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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector

Delegations will find attached document COM(2017) 278 final.

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2017/0121 (COD)

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

{SWD(2017) 184 final}

{SWD(2017) 185 final}

{SWD(2017) 186 final}

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In the road transport sector, the Union social rules contribute to achieving the policy objectives of improving drivers' working conditions, ensuring fair competition between road transport companies and enhancing road safety for all road users. Tailoring these rules to the needs of the sector and making them easier to apply and enforce uniformly and efficiently is a key part of the Commission's strategy to further integrate the road transport market in the EU and make the sector fair, efficient and socially accountable, as outlined in the white paper on transport of 28 March 2011¹.

The key social rules applying to road transport include provisions on the organisation of drivers' working time set out in Directive 2002/15/EC², minimum requirements for enforcement set out in Directive 2006/22/EC, rules on driving times, breaks and rest periods under Regulation (EC) No 561/2006³ and provisions on posting of workers established in Directive 96/71/EC⁴ and the enforcement Directive 2014/67/EU⁵. These legal acts are part of a wider effort to improve the working conditions of drivers, ensure fair competition between operators and improve the safety of European roads, as well as to ensure a balance between the drivers' social protection and operators' freedom to provide cross-border services.

An ex-post evaluation of the social legislation in road transport and its enforcement, carried out in 2015-2017⁶ as part of the regulatory fitness programme (REFIT), concluded that the rules in place do not effectively and efficiently address the risks of deterioration in working conditions and distortions of competition. This is due to shortcomings in the legal framework. Certain rules are unclear, unsuitable or difficult to implement or enforce, which results in differences in implementation between Member States of the common rules and creates a risk of fragmentation of the internal market.

The analysis of the problems on the ground show in particular that differences in interpreting and applying of Directives 96/71/EC and 2014/67/EU to the road transport sector need to be addressed as a matter of urgency. The impact assessment supporting this legislative proposal concludes that the posting provisions and administrative requirements do not suit the highly mobile nature of the work of drivers in international road transport. This causes disproportionate regulatory burdens for operators and creates unjustified barriers to provision of cross-border services. The legal and practical difficulties in applying the posting rules to road transport sector was highlighted in recital (10) of the Commission proposal of 8 March 2016⁷ for amending Directive 96/71/EC: *Because of the highly mobile nature of work in international road transport, the implementation of the posting of workers directive raises particular legal questions and difficulties (especially where the link with the concerned Member State is insufficient). It would be most suited for these challenges to be addressed*

¹ COM(2011)144 final

² OJ L 80, 23.3.2002,p.35

³ OJ L 102, 11.4.2006, p. 1

⁴ OJ L 18, 21.1.1997, p.1

⁵ OJ L 159, 28.5.2014, p.11

⁶ The ex-post evaluation covered Regulation (EC) No 561/2006 on driving times, breaks and rest periods, Directive 2006/22/EC on the enforcement of the provisions of the Regulation and Directive 2002/15/EC on the organisation of the working time of road transport mobile workers.

⁷ COM(2016)128

through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.

This proposal provides for a holistic approach to addressing the risks of inadequate working conditions for drivers, including terms and conditions of employment, and at the same time mitigating the excessive regulatory burdens on operators and preventing distortions of competition. The overarching goal is to ensure a balance between adequate working conditions for drivers and freedom to provide cross-border services for operators.

- **Consistency with existing policy provisions in the policy area**

This proposal is a part of a broader ongoing review of the Union road transport legislation. It is closely linked with an initiative to improve the clarity and adequacy of the rules on driving times, breaks and rest periods set out in Regulation (EC) No 561/2006 and those on the use of tachograph set out in Regulation (EU) No 165/2014. It is also related to the ongoing review of the market rules on access to the profession of road transport operator (Regulation (EC) No 1071/2009), access to the international haulage market (Regulations (EC) No 1072/2009) and access to the international passenger market (Regulation (EC) No 1073/2009). The social and market rules form a comprehensive and coherent legal framework, and enforcing them in a consistent and effective way is key to creating a fair, safe, environmentally and socially sustainable road transport sector. None of the initiatives on their own can effectively address the ongoing social and market challenges.

- **Consistency with other Union policies**

The proposal contributes to two of the priorities of this Commission, notably creating “a deeper and fairer internal market” and boosting “jobs growth and investment”. It is consistent with actions aiming to combat social unfairness and unfair competition and to create a social framework for new employment opportunities and fair business conditions.

