

# Road transport: Enforcement and special provisions for posted workers

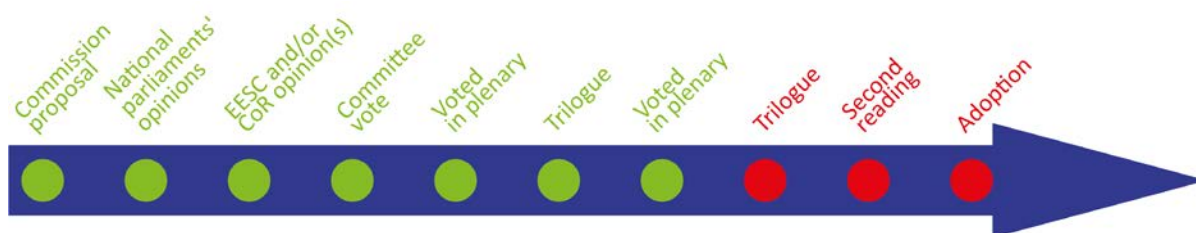
## OVERVIEW

The EU has established a range of social measures applicable to the road transport sector, which aim at improving drivers' working conditions, road safety and competition. To give real substance to these measures, compliance is key. The 2006 Enforcement Directive was therefore adopted to effectively implement the social provisions of the Driving Time Regulation. The current proposal, published in the context of the European Commission's 2017 'Europe on the move' initiative, seeks to remedy some shortcomings of the Enforcement Directive, such as non-uniform implementation. Additionally, it puts forward specific rules on the posting of workers in the road sector, to respond to concerns raised regarding the inadequacy of the Posting of Workers Directive, when applied to the road transport sector.

The European Parliament's Committee on Transport and Tourism (TRAN) adopted its report and a mandate to start interinstitutional negotiations in June 2018. However, Parliament did not endorse the mandate and then, in July 2018, rejected the report, referring it back to the TRAN committee. The Council agreed a general approach on this proposal in December 2018, under the Austrian Presidency. In January 2019, the TRAN committee failed to reach an agreement on a compromise proposal. In March, the Conference of Presidents decided to include this file on the agenda of the March II plenary session. After procedural complications, Parliament adopted its first-reading position during the subsequent plenary session, on 4 April 2019.

**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.**

<i>Committee responsible:</i>	Transport and Tourism (TRAN)	COM(2017) 278
<i>Rapporteur:</i>	Merja Kyllönen (GUE/NGL, Finland)	31.5.2017
<i>Shadow rapporteurs:</i>	Andor Deli (EPP, Hungary), Inés Ayala Sender (S&D, Spain), Kosma Złotowski (ECR, Poland), Izaskun Bilbao Barandica (ALDE, Spain), Karima Delli (Greens/EFA, France), Rosa D'Amato (EFDD, Italy), Marie-Christine Arnautu (ENF, France)	2017/0121(COD)  Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Trilogue negotiations	



## Introduction

The European Commission has long believed that, in order to create a fair, efficient, safe and socially sustainable road transport sector (RTS), it is necessary to provide social as well as market rules. This commitment, on the one hand, to deepening the internal market for road transport services and, on the other, to protecting the social rights of workers, has been renewed on many occasions. For example, in its 2011 [white paper on transport](#), the Commission highlighted that the social dimension of EU transport policy was one of the key challenges to ensure the proper functioning of the EU single transport area. In its [2017 work programme](#), the Commission underlined the need to enhance social legislation in road transport, improving competition and working conditions.

The current social regulatory framework of the RTS is extensive and incorporates 'Enforcement' [Directive 2006/22/EC](#), adopted to set minimum requirements to implement the provisions of the 'Driving time' [Regulation \(EC\) No 561/2006](#),<sup>1</sup> uniformly and effectively. It also includes other sector-specific rules on working time for drivers ([Directive 2002/15/EC](#)) and on the use of tachographs ([Regulation EU No 165/2014](#)). A general framework is set by EU labour and social legislation. The Posting of Workers [Directive 96/71/EC](#)<sup>2</sup> and its [Enforcement Directive 2014/67/EU](#) protect the rights of workers temporarily posted abroad, and the [Rome I Regulation](#) applies to individual employment contracts and specifies the law that should govern them.

An ex-post evaluation of social legislation in the RTS, carried out for the Commission in 2015 to 2017, concluded that shortcomings and non-uniform implementation of the rules meant that deteriorating working conditions and distortions of competition persisted. Moreover, in its impact assessment accompanying the present legislative proposal, the Commission underlined that the posting provisions and administrative requirements were inadequate for the mobile nature of RTS drivers' work, and created disproportionate regulatory burdens for operators and barriers to cross-border services. The Commission [proposal](#), adopted on 31 May 2017, is part of the [Europe on the move](#) package for clean, competitive and connected mobility, and aims to remedy these weaknesses.

