



Council of the  
European Union

Brussels, 8 April 2020  
(OR. en)

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**Interinstitutional File:**  
**2017/0121 (COD)**

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5112/1/20  
REV 1

TRANS 6  
SOC 7  
EMPL 7  
MI 6  
CODEC 11  
PARLNAT 19

## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject: Position of the Council 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  
- Adopted by the Council on 7 April 2020

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**DIRECTIVE (EU) 2020/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of ...

**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 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 Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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<sup>1</sup> OJ C 197, 8.6.2018, p. 45.

<sup>2</sup> OJ C 176, 23.5.2018, p. 57.

<sup>3</sup> Position of the European Parliament of 4 April 2019 [(OJ ...)/(not yet published in the Official Journal)] and position of the Council at first reading of 7 April 2020 [(OJ ...)/(not yet published in the Official Journal)]. Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)] [and decision of the Council of ...]

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 conditions for business and for fair competition for road transport operators ("operators"), on the other. Given the high degree of mobility of the workforce in the road transport sector, sector-specific rules are needed to ensure a balance between the freedom of operators to provide cross-border services, free movement of goods, adequate working conditions and social protection for drivers.
- (2) In view of the inherent high degree of mobility of road transport services, particular attention needs to be paid to ensuring that drivers benefit from the rights to which they are entitled and that operators, most of which are small enterprises, are not faced with disproportionate administrative barriers or discriminatory controls which unduly restrict their freedom to provide cross-border services. For the same reason, any national rules applied to road transport must be proportionate as well as justified, taking account of the need to ensure adequate working conditions and social protection for drivers and to facilitate the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators.

- (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 the road transport sector, certain loopholes in the existing provisions and deficiencies in their enforcement have been identified, such as those with regard to the use of letterbox companies. Furthermore a number of discrepancies exist between Member States in the interpretation, application and implementation of those provisions, creating a heavy administrative burden for drivers and operators. This creates legal uncertainty, which is detrimental to the social and working conditions of drivers and to the conditions for fair competition for operators in the sector.
- (5) In order to ensure that Directives 96/71/EC<sup>1</sup> and 2014/67/EU<sup>2</sup> of the European Parliament and of the Council are correctly applied, controls and cooperation at Union level to tackle fraud relating to the posting of drivers should be strengthened.

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<sup>1</sup> 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, 21.1.1997, p. 1).

<sup>2</sup> 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) The Commission, in its proposal of 8 March 2016 for the revision of Directive 96/71/EC, recognised that the implementation of that Directive raises particular legal questions and difficulties in the highly mobile road transport sector and indicated that those issues would be best addressed through sector-specific road transport legislation.
- (7) 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 particularities of the highly mobile workforce in the road transport sector and providing a balance between the social protection of drivers and the freedom of operators to provide cross-border services. The provisions on the posting of workers, in Directive 96/71/EC, and on the enforcement of those provisions, in Directive 2014/67/EU, apply to the road transport sector and should be made subject to the specific rules laid down in this Directive.
- (8) Given the highly mobile nature of the transport sector, drivers are not generally posted to another Member State under service contracts for long periods of time, as is sometimes the case in other sectors. It should therefore be clarified in which circumstances the rules on long-term posting in Directive 96/71/EC do not apply to such drivers.

- (9) Balanced sector specific rules on posting should be based on the existence of a sufficient link between the driver and the service provided, and the territory of a host Member State. To facilitate enforcement of those 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.
- (10) When a driver engages in bilateral transport operations from the Member State where the undertaking is established (the "Member State of establishment") to the territory of another Member State or a third country or back to the Member State of establishment, the nature of the service is closely linked with the Member State of establishment. It is possible that a driver undertakes several bilateral transport operations during one journey. It would be a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and therefore the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations.

- (11) It should be clarified that international carriage in transit across the territory of a Member State does not constitute a posting situation. 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 therefore no significant link between the driver's activities and the Member State transited. The qualification of the driver's presence in a Member State as transit is, therefore, not affected by stops, for example, for hygiene reasons.
- (12) When a 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. By contrast, when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, there is a sufficient link with the territory of a host Member State and therefore the posting rules should apply.