One aim of the proposal is to ensure decent working conditions and appropriate social protection. It therefore fits with the objectives of the Commission's Social Agenda and with the initiative on the creation of an EU pillar of Social Rights. It is also consistent with the Charter of Fundamental Rights of the European Union, Article 31 of which lays down the right to fair and just working conditions.

The proposal contributes to the REFIT Programme by reducing regulatory burdens, simplifying and adapting certain rules to the specific needs of the sector. It will also make enforcement more efficient by making better use of existing control tools and systems.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal amends Directive 2006/22/EC and lays down sector-specific rules on the posting of workers in relation to Directives 96/71/EC and 2014/67/EU.

Directive 2006/22/EC is based on what is now Article 91(1) of the Treaty on the Functioning of the EU (TFEU), and this provision should also be relied upon for its amendment.

Directives 96/71/EC and 2014/67/EU are founded on (what is now) Article 53(1) TFEU. However, since the rules proposed here exclusively pertain to situations specific to the provision of transport services, Article 91(1) TFEU should be relied upon.

- **Subsidiarity**

Under Article 4(2)(g) TFEU, the EU shares regulatory competence in the field of transport with Member States. However, existing rules can only be amended by the EU legislator.

Shortcomings in the current legislation mean that Member States implement and enforce EU social rules differently, including those on the posting of workers. Guidelines or self-regulation by Member State would not be sufficient to ensure that the social rules in road transport are consistently applied and enforced throughout the EU. And action at EU level is therefore justified.

- **Proportionality**

The proposal does not go beyond what is necessary to address the identified problems of inadequate working conditions for drivers and distortions of competition between operators.

As stated in Section 7.2 of the impact assessment, the proposal puts forward the policy option considered the most suitable and proportionate, providing a balance between enhancing working conditions for drivers, reducing regulatory burdens for operators and enforcing the rules effectively across borders.

The proposal focuses on simplifying, clarifying and adjusting certain rules to meet the needs of the sector. It avoids any unnecessary administrative burden on operators and aims to ensure that the requirements for administrative cooperation and mutual assistance between Member States are proportionate. The impact assessment concluded that the envisaged policy measures will have no disproportionate impact on SMEs.

- **Choice of the instrument**

As the proposal makes a limited number of amendments to Directive 2006/22/EC and lays down sector-specific rules on posting of workers in the road transport sector in relation to Directives 96/71/EC and 2014/67/EU, the instrument chosen is also a directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Enforcement Directive 2006/22/EC, together with the Driving Time Regulation (EC) No 561/2006 and Working Time Directive 2002/15/EC, were subject to a comprehensive ex-post evaluation carried out in 2015-2017⁸. This evaluation was supported by an external study⁹.

The main issues identified were:

- divergent interpretation and enforcement of the provision on recording periods when a driver is away from the vehicle;

- violation of the rules on the working time leading to excessive working hours for drivers and accumulated fatigue with adverse effects on drivers' health and safety and on road safety;

⁸ see footnote no. 1.

⁹ <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

- weak enforcement of the working time provisions and lack of uniform data on monitoring and compliance checks;
- poor administrative cooperation and mutual assistance between the Member States hindering consistent implementation of EU rules;
- inconsistent national systems assessing the risk ratings of transport undertakings, hindering information exchange and data comparison with a view to effective checks;
- insufficient use of data in risk rating systems hampering effective targeting of controls;
- unaddressed risks of deteriorating working conditions linked with inadequate pay and social protection of drivers working for long periods outside their country of employment.

The provisions on the posting of workers were not an explicit part of this REFIT evaluation. However, difficulties with the application of diverging national measures on the posting of workers in the road transport sector showed that the general rules on posting are not suitable for the highly mobile workforce in road transport and that the administrative requirements are disproportionately burdensome, thereby restricting freedom to provide cross-border services.

- **Stakeholder consultations**

Extensive stakeholder consultations were held to prepare this proposal, in line with the minimum standards for the consultation of interested parties set out in the Commission Communication of 11 December 2002 (COM(2002) 704 final).

