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P8_TA(2019)0339

Enforcement requirements and specific rules for posting drivers in the road transport sector *I**

European Parliament legislative resolution of 4 April 2019 on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector (COM(2017)0278 — C8-0170/2017 — 2017/0121(COD))

(Ordinary legislative procedure: first reading)

(2021/C 116/11)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0278),
 - having regard to Article 294(2) and Article 91(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0170/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 18 January 2018 ⁽¹⁾,
 - having regard to the opinion of the Committee of the Regions of 1 February 2018 ⁽²⁾,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on Employment and Social Affairs (A8-0206/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its president to forward its position to the Council, the Commission and the National Parliaments.

P8_TC1-COD(2017)0121

Position of the European Parliament adopted at first reading on 4 April 2019 with a view to the adoption of Directive (EU) .../... 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 ('IMI Regulation') [Am. 764]

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,

⁽¹⁾ OJ C 197, 8.6.2018, p. 45.

⁽²⁾ OJ C 176, 23.5.2018, p. 57.

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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 ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(-1) ***Given the high mobility of workforce in the road transport sector, sector-specific rules are needed to ensure the balance between the freedom to provide cross-border services for operators, the free movement of goods and the social protection of drivers. Therefore, the aim of this Directive is to provide legal certainty and clarity, to contribute to the harmonisation and fostering of enforcement and to the fight against illegal practices and lower administrative burden. [Am. 765]***

(1) In order to create a safe, efficient and socially responsible road transport sector it is necessary to ensure ***the free movement of goods and the freedom to provide services***, adequate working conditions and social protection for drivers, ~~on the one hand,~~ and ***to provide a suitable business and fair competition conditions competitive environment*** for operators, ~~on the other~~ ***while respecting the fundamental freedoms, the free movement of goods and the freedom to provide services in particular as guaranteed by the Treaties. [Am. 766]***

(1a) ***Any national rules applied to road transport must be proportionate and justified and must not hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty, such as the freedom of movement of services, in order to maintain or increase the competitiveness of the Union, whilst respecting the working conditions and social protection for the drivers. [Am. 767]***

(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, ***most (90 %) of which are SMEs with fewer than 10 workers***, are not faced with disproportionate administrative barriers ***or abusive and discriminatory controls***, unduly restricting their freedom to provide cross-border services. **[Am. 768]**

(2a) ***Any national rules applied to road transport must be proportionate as well as justified and must not hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty, such as the free movement of goods and the freedom to provide services in order to maintain or even increase the competitiveness of the Union, including the costs of products and services by respecting the working conditions and social protection for drivers as well as respecting the specificities of the sector since drivers are highly mobile workers, not posted workers. [Am. 769]***

(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, ***proportionate, non-discriminatory*** competition between national and foreign operators is crucial for the smooth functioning of the internal market. ***Any piece of national legislation or policy for implementation at national level in the transport sector must therefore be conducive to the development and strengthening of the single European transport area and in no way contribute to the fragmentation of the internal market. [Am. 770]***

(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, ***as well as illegal practices, such as the use of letterbox companies. Additional emphasis should be put on fighting against undeclared work in the transport sector.*** Furthermore a number of discrepancies exist between Member States in interpretation,

⁽¹⁾ OJ C 197, 8.6.2018, p. 45.

⁽²⁾ OJ C 176, 23.5.2018, p. 57.

⁽³⁾ Position of the European Parliament of 4 April 2019.

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application and implementation of the rules, **creating a heavy administrative burden for drivers and operators**. This creates legal uncertainty and unequal treatment of drivers and operators, which is detrimental to the working, social and competition conditions in the sector. [Am. 771]

