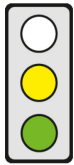


KEY ISSUES

Objective of the Directive: The Commission wants to improve the working conditions of drivers, ensure “fair” competition between haulage companies and increase the safety of all road users.

Affected parties: Drivers and hauliers in the passenger and freight transport sectors and authorities.



Pro: (1) Extending the monitoring duties of the Member States to include the Working Time Directive is appropriate to guarantee the enforcement of social provisions applicable to drivers.

(2) Establishing a “common formula” for the EU-wide risk rating of transport undertakings is appropriate to ensure the equal treatment of transport companies in all Member States.

Contra: In order to reduce incentives for misuse of the rules on the exchange of information, Member States should be obliged to send an annual summary to the Commission of the number of requests made and the information issued.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Proposal COM(2017) 278 of 31 May 2017 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**

Brief Summary

Note: Unless otherwise indicated, references to Articles and page numbers refer to the Proposal for a Directive COM(2017) 278.

► Context and objectives

- The proposed Directive will inter alia [p. 2 et seq.]
 - improve drivers' working conditions,
 - result in “fair” competition between transport companies and
 - increase the safety of all road users.
- The Enforcement Directive [2006/22/EG] sets out the measures to be taken by Member States in order to enforce the
 - Driving Times Regulation [(EC) No. 561/2006, see [cepPolicyBrief 31/2017](#)], which regulates the driving times and rest periods of drivers involved in the carriage of goods and passengers by road, and the
 - Tachograph Regulation [(EU) No. 165/2014], which regulates the installation and use of tachographs to monitor driving times and rest periods.
- The Working Time Directive [2002/15/EC] regulates, inter alia, which of the driver's activities apart from driving constitute working time, restricts the maximum weekly working hours and thereby supplements the Driving Times Regulation.
- The Posting of Workers Directive [96/71/EC] regulates the posting of workers, including drivers, within the EU. The Enforcement Directive [2014/67/EU] to the Posting of Workers Directive regulates, inter alia, what checks the Member States may implement in order to enforce the Posting of Workers Directive.
- According to the Commission, enforcement of the Working Time Directive and the Posting of Workers Directive, as well as cooperation between national authorities on the application of the Enforcement Directive, must be improved [p. 4 et seq.].
- The proposed Directive
 - amends the Enforcement Directive by requiring, inter alia, that Member States will in future have to monitor, not only the application of the Driving Times Regulation and the Tachograph Regulation, but also that of the Working Time Directive [hereinafter: “social provisions”] in accordance with the Enforcement Directive [Art. 1] [this [cepPolicyBrief](#)],
 - contains special rules on the posting of drivers [Art. 2] which differ from the Posting of Workers Directive [96/71/EC] and its Enforcement Directive [2014/67/EU], [[cepPolicyBrief 2018-11](#)].

► **Monitoring powers of the Member States**

- Until now, in order to enforce the Driving Times Regulation and the Tachograph Regulation, Member States had to carry out checks at the road-side and at the premises of the transport undertakings [Art. 4 and 6 in conjunction with Annex I Enforcement Directive].
- In future, the monitoring duties of the Member States under the Enforcement Directive will also apply to enforcement of the Working Time Directive.
 - Member States must (Art. 1 (9))
 - in the case of road-side checks, examine compliance with maximum weekly working time and breaks as well as
 - in the case of checks at the premises, additionally examine compliance with night work requirements.
 - The annual checks must cover a “representative cross-section” of drivers, transport companies and vehicles [Art. 1 (3) (a)].
 - The annual checks must cover at least 3% of the days worked by drivers which fall within the scope of the social provisions [Art. 1 (3) (b)].
 - Checks of the premises of transport companies must be carried out inter alia if serious infringements of the social provisions are detected during roadside checks [Art. 1 (4)], such as exceeding the daily permitted driving times by more than 10% [cf. Enforcement Directive, Annex III].

