



Council of the
European Union

Brussels, 20 November 2018
(OR. en)

Interinstitutional File:
2017/0121(COD)

13206/3/18
REV 3

LIMITE

TRANS 456
SOC 617
EMPL 474
MI 727
COMPET 675
CODEC 1693

WORKING DOCUMENT

From: General Secretariat of the Council
To: Delegations

No. prev. doc.: ST 13206/2/18 REV 2 TRANS 456 SOC 617 EMPL 474 MI 727 COMPET
675 CODEC 1693
ST 12532/18 TRANS 419 SOC 577 EMPL 447 MI 675 COMPET 635
CODEC 1542 ADD 4

No. Cion doc.: ST 9671/17 TRANS 215 SOC 441 EMPL 342 MI 456 COMPET 450
CODEC 926

Subject: **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**
– General approach

In view of the Coreper meeting on 23 November 2018, delegations will find, attached, a revised Presidency compromise concerning the proposal relating to Directive 2006/22/EC and *lex specialis*.

Text added compared to the previous document concerns pages 9, 18 and 24 and is marked in **bold and grey shaded**.

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 and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to create a safe, efficient and socially responsible road transport sector it is necessary to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable business and fair competition conditions for operators, on the other.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) The inherent high mobility of road transport services requires particular attention in assuring that drivers benefit from the rights to which they are entitled and that operators are not faced with disproportionate administrative barriers unduly restricting their freedom to provide cross-border services.
- (3) The balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators is crucial for the smooth functioning of the internal market.
- (4) Having evaluated the effectiveness and efficiency of the current Union social legislation in road transport, certain loopholes in the existing provisions and deficiencies in their enforcement were identified. 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.
- (5) Adequate, effective and consistent enforcement of the working time provisions is crucial for 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. **In doing so, the necessary checks on compliance should be targeted towards undertakings which are not compliant with driving and rest time rules. Comprehensive checks can only be carried out at the premises of the undertakings. Roadside checks should be limited to the rules which can be controlled based on the documentation on board the vehicle.**
- (6) The 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.

- (6a) In order to facilitate roadside checks, updating of posting information and communication in a format standardised across official languages, the posting declaration should be processed through the Internal Market Information System (IMI).**
- (6b) Exchange of information in the framework of administrative cooperation and mutual assistance between the Member States should comply with the rules on protection of personal data laid down in Regulation (EU) 2016/679. With regard to the exchange of information through the Internal Market Information System (IMI), it should also comply with Regulation (EC) No 45/2001* and Regulation (EU) No 1024/2012.****

* **Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1)**

** **Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p.1)**

- (7) In order to further improve the effectiveness, efficiency and consistency of enforcement, it is desirable to develop the features and the use of the existing national risk rating systems. Access to the data contained in risk rating systems would enable better targeting of controls at non-compliant operators and a uniform formula for assessing risk rating of a transport undertaking should contribute to fairer treatment of operators at controls.

- (8) In order to ensure uniform conditions for the implementation of Directive 2006/22/EC, implementing powers should be conferred on the Commission. **The Commission should ensure the equal treatment of undertakings when taking into account the criteria specified in this Directive for the development of a common formula for calculating a risk rating of undertakings.** Those **implementing** powers should be exercised in accordance with Regulation (EU) No 182/2011³.
- (9) Difficulties have also been experienced in applying the rules on posting of workers specified in Directive 96/71/EC of the European Parliament and of the Council⁴ and the rules on the administrative requirements laid down in Directive 2014/67/EU of the European Parliament and of the Council⁵ to the highly mobile road transport sector. The uncoordinated national measures on the application and enforcement of the provisions on posting of workers in the road transport sector have generated high administrative burdens for non-resident Union operators. This created undue restrictions to the freedom to provide cross-border road transport services having negative side-effects on jobs.
- (10) The Commission, in its proposal of 8 March 2016⁶ for the revision of Directive 96/71/EC, recognized that the implementation of that Directive raises particular legal questions and difficulties in the highly mobile road transport sector and indicated that those issues should be best addressed through sector-specific road transport legislation.