- (4a) **In order to ensure that Directives 96/71/EC⁽⁴⁾ and 2014/67/EU⁽⁵⁾ of the European Parliament and of the Council are correctly applied, controls and cooperation at Union level to combat fraud relating to the posting of drivers should be strengthened, and stricter checks should be carried out to ensure that social contributions for posted drivers are actually paid.** [Am. 772]
- (5) Adequate, effective and consistent enforcement of the working time **and rest time** provisions is crucial **for improving road safety**, 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/EC. **The possibility of combining checks on driving time and working time with checks on rules on posting of drivers should be also available without additional administrative burden. Checks of compliance with working time should be limited to checks carried out at the premises of transport operators until technology is available that allows the checks on working time to be carried out effectively at the roadside.** [Am. 773]
- (5a) **Bearing in mind the specific character of transport services and the direct impact on the free movement of goods, with a special focus on road safety and security, roadside checks should be limited to the minimum. Drivers should not be liable for additional administrative obligations of their respective companies. Rules on working time should be controlled at the premises of the transport operator only.** [Am. 774]
- (5b) **In order to allow more efficient, faster and more numerous roadside checks while reducing the administrative burden on drivers, compliance with Directive 2002/15/EC should be verified in the context of inspections on company premises rather than roadside checks.** [Am. 775]
- (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) **With a view to fostering effective administrative cooperation and an effective exchange of information, Member States should interconnect their national electronic registers (NER) through the European Register of Road Transport Undertakings (ERRU) system, with a legal basis in Article 16(5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council⁽⁶⁾. Member States should take all necessary measures to ensure that the national electronic registers are interconnected, so that the competent authorities of the Member States, including road inspectors, can have direct real-time access to the data and information in the ERRU.** [Am. 776]
- (6b) **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 for submitting declarations in posting and an electronic application that will provide inspectors direct real-time access to the ERRU and IMI during roadside checks.** [Am. 777]

(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, 21.1.1997, 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) 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).

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- (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.
- (7a) ***In order to ensure fair competition 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. To this end, the enforcement authorities need to be given real-time access to national electronic registers (NERs), while making maximum use of the European Register of Road Transport Undertakings (ERRU). [Am. 778]***
- (8) In order to ensure uniform conditions for the implementation of Directive 2006/22/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011⁽⁷⁾.
- (8a) ***Rules for the posting of workers applicable to road transport activities should be balanced, simple, and with a low administrative burden for Member States and transport undertakings. They should not aim to discourage operations outside the country of establishment of an undertaking. [Am. 779]***
- (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 Council⁽⁸⁾ and the rules on the administrative requirements laid down in Directive 2014/67/EU of the European Parliament and of the Council⁽⁹⁾ 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 ***legal uncertainty, distortions of competition in the transport sector and 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 and the competitiveness of transport companies. Administrative requirements and control measures need to be harmonised to prevent carriers from suffering unnecessary or arbitrary delays. [Am. 780]***
- (9a) ***Member States should exchange data and information, engage in administrative cooperation and provide mutual assistance via the Internal Market Information System (IMI), the legal basis of which is provided by Regulation (EU) No 1024/2012, with a view to ensuring full compliance with the rules. Similarly, the IMI should be used to submit and update posting declarations between transport operators and the competent authorities of the receiving Member States. In order to achieve this latter objective, it would be necessary to develop a parallel public interface within the IMI system to which transport operators would have access. [Am. 781]***
- (9b) ***All actors in the delivery chain for goods should bear their fair share of responsibility for infringements of the rules provided for in this Directive. This should be the case where the actors have actually known of infringements or where, in the light of all the relevant circumstances, they ought to know of them. [Am. 782]***
- (9c) ***In order to ensure that control measures for the posting of drivers in the road transport sector are correctly applied as defined by Directives 96/71/EC and 2014/67/EU, controls and cooperation at Union level to tackle fraud relating to the posting of drivers should be strengthened. [Am. 783]***

(7) 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).

(8) 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)

(9) 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).

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- (9d) *Contractors should be encouraged to act with social responsibility by using transport operators that comply with the rules provided for by this Directive. To make it easier for contractors to find such transport operators, the Commission should assess existing instruments and best practices promoting socially responsible behaviour of all actors in the delivery chain for goods with a view to establishing a European platform of trusted transport companies, if appropriate. [Am. 784]*
- (9e) *Failure to comply with the rules on the establishment of international road transport companies creates differences across the internal market and contributes to unfairness in inter-company competition. The conditions governing the establishment of international road transport companies should therefore be tightened and made easier to monitor, particularly with a view to combating the creation of ‘letterbox’ companies. [Am. 785]*
- (10) The Commission, in its proposal of 8 March 2016⁽¹⁰⁾ 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.
- (10a) *Given the fact that there is a lack of drivers in Europe, working conditions should be significantly improved in order to increase the attractiveness of the profession. [Am. 786]*
- (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. **Provisions on the posting of workers, in Directive 96/71/EC, and on the enforcement of those provisions, in Directive 2014/67/EU should apply to road transport sector under the terms of this Directive. [Am. 787]**
- (12) Such balanced criteria should be based on a concept of a sufficient link of a driver with a territory of a host Member State. Therefore, a time threshold should be established, beyond which the minimum rate of pay and the minimum annual paid holidays of the host Member State shall apply in case of international transport operations. This time threshold should not apply to **This sufficient link exists in case of** cabotage operations as defined by Regulations (EC) No 1072/2009⁽¹¹⁾ and (EC) No 1073/2009⁽¹²⁾ of the European Parliament and of the Council 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, **Directive 96/71/EC and Directive 2014/67/EU** should apply to cabotage ~~irrespective of the frequency and duration of the operations carried out by a driver.~~ **[Am. 788]**
- (12a) *In case of international transport, the predominant link of a driver in the bilateral international transport would be to a Member State of establishment of the transport company, as the driver returns regularly back to the Member State of establishment of the transport company. A driver may undertake several bilateral transport operations during one journey. 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 non-bilateral international transport operations, in that Member State. [Am. 789]*
- (12b) *In order to ensure efficient use of transport resources, take into account the operational realities and to reduce number of empty runs, which is an important element in achieving objectives of Paris agreement in relation to reduction of CO2 emissions, a limited number of additional transport activities should be possible without triggering the posting rules. Such activities consists of operations performed during a period in the course of or following bilateral international transport operation from the Member State of establishment and before the return journey to the Member State of establishment. [Am. 790]*

