

 <p>Liberté • Égalité • Fraternité RÉPUBLIQUE FRANÇAISE</p>	<p><b>FREQUENTLY ASKED QUESTIONS</b></p> <p><b>about the new provisions governing application of posted worker legislation to drivers and crew members employed by inland transport companies</b></p> <p><b>(Art. L. 1331-1 to L. 1331-3 and Art. R. 1331-1 to R. 1331-11 of the French Transport Code)</b></p>
<p>MINISTÈRE DE LA TRANSITION ÉCOLOGIQUE ET SOLIDAIRE</p>	

## **Overview of the new formalities governing the posting of certain employees in the transport sector**

### **What are the general aims of the new French legislation?**

With reference to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 and to Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014, the new French legislation (articles L. 1331-1 to L. 1331-3 and articles R. 1331-1 to R. 1331-11 of the French Transport Code) is intended to adapt the formalities governing the posting of workers set out in the French Labour Code to the specific requirements of the inland transport sector.

All provisions of the French Labour Code governing posting that are not expressly exempted will continue to apply.

The new rules have three purposes:

- to set out the formalities tailored to the specific needs of inland transport undertakings posting driver and crew member employees within France – common law formalities laid down by the French Labour Code in application of Directive 96/71/EC of 16 December 1996 and Directive 2014/67/EU of 15 May 2014.
- to provide posted driver and crew member employees with easier access to information about their rights.
- to strengthen enforcement in order to better combat worker posting fraud – a common unfair competitive practice that harms law-abiding firms and the rights and working conditions of posted workers.

### **What date will these new formalities enter into force?**

The new formalities come into full effect on 1 July 2016.

### **To what scope do the new formalities apply?**

The new formalities are applicable to undertakings established outside France, which meet all of the following conditions:

- 1°) They carry out one of the inland transport activities defined in article L. 1321-1 of the French Transport Code (in practice, road or river transport activities), or they are a temporary employment

undertaking

2°) They post a driver or crew member employee to work in France, in the cases set out in article L. 1262-1 or article L. 1262-2 of the French Labour Code.

These cases are those indicated in article 1 of Directive 96/71/EC of 16 December 1996, i.e.:

- undertakings carrying out a transnational service, where the recipient of the service is established or operates in France
- undertakings posting workers to another undertaking within the same group or to another establishment of the same company
- undertakings providing a temporary worker to an undertaking located in France, where the temporary employment undertaking is located outside France.

### **Does the new legislation apply to industrial undertakings?**

The specific formalities for the posting of workers in the inland transport sector do not apply to businesses that are not, themselves, public transport undertakings, such as industrial undertakings that employ drivers or crew members to transport their goods.

### **Does the new legislation apply to self-employed workers? How are these workers identified?**

The situation for self-employed workers remains unchanged:

- They are not covered by the rules governing posting of workers and, therefore, are not bound by the duty of declaration, whether under common law or under the specific provisions governing inland transport.
- The status of self-employed workers remains entirely independent from the new rules set out in the French Transport Code. No specific documents are required as proof of self-employed status. However, in the event of an inspection, it may be useful to provide a document confirming that the party in question has self-employed status, as governed by the legislation of the self-employed worker's country of residence.

### **Does the legislation on posted workers apply to undertakings established outside an EU Member State?**

The legislation on posted workers applies to employers established outside the European Union. Article L. 1262-1 of the French Labour Code provides for the temporary posting of employees by an employer established outside France. The posting-related provisions (applicable rights, formalities and posting conditions) therefore apply to the employees of these undertakings, subject to the provisions of any duly ratified or approved and published treaties, conventions or agreements (article L. 1261-1 of the French Labour Code). France has not signed any bilateral agreements relating to the road transport sector that contain exemptions from the rules governing the posting of workers, or from the application of such rules. This means that employers (i.e. road transport undertakings) established in a third (non-EU) country must therefore comply with the declaration formalities set out in the French Transport Code.

### **Why does the French legislation not specify rule application cases for different transport operations?**

This is not the purpose of the legislation. The new legislation's sole purpose is to define the specific formalities tailored to the needs of the transport sector.

The scope of posted worker legislation remains governed exclusively by the rules set out in Directive 96/71/EC of 16 December 1996, transposed into French law by articles L. 1262-1 and L. 1262-2 of the French Labour Code.

