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Questions and Answers on posting of drivers for Member States' authorities

The questions were submitted by the Member States' authorities, who are members of the Commission Expert Group on Posting of Drivers. The replies were prepared by the services of the Directorate-General for Mobility and Transport (DG MOVE), and do not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. Is Article 5(1) of Directive (EU) 2020/1057 interpreted correctly as requiring Member States to provide for a system of specific sanctions regarding consignors, freight forwarders, contractors and sub-contractors which, acting as main contractors (and being themselves transport undertakings or not), commission the performance of cross-border transport services to transport undertakings (which therefore act as contractors or subcontractors of their main contractor)?

The objective of Article 5 of Directive 2020/1057 concerning sanctions and penalties is established in recital 39, following which "Transport undertakings are the addressees of certain special rules on posting and bear the consequences of any infringements of those rules that they commit. However, in order to prevent abuse by undertakings contracting transport services from road haulage operators, Member States should also provide for clear and predictable rules on sanctions against consignors, freight forwarders, contractors and sub-contractors in cases where they knew, or, in light of all relevant circumstances ought to have known, that the transport services that they commissioned involved infringements of special rules on posting."

Article 5(1) of Directive (EU) 2020/1057 provides that "Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and sub-contractors for non-compliance with national provisions adopted pursuant to Article 1, where they knew, or, in the light of all relevant circumstances, ought to have known, that the transport services that they commissioned involved infringements of those provisions."

Therefore, Article 5(1) of Directive (EU) 2020/1057 requires Member States to provide for a system of specific sanctions regarding consignors, freight forwarders, contractors and sub-contractors which commission the performance of cross-border transport services to transport undertakings, when those transport services involve infringements of the national provisions adopted pursuant to Article 1.

2. What do the terms "consignors" and "freight forwarders" mean?

The terms 'consignors' and 'freight forwarders' are not defined in Directive 2020/1057. However these terms have been commonly used in the transport sector and in the EU legislation, e.g. in Regulation (EC) No 561/2006 or in Regulation (EC) No 300/2008. As far as we know, the understanding of these terms has never raised doubts among the road transport authorities and stakeholders. However, national employment authorities should not hesitate to ask for clarifications on the understanding of these concepts with their counterparts and with transport authorities.

3. Apart from the example of a price that is too low, what other circumstances or criteria could be considered to be established that the above-mentioned consignors, freight forwarders, contractors and sub-contractors knew or should have known that the transport services that they commissioned involved infringements of those provisions?

The EU legislature has established that the relevant actors in the transport operation chain should be liable, under certain conditions, for compliance with the rules established in Article 1

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of Directive 2020/1057, as stated in recital 39. According to Article 5(1) of the Directive, the incriminating facts relate to the effective knowledge or to the obligation of knowledge, by the relevant actors of the transport operation chain, that the transport services they commissioned involved infringements of the relevant provisions of the Directive.

The circumstances under which those relevant actors are to be considered as knowing or to have the obligation of knowing that the transport services that they commissioned involved infringements of those provisions must be established according to criteria set out under national law. The Commission services are not in a position to set out these criteria.

4. Do the new requirements of Article 2, point (13) of Directive (EU) 2020/1057, imposing checks at the premises of undertakings and roadside checks regarding compliance with the working time rule on average maximum weekly working time, breaks and night work as set out in Articles 4, 5 and 7 of Directive 2002/15/EC, also encompass carrying out controls in regard to the derogations to Article 4 and 7 of Directive 2002/15/EC as set out in Article 8 of the same directive insofar such derogations have been implemented in collective agreements between social partners?

Regarding the roadside checks, the new paragraph (6) of Annex I Part A of Directive 2006/22/EC (introduced by Article 2(13)(a)(iii) of Directive 2020/1057) requires Member States to consider the following when carrying roadside checks:

"extended maximum weekly working times of 60 hours as set out in Article 4 point (a) of Directive 2002/15/EC; other weekly working times as set out in Articles 4 and 5 of Directive 2002/15/EC only where technology enables effective checks to be carried out"

Article 4(a) of Directive 2002/15/EC lays down that "(...) the maximum weekly working time may be extended to 60 hours only if, over four months, an average of 48 hours a week is not exceeded (...)"