⁽¹⁰⁾ COM(2016)0128.

⁽¹¹⁾ 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).

⁽¹²⁾ 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).

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- (12c) *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 provided that 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. [Am. 791]*
- (12d) *Since there is no sufficient link of a driver with a territory of a Member State of transit, transit operations should not be considered as posting situations. It should also be clarified that the fact that passengers get down of the bus during a stop for hygienic reasons does not change the qualification of the transport operation. [Am. 792]*
- (12e) *Road transport is a highly mobile sector and requires a common approach to certain aspects of remuneration in the sector. 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. It is important that new rules do not introduce unnecessary administrative burden and that they duly take into account the interests of SMEs. [Am. 793]*
- (12f) *Where, in accordance with national law, traditions and practice, including respect for the autonomy of social partners, the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in accordance with Article 3(1) and (8) of that Directive, Member States should ensure that, in line with Directive 2014/67/EU, those terms and conditions are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers, and should seek the involvement of the social partners in that respect. The relevant information should, in particular, cover the different remunerations and their constituent elements, including elements of remunerations provided for in the locally or regionally applicable collective agreements, the method used to calculate the remuneration due and, where relevant, the qualifying criteria for classification in the different wage categories. In accordance with Directive (EU) 2018/957 of the European Parliament and of the Council⁽¹³⁾ amending Directive 96/71/EC transport undertakings should not be penalized for non-compliance with elements of remuneration, the method used to calculate the remuneration due and, where relevant, the qualifying criteria for classification in the different wage categories which are not publically available. [Am. 794]*
- (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. **With a view to minimising the complexity of the obligations laid down in this Directive and Directive 96/71/EC, Member States should be free to impose only the administrative requirements specified in this Directive — which have been tailored to suit the road transport sector — on road transport operators. [Am. 795]***
- (13a) *With a view to minimising the administrative burden and document management tasks incumbent on drivers, transport operators shall provide, at the request of the competent authorities in the Member State in which the operator is based, all necessary documents, as set out in the provisions of Chapter III of Directive 2014/67/EU on mutual assistance and cooperation between Member States. [Am. 796]*
- (13b) *In order to facilitate the implementation, application and enforcement of this Directive, the internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council⁽¹⁴⁾ should be used in Member States for the enhanced exchange of information between regional and local authorities across borders. It could also be an advantage to extend the features of IMI to include the submission and transmission of simple declarations. [Am. 797]*

⁽¹³⁾ 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).

⁽¹⁴⁾ 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).