In practice, international transport operations to or from France and cabotage operations on French territory,

performed by an employee temporarily posted to France and retaining his/her employment relationship with the undertaking from which he/she was posted, meet the criteria for application of posted worker legislation, and are therefore subject to the specific declaration obligations governing the posting of workers in the inland transport sector.

However, an operation involving transit across the national territory, with no loading or unloading of goods, or boarding or alighting of passengers, does not meet the criteria for application of posted worker legislation and, therefore, is not bound by any declaration obligations, either under common law or under the specific legislation governing inland transport.

**Do different formalities apply to posted workers driving vehicles weighing less than 3.5 tonnes?**

Employees driving vehicles weighing less than 3.5 tonnes are subject to the same declaration formalities when posted in France.

**What about the “eight-day rule”, under which there was no requirement to make a formal declaration of posting for employees performing cabotage operations for a period of less than eight days?**

Under the previous system, transport undertakings posting driver or crew member employees to perform cabotage operations for a period of less than eight consecutive days were not required to make a formal declaration of posting.

This rule no longer applies from 1 July 2016.

The certificate of posting, which replaces the declaration of posting, must be completed prior to the commencement of the first transport operation involving the posting of the employee.

**Will different formalities apply to employees in the passenger transport sector? What types of passenger transport will be covered?**

No. The specific formalities set out in the French Transport Code are not dependent on the nature of the activity (goods or passenger transport).

Regular passenger road transport services performed by drivers working for non-resident undertakings fall under the scope of specific declaration formalities if their activity involves the boarding or alighting of passengers on French territory. The decision on whether or not the undertaking is covered by the posted workers rules will be based on the original copy of its service operator authorisation, or a certified copy carried on board the vehicle, stating the stops and timetables of the service.

Where this authorisation includes passenger boarding or alighting points in France, the driver of the vehicle is covered by the posted workers declaration formalities. However, where the service only passes through French territory, these formalities do not apply.

Moreover, the posted workers declaration formalities apply to cabotage operations carried out as part of a regular service or a special regular service (defined by Regulation (EC) No. 1073/2009 as “regular services, by whomsoever organised, which provide for the carriage of specified categories of passengers to the exclusion of other passengers”).

Occasional international services departing from another Member State – whether organised as part of a package travel service in the meaning of Directive (EU) No. 2015/2302 of 25 November 2015 or otherwise – are not covered by the posted workers declaration formalities, since this type of service involves the transportation of a fixed group of passengers, with no new passengers boarding or alighting the service

during the route. Where the group stops for one or more overnight stays in France, this does not alter the nature of the transport service.

However, cabotage operations carried out as part of an occasional service are subject to the posted workers rules.

The decision whether a transport operation is subject to the posted workers rules will, ultimately, be based on the precise nature of the operation in question. This will be determined on the basis of the journey form, a template of which is provided in Annex I of Commission Regulation (EU) No. 361/2014 laying down detailed rules for the application of Regulation (EC) No. 1073/2009 as regards documents for the international carriage of passengers by coach and bus.

**Do the posted workers declaration formalities apply in the following cases?**

- A humanitarian operation where the inland transport service is performed free of charge (some drivers are paid, others are volunteers):

The applicable regime is not determined by the purpose of the transport operation. Provided that the relevant conditions are met and that the driver is an employee, the posted workers provisions apply.

- An international freight transport operation where the vehicle is empty for part of the journey:

The new provisions relate to driver and crew member employees and therefore apply whenever these employees are at work, whether the vehicle is loaded or empty.

- Imported vehicles purchased in France by an undertaking and driven by employees of the undertaking to the country in which they are registered:

This situation is classified as a vehicle import operation, not a public transport operation. The posted workers formalities for transport operations do not therefore apply.

Undertakings carrying out individual passenger transport services (e.g. taxis) are not covered by the scope of the new legislation.

## Certificate of posting

### Why is a certificate of posting required and when do employers have to produce one?

For drivers and crew members employed by inland transport undertakings, the certificate of posting replaces the declaration of posting mentioned in the French Transport Code. This means that inland transport undertakings do not have to use the declaration of posting required for other employees when posting drivers and crew members.

