



Brussels, 27 October 2017

Dear European and national decision makers,

Open letter on the application of posting of workers to road transport – the current situation cannot continue

Since 2006, IRU continually stated that the general Posting of Workers Directive 96/71/EC is not suitable for the road transport sector. Again IRU repeated this message during the 2009 revision of the EU rules on access to the road haulage market, when several Member States started to introduce posting rules and during the European Commission consultations leading to the publication of the EU Mobility Package.

General framework won't work.

IRU welcomes that the European Commission has proposed a *lex specialis* that tries to introduce specific rules for the road transport sector, as opposed to road transport being subject to the general Directive. Directives 96/71/EC and 2014/67/EU do not take into account the highly mobile character of road freight and passenger transport operations. IRU feels that the European Commission, European Parliament and Member States should use this opportunity to discuss fundamental questions such as whether posting of workers should apply to road freight and passenger transport and if so to which types of services.

IRU also welcomes the agreement of the EPSCO Council on 23 October 2017 to keep the decision on posting rules for road transport in the on-going negotiations on the EU Mobility Package. However, IRU is strongly concerned about the decision to continue to apply the general Posting of Workers Directive to the transport sector until specific rules have been agreed. The biggest concern is that implementation in an increasing number of Member States across the EU has demonstrated that posting rules incur a heavy administrative burden for transport operators. In addition, Member States do not provide sufficient information on how transport operators should apply the rules to their drivers for the time spent abroad. These two issues need to be urgently addressed by the European Commission, European Parliament and Member States.

What should the *Lex Specialis* cover?

If, in the framework of the negotiations on the *lex specialis*, it would be decided to apply posting of workers rules to road transport, according to IRU, the *lex specialis* should lay down the key rules and parameters outlining how posting of workers should be applied to road transport.

IRU stresses that decisions on the content of the *lex specialis* should only be made after thorough examination of the sector. It would be essential to take into account the highly mobile character of road transport operations and to minimise the administrative burden and time-losses at the roadside for transport operators. IRU also notes that the status of self-employed and false self-employed drivers could proliferate, which could result in further fragmentation of the market and long subcontracting chains. The road transport industry already consists of 85% of small and medium-sized enterprises and decision-makers should reflect on whether a further market fragmentation is a desired outcome. It is also unclear how the posting of workers rules will apply to transport companies established in 3rd countries and how the obligations will be enforced. IRU points out that EU-based operators might be put in a disadvantageous position should the posting of workers rules only be enforced with them.

IRU also underlines that passenger transport companies will especially be affected by these measures that primarily aim at solving problems (such as labour imports) occurring in the freight sector. IRU therefore requests that further derogations for the passenger transport sector are introduced.

Reducing administrative burden.

IRU notes that notwithstanding the European Commission's welcome general intention to reduce the administrative burden for industry, the majority of the obligations proposed in the *lex specialis* have simply been taken from Directive 2014/67/EU on the enforcement of Directive 96/71/EC. This means

that the proposed administrative requirements are only very slightly relaxed as compared to today's situation in a number of Member States that have adopted national measures in this area. Translation costs will also remain very high, as regular updates of documents will have to be made. Also, these requirements expose the driver and the road transport operator to a high risk of unintentional mistakes that could result in severe sanctions. It should be avoided that the application of the posting of workers in road transport becomes a barrier to the proper functioning of the EU Internal Market. IRU calls for a considerable reduction of the administrative requirements for transport operators.

IRU also considers that the *lex specialis* has insufficiently explored potential digital solutions to reduce the administrative burden. It should have insisted more on closer cooperation and information exchange between Member States using the Electronic Register for Road Transport Undertakings (ERRU) as an example.

Information and enforcement.

In addition, transport operators are not provided with sufficiently transparent and adequate information on the terms and conditions in the Member States currently applying to posting of workers rules. In the real business world, financial and business planning, cost estimates and replies to business offers are rendered extremely complex, as driver costs will be unpredictable.

Finally, enforcement is also proving to be very difficult in those Member States applying Directive 96/71/EC to road transport operations. The *lex specialis* does not provide sufficient solutions to this issue. It is questionable what the purpose is of presenting all the documentation at the roadside. IRU is of the opinion that it is next to impossible to assess compliance with the posting of workers rules at the roadside. According to IRU, roadside checks should primarily concentrate on road safety (driving and rest times and technical condition of the vehicle). Analysing employment and labour documents will severely prolong checks and should be left to checks at company premises or other targeted controls carried out by specialised staff.

IRU is well aware of the highly diverging views on this topic, its complexity and the politically highly sensitive nature of this topic and would therefore like to call on European and national decision-makers not to take hasty decisions on the application of posting of workers rules to road transport. IRU and its Member Associations are committed to continue to work closely together with the European Commission, European Parliament, Member States, and our European social partners in trying to find solutions which would be acceptable to all stakeholders concerned.

Yours sincerely
Matthias Maedge



General Delegate