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- (13c) *In order to reduce administrative burden of transport operators which are often small and medium-sized enterprises, it would be appropriate to simplify the process of sending declarations on posting by transport operators through standardised forms with some pre-defined elements translated in all official languages of the Union. [Am. 798]*
- (13d) *A general implementation and application of the rules for the posting of workers to road transport could impact the structure of the Union road freight transport industry. Therefore, Member States and the Commission should closely monitor the impact of this process. [Am. 799]*
- (13e) *Enforcement should concentrate on inspections at the premises of the undertakings. Roadside checks should not be excluded but should be undertaken in a non-discriminatory manner only for consignment notes or their electronic versions, confirmations of the pre-registration and attestation for return to country of operator's establishment or driver's residence. Roadside checks should control in the first place tachographs data which is important to determine the activity of a driver and vehicle over a four-week rolling period and the geographical coverage of this activity. The recording of the country code can help. [Am. 800]*
- (13f) *The impact of the application and the enforcement of the rules for the posting of workers on the road transport industry should be repeatedly evaluated by the Commission and reported to the Parliament and the Council, and proposals should be made to further simplify them and reduce the administrative burden. [Am. 801]*
- (13 g) *In recognition of the need for specific treatment for the transport sector, in which movement is the very essence of the work undertaken by drivers, the application of Directive 96/71/EC to the road transport sector should coincide with the date of entry into force of the amendment of Directive 2006/22/EC as regards enforcement requirements, and specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector. [Am. 802]*
- (13h) *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 ⁽¹⁵⁾. 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. [Am. 803]*
- (-14a) *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 Regulation (EU) 2016/679. [Am. 804]*
- (-14b) *Rules to safeguard good social conditions across the European road haulage market should be respected by all partners in the supply chain. In order to create an economically and socially sustainable European internal market, a chain of responsibility that covers all actors in the logistical chain should be established and implemented. Enforcing transparency and liability and increasing social and economic equality will increase the attractiveness of the driver as a profession and promote healthy competition. [Am. 805]*
- (14) Directive 2006/22/EC should therefore be amended accordingly,

⁽¹⁵⁾ OJ L 123, 12.5.2016, p. 1.

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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, **in the case of checks at premises**, of mobile workers and drivers falling within the scope of Directive 2002/15/EC. **Member States shall organise roadside checks on the implementation of Directive 2002/15/EC only after the introduction of technology enabling effective checks to be carried out. Until then those checks shall be carried out exclusively at the premises of the transport undertakings.**; [Am. 806]

(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, Regulation (EU) No 165/2014 and Directive 2002/15/EC are checked. **Following roadside checks and where the driver is not in capacity to submit one or more of the required documents, the drivers shall be released to continue their transport operation and the transport operator in the Member State of establishment is obliged to submit the required documents via competent authorities.**; [Am. 807]

(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 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 **at premises** and the number and type of infringements reported, together with a record of whether passengers or goods were transported.'; [Am. 808]

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(3a) Article 5 is replaced by the following:

'Article 5

Concerted checks

Member States shall, at least six times per year, undertake concerted roadside checks and at the premises on drivers and vehicles falling within the scope of Regulation (EC) No 561/2006 or (EU) No 165/2014. Such checks shall be undertaken at the same time by the enforcement authorities of two or more Member States, each operating in its own territory. The summary results of the concerted checks shall be made public in line with 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.'; [Am. 809]

(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~~ and (EU) No 165/2014 ~~or Directive 2002/15/EC~~ have been detected at the roadside.'; [Am. 810]

(4a) in Article 7(1), 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';; [Am. 811]

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

'(d) to ensure exchange of information with the other Member States 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 Article 8(1), the introductory part is replaced by the following:

'1. Information made available bilaterally under Article 22(2) 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';; [Am. 812]

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

'(b) ~~upon reasoned~~ at the specific request by of a Member State in individual cases, provided that the information required is not available through direct consultation of national electronic registers referred to in Article 16 (5) of Regulation (EC) No 1071/2009.'; [Am. 813]

(b) the following paragraph is inserted:

*'1a. Member State shall submit the information requested by other Member States pursuant to paragraph 1(b) of this Article within ~~25 working days~~ **10 working days** from the receipt of the request. In **duly justified** cases requiring in-depth examination or involving checks at premises of the undertakings concerned **the time limit shall be 20 working days**. 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. [Am. 814]*

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Where the requested Member State considers that the request is insufficiently reasoned, it shall inform the requesting Member State accordingly within ~~10~~ **five** 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. [Am. 815]

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 in question shall inform the requesting Member State accordingly within ~~10~~ **five** working days, ~~giving reasons~~ **and provide reasons to duly justify the difficulty or impossibility of providing the relevant information**. The Member States concerned shall discuss with each other with a view to finding a solution for any difficulty raised. [Am. 816]

Where the Commission becomes aware of a persisting problem in the exchange of information or a permanent refusal to supply information, it may take all necessary measures to remedy the situation, including, where necessary, it may open an investigation and eventually apply sanctions to the Member State.; [Am. 817]

(ba) paragraph 2 is replaced by the following:

