

OPINION
of the Foreign and European Union Affairs Committee
of the Senate of the Republic of Poland

on the proposal for a directive of the European Parliament and of the Council 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
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adopted at the session of 26 July 2017

1. The Foreign and European Union Affairs Committee of the Senate of the Republic of Poland (the Committee) sees the need to achieve a balance between the freedom of cross-border service provision, based on fair competition between domestic and foreign operators, and adequate working conditions for drivers, which, as declared by the European Commission, is the aim of the relevant proposed directive. Since the Committee believes, however, that many solutions included in the proposal will have an opposite effect, **the Committee assesses the proposal negatively.**
2. The Committee notes that the measures envisaged in the proposal infringe the fundamental principles of the European Union enshrined in the Treaty on the Functioning of the European Union, namely the principles of the common internal market (Article 26), the freedom of establishment (Articles 49 to 55) and the freedom to provide services (Articles 56 to 62 TFEU).
3. The Committee considers that the regulations proposed by the Commission also infringe Article 94 of the Treaty on the Functioning of the European Union, which states that any measures taken within the framework of the Treaties in respect of transport rates and conditions shall take account of the economic circumstances of carriers.
4. In the opinion of the Committee, another issue that raises substantial legal doubts is the inclusion of drivers working in international road transport within the scope of posting of workers Directive 96/71/EC. These doubts are confirmed by the definition of posting of workers as provided in the judgement of the Court of Justice of 10 February 2011 (references for a preliminary ruling from Raad van State (Netherlands) – Vicoplus S.C. PUK (C-307/09), Bam Vermeer Contracting sp. z o.o. (C-308/09), Olbek Industrial Services sp. z o.o. (C-309/09) v Minister van Sociale Zaken en Werkgelegenheid).

5. The Committee underlines that by introducing solutions that impose **disproportionate constraints on the natural competitive advantage of some entities**, the Commission practically **sanctions protectionist measures taken by countries** against which it has itself initiated infringement procedures.
6. The Committee believes that the rules on the posting of drivers, which have been proposed despite previous objections of many states, are so far-reaching that **they should be supported with reliable facts and numbers**. This basic requirement has not been met, however, and the Commission justifies their introduction by the need to combat “social dumping”. The Committee does not accept this justification, believing that the wage differences in the European Union do not result from dumping but they are a natural consequence of different levels of economic development between individual countries and enterprises.
7. The Committee underlines that the proposed solutions entail **disproportionate administrative burden** due to the necessity to apply the rules of the host country. This is especially true for transport operations along routes crossing several countries.
8. The Committee notes that depending on the countries that a given route crosses, one driver may receive a several times lower wage than another one for the same working time and in the same working conditions. This means a **loss of employment stability** for drivers.
9. The Committee believes that negative consequences of the proposed regulations will be felt not only by the international transport sectors of many EU states, but also by the whole economies of these countries. In Poland, they may mean bankruptcy notably for small transport undertakings, as their operating costs will increase by nearly one third.