Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012

DIRECTIVE (EU) 2020/1057 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) In order to create a safe, efficient and socially responsible road transport sector it is necessary to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable conditions for business and for fair competition for road transport operators (‘operators’), on the other. Given the high degree of mobility of the workforce in the road transport sector, sector-specific rules are needed to ensure a balance between the freedom of operators to provide cross-border services, free movement of goods, adequate working conditions and social protection for drivers.

(2) In view of the inherent high degree of mobility of road transport services, particular attention needs to be paid to ensuring that drivers benefit from the rights to which they are entitled and that operators, most of which are small enterprises, are not faced with disproportionate administrative barriers or discriminatory controls which unduly restrict their freedom to provide cross-border services. For the same reason, any national rules applied to road transport must be proportionate as well as justified, taking account of the need to ensure adequate working conditions and social protection for drivers and to facilitate the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators.

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(3) The balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators is crucial for the smooth functioning of the internal market.

(4) Having evaluated the effectiveness and efficiency of the current Union social legislation in the road transport sector, certain loopholes in the existing provisions and deficiencies in their enforcement have been identified, such as those with regard to the use of letterbox companies. Furthermore a number of discrepancies exist between Member States in the interpretation, application and implementation of those provisions, creating a heavy administrative burden for drivers and operators. This creates legal uncertainty, which is detrimental to the social and working conditions of drivers and to the conditions for fair competition for operators in the sector.

(5) In order to ensure that Directives 96/71/EC[(4)] and 2014/67/EU[(5)] of the European Parliament and of the Council are correctly applied, controls and cooperation at Union level to tackle fraud relating to the posting of drivers should be strengthened.

(6) The Commission, in its proposal of 8 March 2016 for the revision of Directive 96/71/EC, recognised that the implementation of that Directive raises particular legal questions and difficulties in the highly mobile road transport sector and indicated that those issues would be best addressed through sector-specific road transport legislation.

(7) In order to ensure the effective and proportionate implementation of Directive 96/71/EC in the road transport sector, it is necessary to establish sector-specific rules reflecting the particularities of the highly mobile workforce in the road transport sector and providing a balance between the social protection of drivers and the freedom of operators to provide cross-border services. The provisions on the posting of workers, in Directive 96/71/EC, and on the enforcement of those provisions, in Directive 2014/67/EU, apply to the road transport sector and should be made subject to the specific rules laid down in this Directive.

(8) Given the highly mobile nature of the transport sector, drivers are not generally posted to another Member State under service contracts for long periods of time, as is sometimes the case in other sectors. It should therefore be clarified in which circumstances the rules on long-term posting in Directive 96/71/EC do not apply to such drivers.

(9) Balanced sector specific rules on posting should be based on the existence of a sufficient link between the driver and the service provided, and the territory of a host Member State. To facilitate enforcement of those rules a distinction should be made between different types of transport operations depending on the degree of connection with the territory of the host Member State.

(10) When a driver engages in bilateral transport operations from the Member State where the undertaking is established (the ‘Member State of establishment’) to the territory of another Member State or a third country or back to the Member State of establishment, the nature of the service is closely linked with the Member State of establishment. It is possible that a driver undertakes several bilateral transport operations during one journey. It would be a disproportionate restriction to the freedom to provide cross-

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border road transport services if the posting rules, and therefore the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations.

(11) It should be clarified that international carriage in transit across the territory of a Member State does not constitute a posting situation. Such operations are characterised by the fact that the driver passes the Member State without loading or unloading freight and without picking up or setting down passengers and there is therefore no significant link between the driver's activities and the Member State transited. The qualification of the driver's presence in a Member State as transit is, therefore, not affected by stops, for example, for hygiene reasons.

(12) When a driver is engaged in a combined transport operation, the nature of the service provided during the initial or final road leg is closely linked with the Member State of establishment if the road leg on its own is a bilateral transport operation. By contrast, when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, there is a sufficient link with the territory of a host Member State and therefore the posting rules should apply.

(13) Where a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, there is a sufficient link to the territory of the host Member State. The link exists in case of cabotage operations as defined by Regulations (EC) No 1072/2009[(6)] and (EC) No 1073/2009[(7)] of the European Parliament and of the Council since the entire transport operation takes place in a host Member State and the service is thus closely linked to the territory of the host Member State. A non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State of establishment of the undertaking making the posting. The services performed are therefore linked with the host Member States concerned rather than with the Member State of establishment. In those cases, sector-specific rules are only required with regard to the administrative requirements and control measures.

(14) Member States should ensure that, in line with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are laid down by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in their territories, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of Directive 96/71/EC, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. This should include, where relevant, those terms and conditions of employment laid down by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned. The relevant information should, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments. In line with Directive 2014/67/EU, the involvement of the social partners is to be sought.