'2. By way of derogation from Article 21 of Directive 2014/67/EU, the exchange of information between the competent authorities of the Member States provided for in paragraphs 1 and 1a of this Article shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012. Competent authorities of the Member States shall have direct access in real time to data in national electronic registers via the European Register of Road Transport Undertakings (ERRU) as referred to in Article 16 of Regulation (EC) No 1071/2009.'; [Am. 818]

(bb) in Article 8, the following paragraph is added:

'2a. The Commission shall develop an electronic application common to all EU Member States that will provide inspectors direct real-time access to the ERRU and IMI during roadside checks and premises by 2020. This application shall be developed via a pilot project.'; [Am. 819]

(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~~ **is empowered to adopt delegated acts in accordance with Article 15a establishing** 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.~~; [Am. 820]

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

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

'3. An initial list of infringements of Regulations (EC) No 561/2006 and (EU) No 165/2014 is set out in Annex III.'; [Am. 821]

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(bb) in paragraph 3, the second subparagraph is replaced by the following:

‘With a view to giving guidelines on the weighting 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 amending Annex III with a view to establishing guidelines on a common range of infringements, divided into categories according to their gravity.’; [Am. 822]

(bc) in paragraph 3, the third subparagraph is replaced by the following:

‘The category for the most serious infringements should include those where failure to comply with the relevant provisions of Regulation (EC) No 561/2006 or (EU) No 165/2014 create a serious risk of death or serious personal injury.’; [Am. 823]

(c) the following paragraphs are added:

*‘4. In order to facilitate targeted roadside checks, the data contained in the national risk rating system **and the national registers of transport undertakings and activities** shall be accessible at the time of control to all the competent control authorities of the Member State concerned **through at least an electronic application common to all Member States, through which they will have direct real-time access to the ERRU.**’; [Am. 824]*

*5. Member States shall make the information contained in the national risk rating system ~~available upon request or~~ directly accessible **through interoperable national electronic registers as referred to in Article 16 of Regulation (EC) No 1071/2009** to all competent authorities of other Member States ~~in accordance with the time limits set out in Article 8.~~ **In this regard, the exchange of information and data on transport operators infringements and risk rating shall be concentrated and carried out through the interconnection that ERRU provides between the different national registers in the Member States.**’; [Am. 825]*

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

*‘3. The Commission ~~shall establish~~ **is empowered to adopt delegated acts in accordance with Article 15a establishing** 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, ~~and 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, ~~by implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) and is unable to carry out any activities with that vehicle.~~’; [Am. 826]*

(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) 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.’; [Am. 827]

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(8b) in Article 13, point (b) is replaced by the following:

'(b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EC) No 561/2006 between enforcement authorities;' [Am. 828]

(8c) Article 14 is replaced by the following:

'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;' [Am. 829]

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

'Article 15

Updating of the 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.' [Am. 830]

(8e) 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 five-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.

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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.*; [Am. 831]

(9) Annex I is amended as follows:

(-a) in Part A, point (1) is 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;; [Am. 832]

(-aa) in Part A, point (2) is replaced by the following:

'(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 3 vehicles or 105 km/h for category M 3 vehicles (categories N 3 and M 3 as defined in Directive 2007/46/EC ⁽¹⁾); [Am. 833]

⁽¹⁾ 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).

(-ab) in Part A, 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;; [Am. 834]

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

'(6) weekly working times as set out in Articles 4 and 5 of Directive 2002/15/EC, provided that technology enables effective checks to be carried out;; [Am. 835]

(b) in Part B, the following point is added:

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

(ba) in Part B, paragraph 2 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.' [Am. 836]

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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.

1a. These specific rules shall apply to drivers employed by undertakings established in a Member State which take one of the transnational measures referred to in Article 1(3) (a) of Directive 96/71/EC.

~~2. 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 Article 1(3)(a) of that Directive, when performing international carriage operations 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.~~

2. A driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport 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, as defined in Article 2(8) of Regulation (EC) No 1071/2009 to another Member State or a third country, or from another Member State or third country to the Member State of establishment.

2a. From the date on which drivers shall record border crossing data manually, as required in Article 34(7) of Regulation (EU) No 165/2014, Member States shall also apply the exemption set out in paragraph 2 in respect of goods transport when:

— **the driver performing a bilateral transport operation in addition thereto 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 unloads 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 exception shall apply for up to two additional activities of loading and/or unloading, under the conditions set out above.