- (13) Where a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, there is a sufficient link to the territory of the host Member State. The link exists in case of cabotage operations as defined by Regulations (EC) No 1072/2009<sup>1</sup> and (EC) No 1073/2009<sup>2</sup> of the European Parliament and of the Council since the entire transport operation takes place in a host Member State and the service is thus closely linked to the territory of the host Member State. A non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State of establishment of the undertaking making the posting. The services performed are therefore linked with the host Member States concerned rather than with the Member State of establishment. In those cases, sector-specific rules are only required with regard to the administrative requirements and control measures.

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<sup>1</sup> 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).

<sup>2</sup> 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).



- (14) Member States should ensure that, in line with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are laid down by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in their territories, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of Directive 96/71/EC, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. This should include, where relevant, those terms and conditions of employment laid down by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned. The relevant information should, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments. In line with Directive 2014/67/EU, the involvement of the social partners is to be sought.
- (15) Union operators face growing competition from operators based in third countries. It is therefore of the utmost importance to ensure that Union operators are not discriminated against. According to Article 1(4) of Directive 96/71/EC, undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State. That principle should also apply with regard to the specific rules on posting provided for in this Directive. It should, in particular, apply when third country operators perform transport operations under bilateral or multilateral agreements granting access to the Union market.

- (16) The multilateral quota system of the European Conference of Ministers of Transport ("ECMT") is one of the main instruments regulating access to the Union market by third country operators and access to third country markets by Union operators. The number of permits allocated to each ECMT member country is decided on a yearly basis. Member States need to respect their obligation not to discriminate against Union undertakings, including when agreeing conditions for access to the Union market within ECMT.
- (17) The power to negotiate and conclude the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport ("AETR") lies with the Union as part of its exclusive external competences. The Union should, in accordance with Article 2(3) of Regulation (EC) No 561/2006 of the European Parliament and of the Council<sup>1</sup>, align the control mechanisms that can be used to control the respect of national and Union social rules by third country undertakings with the control mechanisms that apply to Union undertakings.

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<sup>1</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (18) Difficulties have also been experienced in applying the rules on the posting of workers specified in Directive 96/71/EC and the rules on the administrative requirements laid down in Directive 2014/67/EU to the highly mobile road transport sector. Uncoordinated national measures on the application and enforcement of the provisions on the posting of workers in the road transport sector have generated legal uncertainty and a heavy administrative burden on non-resident Union operators. This has created undue restrictions to the freedom to provide cross-border road transport services, with negative side-effects for jobs and the competitiveness of operators. Therefore, administrative requirements and control measures need to be harmonised. This would also prevent operators from suffering unnecessary delays.
- (19) In order to ensure effective and efficient enforcement of the sector-specific rules on posting of workers and to avoid a disproportionate administrative burden on non-resident Union operators, specific administrative requirements and control measures 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, and at the same time to reduce the complexity of that task, Member States should only be allowed to impose on operators the administrative requirements and control measures specified in this Directive, which are adapted to the road transport sector.

- (20) Transport undertakings need legal certainty about the rules and requirements with which they have to comply. Those rules and requirements should be clear, understandable and easily accessible to transport undertakings, and should enable effective checks to be carried out. It is important that new rules do not introduce an unnecessary administrative burden and that they duly take into account the interests of small and medium-sized enterprises.
- (21) The administrative burden and document management tasks incumbent on drivers should be reasonable. Therefore, while certain documents should be available in the vehicle for inspection during roadside checks, other documents should be made available via the public interface connected to the Internal Market Information System ("IMI") established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council<sup>1</sup> by the operators and, where necessary, by the competent authorities of the Member State of establishment of the operator. The competent authorities should use the framework of mutual assistance between Member States set out in Directive 2014/67/EU.
- (22) To facilitate the control of compliance with the posting rules set out in this Directive, operators should submit a posting declaration to the competent authorities of the Member States where they post drivers.

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<sup>1</sup> 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).

