



Galerie Agora,  
Rue du Marché aux Herbes 105, Bte 11  
B-1000 Brussels  
Telephone +32 2 285 46 60  
Fax +32 2 280 08 17  
Email: [etf@etf-europe.org](mailto:etf@etf-europe.org)  
[www.etf-europe.org](http://www.etf-europe.org)

European Transport Workers' Federation  
Fédération Européenne des Travailleurs des Transports  
Europäische Transportarbeiter-Föderation  
Federación Europea de los Trabajadores del Transporte

ETF Road Transport

## European Commission's Mobility package

ETF briefing

Posting of workers

### PRELIMINARY CONSIDERATIONS

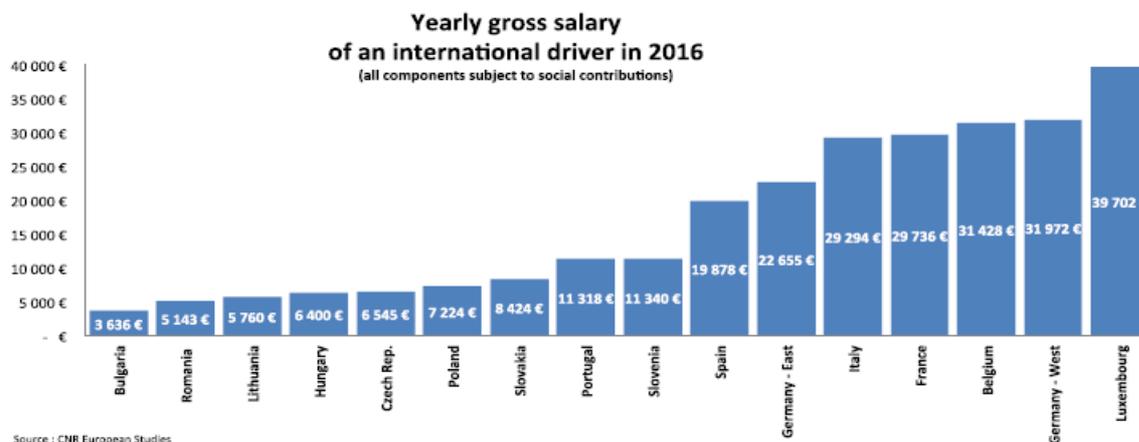
EU legal provisions such as

- Article 45 of the Treaty of Functioning of the European Union
- Posting of workers directive
- Article 8 of the Rome I Regulation
- Regulation (EC) No 1071/2009 on access to occupation (letter box companies)

aim to provide a level playing field for all operators engaged in road transport activities on the territory of any given Member State, no matter their country of establishment, no matter the country they recruit their drivers from.

If drivers work in and from a Member State temporarily, this is posting. If they work in and from a Member State on permanent basis, they fall under the provisions of the Rome I Regulation and thus they are entitled to the full pack of 'host' Member State conditions, including health insurance and social security.

Complying with the above rules and principles is vital in the context where in road transport gaps between Member States in terms of pay and conditions are substantial, and persist (see graphic below). Acknowledging this situation, in 2014 the European Commission gave up its intentions to fully liberalise the domestic freight markets.



CNR Comparative study of employment and pay conditions of international lorry drivers in Europe



President Frank Moreels

1

Vice Presidents Alexander Kirchner  
Ekaterina Yordanova

General Secretary Eduardo Chagas



## NEW PROPOSAL: INTERNATIONAL TRANSPORT - APPLICATION OF POSTING TO PROFESSIONAL DRIVERS AFTER 3 DAYS SPENT ON THE TERRITORY OF A MEMBER STATE

The Mobility Package proposes that Member States shall not apply posting to international transport when the period of posting to their territory is shorter than 3 days during a period of one calendar month.

The position of the ETF with regards to the application of posting of workers to road transport is that posting must apply from Day 1 for all cabotage operations, and from Day 1 too to international transport whenever the posting conditions are met (see Article 1, Directive 96/71/EC).

Any temporary exclusion from the posting conditions will not make rules clearer, simpler to apply and more enforceable. It will only postpone by 3 days the application of the minimum wage to drivers carrying out their activity on a territory of another Member State, thus leaving an open door to abuses, distortions and unfair competition based on labour cost differentials.

On the other hand, the enforcement measures proposed by the European Commission in relation to the above posting solution are far too weak to ensure an effective enforcement of the rules. The employer (road transport operator) is bound to fill in a posting declaration, but this can cover a period of 6 months and a group of drivers. This leaves room to abuses.

