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IRU POSITION ON THE APPLICATION OF THE POSTING OF WORKERS DIRECTIVE TO CABOTAGE OPERATIONS IN ROAD TRANSPORT

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IRU Position on the application of the Posting of Workers Directive to cabotage operations in road transport - unanimously adopted by the IRU Goods Transport Liaison Committee and the IRU Passenger Transport Council.

I. ANALYSIS

1. Background and Purpose of the Directive

The Temporary Posting of Workers Directive (1996/71/EC) applies to workers involved in the provision of services in EU Member States other than the state in which they are employed. Companies organising such work are required to guarantee that their posted workers are afforded at least the same minimum terms and conditions of employment as those enjoyed by the same category of workers employed in the host country.

The intention of the Directive is to facilitate transnational services by clarifying the minimum legal provisions to be followed, while at the same time ensuring fair competition between companies based in different Member States.

The minimum host country conditions to be followed may be national laws, administrative provisions, collective agreements or arbitration awards which cover the areas as outlined in article 3.1 of the Posting Directive. Most importantly these include maximum work periods and minimum rest periods; minimum paid annual holidays; minimum rates of pay, including overtime rates and the conditions for the hiring-out of workers.

2. Application to the Road Transport Sector

In a letter to the IRU dated September 2005, the EU Transport Commissioner, Jacques Barrot stated that cabotage operations in road freight and passenger transport are covered by the scope of the Posting Directive. Subsequently, on 4 April 2006 the European Commission adopted guidance (COM 2006/159) and an accompanying working document on the Directive's implementation. Here, the Commission further clarified that point to point international transport by road should not be included within the scope of the Directive, but that cabotage operations in road transport would be subject to its provisions¹.

¹ http://ec.europa.eu/employment_social/labour_law/docs/sec_2006_439_en.pdf

Despite these assertions, only France has actively applied the Directive for cabotage operations in the road transport sector. However, the de-facto limited application of the Directive by EU member States may not last. Its implementation across all sectors is now under intense scrutiny by the European Commission and also by Trade Unions.

Most recently amendments tabled by members of the European Parliament's Transport Committee on draft proposals for Regulations² on access to the road haulage market, and access to the market for bus and coach operators explicitly refer to the Posting Directive's applicability to cabotage operations. Should these amendments be adopted it could subsequently lead to concrete implementing measures by Member States.

However, should these debates result in clear and limiting rules for cabotage, there would be a very strong case for the exemption of such operations from the scope of the Posting Directive on grounds that they are 'economically non-significant activities' as defined by article 3.5 of the Posting Directive.

3. The Practical Consequences of Applying the Directive

It is apparent that Directive 96/71/EC on the Posting of Workers was developed primarily with other sectors of European industry in mind rather than road transport. Construction workers who may be posted to work in another Member State for long periods of time present a clear case where the Directive can easily be enforced via a foreman or designated individual who can liaise with local and home authorities to ensure that his posted workforce receives equivalent pay and conditions to those employed under the laws and collective agreements of the host country.

However, for cabotage operations undertaken by the road transport sector the current enforceability of the Directive is highly questionable. The administrative burden on companies to ensure that each driver receives the correct balance of country specific pay and benefits when drivers are performing cabotage in many different Member States for short periods of time would be extremely onerous. Indeed, such a complicated administrative burden could make cabotage operations untenable overall.

This was clearly not the intention of the Directive which was meant to facilitate the provision of services within the single market on the basis of fair competition. Moreover road transport is a very specific economic activity and as a general rule these characteristics must be taken into account before general legislative texts or non sector specific regulation is applied to it.

II. IRU POSITION

- The current Posting of Workers Directive is not suitable for the road transport sector as it does not take into account the sector's highly mobile workforce, transnational character nor the administrative burdens and enforcement difficulties of applying it to road cabotage operations. A study concerning the relevance of its application to cabotage is needed.
- The IRU opposes any reference to the Posting Directive within the new Draft Regulations on Access to the Market for goods and passenger transport. The IRU calls for a clear definition of cabotage that would make the application of the Posting Directive redundant.
- No further steps should be taken at EU or national level to implement this Directive, unless the following conditions are simultaneously met:
 - The development of specific provisions that are suitable for application to road transport

² (COM/2007/265) & (COM/2007/264)

- The concrete development of a practical, harmonised and non-discriminatory system of enforcement across the EU
- The implementation of an appropriate EU information and payment system for driver wages and social security, guaranteeing that the application of the Directive does not cause any hindrance to the pursuit of lawful cabotage operations, nor result in any additional administrative burden for transport companies.

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