Article 8 of Directive 2002/15/EC allows for derogations from Article 4 provided that those derogations do not result in the establishment of a reference period exceeding six months, for calculation of the average maximum weekly working time of forty-eight hours.

Given that, according to Article 36 of Regulation (EU) No 165/2014, drivers are only required to show the record sheets for the current day and for the preceding 28 days (this timeframe will be extended to 56 days from 31 December 2024), and that current technology (i.e. the current tachographs and the upcoming smart tachograph version 2) does not allow for access at the roadside to working time data for long enough periods, roadside inspectors cannot check compliance with the requirement of the average working time over the reference period covering 4 or 6 months. Therefore, under the current technological and regulatory limitations, compliance with average working time over the period set out by Article 4 or longer periods set out by national measures adopted in line with Article 8 of the Directive 2002/15/EC cannot be checked by roadside inspectors, who under these circumstances may only control compliance with the maximum weekly working time of 60 hours and with breaks in work.

Roadside inspectors may also control compliance with other weekly working times that may have been defined as derogations to Article 4, adopted in line with Article 8 of the Directive, such as, e.g., compliance with shorter maximum weekly working times, insofar as technology enables the effective checks to be carried out.

Regarding the checks at the premises, the new paragraph (4) of Annex I Part B of Directive 2006/22/EC (introduced by Article 2(13)(b)(i) of Directive (EU) 2020/1057) requires Member States to consider the following when carrying checks at the premises:

"compliance with maximum average weekly working times, breaks and night work requirements set out in Articles 4, 5 and 7 of Directive 2002/15/EC;"

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Firstly, this new provision clearly requires the average weekly working time to be checked. It can therefore be assumed that this also includes any potential derogation to the reference period under Article 8.

Secondly, considering that no other conditions linked to technological possibilities have been added in this provision, it should be understood that, during checks at the premises, checks must also cover the derogations to Article 4 and 7 of Directive 2002/15/EC as set out in Article 8 of the same directive, insofar as such derogations have been implemented in accordance with the conditions set out in that provision.

5. Is it possible to establish a national system where the social partners, and not Member State authorities, carry out controls regarding compliance with Articles 4 and 7 of Directive 2002/15/EC in those situations, where the social partners through collective agreements have decided on derogations in line with Article 8 of the aforementioned directive enforcing Directive (EU) 2020/1057, Article 2(13) in those instances?

Articles 4 and 7 of Directive 2002/15/EC require Member States to “take the measures necessary” to ensure compliance with the provisions set out in those articles.

Further, Article 2(1) of Directive 2006/22/EC requires that Member States organise a system of appropriate and regular checks on correct and consistent implementation, both at the roadside and at premises. Paragraph 2 of that Article specifies that Member States must provide authorised inspecting officers with appropriate legal powers to enable them correctly to discharge their inspection obligations as required by this Directive.

Provided that compliance with the above articles is ensured, nothing prevents Member States to involve social partners in controls established in Directive 2002/15/EC where relevant, for example, in the areas where collective agreements adopted in line with Article 8 of that Directive apply.

Therefore, it is our view that it is possible for Member States to establish a national system where the competent social partners’ organisations carry out controls regarding compliance with Articles 4 and 7 of Directive 2002/15, in those situations where the social partners, through collective agreements, have decided on derogations in line with Article 8 of the aforementioned Directive.

Also, according to Article 10(4) of Directive 2014/67, in Member States where, in accordance with national law and/or practice, the setting of the terms and conditions of employment of posted workers referred to in Article 3 of Directive 96/71/EC, and in particular the minimum rates of pay, including working time, is left to the social partners, they may at the appropriate level and subject to the conditions laid down by the Member States, also monitor the application of the relevant terms and conditions of employment of posted workers, provided that an adequate level of protection equivalent to that resulting from Directive 96/71/EC and this Directive is guaranteed.