A certificate of posting must be produced for each posted employee prior to the commencement of the first operation involving the posting of the driver or crew member, irrespective of the nature of the transport operation. The certificate of posting will remain valid for the period indicated by the undertaking, up to a maximum of 6 months for all transport operations included in the scope of the posting. This means that the certificates may cover multiple posting operations.

The six-month period is a rolling period, from one date to another, over six consecutive months. The certificate does not have to state a deadline for the transnational transport services scheduled during the period. Moreover, the certificate does not have to include details of all journeys carried out in France. The certificate of posting must be appended to the host company's single personnel registry, both for intra-group posting and for posting by a temporary employment undertaking.

### How do I complete the certificate?

There are three types of CERFA form, depending on the specific information required for each type of posting operation. The employer must complete the appropriate form for its employee's situation. Employers must complete the form directly using the SIPSI online service at <https://www.sipsi.travail.gouv.fr>

### Some undertakings, due to national legislation, are not registered with the national electronic register of transport undertakings. How do these undertakings complete the corresponding section of the certificate?

This situation applies only to transport operations performed using vehicles with a permitted laden weight exceeding 3.5 tonnes. In addition, and on a temporary basis, it only concerns road transport undertakings from Member States that are not yet fully compliant with their obligations under European law, by which they are required to establish a national electronic register of road transport undertakings, as set out in article 16 of Regulation (EC) No. 1071/2009.

In such cases, the undertaking should complete the certificate with the licence number allocated under the existing system in the Member State in question.

### How do I enter the SIRET number if my undertaking is not established in France?

If a temporary employment undertaking provides a posted worker to an undertaking established outside France, there is no need to enter the SIRET number.

### Who produces the certificate?

Posting situation	Individual responsible for producing the certificate
Transnational transport service	<ul style="list-style-type: none"><li>The director of the transport undertaking</li></ul>

	employing the individual in question.
Intra-group posting	<ul style="list-style-type: none"> <li>• The director of the undertaking normally employing the individual in question.</li> <li>• Or, failing that, the director of the transport undertaking to which he/she is posted in France.</li> </ul>
Posting by a temporary employment undertaking	<ul style="list-style-type: none"> <li>• The director of the temporary employment undertaking</li> <li>• Or, failing that, the director of the transport undertaking to which he/she is posted in France.</li> </ul>

**What guarantees are offered in terms of processing the data entered in the form?**

The data controller establishes sufficient protective measures to ensure that the data are processed securely, to prevent abusive or fraudulent use of the data, particularly by unauthorised third parties, and to preserve the integrity of the data. A daily log of all connections is kept. The resulting information is retained for a maximum period of 12 months.

**To whom should I submit the certificate?**

A hard copy of the certificate must be produced and given to the posted employee, who must keep it on board the vehicle for inspection purposes.

From 1 January 2017, the undertaking’s representative in France is no longer required to hold a copy.

**In addition to the certificate, what other posting-related documents must be kept on board the vehicle?**

The documents that must be kept on board the form of transport used to carry out the service (i.e. on board the vehicle or boat) are listed in article R.1331-7-III of the French Transport Code.

In all situations involving the posting of driver or crew member employees, the employee’s contract of employment must be kept on board the vehicle. The contract of employment does not have to be translated into French. If a contract of employment is not a legal requirement in the posted employee’s country of residence, then this obligation is waived. However, it may be useful for the employee to produce a document attesting to the employment relationship (the Council directive 91/533/CEE of October 14<sup>th</sup> 1991).

In situations involving intra-group posting, a French translation of the secondment agreement and the addendum to the contract of employment must also be kept on board.

These two documents are explicitly required for not-for-profit labour lending between companies, pursuant to article L. 8241-2 of the French Labour Code. The secondment agreement between the lending company and the host company sets out the duration of the loan and the identity and qualification of the employee in question. It also specified the method by which the wages, social security contributions and professional fees billed by the lending company to the host company are determined. The addendum to the contract of employment details the work that the employee will carry out in the host company, his/her working hours and place of work, and the specific characteristics of his/her workstation.

In situations involving posting by a temporary employment undertaking, a French translation of the temporary contract of employment (contract between the worker and his/her temporary employment agency) and the secondment agreement with the undertaking established in France must also be kept on board.

