and should not create disproportionate administrative burden to reach that objective. Requirements which do not meet these criteria should not be accepted.

Enforcement of driving and resting time rules (amendments 818, 819, 824, 857 and 864)

The European Parliament proposes that the Commission develops an electronic application that would allow roadside controllers direct real-time access to the data in ERRU (European Register of Road Transport Undertakings) and IMI.

The Commission welcomes measures aimed at digitalisation of enforcement to improve its efficacy and efficiency. However, considering the number of databases and communication systems that would need to be modified or introduced at the European and national level (ERRU, IMI, Risk Rating Systems), concerns emerge as to the practical feasibility and the capacity of the Member States to invest in all these technical developments over a short period of time. The Commission will work on the development of such access technology, but with the caveat that the practical introduction of a requirement to this effect may have to be postponed in function of the Member States' capacity (financial and otherwise) to fully implement it.