It should also be noted, that according to Article 2(1) of Directive 2006/22/EC, Member States shall ensure that a coherent national enforcement strategy is applied on their territory. For this purpose, Member States may designate a body for the coordination of actions taken under Articles 4 and 6, concerning roadside checks and checks at the premises of the undertakings. The Commission and the other Member States must be informed thereof.

6. Is Article 1(11) last paragraph of Directive (EU) 2020/1057 interpreted correctly, that during a roadside check it is possible to determine that a driver is considered a posted worker solely on the basis of inspecting the evidence of international road transport operations (transport documents) and tachograph records? If so, can the Member States during these roadside checks, in addition to the above-mentioned documents verify also other documents, which are not mentioned in this provision?

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The correct understanding of Article 1(11) last paragraph of Directive (EU) 2020/1057 is that in order to ascertain whether a driver is not considered to be posted, pursuant to paragraphs 3 and 4 of that Article, Member States' control authorities may only impose an obligation for the driver to keep and make available, where requested at the roadside check, the evidence of the relevant international carriages and tachograph records.

Member States' control authorities may not require from a driver at a roadside check other documents in addition to those explicitly mentioned in Article 1(11)(b) of Directive 2020/1057 in order to ascertain compliance with the rules on posting of drivers. By derogation from Article 9(1) and (2) of the enforcement Directive 2014/67/EU, Article 1(11) of Directive 2020/1057 provides for a closed list of administrative requirements and control measures that may be imposed by Member States on operators and on drivers with regard to checking compliance with the posting rules.

7. Bearing in mind that Article 1(3), (4), (5) and (6) of Directive (EU) 2020/1057, states that a driver who performs certain types of international road transport operations is not considered a posted worker for the purposes of Directive 96/71/EC, not violating only Article 2(1) of this directive, should Article 2(2) of the directive be applied? Is it correct to interpret that in order to determine whether a given driver is or is not a posted worker, Article 2(1) (a posted worker is an employee who performs his work in the territory of the host country for a limited period of time) applies, but Article 2(2) of Directive 96/71/EC does not (according to which the definition of a worker is applicable under the law of the Member State to whose territory the worker is posted)?

Paragraphs 3, 4, 5 and 6 of Article 1 of Directive (EU) 2020/1057 provide specific rules in relation to the application of Article 2(1) of Directive 96/71/EC in the road transport sector. This is particularly clear from recital 7 and Article 1(1) and (2) of Directive (EU) 2020/1057, which establish that these are specific provisions for the sector. This means that in cases where the driver, for a limited period, is carrying out his work in the territory of a Member State other than the State in which he normally works, he is not to be considered to be posted when performing the activities described in Article 1(3), (4), (5) and (6) of Directive (EU) 2020/1057.

Those paragraphs do not derogate from Article 2(2) of Directive 96/71; hence, this article remains fully applicable in case of posted workers in the road transport sector.

8. Why does Article 1 clause 7 of Directive (EU) 2020/1057, state that a driver performing a cabotage operation is considered a posted worker under Directive 96/71/EC, without reference to Article 2(1) of this directive, unlike in aforementioned paragraphs 3-6?

Paragraphs 3, 4, 5 and 6 of Article 1 of Directive (EU) 2020/1057 refer to situations where a driver would be posted due to the application of Article 2(1) of Directive 96/71/EC, but is not to be considered as such due to the application of those exceptions. Article 1(7) refers to a situation where the driver is to be considered as posted, and is therefore not an exception to Article 2(1) of Directive 96/71/EC.

9. Can a Member State include in its own provisions implementing Directive (EU) 2020/1057, apart from drivers that are workers within the meaning of provisions of a host Member State, also those drivers who are not employed under those provisions, yet personally perform road transport operations on behalf of a haulier on the basis of contracts other than an employment contract (e.g. civil-law agreements), to which the national provisions implementing Directive 96/71/EC do not apply?

Directive (EU) 2020/1057 applies to drivers employed by undertakings established in a Member State which take the transnational measure referred to in Article 1(3)(a) of Directive 96/71/EC. All other road transport workers and drivers involved in the different types of

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transnational operations referred to in points (b) and (c) of Article 1(3) of Directive 96/71/EC are subject to the provisions of that directive and of Directive 2014/67.