All the relevant stakeholder groups contributed to the consultation process: national authorities, enforcement bodies, associations representing road transport (freight and passenger) operators, freight forwarders, shippers, SMEs, trade unions, drivers and other road transport workers. In particular, the European Social Partners have been extensively consulted throughout the entire process. A variety of open and targeted consultation methods and tools were used:

- A High Level Conference of 4 June 2015 on a 'Social Agenda for Transport' launched a broad debate on the social aspects in road transport; it brought together some 350 participants: decision makers, experts in transport, social partners;
- Seminars at the end of 2015 which brought together industry stakeholders, representatives of Member States and the social partners at the EU level. The discussions focused on how the social and internal market legislation was working in road transport;
- A Road Transport Conference on 19 April 2016 with a workshop dedicated to internal market and social aspects of road transport. There were some 400 participants, in particular representatives of the Member States, Members of the European Parliament and key stakeholders who discussed the objectives and scope of the planned Road Initiatives;
- Five tailored surveys were launched to obtain the views of the national transport ministries (with a focus on the implementation and interpretation of the rules), enforcement authorities (with a focus on enforcement practices, enforcement costs and benefits), businesses (with a focus was on the impact of legislation on the operators in the market), trade unions (the focus on the impact of the legislation on drivers) and other stakeholders such as industry associations (with a focus on overall views of the effects of the legislation). In total 1441 responses were received (of which 1269 were from road transport firms).

- Interviews with 90 stakeholders (of which 37 were with drivers) were held to gather insights on stakeholders' experiences how enforcement worked and whether it was effective and of challenges with compliance.
- A public consultation¹⁰ between 5 September and 11 December 2016 to define the problem and identify potential solutions. Of the 1378 responses 1209 were from drivers, operators, shippers, forwarders and 169 from national authorities, enforcement bodies, workers' organisations and industry associations;
- A SME panel survey between 4 November 2016 and 4 January 2017. The 109 responses received, provided views on the objectives of the revising the legal framework and potential solutions;
- An on-line survey of drivers (the 345 responses provided views on potential measures, although, of these, 140 replies were from the Netherlands and 127 from the UK); a survey of the national authorities and enforcement bodies (41 responses received from 27 EU Member States plus Norway and Switzerland) and an operators' survey (73 responses, however, again, this was not fully representative as 58 replies were from Hungary);
- Interviews with 7 transport companies, 9 national industry associations, 9 national authorities, 4 national workers' unions and 6 European Social Partners.

The European Social Partners were also regularly informed and consulted in several bilateral meetings with the Commission and at regular meetings of the Sectoral Dialogue Committee on Road Transport and of the Social Partners' Working Group.

The consultation activities confirmed the main problems of: 1) inadequate working conditions for drivers; 2) distortions of competition between transport operators; and 3) regulatory burdens for operators and Member States. The main legal issues identified behind those challenges are: unclear or unsuitable social rules, divergent application of the rules, inconsistent and ineffective enforcement and poor administrative cooperation between the Member States.

As regards the draft policy measures, there was strong support from all stakeholders for strengthening enforcement and cooperation between enforcement bodies, although some national enforcement authorities raised concerns about potential additional enforcement costs. In particular, measures to harmonise national risk rating systems and grant real-time access to the data in risk rating systems were greatly supported by the national authorities and EU level enforcement organisations (with more than 70% support).

The stakeholders were divided in their views on draft measures on posting conditions in road transport, EU-13 Member States and operators supported the measure with reservations (a time threshold should not be too low), whilst trade unions considered the measure detrimental to drivers. EU-15 Member States and operators had mixed views. The measure on reducing administrative burdens when applying the posting rules in road transport was favoured by a majority of all stakeholder groups, except trade unions.

¹⁰ Summary of findings http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road_en

- **Collection and use of expertise**

External contractors assisted the Commission with a support study for the ex-post evaluation¹¹ and a separate support study for the impact assessment, which was completed in May 2017.

- **Impact assessment**

The initiative is supported by an impact assessment, which has received a positive opinion with recommendations from the Regulatory Scrutiny Board. All the Board's main comments were addressed in the revised version of the impact assessment (see Annex 1 for an overview).

Four policy options were considered. The first three are cumulative in terms of increasing the level of regulatory intervention and expected impacts, whilst the fourth was horizontal and its measures could be combined with any of the first three options.