- (23) In order to reduce the administrative burden on operators it is necessary to simplify the process of sending and updating posting declarations. Therefore, the Commission should develop a multilingual public interface, to which operators have access and via which they can submit and update posting information and submit other relevant documents to IMI, as necessary.
- (24) Given that, in some Member States, social partners play a crucial role in enforcing social legislation in the road transport sector, Member States should be allowed to provide national social partners with the relevant information which has been shared via IMI, for the sole purpose of checking compliance with posting rules while respecting Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup>. The relevant information should be provided to social partners by other means than IMI.
- (25) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to specify the functionalities of the public interface connected to IMI. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>2</sup>.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>2</sup> 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).

- (26) Adequate, effective and consistent enforcement of the rules on working time and rest time is crucial to improving road safety, to protecting the working conditions of drivers and to preventing distortions of competition resulting from non-compliance. Therefore it is desirable to extend the scope of the existing uniform enforcement requirements set out in Directive 2006/22/EC of the European Parliament and of the Council<sup>1</sup> to include controlling compliance with the working time provisions set out in Directive 2002/15/EC of the European Parliament and of the Council<sup>2</sup>.
- (27) In view of the series of data necessary to carry out controls of the compliance with rules on working time set out in Directive 2002/15/EC, the extent of roadside checks depends on the development and introduction of technology enabling a sufficient period of time to be covered. Roadside checks should be limited to those aspects that can be checked efficiently through the tachograph and related recording equipment on board, and comprehensive checks should only be carried out on the premises.

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<sup>1</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

<sup>2</sup> 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).

- (28) Roadside checks should be executed efficiently and quickly, with a view to completing the checks in the shortest time possible and with a minimum of delay for the driver. A clear distinction should be made between the obligations of operators and the obligations of drivers.
- (29) Cooperation between Member State enforcement authorities should be further promoted through concerted checks, which Member States should endeavour to extend to checks at premises. The European Labour Authority, whose scope of activities, as set out in Article 1(4) of Regulation (EU) 2019/1149 of the European Parliament and of the Council<sup>1</sup>, covers Directive 2006/22/EC, could play an important role in assisting Member States carrying out concerted checks and could support education and training efforts.
- (30) The administrative cooperation between Member States with regard to the implementation of social rules in the road transport sector has proven to be 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 the exchange of data on infringements and of information on good practices in enforcement.

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<sup>1</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).

- (31) With a view to fostering effective administrative cooperation and an effective exchange of information, Regulation (EC) No 1071/2009 of the European Parliament and of the Council<sup>1</sup> requires Member States to interconnect their national electronic registers (NER) through the European Register of Road Transport Undertakings (ERRU) system. The information accessible through that system at roadside checks should be extended.
- (32) To facilitate and improve communication between Member States, to ensure a more uniform application of social rules in the transport sector and to facilitate operators' compliance with administrative requirements when posting drivers, the Commission should develop one or more new modules for IMI. It is important that IMI allows for validity checks on posting declarations to be carried out during roadside checks.

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<sup>1</sup> Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).



- (33) The exchange of information in the context of effective administrative cooperation and mutual assistance between Member States should comply with the rules on personal data protection laid down in Regulations (EU) 2016/679 and (EU) 2018/1725 of the European Parliament and of the Council<sup>1</sup>. The exchange of information through the IMI should also comply with Regulation (EU) No 1024/2012.
- (34) In order to improve the effectiveness, efficiency and consistency of enforcement, it is desirable to develop the features and extend the use of the existing national risk rating systems. Access to the data contained in risk rating systems would enable the competent control authorities of the Member State concerned to better target checks at non-compliant operators. A common formula for calculating the risk rating of a transport undertaking should contribute to fairer treatment of operators during checks.
- (35) As a consequence of the entry into force of the Treaty of Lisbon, the powers conferred on the Commission under Directive 2006/22/EC should be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (36) In order to ensure uniform conditions for the implementation of Directive 2006/22/EC, implementing powers should be conferred on the Commission to increase the minimum percentage of the days worked by drivers checked by Member States to 4 %; to further clarify the definitions of the categories of statistics to be collected; to designate a body for the active promotion of the exchange of data, of experience and of intelligence between the Member States; to establish a common formula for calculating the risk rating of an undertaking; to establish guidelines on best enforcement practice; to establish a common approach to the recording and controlling of periods of other work and to the recording and controlling of periods of at least one week during which a driver is away from the vehicle and is unable to carry out any activities with that vehicle; and to promote a common approach to the implementation of that Directive, to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EC) No 561/2006 between enforcement authorities and to facilitate dialogue between the transport sector and enforcement authorities. In particular, when adopting implementing acts for the development of a common formula for calculating the risk rating of an undertaking, the Commission should ensure the equal treatment of undertakings when taking into account the criteria specified in this Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