This exemption shall apply only until the date on which the smart tachograph complying with the recording of border crossing and additional activities referred to in Article 8(1) subparagraph 1 of Regulation (EU) No 165/2014 shall be fitted in the vehicles registered in a Member States for the first time, as specified in Article 8(1) subparagraph 2 of that Regulation. From that date the exemption referred to in the first subparagraph shall apply solely to drivers using vehicles fitted with a smart tachograph as provided in Articles 8, 9 and 10 of that Regulation.

2b. A driver engaged in international occasional or regular carriage of passengers, as defined in Regulation (EC) No 1073/2009, shall not be considered to be posted for the purpose of Directive 96/71/EC when:

— **picking up passengers in the Member State of establishment and setting them down in another Member State or a third country; or**

— **picking up passengers in a Member State or a third country and setting them down in the Member State of establishment; or**

— **picking up and setting down passengers in the Member State of establishment for the purpose of local excursions, as defined in Regulation (EC) No 1073/2009.**

2c. A driver performing cabotage as defined by Regulations (EC) No 1073/2009 and 1073/2009 shall be considered to be posted under Directive 96/71/EC.

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2d. 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.

2e. 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.

2f. Member States shall 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 in collective agreements in accordance with Article 3(1) and (8) of that Directive are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. The relevant information shall, in particular, cover the different remunerations and their constituent elements, including elements of remunerations provided for in the locally or regionally applicable collective agreements, the method used to calculate the remuneration due and, where relevant, the qualifying criteria for classification in the different wage categories. In accordance with Directive (EU) 2018/957 amending Directive 96/71/EC transport undertakings shall not be penalized for non-compliance with elements of remuneration, the method used to calculate the remuneration due and, where relevant, the qualifying criteria for classification in the different wage categories which are not publically available.

2 g. Transport undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State.

Member States shall implement equivalent measures to Directive 96/71/EC and this Directive [XX/XX] (*lex specialis*) in their bilateral agreements with third countries when granting access to the EU market to road transport undertakings established in such third countries. Member States shall also strive to implement such equivalent measures in the context of multilateral agreements with third countries. Member States shall notify the relevant provisions of their bilateral and multilateral agreements with third countries to the Commission.

For the purpose of ensuring adequate control of these equivalent measures on posting by third country operators, Member States shall ensure that the revised rules in Regulation (EU) XXX/XXX as regards positioning by means of tachograph [Regulation modifying Regulation (EU) No 165/2014] are implemented in the framework of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR). [Am. 837]

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. [Am. 838]

3. For the purposes of the calculation of the periods of posting referred to in paragraph 2: [Am. 839]

(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; [Am. 840]

(b) a daily working period of six hours or more spent in the territory of a host Member State shall be considered as a full day; [Am. 841]

(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. [Am. 842]

4. By way of derogation from Article 9 of Directive 2014/67/EU, Member States may only impose the following administrative requirements and control measures: [Am. 843]

(a) an obligation for the road transport operator established in another Member State to ~~send a posting~~ **submit a declaration and any update to it in electronic form via the Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012** to the national competent authorities **of the Member State to which a driver is posted** at the latest at the commencement of the posting, in ~~electronic form, in~~ an official language of the ~~host Member State or in English~~ **European Union**, containing only the following information: [Am. 844]

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- (i) the identity of the road transport operator **by means of its intra-Community tax identification number or the number of the Community Licence**; [Am. 845]
- (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~~ **information about the posted driver including the following: the identity, the country of residence, the country of payment of social contributions, the social security number and the identities of posted drivers number of the driving licence**; [Am. 846]
- (iv) ~~the anticipated duration,~~ envisaged beginning **date and the estimated** and end date of the posting **and the law applicable to the employment contract**; [Am. 847]
- (iva) **for the road haulage operators: the identity and the contact details of consignees, provided that the transport operator does not use e-CMR**; [Am. 848]
- (v) the number plates of vehicles used in posting;
- (vi) the type of transport services, that is to say carriage of goods, carriage of passengers, international carriage, cabotage operation;
- (via) **for the road haulage operators: addresses of loading(s) and unloading(s), provided that the transport operator does not use e-CMR**; [Am. 849]
- (b) an obligation for the **road transport operator to ensure that the driver to keep and make available has at his/her disposal**, 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; [Am. 850]
- (c) an obligation for the **road transport operator to ensure that the driver to keep and make available, has at his/her disposal** 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; [Am. 851]
- (ca) **during the roadside checks referred to in points (b) and (c) of this Article, the driver shall be allowed to contact the head office, the transport manager or any other person or entity which may provide the requested documents**; [Am. 852]
- (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/EEC⁽¹⁴⁾, translated into one of the official languages of the host Member State or into English; [Am. 854]
- (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; [Am. 855]
- (f) an obligation for the road transport operator to ~~deliver~~ **send via the IMI public interface**, after the period of posting, ~~in paper or electronic form, [...]~~ copies of documents referred to in points (b), ~~(c) and (e)~~ **and (c)**, at the request of the authorities of the host Member State ~~within a reasonable period of time~~; **to which a driver is posted as well as documentation of the remuneration of posted drivers which relate to the period of posting and their employment**