Nothing prevents Member States to establish national rules applicable on their own territory that would cover other types of drivers, to whom the national provisions implementing Directive 96/71/EC, Directive 2014/67/EU or Directive (EU) 2020/1057 do not apply – such as rules applicable to drivers performing road transport operations on the basis of contracts not subject to national labour laws, or to self-employed contracts. These would not be provisions implementing Directive 96/71/EC, Directive 2014/67/EU or Directive (EU) 2020/1057, but rather, national measures applicable to those other types of drivers. Please note that such measures in order to be compatible with the principle of freedom to provide services would have to be applied in a non-discriminatory manner, be justified by public interest objectives, be suitable for securing the attainment of the objective which they pursue, and not go beyond what is necessary in order to attain that objective.

10. Can a Member State also include in its provisions posted drivers from the third countries, in cases where they are not in an employment relation with the posting employer, yet they perform road transport operations on behalf of this employer on the basis of e.g. a civil-law agreement?

Nothing prevents Member States from establishing national rules on posting (inspired by the EU legislation) applicable to posted drivers from employers established in third countries, regardless of the type of contract or employment relationship which these drivers may have with the undertaking established in the third country making the posting, and provided that EU rules concerning transport operations to and from third countries are complied with. Please note however that 'posting' undertakings established in third countries cannot be treated more favourably than undertakings established in a Member State, pursuant to Article 1(4) of Directive 96/71/EC and Article 1(10) of Directive 2020/1057.

11. Is it possible to impose a penalty for failing to submit a posting declaration to the State where a driver is being posted, without ascertaining whether there exists an employment relation between a driver and a road transport undertaking in accordance with the regulations of the host Member State, in cases where the transport documents and the tachograph recordings show that a given road transport operation falls under the provisions of Directive (EU) 2020/1057?

The imposition of a penalty for a failure to submit the posting declaration depends on the architecture of the national penalty system, which is the competence of Member States. The penalty system shall be established in line with requirements set out in Article 5 of Directive (EU) 2020/1057. That Directive does not specify at which stage of the compliance check the penalty shall be imposed. However, it is important to note that the IMI system and the public interface connected to IMI are designed to facilitate control authorities to gather a full set of information, including an employment contract or equivalent document, necessary to ascertain an infringement to the posting rules. Please note that the employment contract may be requested to the operator by the competent authorities of the Member States where the posting took place pursuant to Article 1(11)(c) of Directive (EU) 2020/1057.

12. Is it necessary to check the exact legal relation between a driver and the road transport undertaking acting as his employer each time during a roadside check, including determining whether there is an employment relation between the driver and the haulier?

No, Directive (EU) 2020/1057 does not impose to check at the roadside the type of employment/contractual relationship between a driver and a posting undertaking. At the roadside control drivers shall not be requested to provide documents and information other than those set out in Article 1(11)(b) of Directive (EU) 2020/1057.

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It should be noted, however, that the posting declaration should already include the start date of the driver's contract of employment and the law applicable to it, pursuant to Article 11(a)(iv) of Directive 2020/1057. The existence of a posting declaration therefore already constitutes a declaration from the transport undertaking of the existence of an employment relationship.

Please see the reply to Q14.

13. Should roadside checks related to posting of drivers be determined, as a general rule, on the spot, in particular with reference to whether a driver is or is not a posted worker according to the provisions of Directive (EU) 2020/1057 and Article 2 of Directive 96/71/EC?

Please see the replies to Q5 and Q6.

14. Is the procedure defined in Article 1(11)(c) of Directive (EU) 2020/1057, which obligates the haulier to submit certain documents via public interface connected to IMI, a mechanism aimed at supplementing information in exceptional cases that raise doubts of the competent authorities of the host Member State, or should it be launched each time the lack of a posting declaration is identified during a roadside check?

Directive (EU) 2020/1057 does not oblige Member States' authorities to request additional documents, in addition to the posting declaration and to the other documents available at the roadside control, each time the compliance check is performed. However, whenever Member States' authorities consider necessary to receive those additional documents, they shall use IMI to make a relevant request.