- (37) In order to reflect developments in best practice as regards checks and standard equipment to be available to enforcement units and to establish or update the weighting of gravity of infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014 of the European Parliament and of the Council<sup>1</sup>, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending, respectively, Annexes I and II and Annex III of Directive 2006/22/EC. 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<sup>2</sup>. 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.
- (38) Directive 2006/22/EC should therefore be amended accordingly.

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<sup>1</sup> 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).

<sup>2</sup> OJ L 123, 12.5.2016, p. 1.

- (39) Transport undertakings are the addressees of certain special rules on posting and bear the consequences of any infringements of those rules that they commit. However, in order to prevent abuse by undertakings contracting transport services from road haulage operators, Member States should also provide for clear and predictable rules on sanctions against consignors, freight forwarders, contractors and sub-contractors in cases where they knew, or, in light of all relevant circumstances ought to have known, that the transport services that they commissioned involved infringements of special rules on posting.
- (40) In order to ensure fair competition conditions and a level playing field for workers and business, there is a need to make progress towards smart enforcement and to provide all possible support for the full introduction and use of risk rating systems.
- (41) The Commission should evaluate the impact of the application and of the enforcement of the rules for the posting of workers on the road transport sector and submit a report on the results of that evaluation to the European Parliament and to the Council, together, where appropriate, with a legislative proposal.

- (42) Since the objectives of this Directive, namely to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable conditions for business and for fair competition for operators, on the other, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (43) The national measures transposing this Directive should apply from the date 18 months after the date of entry into force of this Directive. Directive (EU) 2018/957 of the European Parliament and of the Council<sup>1</sup> is to apply to the road transport sector, in accordance with Article 3(3) of that Directive, from ... [18 months after the date of entry into force of this Directive],

HAVE ADOPTED THIS DIRECTIVE:

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<sup>1</sup> Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16).

## *Article 1*

### *Specific rules on the posting of drivers*

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 relating to administrative requirements and control measures for the posting of those drivers.
2. These specific rules apply to drivers employed by undertakings established in a Member State which take the transnational measure referred to in point (a) of Article 1(3) of Directive 96/71/EC.
3. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations in respect of goods.

For the purpose of this Directive, a bilateral transport operation in respect of goods means the movement of goods, based on a transport contract, from the Member State of establishment, as defined in Article 2(8) of Regulation (EC) No 1071/2009, to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment.

From ... [18 months after the entry into force of this Directive], which is the date from which drivers are required, pursuant to Article 34(7) of Regulation (EU) No 165/2014, to record border crossing data manually, Member States shall apply the exemption for bilateral transport operations in respect of goods set out in the first and second subparagraphs of this paragraph also where, in addition to performing a bilateral transport operation, the driver performs one activity 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 unload them in the same Member State.

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 exemption for additional activities set out in the third subparagraph shall apply to a maximum of two additional activities of loading and/or unloading, under the conditions set out in the third subparagraph.

The exemptions for additional activities set out in the third and fourth subparagraphs of this paragraph shall apply only until the date from which smart tachographs complying with the requirement of recording border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation (EU) No 165/2014 are required to be fitted in the vehicles registered in a Member State for the first time, under the fourth subparagraph of Article 8(1) of that Regulation. From that date the exemptions for additional activities set out in the third and fourth subparagraphs of this paragraph shall apply solely to drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 of that Regulation.

4. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations in respect of passengers.

