

POLITICAL OPINION OF THE FRENCH SENATE ON THE POSTING OF WORKERS

- ① Having regard to directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services,
- ② Having regard to directive 2014/67/UE of 15 May 2014 on the enforcement of directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')
- ③ Having regard to Regulation (EC) No 883/2004 of 24 April 2004 on the coordination of social security systems,
- ④ Having regard to Regulation (EC) No 987/2009 of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems,
- ⑤ Having regard to Regulation (EC) No 1072/2009 of 21 October 2009 on common rules for access to the international road haulage market,
- ⑥ Having regard to the communication from the Commission to the European Parliament, the Council and the European Economic and Social committee - Monitoring the implementation of the European Pillar of Social Rights (COM(2018) 130 final),
- ⑦ Having regard the proposal for a directive amending directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (COM (2016) 128 final),
- ⑧ Having regard to the proposal for a regulation establishing a European Labour Authority (COM(2018) 131 final),

- ⑨ Having regard to the proposal for a directive amending directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (COM(2018) 241 final),
- ⑩ Having regard to the proposal for a regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM(2016) 815 final),
- ⑪ Having regard to the proposal for a directive amending directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to directive 96/71/EC and directive 2014/67/EU for posting drivers in the road transport sector (COM(2017) 278 final),
- ⑫ Having regard to the proposal for a regulation amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector (COM(2017) 281 final),
- ⑬ Having regard to the proposal for a regulation amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs (COM(2017) 277 final),
- ⑭ Having regard to the proposal for a directive amending directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (COM(2017) 648 final),
- ⑮ Having regard to the resolution No 169 (2015-2016) approved by the Senate on the proposal for a targeted revision of directive 96/71 EC concerning the posting of workers of 1st July 2016,
- ⑯ Having regard to the European resolution of the Senate No n°102 (2016-2017) concerning the compliance of the proposal for a Regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM (2016) 815 final), of 8 march 2017 with the subsidiarity principle.

- ⑰ Having regard to the European resolution of the Senate No 114 (2013-2014) of 15 May 2014 on the social dumping in European transport ;
- ⑱ The European affairs committee of the french Senate :
- ⑲ Recalls that the posting of workers must lead to the workforce lack in a specific sector being fulfilled and encouraging mobility across the European Union ;
- ⑳ Considers it essential that equal treatment of workers carrying on the same task at the same place, in all sectors of activity, be ensured ;
- ㉑ *On the draft revision of directive 96/71/CE concerning the posting of workers :*
- ㉒ Welcomes the compromise reached between the European Parliament and the Council on the draft revision of directive 96/71/EC concerning the posting of workers ; considers it must lead to a better respect of workers' social rights and fight against competitive distorsions ;
- ㉓ Supports the decision not extend the duration of posting of workers beyond 12 months, unless with a six month option but it considers that this duration will need to be assessed in the context of a broader reference period ;
- ㉔ However regrets the application of the sending nation scale to the calculation of the reimboursment of seconding costs ; Deems it can in some instances undermine the living conditions of posted workers in host countries ;
- ㉕ Considers that company agreements should also apply to posted workers ;
- ㉖ Questions the absence of any new provision regarding the framing of subcontracting chains ;
- ㉗ *On the European Labour Authority and the fight against « letter box » companies ;*
- ㉘ Supports the Commission's initiative in favour of the creation of a European labour authority intended to improve administrative cooperation between member States ;

- ②⑨ Considers necessary that it is accompanied by a crossroads Bank for social security, based on an interlinking of European social security systems ;
- ③⑩ Requests the development of a company register providing services within several member States in order to better identify « letter box » companies ; considers it should also be able to publish a black list of companies convicted of posting of workers fraud, searchable by supervisory authorities ;
- ③① Considers that a company should realise at least half of its turnover within its country of establishment ;
- ③② Calls for the enrolment in the European law of the principle that a European society cannot be allowed to locate or transfer its head office in a member State in which it hasn't any real economic activity ;
- ③③ *On the revision of regulations concerning social security coordination :*
- ③④ Wishes to secure the certificate A1 of the social security scheme registration of the sending country and thus that it also contains the holder's identity photo ; considers it must be de-designated whenever there are some serious doubts concerning the reality of the posted worker's social security scheme registration of the country of establishment ;
- ③⑤ Regrets the use of implementing acts to implement a standard procedure, accompanied by the deadline for the issue, the format, the content of certificate A1 ; considers that a little latitude should be let to member States for control purposes, in accordance with the case law of the European Court of Justice ;
- ③⑥ Considers essential the creation of a European social security number allowing the interconnection of European social security systems, a real-time coverage identification and check as well as reducing the risk of errors and fraud related to the paper documents use ;
- ③⑦ Questions the operation of the administrative Commission for the coordination of social security systems and finds necessary the implementation of short deadlines of exchanges between supervisory authorities ;

- ③⑧ Welcomes the Council's general approach of 23 October 2017 providing for an enrollment of the worker in the social security scheme of the establishment country of the company which has posted him three months before its posting ; wishes to also check that he had been pursuing an activity within this company and this country for at least three months ;
- ③⑨ Asks for an alignment of the maximal posting duration planned regarding social security with the one chosen in the context of the revision of the 1996 directive, that is 12 months in addition to a six month option ;
- ④⑩ Wishes, for the purposes of controlling the reality of the enrollment to a social security system and the remuneration amount paid, to be implemented a collection system of social contributions concerning workers posted by host member States that would reverse them later to the States where are established the companies ;
- ④⑪ Calls for a better framing for the multi-active worker status, integrating the progress made regarding the posting of workers ;
- ④⑫ *On the secondment regime in the international road transport :*
- ④⑬ Endorses the Commission's desire to strenghten controls regarding posting fraud in the transport sector, by targeting « letter box » companies and setting numerical goals ; supports its framework project of light-duty vehicles activities ;
- ④⑭ Considers the Commission's proposals complicated, unenforceable or potentially dangerous for small companies only working on national markets ;
- ④⑮ Urges that social standards of the hosting country be applied from the first delivery day ;
- ④⑯ Recalls that the European regulation regarding cabotage had been initially implemented to avoid empty returns and thus to alleviate the environmental cost and not to fully liberalise the sector of road transport of goods ; is opposed to any cabotage deregulation ;

- ④⑦ Welcomes the review of the definition of rest time, especially forbidding the rest period in the cab ; however considers it will reduce only imperfectly the permanent cabotage, the norms regarding cabotage geared towards the trucks and not to the drivers ;
- ④⑧ Regrets that the European Commission only proposes a closed list of control measures and administrative requirements ; accordingly asks the alignment with the Action Directive 2014/67/UE which provides for an open list of controls, in other sectors, in order to enable the member States to be as reactive as possible before fraud mechanisms every time more complicated ;
- ④⑨ Wishes the digital tachograph to be generalised to all trucks as early as 2023 ;
- ⑤⑩ Considers that the ongoing european rules review concerning combined transport should provide for the application of the posting of workers system for any international operation.