► **Monitoring periods of “other work”**

- In addition to driving, loading and unloading, drivers’ working time includes “other work” [Art. 4 (c) Driving Times Regulation in conjunction with Art. 3 (a) Working Time Directive]. Under the current provisions, the term is only vaguely defined as work which inter alia may serve to ensure the safety of the vehicle, load or passengers.
- In order to ensure uniform conditions for monitoring the Driving Times Regulation, the Commission can, by way of implementing acts, stipulate how time for “other work” within the meaning of the Driving Times Regulation is to be recorded by drivers and monitored by Member States [Art. 1 (8)].

► **Exchange of information among Member States**

- Every Member State must appoint an authority to be responsible for the exchange of information with other Member States relating to the application of the Enforcement Directive [Art. 1 (5)].
- Every Member State must, at the reasoned request of another Member State, submit “information” to it regarding the application of the Enforcement Directive [Art. 1 (6) (a)]. This will facilitate the monitoring of social provisions [Recital 6].
- The following time limits apply to the submission of information [Art. 1 (6) (b)]:
 - 25 working days in cases requiring an in-depth examination or involving checks at premises,
 - 3 working days in urgent cases or cases requiring simple consultation of registers such as the national risk rating system.
 - Where it is “difficult or impossible” to comply with a request, such as due to the necessary checks, the requesting Member State must be notified within 10 working days, giving reasons. In this case, the Member States involved must try to find a consensual solution [Art. 1 (6) (b)].

► **National risk rating systems**

- Every Member State is already required, under current law, to maintain a national risk rating system. Depending on the number and severity of infringements of social provisions, transport companies are given a lower or higher risk rating [Art. 9 (1) Enforcement Directive].
- Member States must carry out checks at premises more closely and more often in the case of transport companies with a high risk rating than in the case of other transport companies [Art. 9 (2) Enforcement Directive].
- In future, the Commission will be able to establish, by way of an implementing act, a “common formula” for calculating the risk rating of transport companies [Art. 1 (7) (a)]. This formula may be based on
 - the number, severity and frequency of infringements of social provisions and
 - whether a transport company has been using the “smart” tachograph in all vehicles.
 Since 2006, new vehicles must be equipped with “digital” tachographs and as from 2019 with “smart” tachographs. Smart tachographs are linked to a global satellite navigation system, store the location of the vehicle multiple times a day and allow stored data to be read by the authorities by way of remote communication during the journey [Art. 8 et seq. Tachograph Regulation, see [cepPolicyBrief](#)].
- In order to facilitate checks, the data from the national risk rating systems must be
 - made accessible to the authorities in the relevant Member State for road-side checks and
 - “directly” accessible to the authorities in other Member States in accordance with the time limits for the exchange of information [Art. 1 (7) (c)].

Main Changes to the Status Quo

- ▶ In future, the monitoring duties under the Enforcement Directive will also apply to the Working Time Directive.
- ▶ In future, time limits will apply to the exchange of information between the Member States.
- ▶ In future, the national risk rating systems will be harmonised by way of implementing acts.

Statement on Subsidiarity by the Commission

In the road transport sector, the applicable social provisions are implemented and enforced in different ways by the Member States. Union-wide standard implementation and enforcement of these provisions cannot be achieved solely by way of guidelines or self-regulation carried out by the Member States. Measures at EU level are therefore necessary.

Policy Context

The Directive is part of the road transport package “Europe on the Move” of May 2017 which comprises several legislative proposals, including an Amending Directive on driving times and rest periods for drivers [COM(2017) 277, see [cepPolicyBrief](#) 2017-31]. The package will contribute to a “socially fair and competitive internal market for road transport services” [Communication COM(2017) 283, p. 11].