(15) Union operators face growing competition from operators based in third countries. It is therefore of the utmost importance to ensure that Union operators are not discriminated against. According to Article 1(4) of Directive 96/71/EC, undertakings established in

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a non-member State must not be given more favourable treatment than undertakings established in a Member State. That principle should also apply with regard to the specific rules on posting provided for in this Directive. It should, in particular, apply when third country operators perform transport operations under bilateral or multilateral agreements granting access to the Union market.

(16) The multilateral quota system of the European Conference of Ministers of Transport ('ECMT') is one of the main instruments regulating access to the Union market by third country operators and access to third country markets by Union operators. The number of permits allocated to each ECMT member country is decided on a yearly basis. Member States need to respect their obligation not to discriminate against Union undertakings, including when agreeing conditions for access to the Union market within ECMT.

(17) The power to negotiate and conclude the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport ('AETR') lies with the Union as part of its exclusive external competences. The Union should, in accordance with Article 2(3) of Regulation (EC) No 561/2006 of the European Parliament and of the Council[(8)], align the control mechanisms that can be used to control the respect of national and Union social rules by third country undertakings with the control mechanisms that apply to Union undertakings.

(18) Difficulties have also been experienced in applying the rules on the posting of workers specified in Directive 96/71/EC and the rules on the administrative requirements laid down in Directive 2014/67/EU to the highly mobile road transport sector. Uncoordinated national measures on the application and enforcement of the provisions on the posting of workers in the road transport sector have generated legal uncertainty and a heavy administrative burden on non-resident Union operators. This has created undue restrictions to the freedom to provide cross-border road transport services, with negative side-effects for jobs and the competitiveness of operators. Therefore, administrative requirements and control measures need to be harmonised. This would also prevent operators from suffering unnecessary delays.

(19) In order to ensure effective and efficient enforcement of the sector-specific rules on posting of workers and to avoid a disproportionate administrative burden on non-resident Union operators, specific administrative requirements and control measures should be established in the road transport sector, taking full advantage of control tools such as the digital tachograph. In order to monitor compliance with the obligations set out in this Directive and Directive 96/71/EC, and at the same time to reduce the complexity of that task, Member States should only be allowed to impose on operators the administrative requirements and control measures specified in this Directive, which are adapted to the road transport sector.

(20) Transport undertakings need legal certainty about the rules and requirements with which they have to comply. Those rules and requirements should be clear, understandable and easily accessible to transport undertakings, and should enable effective checks to be carried out. It is important that new rules do not introduce an unnecessary administrative

burden and that they duly take into account the interests of small and medium-sized enterprises.

(21) The administrative burden and document management tasks incumbent on drivers should be reasonable. Therefore, while certain documents should be available in the vehicle for inspection during roadside checks, other documents should be made available via the public interface connected to the Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council[(9)] by the operators and, where necessary, by the competent authorities of the Member State of establishment of the operator. The competent authorities should use the framework of mutual assistance between Member States set out in Directive 2014/67/EU.

(22) To facilitate the control of compliance with the posting rules set out in this Directive, operators should submit a posting declaration to the competent authorities of the Member States where they post drivers.

(23) In order to reduce the administrative burden on operators it is necessary to simplify the process of sending and updating posting declarations. Therefore, the Commission should develop a multilingual public interface, to which operators have access and via which they can submit and update posting information and submit other relevant documents to IMI, as necessary.

(24) Given that, in some Member States, social partners play a crucial role in enforcing social legislation in the road transport sector, Member States should be allowed to provide national social partners with the relevant information which has been shared via IMI, for the sole purpose of checking compliance with posting rules while respecting Regulation (EU) 2016/679 of the European Parliament and of the Council[(10)]. The relevant information should be provided to social partners by other means than IMI.

(25) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to specify the functionalities of the public interface connected to IMI. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(11)].

(26) Adequate, effective and consistent enforcement of the rules on working time and rest time is crucial to improving road safety, to protecting the working conditions of drivers and to preventing distortions of competition resulting from non-compliance. Therefore it is desirable to extend the scope of the existing uniform enforcement requirements set out in Directive 2006/22/EC of the European Parliament and of the Council[(12)] to include controlling compliance with the working time provisions set out in Directive 2002/15/EC of the European Parliament and of the Council[(13)].

(27) In view of the series of data necessary to carry out controls of the compliance with rules on working time set out in Directive 2002/15/EC, the extent of roadside checks depends on the development and introduction of technology enabling a sufficient period of time to be covered. Roadside checks should be limited to those aspects that can be