## Context

Road transport plays a leading role in the transport economy. Relatively stable over the last 15 years, in 2016 road freight transport accounted for [almost 50 %](#) of the freight market, while waterborne transport and rail accounted for 36.3 % and 11.2 % of the market share respectively. Around [two thirds](#) of road freight is national, and one third transnational. Bus and coach travel by road accounted for [8.1 %](#) of passengers in 2016, compared to air transport, which carried 10.5 %, and rail 6.6 %.

According to Eurostat, in 2015, there were roughly [571 000](#) registered road freight companies and 371 000 road passenger transport enterprises in the EU. The road haulage sector in the EU employs about [3 million](#) people. Freight companies are [predominantly small](#); 90 % have fewer than 10 employees and account for around 30 % of the sector's turnover. These enterprises tend to compete mainly on price of services, with labour costs being a key factor in their competitiveness. A [2014 study](#) drawn up for the Commission on the EU road haulage market noted the increasing importance in recent years of large pan-European logistics providers, which offer reliable, door-to-door truck services. The road passenger transport sector is highly fragmented in terms of company size and range of services. The latter include, for instance, long-distance, school transport and shuttle services. As a whole, it is estimated that the RTS directly employs [5 million people](#) in the EU.

The main costs affecting road haulier competitiveness are drivers' wages, followed by fuel and vehicle purchase. [Sectoral studies](#) and the 2016 [European Commission](#) evaluation highlight the differences in driver remuneration and social insurance contributions between Member States. The Posting of Workers Directive stipulates that employers must pay a posted driver the minimum rate of pay of the host country. The Commission observed [differences in wages](#) between posted and

local workers, especially in high-wage Member States, provoking [downward pressure](#) on labour costs and unfair competition. Nevertheless, in 2014, the Commission noted that [labour cost gaps](#) in the RTS were narrowing steadily. The number of postings increased by almost [45 %](#) between 2010 and 2014.

## Existing situation

In force since May 2006, Directive 2006/22/EC aims to ensure proper implementation of the social rules. It asks the Member States to set minimum conditions to organise regular checks of drivers, haulage companies, or vehicles on their application of the Driving Time Regulation. These checks can occur at the roadside and on undertakings' premises. As from January 2010, at least 3 % of the days worked by drivers must be checked.<sup>3</sup> Roadside checks must be organised in various places, at any time, and cover a sufficiently extensive area of the road network. They must follow a random rotation system and be carried out without discrimination. The directive asks the enforcement authorities of two or more Member States to organise concerted roadside checks at least six times per year.

Moreover, the directive requires Member States to introduce a risk rating system for undertakings based on the number and severity of infringements: the higher the risk, the more often and closely the companies concerned will be checked. The directive also asks Member States to designate a body for intra-community liaison, to ensure coordination across the EU and forward statistical data to the Commission. Lastly, Annex III<sup>4</sup> of the Directive provides a list of definitions of an infringement.

The Posting of Workers Directive has been in force since December 1999 and is aimed on the one hand at protecting the social rights of posted workers in the framework of cross-border provision of services, and, on the other, at ensuring fair competition. According to the directive, posted workers must be covered by a core set of the terms and employment conditions of the host country in which they provide the service. These conditions refer, among other things, to maximum work and minimum rest periods; minimum paid annual holidays; minimum rates of pay; the conditions of hiring-out workers; health, safety and hygiene issues at work; equal treatment and non-discrimination. The directive applies to three types of posting: the direct provision of services under a service contract between two companies; posting to an establishment or company owned by the same group (intra-group posting); and, lastly, hiring out workers through a temporary employment agency established in another Member State. The directive has recently been [reviewed](#); the Commission published its new [proposal](#) in March 2016, with a view to better aligning posted workers' wages with those of local workers. The [revised directive](#) was adopted by the [Council](#) on 21 June 2018, after its first-reading vote by Parliament in plenary on 29 May. Member States have until 30 July 2020 to transpose its provisions into national laws. The Enforcement Directive on posted workers, which was to be transposed into national law by 18 June 2016, aims at providing additional provisions, instruments and control mechanisms to implement and enforce the Posting of Workers Directive more efficiently.