The first policy option focused on clarifying the legal framework and increasing cooperation between enforcement authorities. The second focused on strengthening enforcement and improving working patterns for workers. The third proposed substantive changes in the rules, in particular banning performance based pay. The fourth comprised sector specific criteria and specific enforcement measures for the posting of workers in the road transport sector. It included variants based on time thresholds: variant (a) - 3 days, (b) - 5 days, (c) - 7 days and (d) – 9 days as a total per calendar month spent in the territory of a host Member State, beyond which the host Member State's rules on minimum pay rates and annual paid holiday apply to a foreign operator.

Policy option 1 appeared to be the least effective in addressing the issue of legal uncertainty and inequality between drivers and operators, mainly due to the voluntary nature of the measures. This would add to concern about the number of national measures that drivers and operators have to cope with.

Policy option 3 appears to have some negative side-effects in terms of working conditions for drivers in passenger transport, because the measure on delayed weekly rest would lead to an increase of 20-33 % in the fatigue index and increase risks to road safety by 4 -5 %. This increased fatigue and risk would go together with a 3-5% reduction in compliance costs for operators.

Policy option 2 provides the most positive impacts in terms of improved working conditions for drivers (reducing the fatigue index by 28% and periods away from home by 43% for EU-13 drivers and by 16% for EU-15 drivers). In the same time it helps to reduce distortions of competition and improve road safety thanks to the measures making enforcement consistent and more efficient, while reducing somewhat administrative burdens for national authorities and transport undertakings.

As regards the horizontal option (PP4) on posting of workers, the compliance costs for operators are the lowest in the case of a higher threshold, due to a reduced number of trips within the scope of the minimum wage rules. On the other hand a lower time threshold would cover a broader group of drivers involved in cross-border provision of road transport services,

¹¹ Final report <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

leading to higher overall positive effects in terms of improving social and working conditions of drivers and increasing job attractiveness.

The estimated significant savings to operators result mainly from the option 4, and in particular the measures on administrative and control requirements. These savings are in the range of €785 million per year in administrative costs. Savings from the option 2 measures could not be quantified. However, they are expected to reduce infringements and hence non-compliance costs. In addition, they enable transport operations to be more efficient and provide an incentive for more frequent returns to drivers' home. They will, however, trigger slightly higher enforcement costs for national authorities (of between 1,3% and 8%), in particular as regards checks on compliance with the working time rules.

- **Regulatory fitness and simplification**

The proposal pursues the REFIT objective of increasing the effectiveness of legislation and reducing regulatory burdens for businesses. It does so mainly by simplifying and adapting the rules to the specific needs of the sector and making more effective use of more uniform enforcement tools and databases. While enforcement costs for national authorities are expected to increase slightly, the increase is justified by the improvement in the working conditions of drivers and business conditions for operators, allowing savings in non-compliance costs. The proposal will also make enforcement more efficient, for example by increasing the use of risk rating systems to target controls at non-compliant operators. The proposal does not exempt micro-enterprises, because that would lead to a risk of unequal competitive conditions and unequal working conditions.

Fundamental rights

The proposal contributes to the objectives of the Charter of Fundamental Rights and in particular Article 31, which provides for the right to fair and just working conditions.

4. BUDGETARY IMPLICATIONS

The proposal will have no implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The monitoring of developments, in particular the number, types and frequency of occurrence of infringements against social rules will be done through a combination of national implementation reports and analysis of data from the EU enforcement organisations. Implementation and enforcement issues will be regularly monitored and assessed by the the Committee on Road Transport. The information on posting will be collected from the national databases, based on the A1 form – a declaration that a posted worker remains covered by the social security system of the home country.

Other developments in the market and their potential impacts on working conditions and conditions of competition will be assessed using relevant data collected as part of other initiatives, in particular the revision of the Regulation on access to the international haulage market.

- **Explanatory documents**

This proposal modifies two existing directives to a limited extent and lays down specific rules in relation to two other existing directives. No specific explanatory documents on the transposition seems necessary.

- **Possible amendment to Directive 2002/15/EC**

In line with Article 154 TFEU, which embodies the social partner organisations at European level to be consulted on issues concerning employment and social affairs set out in Article 153 of the Treaty, the Commission will launch a consultation process to seek the views of the social partners on the possible direction of Union action regarding Directive 2002/15/EC, which is part of the legal framework of social rules in road transport.

- **Detailed explanation of the specific provisions of the proposal**

The main elements of the proposal are:

Directive 2006/22/EC

Article 1 is amending is amending Directive 2006/22/EC as follows :

Article 1 – Subject matter

Article 1 is amended to clarify that enforcement requirements set out in this Directive apply also to controlling compliance with Directive 2002/15/EC.

