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From:	General Secretariat of the Council
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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 – Analysis of the final compromise text with a view to agreement

1. On 31 May 2017, the Commission submitted three legislative proposals as part of the Mobility Package I, on the access to the occupation of road transport operator and to the road haulage market, on, on drivers' rest periods and on tachograph rules, as well as on enforcement provisions for social legislation and posting of drivers. The general objectives of these proposals is to further harmonise and simplify the rules for the European road transport sector, which will result in more consistent enforcement across all Member States, support social fairness and fair competition, and make businesses more efficient.
2. The European Economic and Social Committee adopted two opinions on the three proposals on 18 January 2018, and the European Committee of the Regions one opinion covering those proposals on 1 February 2018.

3. The Council adopted its general approach on all three files on 3 December 2018.¹
4. The European Parliament adopted its first reading positions on 4 April 2019.
5. The Committee for Transport and Tourism of the European Parliament (TRAN) adopted a decision to open interinstitutional negotiations on 24 September 2019.
6. The institutions held informal trilogues on 3 October, 4 and 5, 25 November, and 11 December 2019. The meetings were prepared by the Working Group on Land Transport and by Coreper mandates for negotiations, given on 25 October and 20 November 2019. The trilogue meeting of 11 December 2019 concluded with a provisional political agreement.
7. The Permanent Representatives Committee is invited to analyse the final compromise text with a view to agreement, as set out in the Annex to the present note.
8. The TRAN committee is expected to vote on the political agreement in January 2020, following which, the TRAN chair will address a letter to the Presidency confirming that, should the Council approve the text in first reading, after legal-linguistic revision, the Parliament would approve the Council's position in their second reading.

¹ document ST 15084/18.

Proposal for a
Directive of the European Parliament and of the Council
amending Directive 2006/22/EC as regards enforcement requirements and laying down specific
rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road
transport sector and amending Regulation (EU) No 1024/2012 on administrative cooperation
through the Internal Market Information System ('the IMI Regulation')

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

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.

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, adequate working conditions and the social protection of drivers.

² OJ C , , p. .

³ OJ C , , p. .

- (2) The inherent high mobility of road transport services requires particular attention in assuring that drivers benefit from the rights to which they are entitled and that operators, most of which are small SMEs, are not faced with disproportionate administrative barriers or discriminatory controls unduly restricting their freedom to provide cross-border services.
- (2a) For the same reason, any national rules applied to road transport must be proportionate as well as justified, taking account of the need to ensure social and working conditions for drivers and to facilitate the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators.
- (3) The balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators is crucial for the smooth functioning of the internal market.
- (4) Having evaluated the effectiveness and efficiency of the current Union social legislation in road transport, certain loopholes in the existing provisions and deficiencies in their enforcement were identified, such as with regard to the use of letterbox companies. Furthermore a number of discrepancies exist between Member States in interpretation, application and implementation of the rules, creating a heavy administrative burden for drivers and operators. This creates legal uncertainty, which is detrimental to the working and social conditions and conditions for competition in the sector.
- (4a) In order to ensure that Directives 96/71/EC⁴ and 2014/67/EU⁵ of the European Parliament and of the Council are correctly applied, controls and cooperation at Union level to tackle fraud relating to the posting of drivers should be strengthened.
- (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 for preventing the distortions of competition resulting from non-compliance. Therefore it is desirable to extend the existing uniform enforcement requirements set out in Directive 2006/22/EC to controlling compliance with the working time provisions set out in Directive 2002/15/EU.

- (5a) In view of the data series necessary to carry out controls of the compliance with rules on working time set out in Directive 2002/15/EC, the extent of roadside checks depends on the development and introduction of enabling technology covering sufficient periods of time. The control at the roadside should be limited to aspects which can already be checked using the tachograph and related equipment on board, while comprehensive checks are confined to the premises.
- (5b) Roadside checks should be executed efficiently and quickly, with a view to completing the checks in the shortest time possible and with the least delay for the driver, and a clear distinction should be made between obligations of the transport operators and obligations of drivers.
- (5c) Cooperation between Member State enforcement authorities should be further promoted through concerted checks, which Member States should endeavour to extend to checks at the premises. The European Labour Authority, whose scope of activities, as set out in Article 1(4) of Regulation (EU) 2019/1149, covers Directive 2006/22/EC, could play an important role in assisting Member States carrying out concerted checks.
The European Labour Authority could likewise support education and training efforts.
- (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, Article 16(5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council⁴ requires Member States to interconnect their national electronic registers (NER) through the European Register of Road Transport Undertakings (ERRU) system. The scope of information accessible from the roadside checks should be enlarged within that system.