For the purpose of this Directive, a bilateral transport operation in international occasional or regular carriage of passengers, within the meaning of Regulation (EC) No 1073/2009, is when a driver performs any of the following operations:

- (a) picks up passengers in the Member State of establishment and sets them down in another Member State or a third country;
- (b) picks up passengers in a Member State or a third country and sets them down in the Member State of establishment; or



- (c) picks up and sets down passengers in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009.

From ... [18 months after the entry into force of this Directive], which is the date from which drivers are required, pursuant to Article 34(7) of Regulation (EU) No 165/2014, to record border crossing data manually, Member States shall apply the exemption for bilateral transport operations in respect of passengers set out in the first and second subparagraphs of this paragraph also where, in addition to performing a bilateral transport operation, the driver picks up passengers once and/or sets down passengers once 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.

The exemption for additional activities set out in the third subparagraph of this paragraph shall apply only until the date from which smart tachographs complying with the requirement of recording of border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation (EU) No 165/2014 are required to be fitted in the vehicles registered in a Member State for the first time, under the fourth subparagraph of Article 8(1) of that Regulation. From that date the exemption for additional activities set out in the third subparagraph of this paragraph shall apply solely to drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 of that Regulation.

5. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when the driver transits through the territory of a Member State without loading or unloading freight and without picking up or setting down passengers.
6. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing the initial or final road leg of a combined transport operation as defined in Council Directive 92/106/EEC<sup>1</sup>, if the road leg on its own consists of bilateral transport operations, as defined in paragraph 3 of this Article.
7. A driver performing cabotage operations as defined in Regulations (EC) No 1072/2009 and (EC) No 1073/2009 shall be considered to be posted under Directive 96/71/EC.
8. A posting shall, for the purpose of Article 3(1a) of Directive 96/71/EC, be considered to be ending when the driver leaves the host Member State in the performance of the international carriage of goods or passengers. That period of posting shall not be cumulated with previous periods of posting in the context of such international operations performed by the same driver or by another driver whom he or she replaces.

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<sup>1</sup> Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).

9. Member States shall ensure that, in accordance with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC, which are laid down by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in their territories, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of Directive 96/71/EC, 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 constituent elements of remuneration rendered mandatory by such instruments, including, where relevant, by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned.
10. Transport undertakings established in a non-Member State shall not be given more favourable treatment than undertakings established in a Member State, including when performing transport operations under bilateral or multilateral agreements granting access to the Union market or parts thereof.

11. By way of derogation from Article 9(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 operator established in another Member State to submit a posting declaration to the national competent authorities of a Member State to which the driver is posted at the latest at the commencement of the posting, using a multilingual standard form of the public interface connected to the Internal Market Information System ("IMI"), established by Regulation (EU) No 1024/2012; that posting declaration shall consist of the following information:
    - (i) the identity of the operator, at least in the form of the number of the Community licence where this number is available;
    - (ii) the contact details of a transport manager or other contact person 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 identity, the address of the residence and the number of the driving licence of the driver;

- (iv) the start date of the driver's contract of employment, and the law applicable to it;
  - (v) the envisaged start and end date of the posting;
  - (vi) the number plates of the motor vehicles;
  - (vii) whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations;
- (b) an obligation for the operator to ensure that the driver has at his or her disposal in paper or electronic form and an obligation for the driver to keep and make available when requested at the roadside:
- (i) a copy of the posting declaration submitted via IMI;
  - (ii) evidence of the transport operations taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009;

- (iii) the tachograph records and in particular the country symbols of the Member States in which the driver was 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;
- (c) an obligation for the operator to send via the public interface connected to IMI, after the period of posting, at the direct request of the competent authorities of the Member States where the posting took place, copies of documents referred to in point (b) (ii) and (iii) of this paragraph as well as documentation relating to the remuneration of the driver in respect of the period of posting, the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC<sup>1</sup>, time-sheets relating to the driver's work, and proof of payments.

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<sup>1</sup> 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).

