

REVISED IRU POSITION ON THE APPLICATION OF THE POSTING OF WORKERS DIRECTIVE IN ROAD TRANSPORT

IRU Position on the application of the Posting of Workers Directive in road transport

I. ANALYSIS

1. Background and Purpose of the Directive

The Posting of Workers Directive (1996/71/EC) and its enforcement Directive (2014/67/EU) apply to workers involved in the provision of services in EU Member States other than the state in which they are employed. Companies organising such work are required to guarantee that their posted workers are afforded at least the same minimum terms and conditions of employment as those enjoyed by the same category of workers employed and permanently established in the host country.

The intention of the Directive is to facilitate transnational services by clarifying the minimum legal provisions to be followed, while at the same time ensuring fair competition between companies established in different Member States.

The minimum host country conditions to be followed may be national laws, administrative provisions, collective agreements or arbitration awards as also outlined in Article 3.1 of the Posting Directive. Most importantly, these include maximum work periods and minimum rest periods; minimum paid annual holidays; minimum rates of pay, including overtime rates; and the conditions for the hiring-out of workers.

2. Application to the Road Transport Sector

In a letter to IRU dated September 2005, the European Commission (DG MOVE) stated that cabotage operations in road freight and passenger transport are covered by the scope of the Posting of Workers Directive. On 4 April 2006, the European Commission adopted guidance (COM 2006/159) and an accompanying working document on the Directive's application. Here, the Commission further clarified that international transport as such is not excluded from the scope of the Directive and that only operations fulfilling the criteria¹ set out in Article 1 of the Directive are subject to its provisions².

Since then, the EU road transport market has undergone structural developments and an increasing number of Member States (notably [REDACTED]) have adopted a wide interpretation of the Posting of Workers Directive, going beyond the limits stipulated in Article 1 of the Directive and previous Council and Commission statements on the applicability of the Directive to international transport. These Member States therefore now apply the Directive and its enforcement provisions prescribed by Directive 2014/67 not only for cabotage operations, but also for point-to-point transport operations. The reasons for doing so, as officially declared by the respective national authorities, are manifold, ranging from the effort to counter illegal employment practices, to equalising the level playing field and preventing the use of labour from lower income Member States without the payment of the levels and offering the conditions applicable in the host country.

3. The Practical Consequences of Applying the Directive

It is apparent that Directive 96/71/EC on the Posting of Workers was developed primarily with other sectors of European industry in mind rather than road transport. Construction workers

¹ The transnational provision of services by an undertaking on its own account and under its direction, under a contract concluded between the undertaking providing the services and the party for whom the services are intended and posting as a part of such provision of services.

² http://ec.europa.eu/employment_social/labour_law/docs/sec_2006_439_en.pdf

who may be posted to work in another Member State for long periods of time present a clear case where the Directive can easily be enforced via a foreman or designated individual who can liaise with local and home authorities to ensure that their posted workforce receives equivalent pay and conditions to those employed under the laws and collective agreements of the host country.

However, for all kinds of transport operations undertaken by the road transport sector, the current enforceability of the Directive raises challenges. The administrative burden on companies to ensure that each driver's activities are notified in advance to the different Member States and that the driver receives the correct balance of country specific pay and benefits when drivers are operating in many different Member States mostly for short periods of time is extremely onerous. Member States do not provide clear information regarding with which regulations the undertakings must comply, leading to a lack of clarity as to how to deal with the various minimum wage systems.

Generally, any solution must guarantee the principles of the EU Single Market and fair competition, such as the creation of a better-balanced distinction between the freedom of establishment and the freedom to provide services, and ensure a larger degree of social cohesion in the EU.

II. IRU POSITION

- The practical experience with the application of the Posting of Workers Directive and its enforcement Directive so far to different types of transport operations has been done with substantial administrative burden. These Directives are not suitable for the road transport sector, as they do not take into account the sector's highly mobile workforce, transnational character and enforcement difficulties of applying these Directives to road transport operations.
- Clear and enforceable sector-specific provisions that are suitable for application to road transport need to be developed, based for example on the driving and rest-time rules. A centralised, flexible, user-friendly, electronic registration system needs to be developed, ideally on the basis of the existing databases.
- The key phenomenon in the EU road transport market of today – that is, labour imports – has to be tackled with different measures, starting with intelligence-led enforcement based on the increased use of e-documents, relying on aligned risk-rating systems, and electronic exchange of information, cooperation of Member States' authorities and increasingly on company controls.
- Those most negatively affected by the administrative burden resulting from the minimum wage laws across the EU are the law-abiding operators, usually SMEs. Occasional passenger transport is particularly affected.
- A study concerning the innovative employment practices and collection of statistical data is needed for the road transport sector alongside the sector-specific provision.

* * * * *