⁴ 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).

- (6a) To facilitate and improve communication between Member States, ensure a more uniform application of social rules in the transport sector, and to facilitate road transport operators' compliance with administrative requirements when posting drivers, the Commission should develop one or more new modules for the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012. It is important that IMI allows for validity checks on posting declarations during roadside checks.
- (6b) 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 and (EU) 2018/1725.⁵ The exchange of information through the Internal Market Information System (IMI) should also comply with Regulation (EU) No 1024/2012.⁶
- (6e) To facilitate control of compliance with the posting rules set out in this Directive, road transport operators should submit a posting declaration to the competent authorities of the Member States where they post drivers.
- (6f) In order to reduce the administrative burden on transport operators it is necessary to simplify the process of sending and updating posting declarations. Therefore, the Commission should develop a multilingual public interface, to which transport operators have access and via which they submit and update posting information and submit other relevant documents to IMI, if necessary.
- (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.

⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁶ 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).

- (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.
- (8) In order to ensure uniform conditions for the implementation of Directive 2006/22/EC, implementing powers should be conferred on the Commission. The Commission should ensure the equal treatment of undertakings when taking into account the criteria specified in this Directive for the development of a common formula for calculating a risk rating of undertakings. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011⁷.
- (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 Council⁸ and the rules on the administrative requirements laid down in Directive 2014/67/EU of the European Parliament and of the Council⁹ 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 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 delays.

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, 21.1.97, 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).

- (9b) Transport undertakings are the addressees of certain special rules on posting and are, as such, subject to the consequences of any infringements committed by them. However, in order to prevent abuses by undertakings contracting transport services from road haulage operators, Member States should also provide for clear and foreseeable rules on sanctions on consigners, shippers, freight forwarders, contractors and sub-contractors in case they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they commission involve infringements of special rules on posting.
- (10) The Commission, in its proposal of 8 March 2016¹⁰ 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. Provisions on the posting of workers, in Directive 96/71/EC, and on the enforcement of those provisions, in Directive 2014/67/EU, apply to the road transport sector and should be made subject to the specific rules laid down in this Directive.
- (11a) Given the mobile nature of the transport sector, drivers are not generally posted to another Member State under service contracts for long periods of time as is sometimes the case in other sectors. It should therefore be explicitly clarified in which circumstances the rules on long-term posting in Directive 96/71/EC do not apply to such drivers.
- (12) Such balanced criteria should be based on a concept of a sufficient link of the service provided and the driver with a territory of a host Member State. [...] To facilitate enforcement of the rules a distinction should be made between different types of transport operations depending on the degree of connection with the territory of the host Member State.

¹⁰ COM(2016)128

- (12a) It should be clarified that international carriage in transit across the territory of a Member State does not constitute a situation of posting. Such operations are characterised by the fact that the driver passes the Member State without loading or unloading freight and without picking up or setting down passengers and there is for those reasons no significant link between the driver's activities and the Member State transited. The qualification of the presence of the driver in a Member States as transit is therefore not affected by stops relating, for example, to hygienic reasons.
- (12b) When a driver engages in bilateral transport operations from the Member State where the undertaking is established to the territory of another Member State or a third country or to the Member State of establishment, the nature of the service is closely linked with the Member State of establishment. A driver may undertake several bilateral transport operations during one journey. It would constitute a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and thereby the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations.
- (12d) On the other hand, there is a sufficient link with the territory of a host Member State when a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, in that Member State. This sufficient link exists in case of cabotage operations as defined by Regulations (EC) No 1072/200911 and (EC) No 1073/200912 of the European Parliament and of the Council since the entire transport operation is taking place in a host Member State and the service is thus closely linked to the territory of the host Member State. A non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State in which the undertaking making the posting is established. The services performed are therefore linked with the host Member States concerned rather than the home Member State. In these cases, sector-specific rules are only required with regard to the administrative requirements and control measures.