**Where translations are required, must these translations be produced by a certified translator?**

The certificates must be translated into French. However, only personal identification details and figures are compulsory for inclusion on the certificate, and this information does not require specific translation. The translations do not have to be produced by a certified translator.

**The certificate must include information about the collective bargaining agreement. Is this the French agreement or the agreement in the country of origin?**

The certificate must mention one of the following French collective bargaining agreements: road freight or passenger transport, inland waterway freight or passenger transport.

**Does an undertaking from a third (non-EU) country have to complete form A1 in addition to the certificate?**

The legislation arising from the French Act of 6 August 2015 on growth, business and equal economic opportunities and the French decree of 7 April 2016 sets out the specific labour law formalities governing posted workers, without prejudice to other applicable rules such as social security rules. Social security provisions may be consulted by visiting the CLEISS website: <http://www.cleiss.fr/>

## The rights of posted driver or crew member employees

### **What legal rights do posted driver or crew member employees have?**

There are no specific legal rights assigned to posted driver or crew member employees. These employees enjoy the same fundamental rights as posted employees in other sectors.

These rights are set out in article L. 1262-4 of the French Labour Code.

- 1° Individual and collective freedoms in the employment relationship
- 2° Discrimination and gender equality
- 3° Maternity protection, maternity, paternity and childbirth leave, leave for family events
- 4° Secondment conditions and guarantees due to employees by temporary employment undertakings
- 5° Right to strike
- 6° Working time, rest periods, public holidays, paid annual leave, working time and night work for young workers
- 7° Conditions governing application of the inclement weather lay-off funds
- 8° Minimum wage and wage payment, including additional pay for overtime, and perquisites set by law or collective bargaining agreement
- 9° Rules governing health and safety at work, minimum working age and child labour
- 10° Illegal labour.

### **Does the new French legislation introduce new rights for workers in the inland transport sector posted in France?**

The new French legislation does not introduce any new rights for workers. Instead, it adapts the existing arrangements governing application of posted worker legislation, to provide stronger guarantees that driver and crew member workers in the inland transport sector enjoy their full rights as recognised by Directive 96/71/EC of 16 December 1996 and as set out in article L. 1262-4 of the French Labour Code.

### **How does the certificate provide the employee with easier access to information about his/her rights as a posted worker?**

A copy of the certificate must be kept on board the vehicle. This means that the driver is fully informed of his/her situation and, where applicable, is able to exercise his/her rights.

### **What guarantees do posted workers have in terms of pay?**

The posted employee must be paid in line with the minimum wage in France, or the wage set by collective bargaining agreement, where this is higher than the wage set by the law by which the contract of employment is governed.

However, the rights guaranteed by French law shall not prevent the employee from enjoying more favourable rights, where such rights arise from the law by which the posted employee's contract of employment is governed. For example, the employee will retain his/her contractual wage where this is higher than the minimum wage in France or the wage set by collective bargaining agreement.

### **In practical terms, what elements should be considered when calculating the reference minimum wage?**

Within the framework of article 3§1 of Directive 96/71/EC of 16 December 1996, article L. 1262-4 of the

French Labour Code states that the reference minimum wage applicable in France must include the following elements:

- the minimum pay (hourly or monthly)
- additional pay for overtime
- and perquisites set by law or collective bargaining agreement.

The amounts are expressed gross.

An up-to-date list of elements for **driver** employees can be found in an online fact sheet available at the following address: <http://www.developpement-durable.gouv.fr/Formalites-declaratives.47857.html>.

An up-to-date list of elements for **crew member** employees can be found in an online fact sheet available at the following address: <http://www.developpement-durable.gouv.fr/Detachement-dans-le-transport.html>.

It is important to remember that the employee retains the wage payable under the law by which his/her contract of employment is governed, where this wage is higher than the reference minimum wage.

**What elements of the pay received by the employee from an undertaking not established in France may be considered when verifying compliance with the minimum wage in France?**

Pursuant to paragraph 7 of article 3 of Directive 96/71/EC of 16 December 1996, the following elements may be considered:

- the employee's wage
- any additional pay for overtime
- any perquisites (e.g. length of service bonus)
- any allowances specific to the posting (e.g. expatriation bonus)
- any benefits in kind.

These amounts are expressed gross.

However, any allowances paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging – and including any such amounts paid on a fixed-rate basis – may not be included.