The operator shall send the documentation via the public interface connected to IMI no later than eight weeks from the date of the request. If the operator fails to submit the requested documentation within that time period, the competent authorities of the Member State where the posting took place may request, via IMI, the assistance of the competent authorities of the Member State of establishment, in accordance with Articles 6 and 7 of Directive 2014/67/EU. When such a request for mutual assistance is made, the competent authorities of the Member State of establishment of the operator shall have access to the posting declaration and other relevant information submitted by the operator via the public interface connected to IMI.

The competent authorities of the Member State of establishment shall ensure that they provide the requested documentation to the competent authorities of the Member State where the posting took place via IMI within 25 working days from the day of the request for mutual assistance.

For the purpose of ascertaining whether a driver is not to be considered to be posted pursuant to paragraphs 3 and 4 of this Article, Member States may only impose as a control measure an obligation for the driver to keep and make available, where requested at the roadside check, in paper or electronic form, the evidence of the relevant international carriages, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009, and tachograph records, as referred to in point (b)(iii) of this paragraph.

12. For the purposes of control, the operator shall keep the posting declarations referred to in point (a) of paragraph 11 up to date in the public interface connected to IMI.
13. The information from the posting declarations shall be saved in the IMI repository for the purpose of checks for a period of 24 months.

A Member State may allow the competent authority to provide national social partners by other means than IMI with relevant information available in IMI to the extent necessary for the purpose of checking compliance with posting rules and in accordance with national law and practices, provided that:

- (a) the information relates to a posting to the territory of the Member State concerned;
  - (b) the information is used exclusively for the purpose of enforcing the posting rules;  
and
  - (c) any data processing is carried out in accordance with Regulation (EU) 2016/679.
14. By ... [six months after the entry into force of this Directive], the Commission shall specify, by way of an implementing act, the functionalities of the public interface connected to IMI. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 4(2).



15. Member States shall avoid unnecessary delays in the implementation of the control measures that might affect the duration and dates of the posting.
16. The competent authorities in the Member States shall cooperate closely and shall provide each other with mutual assistance and all relevant information, subject to the conditions laid down in Directive 2014/67/EU and in Regulation (EC) No 1071/2009.

## *Article 2*

### *Amendment of Directive 2006/22/EC*

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 as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC";

(2) Article 1 is replaced by the following:

*"Article 1*

*Subject matter*

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

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\* Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

\*\* 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. Roadside checks on compliance with Directive 2002/15/EC shall be limited to aspects that can be checked efficiently through the tachograph and related recording equipment. A comprehensive check on compliance with Directive 2002/15/EC may only be carried out at the premises.";

(b) in paragraph 3, the first and second subparagraphs are 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 Regulations (EC) No 561/2006 and (EU) No 165/2014 are checked. During the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity in order to provide, before the end of the roadside check, any evidence which is found to be missing on board; this is without prejudice to the driver's obligation to ensure the proper use of tachograph equipment.

From 1 January 2012 the Commission may, by means of an implementing act, increase the minimum percentage to 4 %, provided that the statistics collected pursuant to Article 3 show that, on average, more than 90 % of all vehicles checked are equipped with a digital tachograph. In making its decision, the Commission shall also take into account the effectiveness of existing enforcement measures, in particular the availability of digital tachograph data at the premises of undertakings. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 12(2).";

(c) the following paragraph is inserted:

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

(d) 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, and shall indicate whether passengers or goods were transported.";

(4) The fifth paragraph of Article 3 is replaced by the following:

"The Commission shall, if required, further clarify, by means of implementing acts, the definitions of the categories mentioned under points (a) and (b) of the first paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).";

(5) Article 5 is replaced by the following:

*"Article 5*

*Concerted checks*

Member States shall, at least six times per year, carry out concerted roadside checks on drivers and vehicles falling within the scope of Regulation (EC) No 561/2006 or (EU) No 165/2014. Member States shall, in addition, endeavour to organise concerted checks at premises of undertakings.