³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁴ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.97, p.1)

⁵ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

⁶ COM(2016)128

- (11) In order to ensure the effective and proportionate implementation of Directive 96/71/EC in the road transport sector, it is necessary to establish sector-specific rules reflecting the particularity of the highly mobile workforce in the road transport sector and providing a balance between the social protection of drivers and the freedom to provide cross-border services for operators.
- (12) Such balanced criteria should be based on a concept of a sufficient link of **the service provided and the** a-driver with a territory of a host Member State. **To facilitate enforcement of the rules a distinction should be made between different types of transport operations depending on the degree of connection with the territory of the host Member State.** ~~Therefore, a time threshold should be established, beyond which the minimum rate of pay and the annual paid holidays of the host Member State shall apply in case of international transport operations. This time threshold should not apply to cabotage operations as defined by Regulations 1072/20097 and 1073/20098 since the entire transport operation is taking place in a host Member State. As a consequence 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.~~
- (12a) It should be clarified that international carriage in transit across the territory of a Member State does not constitute a situation of posting. Such operations are characterised by the fact that the driver passes the Member State without loading or unloading freight and without picking up or setting down passengers and there is for those reasons only a very weak link between the driver's activities and the Member State transited.**

⁷ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

⁸ Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p.88)

- (12b) Moreover, when a driver engages in bilateral transport operations, from the Member State where the undertaking is established to the territory of another Member State, the nature of the service is closely linked with the Member State of establishment from which the driver departs. A driver may undertake several bilateral transport operations during one journey. It would constitute a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and thereby the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations. In order to discourage the empty return of vehicles, the posting rules should also not apply to the return transport operations of a bilateral nature.**
- (12c) To ensure the efficient use of transport resources, a limited number of additional transport activities on the way should be possible without triggering the posting rules. Such activities consist of loading goods in a Member State that is crossed on the journey of the bilateral operation, and unloading the same goods in another Member State, or, during return before reaching the Member State of establishment, loading goods and unloading the same goods in another Member State.**
- (12d) On the other hand, there is a sufficient link with the territory of a host Member State when a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, in that Member State. Cabotage operations are national carriage carried out on a temporary basis in a host Member State and thus closely linked to the territory of the host Member State without any close link with the Member State of establishment. Non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State in which the undertaking is established. The services performed are therefore linked with the host Member States concerned rather than the home Member State. In these cases, sector-specific rules are only required with regard to the enforcement regime.**

- (12e) Similarly, in case that the driver is engaged in a combined transport operation, the nature of the service provided during the initial or final road leg is closely linked with the Member State of establishment if the road leg on its own is a bilateral transport operation. On the other hand, there is a sufficient link with the territory of a host Member State when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, and therefore posting rules should apply in such a case.**
- (13) In order to ensure effective and efficient enforcement of the sector-specific rules on posting of workers and to avoid disproportionate administrative burdens for non-resident operators sector, specific administrative and control requirements should be established in the road transport sector, taking full advantage of control tools such as the digital tachograph. **In order to monitor compliance with the obligations set out in this Directive and Directive 96/71/EC, Member States should be allowed to impose on road operators only the administrative requirements specified in this Directive, which are adapted to the road transport sector. While certain documents should be available in case of roadside inspection, other documents should be made available by the road operators via the competent authorities of the Member State where the operator is established, in the framework of mutual assistance between Member States set out in Chapter III of Directive 2014/67/EU.**
- (13a) To facilitate better and more uniform application of the minimum conditions for the implementation of Regulation (EC) No 561/2006, Regulation (EU) No 165/2014 and Directive 2002/15/EC, and to facilitate road transport operators' compliance with administrative requirements when posting drivers, the Commission should develop one or several modules of IMI.**

(13b) In order to adapt the Annexes of this Directive to developments in best practice, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending those Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(13c) It is important that road transport operators established in third countries, while performing road transport operations in the territory of the Union, are subject to rules which are equivalent to rules set out in this Directive. The Commission should assess the fulfilment of this principle at Union level and propose adequate solutions for efficient enforcement of the rules.