Legislative Procedure

31 May 2017	Adoption by the Commission
5 November 2017	Debated by the Council
Open	1st Reading in European Parliament
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Mobility and Transport (leading)
Committees of the European Parliament:	Transport and Tourism (leading), Rapporteur: Merja Kyllönen (GUE/NG Group); Transport and Tourism
Federal Ministries:	Transport and Digital Infrastructure (leading)
Committees of the German Bundestag:	Transport and Digital Infrastructure (leading); Employment and Social Affairs

Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)
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Formalities

Legal competence:	Art. 91 (1) TFEU (Transport)
Type of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Extending the duties of Member States to monitor the Working Time Directive is appropriate. Only if the social provisions for drivers are effectively enforced can the objectives of these provisions – improving drivers’ working conditions and the safety of all road users by preventing drivers from becoming overtired – be achieved. The necessary additional expense is low because national monitoring authorities already have to check compliance with the Driving Times and Tachograph Regulations and because checks only have to cover 3% of the days worked by drivers.

“Other work” counts towards drivers’ working time and therefore has to be recorded by drivers and checked by the authorities. In order to prevent transport companies in some Member States from gaining an unfair competitive advantage in the form of lower labour costs by failing to record and check all components of working time, it is appropriate for the Commission to define a uniform EU-wide approach to the recording and checking of “other work”. In order to determine, when carrying out road-side checks, whether and how far social provisions are being infringed, national monitoring authorities often require additional information about the transport companies for whom the drivers are working. **Where transport companies are resident abroad, monitoring authorities are dependent on a smooth and rapid exchange of information between the Member States. It is therefore appropriate that the Directive imposes time limits for the exchange of information.** In order to keep the cost of providing information - and the

accompanying administration costs - to a minimum for the requested authority, it is also useful to distinguish between regular and urgent requests. Such a distinction, however, also allows misuse. Requesting authorities could also declare such requests to be urgent when in fact they are not. Authorities that are under a duty to provide information could also declare simple requests to be “difficult” or “impossible” in order to gain time or to protect domestic transport companies. **In order to reduce incentives for misuse of the rules on the exchange of information, Member States should be obliged to compile and send an annual summary to the Commission indicating the number of requests made and the information issued.** This summary should distinguish between regular and urgent requests and contain information on whether and how fast requests were answered. The Commission should make these summaries available to all Member States.

Legal Assessment

Legislative Competency

Unproblematic. The EU can adopt all appropriate provisions to implement a common road transport policy [Art. 91 in conjunction with Art. 100 TFEU]. As a special competence in the field of transport, Art. 91 TFEU also permits legislation to improve drivers' working conditions because this competence takes precedence over the general competence in the area of social policy [Art. 153 TFEU].

Subsidiarity.

Due to the cross-border nature of transport, and since the subject matter of the Directive is already regulated under EU law, action by the EU to achieve the envisaged aims is appropriate.

Compatibility with EU Law in other respects

Establishing a “common formula” for the EU-wide risk rating of transport undertakings is appropriate to ensure uniform implementation of social provisions and in this regard the equal treatment of transport companies in all Member States. The “common formula” will inter alia take account of whether transport companies install smart tachographs in all their vehicles. Smart tachographs allow inter alia stored data to be checked during the journey. This will make the work of monitoring authorities easier and reduce adverse effects on transport companies caused by interruptions to journeys for road-side checks. Smart tachographs will be obligatory for new vehicles as from 2019, but for old vehicles only from 2034. **The “common formula” must not therefore result in a discriminatory burden for transport companies using old vehicles without smart tachographs before 2034, because they are acting lawfully.** The Directive should expressly specify how it will ensure that data from the national risk rating system is “directly” accessible to the authorities of other Member States.

Conclusion

Extending the duties of Member States to monitor the Working Time Directive is appropriate because only where the social provisions for drivers are effectively enforced can the objectives of these provisions be achieved. Where transport companies are resident abroad, monitoring authorities are dependent on a smooth exchange of information between the Member States. It is therefore appropriate that the Directive imposes time limits for the exchange of information. In order to reduce incentives for misuse of the rules on the exchange of information, Member States should be obliged to send an annual summary to the Commission indicating the number of requests made and the information issued. Establishing a “common formula” for the EU-wide risk rating of transport undertakings is appropriate to ensure the equal treatment of transport companies in all Member States. The “common formula” must not result in a discriminatory burden for transport companies using old vehicles without smart tachographs before 2034, because they are acting lawfully.