15. Will it be possible to send recovery proceedings requests, regarding the fines imposed on road transport undertakings, or any relevant notifications, to the competent authorities of other Member States via the new module of the IMI system dedicated to posting of drivers? If not, will such requests be sent via the existing module of the IMI system relevant to posting of workers? (forms: PW - uniform instrument – request to notify about the decision and PW – uniform instrument – request to recover a penalty and/or fine)?

Under the new module in IMI developed for the purposes of Directive (EU) 2020/1057, the scope of information exchanges is laid out in Article 1(11)(c) of the Directive, i.e. the module shall be used to exchange documents referred to in the Directive and not anything else outside the scope of this exchange.

As for the existing Posting of Workers (PoW) module in IMI, this covers all posting of workers cases, including the posting of drivers; therefore the information requests, including the request to notify a decision and request to recover a penalty and/or fine, can be used.

The full list of questions under the IMI Posting of Workers module can be found here: https://ec.europa.eu/internal_market/imi-net/library/question_sets_forms/index_en.htm

16. Will the new IMI module dedicated to posting of drivers only enable to send documents and to direct a request for help in obtaining them to a competent authority in another Member State, in case an operator fails to comply with the obligation to deliver them within an 8 weeks' time, or should it be considered that all the information exchange and cooperation between competent authorities in the field of posting of drivers will be realised with the use of this new module, or yet, will it operate in parallel to the module on posting of workers and the question forms in areas, where it will be possible to pose questions regarding certain situations in relation to posting of drivers pursuant to the provisions of Directive (EU) 2020/1057 (PW - posting of workers - request for information concerning a posting, PW – request for information concerning working conditions, PW – request for information concerning health and safety, PW - urgent request concerning establishment)?

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Under the new IMI module, indeed, first, the document request is presented to the economic operator and in case the economic operator fails to comply, only then can the competent authority request documents from the competent authority of establishment.

As pointed out under Q15, the existing PoW modules in IMI cover all PoW cases, including those that concern posting of workers in the road transport sector and thus, can be used by national competent authorities.

17. Can the obligations related to submitting posting declarations as well as providing other documents via the public interface connected to IMI be imposed by Member States also on operators posting drivers from the third countries or on self-employed drivers, or drivers performing services on a basis other than an employment contract (not being workers in the light of the regulations of the host Member State)? If not, can the Member States create their own system obligating the operators from the third countries to notify all or some road transport operations within the territory of the host country – pertaining to either employed drivers, self-employed drivers, or drivers performing services on a basis other than an employment contract (not being workers in the light of the regulations of the host Member State)?

Directive (EU) 2020/1057 applies to undertakings established in Member States. Hence the obligations stemming from this EU legislation, including the use of the public interface, do not directly apply to operators established in third countries. However, as indicated in recitals (15), (16) and (17) and in Article 1(10) of Directive (EU) 2020/1057, undertakings established in the third countries must not be given more favourable treatment than undertakings established in a Member State. The respect of the posting rules by third country operators may be regulated via bilateral or multilateral agreements with the relevant third countries. There is a technical and legal possibility to enable third countries the use of the IMI system and of the public interface connected to IMI.

Directive 96/71/EC is also applicable only to undertakings established in a Member State. Regarding undertakings established in third countries and sending their workers to provide services in a Member State, it has to be noted that according to Article 1(4) they cannot be given more favourable treatment than undertakings established in a Member State.

Member States may also decide to create their own systems for notifications dedicated to third country operators and to drivers not falling under the scope of Directive 2020/1057 or apply the system established for posted workers under Directive 2014/67.

18. Is posting of drivers subject to employment conditions of the host Members State that result from Article 3(1)(f) of Directive 96/71/EC, related to protective measures towards children and young people, also in situations where a driver must be at least 18 years of age?

Yes, all the provisions of Directive 96/71 from which Directive (EU) 2020/1057 does not derogate apply to posted drivers, subject to Directive (EU) 2020/1057 rules. It is to be noted that according to Article 1(9) of Directive (EU) 2020/1057, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC, which are laid down by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in their territories, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of Directive 96/71/EC, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers.