Where the employee is paid a flat fixed rate, the employer is responsible for declaring the estimated portion attributable to board, lodging and – where applicable – travel expenses.

The vehicle supplied by the employer cannot be considered the driver employee's accommodation in all circumstances. As such, no portion of the flat fixed rate paid to the employee may account for accommodation expenses away from the base of the undertaking. Article 8 of Regulation (EC) No. 561/2006 of 15 March 2006 allows drivers to take daily and reduced weekly rest periods on board the vehicle when working away from the base of the undertaking, provided that the vehicle is stationary and has suitable sleeping facilities for each driver. However, this same article also states that the driver must "choose" to exercise this option. This means that the employer must provide the driver with a choice of accommodation other than the vehicle, either by paying him/her a daily allowance to cover accommodation (overnight stay) expenses, or by directly covering the cost of accommodation away from the vehicle. In addition, drivers are not permitted to take their normal weekly rest period on-board the vehicle and the employer must always cover the driver's accommodation costs during this rest period, where it is taken away from base.

The portion of the allowance deemed by the employer to cover the employee's meals must be assessed objectively and must be justifiable in the event of an inspection.

For information purposes, the table below shows the allowance rates applicable to road drivers according to the national collective bargaining agreement for road transport, in line with the extended protocol applicable

<https://www.legifrance.gouv.fr/affichIDCC.do;jsessionid=D4C5BD3BB5531171611A953458652579.tpdila09v1?idSectionTA=KALISCTA000035233104&cidTexte=KALITEXT000035233092&idConvention=KALICON T000005635624&dateTexte=29990101>

(in euros)

Expense type	Rate	Protocol article ref.
Meal allowance	13.40	Art. 3, para. 1
Single meal allowance	8.25	Art. 4
Single meal allowance (night)	8,03	Art. 12
Special allowance	3,63	Art. 7
Snack allowance	7.26	Art. 5
Long trip allowance		
1 meal + 1 overnight stay	42.86	Art. 6
2 meals + 1 overnight stay	56,26	

### What exchange rate should be used if the wage is not paid in euros?

The wage paid in foreign currency is converted into euros at the most recent [reference exchange rate](#) published by the European Central Bank on the date on which the posting is scheduled to commence. The undertaking may use the exchange rate published for the week, or the rate published for a shorter reference period.

### Does the hourly wage apply to the section of the journey in France or to the entire trip?

Provided that it is more favourable, the French hourly wage applies only to the hours worked by the posted worker in France.

### In practical terms, how are the French territory entry and exit dates and times established?

There are no specific rules for the transport sector. The employer determines the number of hours worked by the employee in France by any appropriate means .

Generally speaking, where there are suspicions that the amount of time worked in France has been artificially reduced, the burden of proof rests with the enforcement services. The employer is entitled to contest the findings of the inspectors by any appropriate means.

### How are the working time rules applied, particularly for short-term postings?

Compliance with French legislation on maximum working time and minimum rest periods is only required where the employee is posted in France for a period at least equal to the reference period.

For example, the employee may not work more than the maximum number of hours per week if he/she is posted in France for a period of at least one week. This rule does not apply if the posting period is shorter than one week.

The reference rules for **driver** employees can be found in an online fact sheet available at the following address: <http://www.developpement-durable.gouv.fr/Formalites-declaratives,47857.html>.

An up-to-date list of elements for **crew member** employees can be found in an online fact sheet available at the following address: <http://www.developpement-durable.gouv.fr/Detachement-dans-le-transport.html> .

Only the actual hours worked are used to calculate the minimum wage. It is not possible to assign a fixed

number of hours per day.

**Special cases:**

**Do the posted worker rights, and the right to the minimum wage in particular, apply if the driver owns the lorry?**

Ownership of the vehicle is irrelevant in terms of posted worker rights.

**If the vehicle has two drivers on board, are both drivers (the one driving and the one resting) entitled to the same hourly wage?**

Only worked hours are paid in France. In this specific case, 100% of the time that the second driver spends not driving while the vehicle is in motion is paid.

For passenger road transport, only 50% of this time is considered working time when calculating daily and weekly working time limits.

For road haulage, however, 100% of non-driving time while the vehicle is in motion is considered working time.