The European Commission text indicates that the control of posting will be mainly done during roadside checks. As the ETF proposed in its set of enforcement solutions<sup>1</sup>, while roadside checks can play a key role in detecting false posting but must not remain the only mean of control. Determining the posting status of a driver will depend on a mix of elements such as reliable data, access of enforcers to it, and the possibility for enforcers to compare data from various sources (see more below, under “ETF proposals”).

But by far the main measure proposed in the Mobility Package for the enforcement of the posting directive in road transport is the drivers’ obligation to manually record, at every stop, the code of the country they are in. However, this method tends to keep road transport in the era of buttons, faxed documents and paperwork. Additionally, the manual introduction of the country code will once again place the pressure and responsibility on the drivers, both from employers (most likely to order drivers not to do so) and enforcers – if the law places the responsibility with the driver, that the sanctions will target the driver too!

### THE PROBLEM WITH THE EUROPEAN COMMISSION ‘POSTING’ PROPOSALS

**They risk to legalise dumping practices and to undermine the level playing field between road transport operators.**

**They risk to create to further distortions on domestic markets**, both labour and transport, as road transport undertakings will use workforce from low-income Member States to operate within domestic markets of Member States with higher levels of pay and working standards. The Member States with higher exposure to cabotage (Western and Northern Europe) will be particularly affected.

**They don’t make rules simpler, clearer or more enforceable**, but rather just delay their application by a number of 3 days.

---

<sup>1</sup> “The extra-mile towards a full-fledged enforcement scenario in the EU road transport sector. An ETF proposal to policy makers”



**They will unfortunately reverse the burden of proof on the drivers:** it will be for the drivers to prove their posting status. Having in view the numerous cases where employers prevent drivers correctly record working time (also done via manual input of data in the tachograph), this time too drivers will be under considerable pressure not to record the country code at each stop while in the event of a check drivers will be held liable for not having done so.

## ETF PROPOSALS

- **Clarification of the status of the professional drivers in relation to their habitual workplace.** This would require an amendment to Regulation (EC) No 1071/2009 based on Articles 8.1 and 8.2 of Rome I Regulation (Regulation (EC) No 598/2008) and on the ECJ court ruling on the Koelzsch case, to stipulate that professional drivers are covered by the 'host country' conditions when habitually working in and from a Member State with better pay and conditions
- **Full application of posting to road transport, without exception,** including to international transport whenever the posting conditions are met (Article 1, Directive 96/71/EC)
- Stepping up **enforcement**, notably by:
  - **bringing forward the deadline for the mandatory introduction of the 'smart' tachograph to all vehicles engaged in international transport** (including of course cross-trade transport and cabotage). This can be done by means of a derogation to Regulation (EU) No 165/2014. How will this improve enforcement, in practice? One of the functions of the future 'smart' tachograph is the mandatory automatic recording of the exact position of vehicle and driver at the start and the end of the driver's working day, as well as at every three hours of cumulated driving time. Hence its capacity to record the period of time spent by the driver and vehicle in a given Member State. Hence its capacity to indicate the habitual and / or temporary workplace of the driver. Additional benefits of the early introduction of the 'smart' tachograph on all vehicles performing international transport will also consist of the following: a) it will be the only tool to control cabotage; b) 'smart' tachograph data will have to be kept for at least 1 year in the company records, hence company checks will be able to detect retroactively whether or not companies had complied with the cabotage rules and with posting of workers requirements
  - **introducing a posting declaration in electronic form, to be linked to the data declared by the road transport operator in the national electronic register, and mandatory for each posted driver.** This will consist in "a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision [...] containing the relevant information necessary in order to allow factual controls at the workplace" (Article 9 of Directive 2014/67/EU). The declaration should be accessible in real time to all enforcement agencies responsible for road transport and must be kept on board vehicles for controls
  - **consolidating the data declared by road transport operators in the national electronic registers,** to include information about employed drivers (country of origin, country of registration of labour contract, country of payment of social security, etc.), and give real time access to road inspectorates to the NERs and ERRU. In this setting roadside checks would act as a *one-stop* collection point of on-board vehicle information on carrier, vehicle and driver - the so called integrated 'operator file'. Once collected, the information will be transferred to the national contact point and compared with data contained by NERs.

For more please see the ETF proposal on enforcement solution which can be downloaded here: <http://www.etf-europe.org/RespectDrivers.cfm>

Brussels, 06 June 2017



President Frank Moreels

3

Vice Presidents Alexander Kirchner  
Ekaterina Yordanova

General Secretary Eduardo Chagas