Article 2 – Checking systems

Article 2(1) second paragraph is amended to require that checks carried out by Member States include checking compliance with the working time provisions set out in Directive 2002/15/EC.

Article 2(3) specifies that the minimum number of checks on compliance with the provisions of Regulation (EC) No 561/2006 includes checks on compliance with Directive 2002/15/EC.

Article 2(4) requires the information submitted by the Member States to the Commission on the results of checks at the roadside and at premises to include checks on compliance with Directive 2002/15/EC.

Article 6 – Checks at the premises of undertakings

Article 6(1) specifies that serious infringements giving rise to checks at premises of road transport undertakings shall also include infringements of Directive 2002/15/EC.

Article 7 – Intracommunity liaison

Article 7(1)(d) is inserted to require designated national authorities to exchange information on the implementation of this Directive and of Directive 2002/15/EC.

Article 8 – Exchange of information

Article 8 is amended in order to expand administrative cooperation and mutual assistance between Member States. Article 8(1) is amended to specify that exchange of information between the designated national authorities also covers the implementation of Directive 2002/15/EC and Regulation (EC) No 561/2006. Article 8(1)a is inserted to set fixed deadlines within which a Member State authority must respond to requests for information from other Member States.

Article 9 – Risk rating system

Article 9 is amended to improve the consistency and effectiveness of national risk rating systems. In Article 9(1), a second paragraph is added, requiring the Commission to establish a uniform formula for calculating the risk rating of transport undertakings; it also specifies the criteria to be taken into account when establishing such a formula, including the use of the 'smart' tachograph. Article 9(2) is amended to encourage Member States to discuss rules for carrying out additional checks at the premises of road transport undertakings with a high risk rating. Article 9(4) is added to specify that data in the risk rating system must be made available to control authorities. Article 9(5) is added to require Member States to make the information in the national risk rating system available to other Member States on request.

Article 11- Best practice

Article 11(3) is added to require the Commission to establish a common approach to recording and controlling periods of 'other work' than driving when a driver is away from a vehicle and hence could not make the necessary records in the tachograph.

Annex 1

Part A point (6) is added to extend the scope of roadside checks to cover checks on compliance with the weekly working time limits. Part B point (4) is added to extend the scope of checks at premises by including checks on weekly working time, breaks and night work provisions set out in Directive 2002/15/EC.

Specific rules on posting in the road transport sector prevailing over certain provisions of Directive 96/71/EC and Directive 2014/67/EU

Article 2, Paragraph 1

Article 2, paragraph 1 explains the objectives of the rules laying down specific rule son posting in the road transport sector prevailing over relevant provisions in Directives 96/71/EC and Directive 2014/67/EU.

Article 2, paragraphs 2 and 3

Article 2, paragraph 2 specifies the minimum period of posting below which the host Member States' rules on minimum rates of pay and on paid annual leave do not apply to international road transport operations. This time threshold does not apply to cabotage since the entire transport operation is taking place in a host Member State. As a consequence the minimum rate of pay and the minimum annual paid holidays of the host Member State should apply to cabotage irrespective of the frequency and duration of the operations carried out by a driver. Paragraph 3 further explains the method of calculation of such periods of posting.

Article 2, paragraph 4

Article 3, paragraph 4 and 5 lays down the specific administrative requirements and control measures for checking compliance with the provisions on posting of workers in road transport.

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

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 Committee¹²,

Having regard to the opinion of the Committee of the Regions¹³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to create a safe, efficient and socially responsible road transport sector it is necessary to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable business and fair competition conditions for operators, on the other.
- (2) The inherent high mobility of road transport services requires particular attention in assuring that drivers benefit from the rights to which they are entitled and that operators are not faced with disproportionate administrative barriers unduly restricting their freedom to provide cross-border services.
- (3) The balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators is crucial for the smooth functioning of the internal market.
- (4) Having evaluated the effectiveness and efficiency of the current Union social legislation in road transport, certain loopholes in the existing provisions and deficiencies in their enforcement were identified. Furthermore a number of discrepancies exist between Member States in interpretation, application and implementation of the rules. This creates legal uncertainty and unequal treatment of drivers and operators, which is detrimental to the working, social and competition conditions in the sector.
- (5) Adequate, effective and consistent enforcement of the working time provisions is crucial for protecting the working conditions of drivers and preventing the distortions of competition resulting from non-compliance. Therefore it is desirable to extend the

¹² OJ C , , p. .