## The employer's representative in France

### **Who may be designated as the employer's representative in France?**

Pursuant to article 9-1.e) of Directive 2014/67/EU of 15 May 2014, article L. 1262-2-1 of the French Labour Code states that any employer that posts employees to France must appoint a representative on the national territory, and that such representative is responsible for liaising with the enforcement services.

There are no specific rules for the inland transport sector when it comes to the designation of the representative. The representative may be any natural or legal person, from within or outside the undertaking (at the employer's discretion), with the necessary resources and skills to fulfil the duties of the role. Such person must also be physically present in France. The representative's remuneration is determined by a formal contract with the undertaking by which the representative is designated. Where the representative fails to fulfil its obligations, it shall be held civilly liable towards the employer by which it was designated.

### **Can the representative be established abroad if it has a P.O. box address or premises in France?**

The representative in France must be a company (or individual) established in France (e.g. another transport undertaking, a consulting or legal firm, etc.). An address is not sufficient.

### **For how long is the representative of the employer posting driver or crew member employees in France required to respond to the enforcement services?**

This period, within the inland transport sector specifically, is set at 18 months following the date on which the employee's posting period ends. There are no rules governing the length of the representative's contract or mandate.

### **Can a single representation contract or mandate cover all drivers posted to France by the same undertaking in a given period?**

There are no specific rules in this respect. There may be a single mandate per undertaking (covering all driver or crew member employees) or a single mandate per employee.

### **Can someone else replace the representative when he/she is on leave? If so, what formalities are required?**

It is up to the representative and the undertaking that appointed him/her to take the necessary steps to ensure that a contact person is in place in the event of an inspection during his/her leave.

### **What happens if the employer decides to change representative?**

The former representative must continue to respond to the enforcement services for the operation(s) occurring during the period in which it was designated, and for 18 months following the date on which the employee's posting period ends.

### **What is the role of the employer's representative?**

The representative must be able to respond to requests from the enforcement services.

It must therefore be in possession of a certain number of documents.

For posted driver or crew member employees, it must retain copies of the employee's payslips covering the posting period. These payslips may be replaced by other documents, provided that such documents contain precise and specific details of the employee's gross hourly pay, working hours (including separate details of

hours paid at a higher rate), leave, public holidays, and a breakdown of his/her remuneration.

The representative must also hold documents:

- showing that the employee has actually been paid
- mentioning its designation by the undertaking
- mentioning the title of the collective bargaining agreement applicable to the posted employee.

**Within what deadline and in what format is the representative required to respond to the enforcement services?**

The representative must be able to present and communicate the documents requested by the enforcement services without delay. These documents must exist prior to the communication request, and must not be created solely for the purpose of responding to requests from the enforcement services.

Documents may be submitted in a standard electronic format (such as PDF).

**Does the representative have to be available 24/7 to deal with requests from the enforcement services without delay?**

No, this is not compulsory, but the undertaking may establish permanent availability at its discretion.

**Can the payslips retained by the representative be produced after the employee has been posted (1 or 2 months later)?**

The rules governing the issue of payslips, as set out in French labour law, remain unchanged by the new legislation.

**How should the documents collected by the representative be stored (hard-copy or electronic format)?**

There are no specific format rules. However, it must be possible to consult the document at any time within the given period (posting time +18 months).

## Liability and sanctions

### **What should the contractor do when its co-contractor posts employees covered by the scope of the new legislation?**

The contractor must verify that the certificate of posting has been produced.

### **Who bears the contractor's liability under a subcontracting agreement?**

Each subcontractor, irrespective of its position in the chain, is considered to be a contractor towards its own subcontractors.

### **Under the transport contract, what obligations are incumbent on the recipient of the service?**

Generally speaking, the recipient has no specific obligations as regards posting under the transport contract.

However, where the recipient is a business established in France, it may be contacted by the enforcement services, on a secondary basis:

- if the posting takes place as part of a transnational transport service
- and if neither the contractor nor the carrier is established in France.

Where both of these conditions are met, the enforcement service may request that the recipient contact the employer and ask the employer to address certain irregularities (non-payment of the minimum wage, unfit accommodation conditions, non-compliance with the core principles of labour law).

The recipient may be declared jointly liable for breaches by the employer only where it fails to act on such request, or where it fails to report on its actions.