- (12e) In case that the driver is engaged in a combined transport operation, the nature of the service provided during the initial or final road leg is closely linked with the Member State of establishment if the road leg on its own is a bilateral transport operation. On the other hand, there is a sufficient link with the territory of a host Member State when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, and therefore posting rules should apply in such a case.
- (12f) 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.
- (12g) Member States should ensure that, in line with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC, which are laid down in national law, regulation or administrative provisions, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of that Directive, including where relevant by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. The relevant information should, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments. In line with that Directive the involvement of the social partners is to be sought.
- (12h) EU transport operators face growing competition from operators based in non-EU States. It is therefore of utmost importance to ensure that Union undertakings are not discriminated against. According to Article 1(4) of Directive 96/71/EC, undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State. That principle should also apply with regard to the specific rules on posting provided for in this Directive. It should, notably, apply when third country undertakings perform transport operations under bilateral or multilateral agreements granting access to the Union market.

- (12i) The ECMT multilateral quota system is one of the main instruments regulating access to the EU market by non-EU operators and access to non-EU markets by EU operators. The number of permits allocated to each ECMT member country is decided on a yearly basis. In order to ensure that Union undertakings are not discriminated against, the Member States' obligation in this regard needs to be observed also when agreeing conditions for access to the EU market within ECMT.
- (12j) In addition, the power to negotiate and conclude the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) lies with the Union as part of its exclusive external competences. The Union should, in accordance with Article 2(3) of Regulation (EU) 561/2006, align the control mechanisms that can be used to control the respect of national and Union social rules by third country operators with those that apply to Union operators.
- (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 [...], specific administrative and control requirements should be established in the road transport sector, taking full advantage of control tools such as the digital tachograph. In order to monitor compliance with the obligations set out in this Directive and Directive 96/71/EC, and at the same time reduce the complexity of this task, Member States should be allowed to impose on road operators only the administrative requirements specified in this Directive, which are adapted to the road transport sector.
- (13a) The administrative burden and document management tasks incumbent on drivers should be reasonable. Therefore, while certain documents should be available in the vehicle for roadside inspection, other documents should be made available via the IMI public interface by the road operators and, where necessary, by the competent authorities of the Member State where the operator is established. The competent authorities should use the framework of mutual assistance between Member States set out in Directive 2014/67/EU.

(13aa) Given that in some Member States social partners play a crucial role in enforcing social legislation in the road transport sector, Member States should be allowed to provide national social partners with the relevant information shared via IMI with the sole purpose of checking compliance with posting rules while respecting Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016. The relevant information should be provided to social partners outside of IMI.

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

(13c) The Commission should evaluate the impact of the application and of the enforcement of the rules for the posting of workers on the road transport industry and submit a report on the results of that evaluation to the Parliament and the Council, together, where appropriate, with a legislative proposal.

(13d) This Directive should apply from ... [18 months following the date of entry into force]. That will be the date from which Directive 2018/957 is to apply to the road transport sector, in accordance with its Article 3(3).

* OJ L 123, 12.5.2016, p. 1.

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

HAVE ADOPTED THIS DIRECTIVE:

[NOTE 1: According to legislative drafting rules, Article 2 (self-standing provision) should be placed before Article 1 (amending an existing Directive).

NOTE 2: obligatory alignment of outdated comitology provisions during lawyer-linguist revision]

Article 1

Directive 2006/22/EC is amended as follows:

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

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

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

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

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

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

(3) Article 2 is amended as follows:

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

"These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles falling within the scope of Regulations (EC) No 561/2006 and (EU) No 165/2014 and of mobile workers and drivers falling within the scope of Directive 2002/15/EC."; Roadside checks on the implementation of Directive 2002/15/EC shall be limited to rules that may be efficiently controlled using the tachograph and related recording equipment. A comprehensive check on the implementation of Directive 2002/15/EC may only be carried out at the premises.";

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

"Each Member State shall organise checks in such a way that at least 3% of days worked by drivers of vehicles falling within the scope of Regulation (EC) No 561/2006, and Regulation (EU)165/2014 [...] are checked. During the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity in order to provide, within the duration of the roadside check, any evidence which is found missing on board; this is without prejudice to the driver's obligations to ensure the proper use of tachograph equipment.";

(ba) The following paragraph is inserted:

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

(c) paragraph 4 is replaced by the following:

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

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

"Article 5

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

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."";

(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."";

(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;”

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

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

(6) Article 8 is amended as follows:

(a) paragraph 1 [...] is replaced by the following:

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

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

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

(b) the following paragraph 1a is inserted:

"1a. Member State shall submit the information requested by other Member States pursuant to paragraph 1(b) of this Article within 25 working days from the receipt of the request [...]. A shorter time limit may be mutually agreed between the Member States. In urgent cases or 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 [...] to comply with a request for information or to carry out checks, inspections or investigations, the requested Member State [...] shall inform the requesting Member State accordingly within 10 working days[...] 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.