¹³ OJ C , , p. .

existing uniform enforcement requirements set out in Directive 2006/22/EC to controlling compliance with the working time provisions set out in Directive 2002/15/EU.

- (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.
- (7) In order to further improve the effectiveness, efficiency and consistency of enforcement, it is desirable to develop the features and the use of the existing national risk rating systems. Access to the data contained in risk rating systems would enable better targeting of controls at non-compliant operators and a uniform formula for assessing risk rating of a transport undertaking should contribute to fairer treatment of operators at controls.
- (8) In order to ensure uniform conditions for the implementation of Directive 2006/22/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011¹⁴.
- (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 Council¹⁵ and the rules on the administrative requirements laid down in Directive 2014/67/EU of the European Parliament and of the Council¹⁶ to the highly mobile road transport sector. The uncoordinated national measures on the application and enforcement of the provisions on posting of workers in the road transport sector have generated high administrative burdens for non-resident Union operators. This created undue restrictions to the freedom to provide cross-border road transport services having negative side-effects on jobs.
- (10) The Commission, in its proposal of 8 March 2016¹⁷ 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.
- (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.

¹⁴ 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).

¹⁵ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.97, p.1)

¹⁶ 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).

¹⁷ COM(2016)128

- (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 cabotage operations as defined by Regulations 1072/2009¹⁸ and 1073/2009¹⁹ since the entire transport operation is taking place in a host Member State. As a consequence the minimum rate of pay and the minimum annual paid holidays of the host Member State should apply to cabotage irrespective of the frequency and duration of the operations carried out by a driver.
- (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.
- (14) Directive 2006/22/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/22/EC is amended as follows:

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

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

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

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

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

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

- (3) Article 2 is amended as follows:

¹⁸ 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).

¹⁹ 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)

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

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

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

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

(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 and the number and type of infringements reported, together with a record of whether passengers or goods were transported."

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

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

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

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

(6) Article 8 is amended as follows:

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

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

(b) the following paragraph 1a is inserted:

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

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

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

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

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

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

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

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

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

(9) Annex I is amended as follows:

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

"(6) weekly working times as set out in Articles 4 and 5 of Directive 2002/15/EC.";

(b) in Part B, the following point (4) is added:

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

Article 2

1. This Article establishes specific rules as regards certain aspects of Directive 96/71/EC relating to the posting of drivers in the road transport sector and of Directive 2014/67/EU of the European Parliament and of the Council relating to administrative requirements and control measures for the posting of those drivers.
2. 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.

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.

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

- (a) a daily working period shorter than six hours spent in the territory of a host Member State shall be considered as half a day;
- (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;
- (c) breaks and rest periods as well as periods of availability spent in the territory of a host Member State shall be considered as working period.

4. Member States may only impose the following administrative requirements and control measures:

(a) an obligation for the road transport operator established in another Member State to send a posting declaration to the national competent authorities at the latest at the commencement of the posting, in electronic form, in an official language of the host Member State or in English, containing only the following information:

- (i) the identity of the road transport operator;
- (ii) the contact details of a transport manager or other contact person(s) in the Member State of establishment to liaise with the competent authorities of the host Member State, in which the services are provided and to send out and receive documents or notices;
- (iii) the anticipated number and the identities of posted drivers;
- (iv) the anticipated duration, envisaged beginning and end date of the posting;
- (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;

(b) an obligation for the driver to keep and make available, where requested at the roadside control, in paper or electronic form, a copy of the posting declaration and evidence of transport operation taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council.

(c) an obligation for the driver to keep and make available, where requested at the roadside control, the tachograph records, and in particular the country codes of Member States where the driver has been present when carrying out international road transport operations or cabotage operations;

(d) an obligation for the driver to keep and make available, where requested at the roadside control, in paper or electronic form, a copy of the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC²⁰, translated into one of the official languages of the host Member State or into English;

²⁰ 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)

- (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;
 - (f) an obligation for the road transport operator to deliver, after the period of posting, in paper or electronic form, copies of documents referred to in points (b), (c) and (e), at the request of the authorities of the host Member State within a reasonable period of time;
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.

Article 3

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

Article 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, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.
They shall apply those provisions from [...].
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President