(13d) This Directive will, at the latest, apply from [OJ: insert date 18 months after entry into force] ~~should be aligned with other key parts of the first Mobility package and therefore apply from 31.12.2024.~~ That date will also be the date from which Directive 2018/957 should apply to the road transport sector, in accordance with its Article 3(3). A later date of application should be established for benefitting from a certain flexibility within the exemption to posting rules to ensure that the application of such additional flexibility may be monitored.

* OJ L 123, 12.5.2016, p. 1.

(14) Directive 2006/22/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/22/EC is amended as follows:

- (1) the title is replaced by the following:

"Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC of the European Parliament and of the Council as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC";

- (2) Article 1 is replaced by the following:

"This Directive lays down minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014* and Directive 2002/15/EC**."

* Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

** Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).";

- (3) Article 2 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:

"These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles falling within the scope of Regulations (EC) No 561/2006 and (EU) No 165/2014 and of mobile workers and drivers falling within the scope of Directive 2002/15/EC.";

(b) in paragraph 3, the first subparagraph is replaced by the following:

"Each Member State shall organise checks in such a way that at least 3% of days worked by drivers of vehicles falling within the scope of Regulation (EC) No 561/2006, **and** Regulation (EU)165/2014 ~~and Directive 2002/15/EC~~ are checked."

(ba) The following paragraph is inserted:

"3a. Each Member State shall organise checks on compliance with the provisions of Directive 2002/15/EC taking into account the risk rating system provided for in Article 9c of this Directive. Those checks shall be targeted to an undertaking if one or more of its drivers have been continuously or seriously infringing the provisions of Regulation (EC) No 561/2006 or Regulation (EU) No 165/2014."

(c) paragraph 4 is replaced by the following:

"4. The information submitted to the Commission in accordance with Article 17 of Regulation (EC) No 561/2006 **and Article 13 of Directive 2002/15/EC** shall include the number of drivers checked at the roadside, the number of checks at the premises of undertakings, the number of working days checked and the number and type of infringements reported, together with a record of whether passengers or goods were transported."

(4) in Article 6, paragraph 1 is replaced by the following:

"1. Checks at premises shall be planned in the light of past experience in relation to the various types of transport and undertakings. They shall also be carried out if serious infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014 or Directive 2002/15/EC have been detected at the roadside.";

(5) in Article 7(1), the following point (d) is added:

"(d) to ensure exchange of information with the other Member States **pursuant to Article 8 of this Directive** with regard to the application of national provisions transposing this Directive and Directive 2002/15/EC."

(6) Article 8 is amended as follows:

(a) ~~in~~ paragraph 1, ~~point (b)~~ is replaced by the following:

"1. Information exchanged bilaterally under Article 22 of Regulation (EC) No 561/2006 or Article 40 of Regulation (EU) No 165/2014 shall be exchanged between the designated bodies notified to the Commission in accordance with Article 7(2):

(a) at least once every six months after the entry into force of this Directive;

(b) upon reasoned request by a Member State in individual cases.";

(b) the following paragraph 1a is inserted:

"1a. Member State shall submit the information requested by other Member States pursuant to paragraph 1(b) of this Article within **30** ~~25~~ working days from the receipt of the request ~~in cases requiring in-depth examination or involving checks at premises of the undertakings concerned~~. A shorter time limit may be mutually agreed between the Member States. In urgent cases or cases requiring simple consultation of registers, such as of a risk rating system, the requested information shall be submitted within three working days.

Where the requested Member State considers that the request is insufficiently reasoned, it shall inform the requesting Member State accordingly within 10 working days. The requesting Member State shall further substantiate the request. Where this is not possible, the request may be rejected by the Member State.