Such concerted checks shall be carried out at the same time by the enforcement authorities of two or more Member States, each operating in its own territory.";

(6) 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.";

(7) Article 7 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

"(b) to forward the biennial statistical returns to the Commission under Article 17 of Regulation (EC) No 561/2006;"

(ii) the following point 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.";

(b) paragraph 3 is replaced by the following:

"3. The exchange of data, of experience and of intelligence between Member States shall be actively promoted, primarily, but not exclusively through the Committee referred to in Article 12(1) and any such body as the Commission may designate by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).";

(8) Article 8 is replaced by the following:

*"Article 8*

*Exchange of information*

1. Information made available bilaterally under Article 22(3) of Regulation (EC) No 561/2006 shall also be exchanged between the designated bodies notified to the Commission in accordance with Article 7 of this Directive:

- (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.

2. A Member State shall provide the information requested by another Member State pursuant to point (b) of paragraph 1 within 25 working days from the receipt of the request. A shorter time limit may be mutually agreed between the Member States. In urgent cases or in cases requiring only a simple consultation of registers, such as registers of a risk rating system, the requested information shall be provided 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 from the receipt of the request. The requesting Member State shall further substantiate the request. Where the requesting Member State is unable to further substantiate the request, the requested Member State may reject the request.

Where it is difficult or impossible to comply with a request for information or to carry out checks, inspections or investigations, the requested Member State shall inform the requesting Member State accordingly within 10 working days from the receipt of the request and provide reasons to duly justify that difficulty or impossibility. The Member States concerned shall discuss with one another with a view to finding a solution.

In the event of persistent delays in the provision of information to the Member State to whose territory the worker is posted, the Commission shall be informed and shall take appropriate measures.



3. 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 of the European Parliament and of the Council\*. This does not apply to information which Member States exchange through direct consultation of national electronic registers referred to in Article 16(5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council\*\*.

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\* 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).

\*\* Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p.51).";

(9) 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 gravity 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.

By... [10 months after entry into force of this amending Directive] the Commission shall, by means of implementing acts, establish a common formula for calculating the risk rating of an undertaking. That common formula shall take into account the number, gravity and frequency of occurrence of infringements and the results of controls where no infringement has been detected, as well as 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;

(c) paragraph 3 is replaced by the following:

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

With a view to establishing or updating the weighting of gravity of infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014, the Commission is empowered to adopt delegated acts in accordance with Article 15a of this Directive to amend Annex III to take account of regulatory developments and road safety considerations.

The category for the most serious infringements should include those in which failure to comply with the relevant provisions of Regulations (EC) No 561/2006 and (EU) No 165/2014 creates a serious risk of death or serious personal injury.";

(d) the following paragraphs are added:

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

5. Member States shall make the information contained in their national risk rating system directly accessible through interoperable national electronic registers as referred to in Article 16 of Regulation (EC) No 1071/2009 to competent authorities of other Member States in accordance with Article 16(2) of that Regulation.";

(10) Article 11 is amended as follows:

(a) paragraph 1 is replaced by the following:

- "1. The Commission shall, by means of implementing acts, establish guidelines on best enforcement practice. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).

Those guidelines shall be published in a biennial report of the Commission.";

(b) paragraph 3 is replaced by the following:

"3. The Commission shall, by means of implementing acts, establish a common approach to the recording and controlling of periods of other work, as defined in point (e) of Article 4 of Regulation (EC) No 561/2006, including the form of the recording and specific cases in which it is to take place, and to the recording and controlling of periods of at least one week during which a driver is away from the vehicle and is unable to carry out any activities with that vehicle. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive.";

(11) Articles 12 to 15 are replaced by the following:

*"Article 12*

*Committee procedure*

1. The Commission shall be assisted by the Committee established by Article 42(1) of Regulation (EU) No 165/2014. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council\*.
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.

### *Article 13*

#### *Implementing measures*

At the request of a Member State or on its own initiative the Commission shall adopt implementing acts in particular with one of the following aims:

- (a) to promote a common approach to the implementation of this Directive;
- (b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EC) No 561/2006 between enforcement authorities;
- (c) to facilitate dialogue between the transport sector and enforcement authorities.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive.

## *Article 14*

### *Negotiations with third countries*

Once this Directive has entered into force, the Union shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive.