### **Does the administrative authority have the power to suspend the transport operation if it finds irregularities relating to the posting of workers?**

As in all other sectors, the administrative authority has the right to suspend the service in the event of certain serious or repeated infringements, as set out in the French Labour Code.

However, the authority must first issue an injunction calling on the undertaking to address the irregularities before proceeding with the suspension. Under this arrangement, the procedure should only apply to a small number of situations in which the transport service is carried out over a sufficiently lengthy period of time.

### **What sanctions will be applied to those who infringe these new rules?**

No sanctions are applied to the driver.

Failure to carry a valid, compliant certificate on board the vehicle will be punishable by a class 4 fine (up to a maximum of €750) levied against the employer (art. R. 1331-9 of the French Transport Code). Failure to carry the employee's contract of employment and, where applicable, the employee secondment agreement on board the vehicle will be punishable by a class 3 fine (up to a maximum of €450) levied against the employer (art. R. 1331-10 of the French Transport Code).

Infringement, by the employer, of the obligations of submitting a declaration of posting (which the certificate is substituted to) and designate a representative – as set out in article L. 1264-1 of the French Labour Code –

shall also be punishable by administrative fines (up to a maximum of €2,000 per employee).

Infringement, by the contractor, of the duty of vigilance shall be punishable by an administrative fine, pursuant to articles L. 1264-2 and L. 1264-3 of the French Labour Code, of up to €2,000 per employee and €4,000 per employee for a repeat offence, capped at a maximum of €500,000 in total.

However, the same offence for the same employee may not be punishable by multiple criminal and administrative fines.

**Are there any specific sanctions against the representative, for example if it fails to respond – or does not respond comprehensively – to requests from the enforcement services?**

No. However, if the representative fails to carry out its duties, this may be considered a breach by the employer, which may be liable for criminal or administrative sanctions (e.g. an administrative fine against an employer that has failed to produce a certificate).

Besides, the representative in France could be penally implicated if the intentionally hinders the agent from controlling.

**What sanctions will be applied to those who fail to pay the minimum wage?**

Where an employer fails to pay the minimum wage due to a posted employee, it shall (principally) be subject to the following measures:

- **Either a criminal sanction:** where the employer fails to pay the statutory minimum wage (SMIC) or the statutory minimum monthly salary, it shall be subject to a class 5 fine (up to a maximum of €1,500), pursuant to article R. 3233-1 of the French Labour Code. This is a sanction under common law and is not specific to posted workers.

- **Or an administrative sanction:** where the employer fails to pay the statutory minimum wage or the minimum wage set by collective bargaining agreement, it shall be subject to a maximum administrative fine of €2,000, pursuant to article L. 8115-1 of the French Labour Code. Again, this is a sanction under common law and is not specific to posted workers.

The following measures may also be taken:

- **Suspension of the transnational service for a duration of up to one month** where the employer fails to remedy a severe breach involving payment of a wage below the statutory minimum wage (SMIC), pursuant to articles L. 1263-3 and L. 1263-4 of the French Labour Code. Where the employer fails to comply with the suspension, it shall be subject to an administrative fine up to a maximum of €10,000 per employee concerned. However, the scope of this measure is limited in the transport sector, except for regular lines covered by a contract between the contractor and the carrier.

- **Criminal sanction where actual hours worked are not reported on payslips:** pursuant to article L. 8224-1 of the French Labour Code, a fine of €45,000 and three years' imprisonment. This sanction is not specific to posted workers.

**What action can an employee with a grievance take?**

Pursuant to Directive 96/71/EC (article 6), “In order to enforce the right to the terms and conditions of employment guaranteed in Article 3, judicial proceedings may be instituted in the Member State in whose territory the worker is or was posted, without prejudice, where applicable, to the right, under existing international conventions on jurisdiction, to institute proceedings in another State”.

Moreover, the French Labour Code (art. L. 1265-1) states, in relation to the posting of workers by an

undertaking established outside France, that “representative unions may take any [necessary] legal action on an employee’s behalf, without the need for a mandate from the party in question. The party must simply be notified, under the conditions established by law, and must not oppose such action within 15 days of the date on which notification was given by the union. The party in question may attend the proceedings initiated by the union and terminate such proceedings at any time.”