Where it is difficult or impossible to comply with a request for information or to carry out checks, inspections or investigations, the Member State in question shall inform the requesting Member State accordingly within 10 working days, giving reasons. The Member States concerned shall discuss with each other with a view to finding a solution for any difficulty raised."

(c) **paragraph 2 is replaced by the following:**

"2. The exchange of information provided for in this Article shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012*."

* **Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).";**

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall introduce a risk rating system for undertakings based on the relative number and severity of any infringement of Regulation (EC) No 561/2006 or of Regulation (EU) No 165/2014 or of national provisions transposing Directive 2002/15/EC that an individual undertaking has committed.

The Commission shall, by means of implementing acts, establish a common formula for calculating a risk rating of undertakings, which shall take into account the number, severity and frequency of occurrence of infringements as well as the results of controls where no infringement has been detected and whether a road transport undertaking has been using the smart tachograph, pursuant to Chapter II of Regulation (EU) No 165/2014, on all its vehicles. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive."

(b) in paragraph 2, the second sentence is deleted.

(ba) paragraph 3 is replaced by the following:

"3. An initial list of infringements of Regulation (EC) No 561/2006 and Regulation (EC) No 165/2014 and their weighting of gravity is set out in Annex III.

The Commission is empowered to adopt delegated acts in accordance with Article 15a of this Directive amending Annex III in order to take account of regulatory developments and considerations of road safety.

The category for the most serious infringement should include those where failure to comply with the relevant provisions of Regulation (EC) No 561/2006 and Regulation (EC) No 165/2014 create a serious risk of death or serious personal injury."

(c) the following paragraphs 4 and 5 are added:

"4. In order to facilitate targeted roadside checks, the data contained in the national risk rating system shall be accessible at the time of control to all the competent control authorities of the Member State concerned.;

5. Member States shall make the information contained in the national risk rating system available upon request or directly accessible to all competent authorities of other Member States in accordance with the time limits set out in Article 8.";

(8) in Article 11, paragraph 3 is replaced by the following:

"3. The Commission shall establish a common approach to recording and controlling periods of other work, as defined in point (e) of Article 4 of Regulation (EC) No 561/2006, and periods of at least one week during which a driver is away from the vehicle, by implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2)";

(8a) Article 12 is replaced by the following:

"Article 12

Committee procedure

- 1. The Commission shall be assisted by the Committee set up by Article 42(1) of Regulation (EU) 165/2014.**
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply."

(8b) Article 15 is replaced by the following:

"Article 15

Updating of Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 15a amending Annexes I and II to introduce necessary adaptations to developments in best practice."

(8c) The following article is inserted:

"Article 15a

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.**

2. **The power to adopt delegated acts referred to in Article 9(3) and Article 15 shall be conferred on the Commission for a period of 5 years from [date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**
3. **The delegation of power referred to in Article 9(3) and Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.**
4. **Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*.**
5. **As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.**
6. **A delegated act adopted pursuant to Article 9(3) and Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."**

* OJ L 123, 12.5.2016, p. 1.

(9) Annex I is amended as follows:

(a) in Part A, the following point (6) is added:

"(6) **extended maximum** weekly working times of **60 hours** as set out in Articles 4 point (a) and 5 of Directive 2002/15/EC.";

(b) in Part B, the following points ~~are~~ (4) is added:

"(4) **maximum average** weekly working times, breaks and night work requirements set out in Articles 4, 5 and 7 of Directive 2002/15/EC.;

(5) **observance of the obligations of undertakings as regards the payment for drivers' accommodation and the organisation of the work of drivers, in accordance with Article 8(8) and (8a) of Regulation 561/2006.**"

Article 2

1. This Article establishes specific rules as regards certain aspects of Directive 96/71/EC relating to the posting of drivers in the road transport sector and of Directive 2014/67/EU of the European Parliament and of the Council relating to administrative requirements and control measures for the posting of those drivers.
2. **A driver shall not be considered to be posted for the purpose of Member States shall not apply points (b) and (c) of the first subparagraph of Article 3 (1) of Directive 96/71/EC to drivers in the road transport sector employed by undertakings referred to in Articles 1(3)(a) and (b) of that Directive, when performing bilateral transport international carriage operations.**

For the purpose of this Directive, a bilateral transport operation in respect of goods is the movement of goods, based on a transport contract, from the Member State of establishment, where the goods are loaded, to another Member State or a third country, where they are unloaded.