Some Member States have recently adopted national laws on minimum wages in the RTS. On 1 January 2015, Germany introduced a [minimum wage act](#), which applies to all transport companies providing transport services in Germany, including those not based in Germany. France adopted a similar law in 2015, and its [implementing act](#) on 7 April 2016: it entered into force on 1 July 2016 and applies to international transport and cabotage, transit<sup>5</sup> excluded. As these national provisions disproportionately restrict the freedom to provide services and the free movement of goods, the European Commission launched infringement proceedings on 19 May 2015 against [Germany](#) and on 16 June 2016 against [France](#). Similarly, on 27 April 2017, the Commission initiated an [infringement](#) proceeding against Austria, owing to its decision to apply the updated [Austrian Act against wage and social dumping](#) to the RTS. Answering a July 2018 letter sent by a group of MEPs asking to speed up the proceedings against these three countries, the Commission [stated](#) in September 2018 that it had suspended proceedings. The Commission explained that only European legislative solutions could ensure uniform legal standards and that therefore it was expecting

progress on the legislative proposals of the mobility package and the *Lex specialis* for posting drivers in the RTS.

## Parliament's starting position

On 18 May 2017, the European Parliament adopted a [resolution](#) on road transport in the EU that contains a significant section on the improvement of social conditions and safety rules. To enhance the sector's competitiveness, Parliament insisted on the need to ensure a level playing field between operators. The resolution urged the Member States to implement and enforce EU rules more strictly. It asked them to step up checks, in particular in relation to compliance with driving and rest times. It also asked the European Commission to clarify the application of the Posting of Workers Directive to the RTS, and to improve its enforcement.

Earlier, on 14 September 2016, the European Parliament adopted a [resolution](#) on social dumping in the EU, addressing this issue across all sectors, including mobile workers in the transport sector. Parliament insisted that Member States should improve cross-border cooperation and information exchange between inspection services, to improve the efficiency of controls in combating and preventing social fraud. On the Posting of Workers Directive, to address the issue of non- or irregular declaration, Parliament recommended that Member States submit a declaration at the latest when the provision of services begins, and enter it in an easily-searchable EU register. Regarding the transport industry, Parliament called for increased checks on work, standby, driving and rest times, and for the imposition of penalties in cases of non-compliance.

In its [resolution](#) on the implementation of social legislation relating to road transport of 9 October 2008, the European Parliament underlined its concern at the high number of social provision infringements in the RTS. It called on the Commission to provide for preventive and coercive measures to improve enforcement and to set up guidelines for a uniform definition of infringements.

## Preparation of the proposal

In 2009, as required by Directive 2006/22/EC, the European Commission submitted its first [report](#) on the penalties for serious infringements of the social rules in the RTS. It noted that Member States used different types of penalty. While all countries imposed financial penalties, 15 provided for immobilisation of the vehicle and only seven used imprisonment. Moreover, the size of fines varied appreciably. For instance, manipulation of the tachograph is penalised with a fine of €586 in Lithuania, €2 460 in Poland, €6 232 in Italy and up to €30 000 in France. The report also noted that neither the definitions nor the grading of serious infringements were homogenous across the EU. The Commission called for a more harmonised application of the social rules, and promised to continue supporting dialogue among the Member States in this endeavour. In its 2014 [State of the Union road transport market report](#), the Commission underlined the efforts taking place to enforce the social provisions of road legislation. The report noted in particular the completion of the [TRACE](#) project, which set up common training for roadside enforcement officers.

An [ex-post evaluation of social legislation in the RTS](#), outsourced by the Commission, covering the three interrelated acts, Regulation EC No 561/2006, and Directives 2002/15 and 2006/22, was published in 2016. It stated that overall the Enforcement Directive contributes to a more uniform application of social rules across the EU. Roadside checks were reported as satisfactory and, with the exception of five Member States,<sup>6</sup> from January 2010, the number of checks had increased to at least 3 % of driver working days. At the same time, strong divergences persisted at national level in the implementation of the rules (e.g. concerning the risk rating system) and in the type and level of sanctions and fines. It noted that control tools were used differently and that administrative cooperation between Member States was insufficient, weakening cross-border enforcement. To address this, the evaluation recommended rebalancing checks towards premises, where more thorough checks could be carried out. In its subsequent March 2017 [implementation report](#) on

Regulation 561/2006 and Directive 2002/15, the Commission noted that the majority of Member States performed more checks of working days than is required by the Enforcement Directive. Over the 2013-2014 period, 7.4 million drivers were checked at the roadside, and roughly 147 000 companies were checked. The report underlined that, despite discrepancies across the EU, the offence rate continued to decline between 2013 and 2014. The most frequent infringements concerned rest periods (25 %), breaks (23 %), driving time records (17 %) and driving time (16 %).

