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European Transport Workers' Federation
Fédération Européenne des Travailleurs des Transports
Europäische Transportarbeiter-Föderation
Federación Europea de los Trabajadores del Transporte

ETF Road Transport

Legal action against minimum wage in France and Germany: European Commission uses infringement procedures to sanction transposition of laws which, if in place, would eradicate illegal practices and social dumping in the road transport sector

ETF Position

The ETF represents more than 3.5 million transport workers from more than 230 transport unions and 41 European countries, in the following sectors: road transport, railways, maritime transport, inland waterways, civil aviation, ports, tourism and fisheries. The ETF is the recognised social partner in seven European Sectoral Social Dialogue Committees including the one for Road Transport.



President Lars Lindgren

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Vice Presidents Alexander Kirchner
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General Secretary Eduardo Chagas



On 16 June 2016 the European Commission announced legal action against France and Germany, for the systematic application of their minimum wage legislation to the transport sector.

The European Transport Workers' Federation (ETF) points out that the measures taken by the two Member States are in breach of no Community rules, thus the ETF considers the European Commission action unjustified. The ETF equally recalls that the measures taken by France within the scope of the 'Loi Macron' represent nothing else than a correct transposition of the legal requirements stipulated in Article 9 of Directive 2014/67/EU on the enforcement of posting of workers directive.

To the European Commission argument that these measures are disproportionate, the ETF points out that it is precisely the systematic lack of action by the Commission in the recent years to have rendered the road transport sector disproportionately fraudulent. The European Commission has systematically ignored delays in the transposition and implementation of EU rules applicable to road transport, failing to open timely infringement proceedings against non-compliant Member States. This resulted in transposition and implementation of 4 to 9 years.

In the past years, regrettably, the European Commission has done nothing to ensure better enforcement of EU rules applicable to road transport. This is the case with the rules against the letter box companies, rules safeguarding non-discriminatory regimes between drivers (i.e. posting of workers) and rules to improve driver occupational health and safety. Hence the critical state of the EU road haulage market, illustrated by palpable evidence of social fraud and unfair competition between hauliers. Illegal business constructions (letter-box companies) have expanded in number since the adoption of the very EU rules meant to eradicate them! On the other hand, any road user can witness on daily basis truck drivers living in appalling conditions around their trucks at week-ends, along roads and motorways, in the only transport sector which has its own social legislation!

Social partners, Member States, the European Parliament have been continuously asking for EU-wide measures to effectively address distortions in competition and labour markets in the road sector. Nothing so far! One must not wait for the 'road initiative' to take these measures. Much can be done – in as far as the EU legislation allows – via delegated acts, etc. The ETF set of proposals for better enforcement of EU legislation in road transport proves it. In the absence of any effective and credible action by the European Commission in this sense, Member States will act. Even more legitimately so as like in the case of France, nothing else was done but to correctly transpose Directive 2014/67/EU while in the case of both Germany and France, neither of the two Member States are in breach of EU rules by applying the minimum wage to the road transport sector.

Mindful of the above, the ETF calls on the European Commission to withdraw its legal action against France and Germany and to urgently adopt measures to restore the equal treatment of drivers, fair competition and the confidence of the EU Member States in a fair and functional EU haulage market.

The ETF equally calls for the European Commission to take on board our set of proposals "The extra-mile towards a full-fledged enforcement scenario in the EU road transport sector, an ETF proposal to policy makers". The solutions described in this document would allow immediate enforcement of cabotage, posting of workers and access to occupation, with only minor - if any - changes in the EU rules.

Please see the Annex for detailed information on aspects mentioned above.



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Annex

To the European Commission argument that the application of minimum wage by France and Germany to the transport sector is disproportionate, the ETF points out that it is precisely the systematic lack of action by the Commission in the recent years to have rendered the road transport sector disproportionately fraudulent. Here are some examples:

- **Delays in the transposition of EU road legislation by 4 to 9 years, not sanctioned by the European Commission**

Currently, at least two EU legal acts applicable to road transport and of key importance for cross-border enforcement present delays in transposition and implementation by 4 to 9 years. This is the case of Directive 2006/22/EC on levels of enforcement and controls in road transport, and of Regulation (EC) No 1071/2009 on access to occupation. These delays seriously undermine the enforcement of social legislation in road transport, and respectively the effective cross-border data exchange between Member States on non-compliant road transport undertakings failing to meet the conditions to operate outside of their country of establishment. **Regulation (EC) No 1071/2009** requires the setting up of the ERRU, a Europe-wide linked-up database to which the 28 Member States were supposed to connect their registers of road transport undertakings by December 2012. By 2015, only approximately 20 Member States were interconnected. The total investment by the Member States in setting up and interconnecting their national electronic registers was of € 22 million. However, currently, the ERRU does not function. A report commissioned by the European Commission summarises the negative impact of these delays as follows: lack of cost-effectiveness of the ERRU so far; expected reductions in administrative burden not achieved; hindered cross-border cooperation between Member States in clamping down on the so called 'letter-box' companies. Despite all these, the Commission only started infringement procedures against the delayed Member States in 2015! **Directive 2006/22/EC** makes it mandatory for the Member States to develop, by April 2007, risk-rating systems (RRS) for all hauliers controlled on their territory. This is how the European Commission itself explains the negative effects of not doing so: "Failing to comply with the obligation to establish a risk-rating system prevents targeted checks of those road transport undertakings that regularly infringe the social rules. This poses a risk to fair competition, to road safety and to the maintenance of adequate working conditions in the road transport industry." Despite this, so far, only 5 or 6 Member States have RRSs in place and thus are engaged in RRS data exchange. The European Commission opened so far, in the past 9 years, only one infringement procedure on delays with the implementation of RRSs!