If the bilateral transport operation, or bilateral transport operations during the same journey, are followed by a return to the Member State where the undertaking employing the driver is established, the driver shall not be considered to be posted for the return journey.

A bilateral transport operation in respect of passengers is the picking up of passengers in the Member State of establishment, and their setting down in another Member State or a third country or the Member State of establishment (international closed door tours).

From 31.12.2024 Member States shall also apply the exemption set out in the first subparagraph ~~shall also apply~~ when the driver performing a bilateral transport operation in respect of goods in addition thereto performs up to [two] activities of loading and/or unloading in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unloads them in the same Member State. If the bilateral transport operation, or bilateral transport operations during the same journey, are followed by a return to the Member State where the undertaking employing the driver is established, the exemption for additional activities shall only apply when the activities are carried out in Member States or third countries which the driver crossed during the bilateral transport operation.

From 31.12.2024 Member States shall also apply the exemption set out in the first subparagraph ~~shall also apply~~ when the driver performing a bilateral transport operation in respect of passengers in addition thereto:

- picks up passengers once or twice; and/or**
- sets down passengers once or twice**

in Member States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same shall apply to the return journey.

as defined by Regulations ~~1072/2009 and 1073/2009~~ where the period of posting to their territory to perform these operations is shorter than or equal to 3 days during a period of one calendar month.

~~When the period of posting is longer than 3 days, Member States shall apply points (b) and (c) of the first subparagraph of Article 3 (1) of Directive 96/71/EC for the entire period of posting to their territory during the period of one calendar month referred to in the first subparagraph.~~

2a. Notwithstanding Article 2(1) of Directive 96/71/EC, 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.

2b. In case where the driver is performing the initial or final road leg of a combined transport operation as defined in Directive 92/106/EEC, the driver shall not be considered posted for the purpose of Directive 96/71/EC if the road leg on its own consists of bilateral transport operations as defined in paragraph 2.

~~3. For the purposes of the calculation of the periods of posting referred to in paragraph 2:~~

~~(a) a daily working period shorter than six hours spent in the territory of a host Member State shall be considered as half a day **of posting**;~~

~~(b) a daily working period between of six hours or more spent in the territory of a host Member State shall be considered as a full day **of posting**;~~

~~(c) 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.~~

4. By way of derogation from Article 9 paragraphs 1 and 2 of Directive 2014/67/EU, Member States may only impose the following administrative requirements and control measures **with respect to the posting of drivers:**

- (a) an obligation for the road transport operator established in another Member State to send a posting declaration to the national competent authorities at the latest at the commencement of the posting, ~~in electronic form, in an official language of the host Member State or in English,~~ **using a multilingual standard form of the public interface connected to the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012. The standard form of the posting declaration shall consist of** ~~containing only~~ the following information:
- (i) the identity of the road transport operator;
 - (ii) the contact details of a transport manager or other contact person(s) in the Member State of establishment to liaise with the competent authorities of the host Member State, in which the services are provided and to send out and receive documents or notices;
 - (iii) the anticipated number and the identities of posted drivers;
 - (iiia) the starting date of the employment contract of each driver;**
 - (iv) ~~the anticipated duration, envisaged beginning and~~ **anticipated duration end date** of the posting;
 - (v) the number plates of the **motor** vehicles ~~used in posting~~;
 - (vi) the type of transport services, that is to say carriage of goods, carriage of passengers, international carriage, cabotage operation;
- (b) an obligation for the driver to keep and make available, where requested at the roadside control, in paper or electronic form: ~~, a copy of the posting declaration and evidence of transport operation taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council.~~