In September 2016, the Commission published its [inception impact assessment](#). It highlighted the 'ambiguous, unfit or unenforceable' character of some social provisions leading to non-homogeneous implementation and uncoordinated national measures. The assessment observed that the implementation of the Posting of Workers Directive raised legal issues in particular when the link between the driver and the host country was weak. It also highlighted the inconsistent and ineffective cross-border enforcement, and the lack of joint controls by Member States. The assessment recommended adopting measures with a view to improving enforcement.

The new Commission proposal is supported by an [impact assessment](#) covering the EU social provisions in RTS and putting forward four policy options. The fourth of these is horizontal and sets specific thresholds under which drivers would not fall under the full application of the Posting of Workers Directive. The preferred policy option consists of strengthening enforcement and improving working patterns for drivers. It would reduce distortions of competition and increase safety. The option concerning the Posting of Workers Directive provides for sector-specific lighter administrative and control measures in the RTS, which would improve operators' efficiency and allow for annual administrative cost savings of around €785 million. An [initial appraisal](#) of the Commission's impact assessment points to shortcomings in the economic impact assessment, due to data limitations.

In 2013, the European Parliament commissioned a [study](#) on road transport hauliers' social and working conditions and [updated](#) it in 2017. The study highlighted a general deterioration in working conditions, as well as disparities in social provisions and labour costs in the EU, encouraging social dumping. It made several recommendations, such as strengthening enforcement mechanisms, introducing reporting mechanisms on the implementation of the Posting of Workers Directive and enhancing cooperation between Member States.

Subsequent to the publication of the legislative proposal, in October 2018 the European Commission published a [report](#) on implementation in 2015 and 2016 of four legislative acts: the Enforcement (2006/22/EC) and Road Transport Working Time Directives (2002/15/EC) and the Driving Time ((EC) No 561/2006) and Tachograph Regulations ((EU) No 165/2014). The report contains quantitative and qualitative data on checks carried out at the roadside and at premises of road companies and on offences registered. It also comments on the key challenges in applying and enforcing legal acts. The report noted a decrease of around 13 % in the total number of driver working days checked, compared to the previous reporting period (2013-2014). All but three Member States (Greece, Malta and the Netherlands) met, and even exceeded, the minimum threshold of working days to be checked. Roadside checks of vehicles increased by 24 % compared to the previous period, while checks at premises remained stable. The report highlighted a 6 % increase in the total number of offences. This trend may be the result of more effective checks and a higher detection rate of offences on premises. The detection rate varied considerably across the EU, while the types of infringements did not change much compared with the previous reporting period. Out of all offences registered across the EU at both roadside and on premises, offences for rest periods represented 24 %, followed by offences linked to recording equipment (11 %) and lack of records for other work performed (7 %). Moreover, the majority of Member States (15) fulfilled the requirement of six concerted joint checks per year. The report also found a significant increase in offences related to incomplete or incorrect driving time records.

## The changes the proposal would bring

The new proposal indicates that enforcement requirements and checks, including on transport company premises, must include checks on compliance with the Working Time Directive 2002/15/EC. Article 8 is modified to expand cooperation and exchange of information between Member States, and a deadline of 25 working days (3 working days in urgent cases), is set to respond to a request for information submitted by another Member State. The national risk rating system is also amended to make it more consistent, efficient and available to control authorities or, upon request, to another Member State. The European Commission would establish a uniform formula to calculate this risk and to specify the criteria used.

As regards certain aspects of the Posting of Workers and Enforcement Directives in the RTS, the proposal sets specific rules. It establishes a three-day threshold for posting in a period of one calendar month, below which the host Member State's social framework (minimum pay rates, minimum paid annual holidays) does not apply to international road transport operations. Above three days, these minimum social conditions apply for the entire period of posting. Minimum social rules should always apply to cabotage<sup>7</sup> operations, which by definition take place entirely in the host Member State, irrespective of their duration and frequency. Lastly, the proposal provides for specific requirements and control methods to apply to road operators and drivers to check compliance with the Posting of Workers Directive provisions in the RTS.

## Advisory committees

Consultation of the European Economic and Social Committee (EESC) and of the European Committee of the Regions (CoR) is mandatory, as the proposal is based on [Article 91\(1\)](#) of the Treaty on the Functioning of the European Union (TFEU).