⁽¹⁴⁾ 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)

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contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC⁽¹⁷⁾, time-sheets relating to the driver's work and proof of payments.

The road transport operator shall provide the requested documentation by using the IMI public interface within 2 months from the date of the request.

Where the road transport operator fails to provide all requested documentation via the IMI public interface within the set deadline, the competent authorities of the Member State where the posting took place may, in accordance with Articles 6 and 7 of Directive 2014/67/EU, request the assistance of the competent authorities of the Member State of establishment of the operator. When such request is made via IMI, 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 IMI public interface.

The competent authorities of the Member State of establishment of the operator shall ensure that the documents requested by the competent authorities of the Member State where the posting took place is provided via IMI within 25 working days from the date of the request. [Am. 853]

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. [Am. 856]

5a. *The information from the declarations shall be saved in the repository of IMI for the purpose of checks for a period of 18 months and shall be directly and real time accessible to all competent authorities of other Member States designated in accordance with Article 3 of Directive 2014/67/EU, Article 18 of Regulation (EC) No 1071/2009, and Article 7 of Directive 2006/22/EC.*

The national competent authority may allow social partners in accordance with national law and practices access to the information provided that the information:

- *relates to posting to the territory of the Member State concerned;*
- *is used for the purpose of enforcement of the rules on posting; and*
- *data processing is in line with 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. [Am. 857]*

5b. *The Commission shall adopt implementing acts developing a standardised forms in all official languages of the Union to be used for submitting declarations via the IMI public interface, specify the functionalities of the declaration in the IMI and how the information referred to point (a)(i) to (via) of paragraph 4 is to be presented in the declaration and ensure that those information from declarations are automatically translated in a language of a host Member State. The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 2a(2). [Am. 858]*

5c. *Member States shall avoid unnecessary delays in the implementation of the control measures that may affect the duration and dates of the posting. [Am. 859]*

5d. *The competent authorities in the Member States shall cooperate closely and shall provide each other with mutual assistance and all relevant information, within the conditions laid down in Directive 2014/67/EU and in Regulation (EC) No 1071/2009. [Am. 860]*

⁽¹⁷⁾ 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).

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Article 2a

1. *The Commission shall be assisted by the Committee set up 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. [Am. 861]*

Article 2b

Member States shall provide for penalties against consignors, freight forwarders, contractors and subcontractors for non-compliance with Article 2 of this Directive, where they know, or, in the light of all relevant circumstances ought to know, that the transport services that they commission infringe of this Directive.

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. [Am. 862]

Article 2c

The Commission shall assess existing instruments and best practices promoting socially responsible behaviour of all actors in the delivery chain for goods and make a legislative proposal to establish a European Platform of Trust, if appropriate, by ...[two years after entry into force of this Directive]. [Am. 863]

Article 2d

Smart enforcement

1. *Without prejudice to Directive 2014/67/EU and in order to further enforce the obligations stipulated under Article 2 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 of the European Parliament and of the Council.*
2. *Each Member State shall ensure that the checks provided for in Article 2 of Directive 2006/22/EC will include, where relevant, a check on posting and that these check shall be carried out without discrimination, in particularly without discrimination based on the number plates of vehicles used in posting.*
3. *Member States shall target those undertakings which are classed as posing an increased risk of infringing the provisions of Article 2 of this Directive, applicable to them. For that purpose, Member States shall, within the risk classification system established by them under Article 9 of Directive 2006/22/EC of the European Parliament and of the Council and extended in accordance with Article 12 of Regulation (EC) No 1071/2009 of the European Parliament and of the Council, treat the risk of such infringements as a risk in its own right.*
4. *For the purpose of paragraph 3, Member States shall have access to relevant information and data recorded, processed or stored by the smart tachograph referred to in Chapter II of Regulation (EU) No 165/2014, posting declarations referred to in Article 2 (4) of this Directive and in electronic transport documents, such as electronic consignment notes under the Convention on the Contract for the International Carriage of Goods by Road (eCMR).*
5. *The Commission is empowered to adopt delegated acts to stipulate the characteristics of the data to which Member States shall have access to, the conditions for their use and the technical specifications for their transmission or access, specifying in particular:*

