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IMPLEMENTING DECREE ON THE POSTING OF WORKERS LAW IN FRANCE – LOI MACRON

France adopts new measures on the posting of workers in road transport entering into force on 1 July 2016.

I. ANALYSIS

On 9 April 2016, the implementing decree on *Loi Macron* was published in the Official Journal of the French Republic, the full text (in French) can be found [here](#).

As IRU Members were already informed, as of 1 July 2016, *Loi Macron* envisages new obligations for freight and passenger transport companies when posting drivers to France, similar to those already in force in Germany under the MiLoG. According to IRU interpretation (and as verified with the French Permanent Representation to the EU), the new provisions are applicable to cabotage, bilateral intra-EU transports, with only transit operations being exempted. At this moment, it is unclear whether the new law applies to all cabotage and bilateral transport operations in the French territory, regardless of the direct contract conditionality as stipulated by the Posting of Workers Directive (Article 1, par. 3a of Directive 96/71). It is therefore crucial to verify with the French authorities whether the new obligations apply at the moment when the operator crosses the French border (as is with the extensive interpretation of the Posting of Workers Directive by Germany) or if there has to be a direct contract between the transport company and its customer.

Under the *Loi Macron*, the driver posted to France is entitled to the French minimum wage and other elements¹ in line with Article 3 of Directive 96/71. Responsibility is also placed on the receiver of the goods and the transport company has to designate a representative in France.

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- (a) maximum work periods and minimum rest periods;
 - (b) minimum paid annual holidays;
 - (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
 - (d) the conditions of the hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
 - (e) health, safety and hygiene at work;
 - (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; and
 - (g) equality of treatment between men and women and other provisions on non-discrimination.

The implementing measures in detail are notably the following:

1) The certificate of posting

The posting transport company is required to present a certificate of posting. The validity of this certificate is a maximum of six months.

The certificate is drawn up in French before the start of the first posting operation.

When the posting is performed:

- a) on behalf of the employer and under his direction, under a contract concluded between it and the recipient of the benefit established or operating in France;
- b) on the employer's account, unless there is a contract between the company and the recipient;

the certificate is signed and dated and includes:

- the name or business name and the mailing and electronic addresses, telephone numbers of the company that usually employs the employee, the legal form of the company, the full name, date and place of birth of designated managers, the appointment of the social security agencies or similar to which the company pays social security contributions or equivalent;
 - the full name, date and place of birth, address of habitual residence, nationality, date of signature of the contract of employment and labour law applicable to the employment contract, professional qualifications of the posted employee (*to be clarified*);
 - the gross hourly wage rate, converted into euros if applicable, and the details of the company's arrangements as regards the costs incurred for accommodation and meals, i. e. daily allowances for the posted employee;
 - the name or full name and the mailing and electronic addresses, telephone numbers of the representative (see below);
 - reference to the company's registration in the national electronic register of transport undertakings (cf. Article 16 of Regulation (EC) No. 1071/2009, *to be clarified*);
- c) When the posting takes place between establishments of the same company or between companies in the same group, or is carried out in the framework of temporary work, the certificate further comprises of:
- the name or business name and the mailing and electronic addresses, telephone numbers and the SIRET identification number of the company or host institution in France to which to employee is posted, the start date of posting and the scheduled end, the arrangements of travel expenses, and possibly the address of the places of accommodation of the employee.

2) The obligation to designate a representative in France

The employer posting the employee (i.e. the foreign company) must appoint a company representative in France, responsible for liaising with the supervisory body for the duration of the service provision. The minimum period of appointment of the representative is 18 months following the posting.

3) Evidence and record keeping obligation

The above-mentioned certificate of posting is drawn up in two copies, one of which is given to the employee to be kept on board the vehicle and the other is held by the designated

representative of the company or by the company employing the posted worker. In addition, a copy of the valid certificate must be kept on board the vehicle for control purposes and/or at the request of the competent authorities.

In addition, the following documents must be kept on board the vehicle:

- the employment contract of the driver;
- if applicable, a copy translated into French of collective agreements applicable to the employment contract.

4) Potential criminal and administrative sanctions

The amount of the fine shall not exceed €2,000 per posted employee and not more than €4,000 in the case of repetition within one year from the date of notification of the first fine.

The total amount of the fine cannot exceed €500,000.

II. ACTION

IRU Members are kindly asked to take note of this initial information.

Next steps:

The IRU Secretariat will continue to monitor this issue and inform Members accordingly. The IRU Secretariat will also reflect on the next steps, including on the possibility to request additional information from the French authorities, namely on the exact scope and practicalities of the implementing decree.

As a reminder, in March 2015, the IRU already sent a letter to the French Minister of Transport voicing the concern whether the measures under *Loi Macron* are line with the EU legal framework, notably Directive 96/71 and the danger of administrative and financial burdens stemming from the new legislative framework.

For the sake of legal certainty of the road transport operators, it would seem more appropriate to await the EC decision in the MiLoG infringement case before proceeding with the implementation of *Loi Macron*. The IRU Secretariat will also raise this point with the EC.

As IRU Members were also notified, informal contacts were taken with the French Permanent Representation to the EU to organise a workshop for the road transport stakeholders on *Loi Macron*.

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