In its opinion on the 'Roadmap to a single European transport area – Progress and challenges' ([TEN/566](#); Rapporteur: R. Hencks, Workers-Group II/Luxembourg), adopted on 22 April 2015, the EESC observed that diverging interpretation of the Posting of Workers Directive's rules was an obstacle to the smooth operation of the internal market, and welcomed the Enforcement Directive 2014/67/EU. In its subsequent opinion on the 'Internal market of international road freight: social dumping and cabotage' ([TEN/575](#); Rapporteur: R. Hencks, Workers-Group II/Luxembourg), adopted on 17 September 2015, the EESC underlined the need for EU action to avoid the risk of fragmentation of the internal market in the RTS, through the adoption of unilateral national measures. It encouraged the Commission and the Member States to improve the exchange of information for an effective enforcement of measures, to fight abuse and social dumping. In its opinion on the 'Revision of the Posting of Workers Directive' ([SOC/541](#); Rapporteurs: E. Nygren, Workers-Group II/Sweden and V. Drbalová, Employers-Group I/Czech Republic), adopted in November 2016, the EESC reiterated the importance of the principle of equal pay for equal work.

On 18 January 2018, the EESC adopted its opinion on 'Driving and rest time periods, working time and posting of workers' ([TEN/637](#); Rapporteur: T. Buzek, Workers-Group II/Germany). It endorsed the Commission's initiative to clarify the rules for the RTS and to ensure efficient enforcement. While considering that the application of posting of workers rules is of key importance to retain a level playing field for workers and business in the RTS, the Committee was of the view that the Commission proposal would not adequately address the problems in international road transport. The EESC raised the issue of how the proposal would apply to transport operators established in a third country, and asked the Commission to clarify that transit operations would be exempted from the posting rules.

To improve cross-border enforcement of the EU rules, the EESC called for the Commission to set up a European road transport agency, which could also be used to control postings. On this last point, the Committee recommended introducing an EU electronic posting declaration as well as an EU-wide one-stop shop notification system.

In its opinion, adopted in December 2016, on the 'Revision of the Posting of Workers Directive' ([SEDEC-VI/011](#); Rapporteur: Y. Renström (Sweden/PES), the CoR underlined the need to strike a balance between the free movement of services and the protection of posted workers against wage and social dumping. On 1 February 2018, the CoR adopted its opinion ([COTER-VI/033](#); Rapporteur S. Spyridon (Greece/EPP)) on 'Europe on the Move: labour aspects of road transport'. It welcomed the Commission's attempt to introduce clearer rules on posting of drivers in the RTS, which is key to achieving a single market with a high level of mobility. It reiterated that the principle of equal pay for equal work in the same place should also apply to the RTS. The Committee considered that the proposed three-day threshold before applying posting provisions would freely allow international transport, but feared that the proposed posting rules would increase administrative costs for businesses and national administrations.

On the issue of controls, the CoR expected that on-road compliance checks would be problematic, and suggested that road transport operators should be responsible for making available the documentation linked to posting at roadside checks. Finally, the CoR called for the full operation of the European Register of Road Transport Operators (ERRU) as soon as possible.

## National parliaments

The subsidiarity [deadline](#) was 4 September 2017. On 27 July 2017, the Polish Senate sent a reasoned opinion on incompatibility with the subsidiarity principle. The Polish Chamber assessed the proposal negatively, considering that it violates the fundamental principles of the EU, such as the functioning of the internal market, the right of establishment and the freedom to provide services. The opinion recalled that any measures taken in respect of transport rates and conditions should take account of the economic circumstances of the carriers (Article 94 [TFEU](#)), and observed that the proposed measures would represent a disproportionate administrative burden.

The European Parliament received [contributions](#) from several national parliaments. By way of example, on the Posting of Workers Directive, some parliamentary groups of the Netherlands House of Representatives raised concerns about the possibility given to evade the minimum social provisions during the first three days of international transport and asked if it would be possible to differentiate better between the various forms of international transport. In Italy, the Parliamentary Committees proposed to exclude transit operations from the scope of the Posting of Workers Directive. They also recommended applying the host country's minimum social provisions to drivers from the first day of work in the host country and for all types of road transport. The French Parliament also called for application of minimum social conditions from the first day.

## Stakeholders' views<sup>8</sup>

In preparing its proposal, the European Commission carried out extensive stakeholder consultations. In 2016-2017, it launched a [public consultation](#) and an [SME panel survey](#) on enhancement of social legislation in the RTS. General patterns emerged, showing that differing application of social rules was a very important legislative challenge for a majority of respondents and that the use of different tools for checks was an obstacle to effectiveness of the rules. Issues were raised concerning the conditions applying to posted drivers during international transport as well as the Posting of Workers Directive's inadequacy for the RTS. National and enforcement authorities, NGOs and unions suggested that continuous training for enforcers and clarity on liability for infringements would improve enforcement of social legislation.