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- (a) *a detailed list of information and data to which national competent authorities shall have access to, which shall include at least the time and location of border crossings, loading and unloading operations, the registration plate of the vehicle and the driver details;*
- (b) *the access rights of the competent authorities, differentiated where appropriate according to the type of competent authorities, the type of access and the purpose for which the data is used;*
- (c) *the technical specifications for the transmission or access to the data referred to in point (a), including, where relevant, the maximum duration that the data is retained, differentiated where appropriate according to the type of data.*

6. *Any personal data referred to in this Article shall be accessed or stored for no longer than is strictly necessary for the purposes for which the data were collected or for which they are further processed. Once such data are no longer needed for those purposes, they shall be destroyed.*

7. *Member States shall, at least three times per year, undertake concerted roadside checks on posting, which may coincide with checks performed in accordance with Article 5 of Directive 2006/22/EC. Such checks shall be undertaken at the same time by the national authorities in charge of enforcing the rules in the field of posting of two or more Member States, each operating in its own territory. Member States shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.*

The summary results of the concerted checks shall be made public in line with 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. [Am. 864]

Article 2e

Amendment to Regulation (EU) No 1024/2012

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

- '12a. 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*
- 12b. Directive of the European Parliament and of the Council of 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: Article 2(5)'. [Am. 865]*

Article 3

Reporting and review

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.*

1. *Member States shall report annually to the Commission on the implementation of this Directive, in particular on the implementation of smart enforcement referred to in Article 2d and on the potential difficulties in enforcement.*

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In order to enable the effectiveness of enforcement information to be assessed, the report shall include information on the effectiveness of:

- the smart tachograph, referred to in Chapter II of Regulation (EU) No 165/2014;*
- the use of IMIs, referred to in Article 2 (5a) and (5b) of this Directive;*
- the use of electronic transport documents, such as electronic consignment notes under the Convention on the Contract for the International Carriage of Goods by Road (eCMR);*
- the exchange of information between competent authorities via ERRU and IMI, as well as the information on the effectiveness of authorities direct and real time access to both ERRU and IMI via the EU application during road side checks, as referred to in Articles 8 and 9 of Directive 2006/22/EC; and*
- the implementation of the training programme aiming to help drivers and all other actors involved in the procedure, including undertakings, administrations, inspectors to adapt to the new rules and requirements affecting them.*

~~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.~~

2. The Commission may adopt implementing acts specifying the format of, and setting guidelines for, the reporting referred to in paragraph 1.

Those implementing acts may include rules requiring that Member States provide the Commission with data on traffic flows and data on the Member States of registration of vehicles collected by toll systems in Member States, where such data exists, for the purpose of assessment of the effectiveness of enforcement of this Directive.

~~3. Where appropriate, the reports referred to in paragraphs 1 and 2 shall be accompanied by relevant proposals.~~

3. No later than 31 December 2025, the Commission shall submit a report to the European Parliament and the Council on the implementation and effects of this Directive, in particular as regards the effectiveness of enforcement, including a cost benefit analysis of use of weighing sensors for the purpose of automatic recording of loading/unloading points. The Commission report shall be accompanied, if appropriate, by a legislative proposal. The report shall be made public. [Am. 866]

Article 3a

Training

In the interests of ensuring compliance with the provisions of this Directive, both the Commission and the Member States shall establish a comprehensive and integrated programme of training and adaptation to the new rules and requirements for drivers and all other actors involved in the procedure, undertakings, administrations, inspectors. [Am. 867]

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] at the latest, 30 July 2020 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. [Am. 868]~~

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The transport sector, due to its recognised highly mobile nature, is exempt from the measures deriving from the legislative act amending Directive 96/71/EC until this Directive shall become applicable. [Am. 869]

The transport sector is exempt from the measures deriving from the legislative act amending Directive 96/71/EC until the entry into force of enforcement requirements laying down specific rules with respect to transport of this Directive. [Am. 870]

They shall apply those provisions from [...].

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 ...,

For the European Parliament
The President

For the Council
The President