- **Systematic lack of enforcement of EU rules**

Currently, at least three EU legal acts applicable to road transport have only partially or never been enforced and controlled in the road sector. Incidentally, these three are the most important in ensuring fair competition between hauliers and non-discriminatory regimes between road transport workers: the cabotage rules, the criteria for access to occupation and the posting of workers directive. The systematic lack of enforcement of these rules has led to serious distortions on domestic labour and haulage markets across the EU Member States.

- **No honest analysis of the EU haulage market, its current dysfunctions and needs, thus no EU measures to restore confidence in a functioning, non-discriminatory road transport sector**

Over the recent years, Member States, social partners and other stakeholders called for the European Commission to come up with clear rules and effective measures at EU level to eradicate social dumping and unfair competition in the road transport sector. In the absence of EU viable responses, several Member States started applying enforcement



measures to curb unlawful practices and their effect on their markets - illegal cabotage, massive social fraud, discrimination in terms of pay and working conditions leading to entrenched social dumping, etc. In response, the European Commission did nothing else but launched a number of infringement procedures attacking these Member States on grounds, again, of disproportionality of measures. 16 June 2016 was not a bad day only for France and Germany. The same day, the European Commission referred Denmark and Finland to the European Court of Justice in relation to measures the two Member States had taken against illegal cabotage. In 2014, Belgium and France were equally targeted by the European Commission for having taken measures to ensure that truck drivers take their weekly rest outside of the truck cabin, as per the requirements of Regulation (EC) No 561/2006 on driving and rest time. It is once again worth mentioning that the above Member States did nothing but adopting measures to enforce provisions of the EU law, while staying in full compliance with the objectives of the cabotage regulation and respectively of the driving and rest time rules.

Thus, the EU road haulage market currently finds itself in a critical situation, illustrated by palpable evidence of social fraud and unfair competition between hauliers. Illegal business constructions (letter-box companies) have expanded in number since the adoption of the very EU rules meant to eradicate them! On the other hand, any road user can witness truck drivers living in appalling conditions around their trucks at week-ends, along roads and motorways, in the only transport sector which has its own social legislation!

- **Letter box companies and illegal business constructions expand under the eye of the legislator**

A report of November 2015 published by the European Commission admits that the delays in setting up the ERRU have rendered Regulation (EC) No 1071/2009 ineffective and as a proof, paradoxically, letter box companies have expanded in number since its adoption. The purpose of this regulation was precisely to eradicate them! The report points out that “the general objective of achieving level playing field for hauliers has not been fully achieved due to the continuing presence of the letter box companies, differing national interpretation of rules and uneven monitoring/enforcement.” The other systemic barrier in eliminating the so called ‘letter-box’ companies is precisely the ‘uneven monitoring/enforcement’ of EU road transport legislation. Interests in clamping them down differ substantially, dividing Member States impacted by the illegal business ‘models’ from Member States hosting them, with the latter being less inclined to close them down. Once again, enforcement measures can be taken urgently, even before launching the much awaited ‘road initiative’. The ETF set of proposals for better enforcement of the EU law applicable to road transport contains concrete solutions in this direction.

- **Discrimination on basis of nationality in terms of pay and working conditions – ‘business as usual’ in the road transport sector**

Easily collectable evidence – one only needs to spend some time in a parking area in Western Europe and talk with the truck drivers taking their daily or weekly rest – leads to the same fraudulent employment schemes in road transport, as a constant source of illegal practices. By way of example, a truck driver:

- is recruited in country A, with individual labour agreements signed in country B in the language of country B and not in the driver mother tongue;
- is paid the minimum wage of the country of origin while working permanently in and from Western European countries;
- is misled to believe he is covered by social security, but very often this is not the case;



- is charged monthly or annually for a vehicle and driver insurance but when his truck is damaged he will be covering the costs;
 - works away from the country of residence for periods from 3 weeks to 9 months and more;
 - takes all the rest periods in the truck;
 - has no access to decent meals;
- Etc. etc. etc.

Fraudulent employment schemes as the one described above, including undeclared or bogus posting, have generated important losses for a number of Member States in terms of tax avoidance, non-payment of social contributions, having to cover benefits related to job-losses. Once again, in the absence of European solutions, this entitles them to adopt measures in line with EU legislation and its adequate enforcement.

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