Various stakeholders, including the Confederation of European businesses (BusinessEurope), the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), the European Association for Forwarding, Transport, Logistics and Customs Services (CLECAT), the International Road Transport Union (IRU) and the European Transport Workers Federation (ETF), expressed their views on social legislation in the RTS.<sup>9</sup>

In its [2015 policy proposals](#), the ETF proposed extending enforcement practices to social and labour regimes, without amending EU legislation. It suggested cooperation between three levels of enforcement: roadside, back office, and company checks; and the pooling of enforcement intelligence and technology. It also recommended mandatory pre-notification of each posted worker, in accordance with Enforcement Directive 2014/67/EU. Ahead of the launch of the Commission proposals, on 5 April 2017, the ETF and 27 of its member organisations from 20 European countries (including North Macedonia and Norway) adopted the [Warsaw declaration](#). They called on the Commission to include the ETF proposals in its road initiatives to guarantee better enforcement, safety of drivers and a level playing field for businesses.

[BusinessEurope](#) too underlined the importance of enforcement of social legislation. This concern was shared by [CLECAT](#), which additionally recommended strengthening the ERRU to provide harmonised enforcement. CLECAT and [UEAPME](#) both considered that the current Posting of Workers Directive is not adapted to the RTS – the former called for a special law, adapted to international RTS specificities. CLECAT reiterated this view in its [consolidated opinion](#) in September 2017 and again in [November 2018](#). It also observed that the application of posting of workers rules to the RTS would entail applying different national legislation and minimum wages, increasing the cost of transport and reducing its competitiveness.

On 10 October 2017, transport and logistics associations and chambers of commerce and employers' confederations<sup>10</sup> signed a [mutual declaration](#) against the application of the Posting of Workers Directive to international transport in the EU. The signatories underlined the directive's inadequacy for international transport operations, its administrative burden for road companies and the risk that it could lead to even harder competition (for instance from self-employed drivers or companies established outside the EU circumventing posting rules). The ETF published its [position paper](#) on the social proposals of the mobility package in April 2018. It suggested applying posting rules to cabotage and combined transport from the first day of operation. Concerning international transport, the ETF called for the application of posting rules each time there is a risk of wage competition, notably in the case of transport with successive pick-up and delivery operations in different Member States.

Ahead of Parliament's July 2018 plenary session, in June 2018, [BusinessEurope](#) reiterated its position on the importance of excluding international transport from posting of workers rules, for the sake of the competitiveness of European logistics and industry at large.

On 31 October 2018, the ETF and its affiliated European trade unions signed the [Vienna Declaration](#) for a fair mobility package. The signatories called on the European Parliament and the Member States to adopt clear, enforceable and effective measures meant to eliminate abuse, promote road safety and restore fair competition. To eliminate wage discrimination, the declaration called for clear and enforceable posting rules with limited exemptions, easy to control and detect.

Prior to the TRAN committee vote on the legislative proposal on 10 January 2019, representatives of international road hauliers from Bulgaria, Croatia, Hungary, Lithuania, Poland, Romania and Slovenia issued a [joint declaration](#). They protested against the posting of workers proposal as well as the other two linked proposals on driving times and cabotage, describing them as being discriminatory, raising barriers in RTS, and causing administrative, organisational and financial burdens and fragmentation of the EU transport service market.

CLECAT, the European Express Association (EEA) and the International Federation of Freight Forwarders Associations (FIATA) urged MEPs to agree on a [posting regime](#) that would be more flexible than the Council's general approach of December 2018, to give substance to EU objectives of better enforcement, a new boost for growth and CO<sub>2</sub> efficiency in transport. The three associations called for full exclusion of international transport from posting rules or at least the exclusion of a fair number of loading and unloading operations.



## Legislative process

In the European Parliament, the legislative file was assigned to the Committee on Transport and Tourism (TRAN), where Merja Kyllönen (GUE/NGL, Finland) was appointed rapporteur. On 16 October 2017, the TRAN committee together with the Committee on Employment and Social Affairs (EMPL) organised a [joint public hearing](#) on working conditions of mobile transport workers. Representatives from transport workers' and road operators' organisations agreed on the need to enforce the rules better through more rapid implementation of smart tachographs and to clarify the notion of transit. Some speakers underlined the risk of creating an additional burden for SMEs. On 22 November 2017, the TRAN committee organised a second [public hearing](#) on the mobility package, which focused on market and social aspects.

The rapporteur's [draft report](#) was issued on 21 December 2017. As a general remark, the rapporteur highlighted that this proposal constitutes a coherent legal set with the other proposals of the May 2017 mobility package. She observed that administrative requirements and checks should be reasonable from the point of view of administrative burden, and effective during roadside checks. The draft report underlined the importance of adequate penalties for non-compliance with the rules on posting, and recommended a further assessment of the situation of drivers and companies in/from third countries. Concerning enforcement, the rapporteur insisted on a more effective cross-border exchange of information and on the acceleration of the introduction of smart tachographs.