Pending the conclusion of these negotiations, Member States shall include data on checks carried out on vehicles from third countries in their returns to the Commission as set out in Article 17 of Regulation (EC) No 561/2006.

## *Article 15*

### *Updating of the Annexes*

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

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\* 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).";

(12) 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 five years from ... [date of entry into force of this amending 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.

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\* OJ L 123, 12.5.2016, p. 1.";

(13) Annex I is amended as follows:

(a) Part A is amended as follows:

(i) points (1) and (2) are replaced by the following:

"(1) daily and weekly driving times, breaks and daily and weekly rest periods; also the preceding days' record sheets which have to be carried on board the vehicle in accordance with Article 36(1) and (2) of Regulation (EU) No 165/2014 and/or the data stored for the same period on the driver card and/or in the memory of the recording equipment in accordance with Annex II to this Directive and/or on printouts;

- (2) for the period referred to in Article 36 paragraphs (1) and (2) of Regulation (EU) No 165/2014, any cases where the vehicle's authorised speed is exceeded, to be defined as being any periods of more than one minute during which the vehicle's speed exceeds 90 km/h for category N<sub>3</sub> vehicles or 105 km/h for category M<sub>3</sub> vehicles (categories N<sub>3</sub> and M<sub>3</sub> as defined in Directive 2007/46/EC of the European Parliament and of the Council\*);

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\* Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).";

- (ii) point (4) is replaced by the following:

"(4) the correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets) or, where appropriate, presence of the documents referred to in Article 16(2) of Regulation (EC) No 561/2006";

(iii) the following point is added:

"(6) extended maximum weekly working times of 60 hours as set out in Article 4 point (a) of Directive 2002/15/EC; other weekly working times as set out in Articles 4 and 5 of Directive 2002/15/EC only where technology enables effective checks to be carried out.";

(b) Part B is amended as follows:

(i) in the first paragraph, the following points are added:

"(4) compliance with 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 (EC) No 561/2006.";

- (ii) the second paragraph is replaced by the following:

"Member States may, if appropriate, check on the joint liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with Regulations (EC) No 561/2006 and (EU) No 165/2014."

*Article 3*

*Amendment to Regulation (EU) No 1024/2012*

In the Annex to Regulation (EU) No 1024/2012 the following points are added:

- "13. 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 as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC\*: Article 8.

14. Directive (EU) 2020/... of the European Parliament and of the Council of ... 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<sup>\*\*\*</sup>: Article 1(14).

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\* OJ L 102, 11.4.2006, p. 35.

\*\* OJ L ..., ..., p. ....".

#### *Article 4*

##### *Committee procedure*

1. The Commission shall be assisted by the committee established by Article 42(1) of Regulation (EU) No 165/2014. 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.

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<sup>+</sup> OJ: please insert the serial number and the date of this Directive in the text and complete the corresponding footnote.

## *Article 5*

### *Penalties and sanctions*

1. Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and sub-contractors for non-compliance with national provisions adopted pursuant to Article 1, where they knew, or, in the light of all relevant circumstances, ought to have known, that the transport services that they commissioned involved infringements of those provisions.
2. Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to Article 1 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate, dissuasive and non-discriminatory.

## *Article 6*

### *Smart enforcement*

Without prejudice to Directive 2014/67/EU and in order to further enforce the obligations provided for in Article 1 of this Directive, 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, referred to in Article 9 of Directive 2006/22/EC.

*Article 7*  
*Evaluation*

1. The Commission shall evaluate the implementation of this Directive, in particular the impact of Article 1, by 31 December 2025 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. The report shall be made public.
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. The evaluation results shall, if appropriate, be accompanied by relevant proposals.

*Article 8*  
*Training*

Member States shall cooperate in the provision of education and training to enforcement authorities, building on existing enforcement schemes.

Employers shall be responsible for ensuring that their drivers acquire knowledge about their rights and obligations stemming from this Directive.



*Article 9*  
*Transposition*

1. By ... [18 months after the entry into force of this Directive], Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from ... [18 months after the entry into force of this Directive].

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 10*  
*Entry into force*

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

*Article 11*  
*Addressees*

This Directive is addressed to the Member States.

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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