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

(c) paragraph 2 is replaced by the following:

"2. The exchange of information provided for in this Article shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012* excluding information which Member States exchange through direct consultation of national electronic registers referred to in Article 16(5) of Regulation (EC) No 1071/2009.";

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

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

By... [OJ: insert date 10 months after entry into force of this amending Directive] the Commission shall, by means of implementing acts, establish a common formula for calculating a risk rating of undertakings, which shall take into account the number, severity and frequency of occurrence of infringements as well as the results of controls where no infringement has been detected and whether a road transport undertaking has been using the smart tachograph, pursuant to Chapter II of Regulation (EU) No 165/2014, on all its vehicles. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive.";

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

(ba) paragraph 3 is replaced by the following:

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

With a view to establishing or updating 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 of this Directive amending Annex III, taking account of regulatory developments and considerations of road safety.

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

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

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

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

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

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

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

"Article 12

Committee procedure

1. The Commission shall be assisted by the Committee [...] established by Article 42(1) of Regulation (EU) 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.

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

(8b) 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;”

(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.”;

(8c) 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.”;

(8d) The following article is inserted:

*"Article 15a
Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9(3) and Article 15 shall be conferred on the Commission for a period of 5 years from [date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

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

* OJ L 123, 12.5.2016, p. 1.

(9) Annex I is amended as follows:

(-a) in Part A, 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;"

(-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/EC¹¹;"

(-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;"

¹¹ 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).

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

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

(-b) in Part B, paragraph 2 is replaced by the following:

"(2) 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.";

(b) in Part B, the following [...] points are added:

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

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

Article 2

Specific rules on the posting of drivers

1. This Article establishes specific rules as regards certain aspects of Directive 96/71/EC relating to the posting of drivers in the road transport sector and of Directive 2014/67/EU 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.

- 1b. A posting shall, for the purpose of Article 3(1a) of Directive 96/71/EC, be considered as ending when the driver leaves the host Member State in the performance of an international carriage of goods or passengers, and that posting period shall not be cumulated with previous posting periods in the context of such international operations of the same driver or another driver he replaces.
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 a 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 unload them in the same Member State.

Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the 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) 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 this paragraph shall apply solely to drivers using vehicles fitted with a smart tachograph as provided in Articles 8, 9 and 10 of that Regulation.

- 2b. For the purpose of this Directive, a bilateral transport operation in international occasional or regular carriage of passengers, as defined in Regulation (EC) No 1073/2009, is when a driver:
- picks up passengers in the Member State of establishment and sets them down in another Member State or a third country; or
 - picks up passengers in a Member State or a third country and sets them down in the Member State of establishment; or
 - picks up and sets down passengers in the Member State of establishment for the purpose of carrying-out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009.

2c. 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 2b in respect of passenger transport when the driver performing a bilateral transport operation in addition thereto:

- picks up passengers once; and/or
- sets down passengers once in Member States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same shall apply to the return journey.

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) 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 this paragraph shall apply solely to drivers using vehicles fitted with a smart tachograph as provided in Articles 8, 9 and 10 of that Regulation.

2d. A driver performing cabotage as defined by Regulations (EC) No 1072/2009 and 1073/2009 shall be considered to be posted under Directive 96/71/EC.

2e. 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.

2f. 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.

[...]

2fa. 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 national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply 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 constituent elements of remuneration rendered mandatory by such instruments, including, where relevant, by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned.

2g. Transport undertakings established in a non-member State shall not be given more favourable treatment than undertakings established in a Member State, including when performing transport operations under bilateral or multilateral agreements granting access to the Union market or parts thereof.