The associated EMPL committee (under Rule 54) adopted its [opinion](#) (Rapporteur: Martina Dlabajová (ALDE, Czech Republic) on 24 April 2018.

Overall, 595 [amendments](#) to the TRAN draft report were [tabled](#) by 23 February 2018. On 4 June 2018, the TRAN committee organised an exceptional meeting to vote on this legislative file as well as on the other mobility package proposals. Concerning enforcement and posting, it adopted nine compromise amendments; the sixth one fully excluded international and transit transport operations from posting. Cabotage and the road leg of combined transport carried out in the same host Member State would be covered by posting rules. To reduce the administrative burden on road companies, TRAN Members adopted another compromise allowing road operators to use standardised forms in their own language via the [Internal Market Information System](#). The TRAN committee adopted the report with 27 votes in favour and 21 against, as well as the decision to enter into trilogue negotiations. However, during the June 2018 plenary session, in accordance with [Rule 69c\(3\)](#) of Parliament's rules of procedure, the mandate was announced in plenary and subsequently challenged. On 14 June 2018, a vote took place in which Members rejected the TRAN committee's mandates to launch negotiations on the three proposals in the package. This is the first time since the new procedure under Rule 69c came into force (January 2017) that plenary has rejected committee mandates.

Thus automatically on the agenda of the following plenary session, Members had the possibility to table new amendments. On the posting proposal, the EMPL committee decided to re-submit its amendments that had previously been rejected by the TRAN committee. On 4 July 2018, plenary rejected the report as amended and referred it back to the TRAN committee for further consideration. The TRAN committee relaunched work on the file and drew up a series of draft compromise amendments.<sup>11</sup> With regard to posting, the rapporteur proposed to introduce a clear distinction between the different categories of transport operations: cabotage and [cross-trade](#) operations between two Member States would be subject to posting, allowing in the latter case for an exemption for a limited number of cross-trade operations. Transit and bilateral international operations between the haulier's Member State of establishment and a host Member State would not be considered posting situations.

On 10 January 2019, the TRAN committee voted on the rapporteur's new compromise amendments as well as on alternative compromise amendments presented by groups of individual Members. No majority was reached on any of the compromises, preventing the committee from defining a

position on the proposal. On 21 January 2019, the political group coordinators discussed how to proceed with this file, as well as with the other two interlinked mobility package files (on driving times and cabotage), but no proposal found a majority. At the subsequent TRAN meeting, on 29 January 2019, the Chair announced that a majority of political groups had emerged in favour of recommending that the Conference of Presidents put the file on the plenary agenda for a new vote.

In March 2019, the Conference of Presidents of the Parliament's political groups decided to include this file, as well as the two other associated proposals on driving times and cabotage, on the agenda of the March II plenary session. The TRAN committee submitted amendments to the original Commission proposal. Two motions were subsequently tabled by political groups and Members to amend the plenary agenda and discard the proposal ([Rule 149a](#)) and then to declare it inadmissible ([Rule 187](#)), but both were unsuccessful. On 26 March, due to the significant number of amendments (more than 1 500) to the three proposals, the President decided to refer these texts back to the TRAN committee to 'filter' the amendments, as he considered that voting could not be carried out in optimum conditions. On 2 April, the TRAN committee organised an extraordinary meeting to carry out this operation, according to [Rule 175](#). However, the meeting did not significantly reduce the number of amendments for plenary as the vast majority were supported by the required minimum threshold (one third) of committee Members. After two further unsuccessful motions to postpone the vote on the proposal in plenary, and voting on amendments in blocks, Parliament's position on the enforcement and posting proposal was adopted by a slim majority, with 317 votes in favour, 302 against and 14 abstentions, on 4 April 2019.

At the [Council meeting](#) on transport, telecommunications and energy in June 2017, Member States welcomed the Commission's efforts to clarify existing rules and step up enforcement measures. The Working Group on Land Transport examined the proposal from June to November 2017. The Estonian Presidency presented a [progress report](#) to the Council on 5 December 2017. On this occasion, ministers [welcomed](#) the progress report and several of them highlighted the compromise reached by social affairs ministers in October 2017 in the framework of the revision of the Posting of Workers Directive. This [compromise](#) established that changes to the Posting of Workers Directive would apply to the RTS only once the *Lex specialis* (i.e. the present proposal) entered into force. However, several ministers noted that transport-specific rules for posting would require considerable work. Regarding control, delegations agreed on strengthening administrative cooperation and on the use of electronic information from tachographs for road checks.