19. In case of drivers of vehicles with a maximum permissible mass exceeding 2,5 tonnes but not exceeding 3,5 tonnes which are used in international transport of goods, the question arises as to how to check the provisions of Directive (EU) 2020/1057 before 1st July of 2026, when the provisions of Regulation (EC) No 561/2006 and, consequently, Regulation (EU) No 165/2014 become applicable to these drivers?

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Until the time when smaller commercial vehicles are equipped with the smart tachograph, the roadside controls should be limited to controlling posting declarations and transport operation documents. All other relevant documents specified in Art 1(11) of Directive (EU) 2020/1057 can be verified by the Member States' authorities, via the IMI system.

20. Considering that Article 1(11)(c) of Directive (EU) 2020/1057 requires operators to send, at the direct request of the competent authorities of the host Member State, copies of certain documents, including inter alia the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC and that the aforementioned Directive will be repealed in accordance with Article 24 of Directive (EU) 2019/1152, what is meant by a "document equivalent" to an employment contract within the meaning of Article 3 of Directive 91/533/EEC? What types of documents the national authorities must recognise in addition to the employment contract?

Directive (EU) 2019/1152 will repeal Directive 91/533/EEC with effect from 1 August 2022. While Directive 91/533/EEC lists types of documents which the employer may use as the means of information for fulfilment of information obligations, Directive (EU) 2019/1152 no longer contains such list. Directive (EU) 2019/1152 also no longer uses the term 'document equivalent'. This means that any document (including in an electronic format) containing the information listed in the relevant provisions of Directive (EU) 2019/1152 could be in principle accepted in the context of the Directive. See in this respect Articles 5 and 6 of Directive (EU) 2019/1152, which refer to "a document".

*Article 3 of Directive (EU) 2019/1152 requires that the information is transmitted on paper **or** in an electronic format. In the case of electronic format, three cumulative criteria must be met: (1) the information is accessible to the worker, (2) it can be stored and printed, and (3) that the employer retains proof of information or receipt.*

The 2021 Expert Group report on transposition of Directive (EU) 2019/1152 (available [here](#)) further clarified, on p. 26, that:

"accessible to the worker" means that the worker must actually have unrestricted access to the information. Further, if a worker does not have access to the electronic tools used to transmit the information, this would rule out the use of these electronic means. "That it can be stored and printed" means that the information must be formatted in such a way as to enable it to be stored and printed by the worker. There is no requirement that the employer actually prints it. The obligation of keeping proof of transmission or receipt allows for choosing one or the other method (or both). The Directive does not set up a requirement to provide the information in electronic form. These criteria only apply if the employer chooses to transmit the information electronically. If the information is transmitted on paper the situation is the same as in the Written Statement Directive, namely that the employer is not required to retain proof of transmission, though it might be in his or her interest to do so as the burden of proof will be on the employer to show that he or she has fulfilled their obligation (e.g. during an inspection).

With regard to the electronic transmission, there is also no requirement to send the information in a certified form. A sent e-mail should be sufficient as long as the e-mail can be retained by the employer. Other means for transmitting the information electronically than e-mail are also possible."

21. Does Directive (EU) 2020/1057 apply to self-employed drivers?

Article 1(2) of Directive (EU) 2020/1057 states that: "These specific rules apply to drivers employed by undertakings established in a Member State which take the transnational measure referred to in point (a) of Article 1(3) of Directive 96/71/EC."

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It follows from the clear wording of Article 1(2) that only employed drivers are covered by Directive (EU) 2020/1057. However, drivers who are employed by self-employed drivers are also covered by this Directive.

22. Does Directive (EU) 2020/1057 apply to 'own account' operations?

There may be different types of road transport operations, including operations on 'own-account' and operations for hire or reward. 'Own-account' operations are usually performed where the carried goods are owned or have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the undertaking carrying them. 'Hire or reward' operations are usually performed where the carried goods are not owned or have not been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the undertaking carrying them.

The type of the operation does not have an impact on the application of the Directive regarding the employed drivers.