- ~~(c) an obligation for the driver to keep and make available, where requested at the roadside control, the tachograph records, and in particular the country codes of Member States where the driver has been present when carrying out international road transport operations or cabotage operations;~~
- ~~(d) an obligation for the driver to keep and make available, where requested at the roadside control, in paper or electronic form, a copy of the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC⁹, translated into one of the official languages of the host Member State or into English;~~
- ~~(e) an obligation for the driver to make available, where requested at the roadside control, in paper or electronic form, a copy of payslips for last two months; during the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity which may provide this copy;~~
- (i) a copy of the posting declaration;**
- (ii) evidence of the transport carriage(s) taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8 of Regulation (EC) No 1072/2009;**
- (iii) the tachograph records, and in particular the country codes of Member States where the driver has been present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006 and (EU) No 165/2014;**

⁹ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32)

~~(c)~~(c) an obligation for the road transport operator to deliver, after the period of posting, in paper or electronic form, copies of documents referred to in points (b), ~~(c)~~ and ~~(e)~~, at the request of the authorities of the host Member State within a reasonable period of time as well as documentation of the remuneration of posted drivers which relate to the period of posting and their employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC ¹⁰, time-sheets relating to the driver's work and proof of payments. In accordance with Articles 6 and 7 of Directive 2014/67/EU the competent authority of the host Member State shall make the corresponding request to the competent authority of the Member State of establishment, which latter shall request that information from the operator.

However, as regards the documentation of the remuneration and proof of payments relating to posted drivers, the Member State may also impose an obligation for the road transport operator to upload documentation to the IMI public interface without undue delay upon request communicated via IMI by the competent authority of the host Member State.

In order to ascertain that drivers, in accordance with paragraphs 2 and 2a, are not to be considered posted, Member States may only impose as control measure an obligation for the driver to keep and make available, where requested at the roadside control, in paper or electronic form, the evidence of the relevant international carriage(s) such as an electronic consignment note (e-CMR) or evidence referred to in Article 8 of Regulation (EC) No 1072/2009, and tachograph records referred to in point b) (iii) .

5. For the purposes of ~~point (a) of paragraph 4~~ the road transport operator may provide a posting declaration covering a period of a maximum of six months. ~~control~~, the transport operator shall keep the posting declaration referred to in point (a) of paragraph 4 up to date.

¹⁰ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32)

6. **The Commission shall specify, by way of implementing act, the functionalities of the posting declaration in the IMI and how the information referred to in paragraph 4 point (a) (i) to (vi) above is to be presented in the posting declaration. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 2a (2).**

Article 2a

1. **The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**
2. **Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**

Article 3

1. The Commission shall evaluate the implementation of this Directive, in particular the impact of Article 2, by [3 years after the date for transposition of this Directive] and report to the European Parliament and the Council on the application of this Directive. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.
2. Following the report referred to in paragraph 1, the Commission shall regularly evaluate this Directive and submit the evaluation results to the European Parliament and the Council.
3. Where appropriate, the reports referred to in paragraphs 1 and 2 shall be accompanied by relevant proposals.

Article 3a

The Annex to Regulation (EU) No 1024/2012 is amended as follows:

1. the following point is inserted:

"6a. Directive xxx/xxx/EU laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting of drivers in road transport: Article 2(4).";

2. the following point is added:

"7b. Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC of the European Parliament and of the Council as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC: Article 8."

Article 4

1. Member States shall adopt and publish, by [...] ~~[The time limit for transposition will be as short as possible and, generally, will not exceed two years]~~ **[OJ: insert 18 months two years after entry into force of this Directive]** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from **[OJ: insert same date as in previous paragraph]** [...] **31.12.2024.**

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