The subsequent Bulgarian Presidency examined the draft presidency compromises from January to May 2018 and made considerable progress on technical and some political issues. It published a [progress report](#) on 30 May 2018. In respect of enforcement and specific rules for posting drivers, the presidency strived to empower the Commission to adopt delegated acts for updating the lists of infringements and the lists detailing subjects of checks (roadside or at premises). It also underlined the need for the Commission to assess the situation of operators from third countries on EU territory to avoid their gaining a competitive advantage.

At the [Council meeting](#) on transport, telecommunications and energy on 7 June 2018, the Bulgarian Presidency presented its progress report and took stock of the progress achieved on the legislative file. It could not reach a general approach.

The subsequent Austrian Presidency started by marking out the work to be done with a view to reaching a political agreement at the Council meeting in early December 2018. It drew up several compromise agreements, which were discussed from October 2018.

On 12 November 2018, the [Road Alliance](#)<sup>12</sup> transport ministers met in Brussels to reiterate their unchanged political priorities on the legislative proposals concerning social and market rules in the RTS. In their [statement](#), they insisted on the importance of fighting unfair competition and introducing smart tachographs rapidly. They also observed that driving and rest times as well as application of posting rules were still open issues.

At the Council meeting on transport, telecommunications and energy on 3 December 2018, the Council agreed its [general approach](#) on this proposal as well as on the two other linked proposals concerning the social reform of road haulage. According to the general approach, cabotage operations should be considered as being posted, while transit through a Member State without loading or unloading goods or picking up or setting down passengers should not. The general approach extends the exemption from posting rules to bilateral transport operations from the Member State of establishment to another Member State or a third country or vice versa. In order to enhance the exchange of information, a Member State would have to submit the information requested by another Member State within 30 working days, or within three working days in urgent cases.

With both co-legislators' positions on the three proposals within the mobility package now established, trilogue negotiations are expected to start in the new parliamentary term.

## EP SUPPORTING ANALYSIS

- [Road transport: Driving times, breaks, rest periods, tachographs and posting of drivers](#), Initial appraisal of a Commission impact assessment, EPRS, European Parliament, November 2017.
- [Enhancement of the social legislation in road transport II](#), Implementation Appraisal, EPRS, European Parliament, May 2017.
- [Posting of Workers Directive](#), EU Legislation in Progress, EPRS, European Parliament, May 2018.
- [Social and working conditions of road transport hauliers](#), (update of the 2013 study), Policy Department for Structural and Cohesion Policies, European Parliament, October 2017.

## OTHER SOURCES

[Posting drivers in the road transport sector](#), Legislative Observatory (OEIL), European Parliament.

## ENDNOTES

- <sup>1</sup> Regulation 561/2006 amended Council Regulation (EEC) 3821/85 and repealed Regulation (EEC) 3820/85.
- <sup>2</sup> This briefing covers Posting of Workers Directive issues relating exclusively to the road transport sector. For the Posting of Workers Directive in general and its revision, see [Posting of Workers Directive](#), EU Legislation in progress, EPRS, European Parliament, May 2018.
- <sup>3</sup> Pursuant to Article 2(3) of 1 January 2012, this percentage may be increased to 4 %, provided that, on average, more than 90 % of all vehicles checked are equipped with a digital tachograph.
- <sup>4</sup> Annex III was replaced in 2009 by the [Commission Directive 2009/5/EC](#).
- <sup>5</sup> Transit of road vehicle is [defined](#) as any loaded or empty road motor vehicle, which enters and leaves the country at different points provided that the journey within the country does not imply any loading or unloading operation.
- <sup>6</sup> In the 2011-2012 reporting period, Denmark, Greece, Italy, Latvia and the Netherlands did not meet the 3 % threshold.
- <sup>7</sup> Cabotage operations are 'national carriage for hire or reward carried out on a temporary basis in a host Member State' as defined by Regulation [EC 1072/2009](#). Regulation [EC 1073/2009](#) provides a more complete definition.
- <sup>8</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.
- <sup>9</sup> See [Road transport: driving, breaks, rest times and positioning by tachographs](#), EU Legislation in Progress, EPRS, European Parliament, March 2019.
- <sup>10</sup> Confederations from Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Greece, Hungary, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain and the United Kingdom.
- <sup>11</sup> Compromise amendments group amendments or seek an alternative to conflicting amendments.
- <sup>12</sup> The [Road Alliance](#) was set up on 31 January 2017, in Paris, by the transport ministers of eight Member States (Austria, Belgium, Denmark, Germany, France, Italy, Luxembourg and Sweden) and Norway to harmonise national social rules in the RTS and improve control and enforcement. Switzerland joined the Alliance later in 2017 and Greece in 2018.

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