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

(a) an obligation for the road transport operator established in another Member State to [...] submit a posting declaration to the national competent authorities of a Member State to which the driver is posted at the latest at the commencement of the posting, [...] using a multilingual standard form of the public interface connected to the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012. The posting declaration shall consist of the following information:

(i) the identity of the road transport operator, at least, where available, in the form of the number of the Community licence;

- (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 [...] following information about the posted driver: the identity of [...] the driver, the address of the driver's place of residence and the number of the driving licence;
 - (iiia) the starting date of the employment contract of the driver, and the law applicable to it;
 - (iv) the [...] envisaged beginning and end date of the posting;
 - (v) the number plates of the motor vehicles [...];
 - (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 road transport operator to ensure that the driver [...] has at his/her disposal, and for the driver to keep and make available, when requested at the roadside, in paper or electronic form:
- (i) a copy of the posting declaration submitted via IMI;
 - (ii) evidence of the transport [...] carriage(s) taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8 of Regulation (EC) No 1072/2009;
 - (iii) [...] the tachograph records, and in particular the country codes of Member States where the driver has been present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006 and (EU) No 165/2014; [...]
- (c) an obligation for the road transport operator to [...] send via the IMI public interface, after the period of posting, on the direct request of the competent authorities of the Member States where the posting took place [...], copies of documents referred to in

point (b) (ii) and (iii) as well as documentation of the remuneration of the posted driver which relate to the period of posting, the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC, time-sheets relating to the driver's work, and proof of payments.

[...]The operator shall send the documentation via the IMI public interface no later than 8 weeks from the date of the request. If the operator fails to submit the requested documentation within the set deadline, the competent authorities of the Member State where the posting took place may request, via IMI, the assistance of the competent authorities of the Member State of establishment, in accordance with Articles 6 and 7 of Directive 2014/67/EU. When such request of mutual assistance is made, the competent authorities of the Member States of the establishment of the operator shall have access to the posting declaration and other relevant information submitted by the operator via the IMI public interface.

The competent authorities of the Member States of establishment of the operator shall ensure that the documents requested by the competent authorities of the Member States where the posting took place are provided via IMI within 25 working days from the day of request.

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

5. For the purposes of [...] control, the [...] transport operator [...] shall keep the posting declarations [...] referred to in point (a) of paragraph 4 up to date in the IMI public interface.
- 5a. The information from the declarations shall be saved in the repository of IMI for the purpose of checks for a period of 24 months.

The Member State may allow the competent authority to provide national social partners outside of IMI with the relevant information [...] available in IMI to the extent necessary for the purpose of checking compliance with posting rules and in accordance with national law

and practices, provided that the information:

- relates to a posting to the territory of the Member State concerned;
- is used exclusively for the purpose of enforcing the rules on posting; and
- data processing is in line with Regulation (EU) 2016/679.

5b. By [OJ: 6 months after the entry into force of this amending Directive], the Commission shall specify, by way of implementing act, the functionalities of the IMI public interface. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 2a (2).

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

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.

Article 2a

Committee procedure

1. The Commission shall be assisted by a committee established by Article 42(1) of Regulation (EU) No 165/2014. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 2b

Rules and sanctions

1. Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and subcontractors for non-compliance with Article 2 of this Directive, where they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they have commissioned involve infringements of that Article.
2. Member States shall lay down rules on penalties applicable to infringements of the provisions of Article 2 of this Directive and shall take all measures necessary to ensure that they are

implemented. The penalties provided for shall be effective, proportionate, dissuasive and non-discriminatory.

Article 2d

Smart enforcement

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.

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 (EU) .../... 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 and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘IMI Regulation’): Article [2(5)].”

Article 3

Evaluation

1. The Commission shall evaluate the implementation of this Directive, in particular the impact of Article 2, by [...] [31 December 2025] and report to the European Parliament and the Council on the application of this Directive. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal. The report shall be made public.

2. Following the report referred to in paragraph 1, the Commission shall regularly evaluate this Directive and submit the evaluation results to the European Parliament and the Council.
3. Where appropriate, the reports referred to in paragraphs 1 and 2 shall be accompanied by relevant proposals.

Article 3a

Training

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

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

Article 4

1. Member States shall adopt and publish, by ... [OJ: insert date of 18 months after the entry into force of this Directive], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall [...] immediately [...] inform the Commission [...] thereof.

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

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
