



Brussels, 12 December 2012

**SECTORAL DIALOGUE COMMITTEE
ROAD TRANSPORT**

DRAFT concise minutes of the working group meeting

7th December 2012

The meeting was chaired by Mr Sugic (workers, chairman of the committee). The agenda was adopted.

1. ECJ judgement regarding Rome Convention on the law applicable to contractual obligations (C-29/10¹) - exchange of views

Mr Wilderspin, representing the Commission's Legal Service², gave a brief overview of the *Heiko Koelzsch v État du Grand Duchy of Luxembourg* case, which he argued at the European Court of Justice (ECJ). In this judgement, the ECJ gave a broader interpretation to the employee's protection principle; it is to say, that by choosing another country's legislation for the employment contract, the employee does not lose the protection he would have had in his respective country. The court also decided that if the person works in many different countries, the "usual place of business" rule applies. This ruling contrasted with the more formalistic approach of the national instances on this issue and opened the way for several follow-up cases (notably case C-394/10: a sailor working for two companies in Belgium and Luxembourg). As pointed out by the ETF, the ruling in this case is interesting in the light of the current number of cases ETF affiliates brought to the Belgian court (ex. a Romanian worker employed by a Slovakian company working in Belgium). Answering to the IRU's comment on the general difficulty to determine the "usual place of business" in the transport sector, Mr Wilderspin answered that, according to the Commission's expertise, in a situation of conflicting national laws, any rules protective of employees are likely to prevail.

2. European Register of Road Transport Undertakings (ERRU)³ – current state of play – information

In her presentation, Ms Ptaszynska from DG MOVE gave the social partners an update on the implementation of the ERRU. Having explained the rationale of this system, she stressed that since the establishment of national electronic registers in December 2011 only two member states have successfully passed the integration tests, while 19 have not even started them. The ERRU working group has been put in place to help the countries in transition, and two functional mailboxes have been made available for any related questions. The Commission is considering establishing *guidance notes* providing for common approach to application of certain provisions relating to ERRU as well as publishing FAQs. In their reaction, IRU urged the Member States and the Commission to cooperate on the implementation of the ERRU, and stressed that the 7 identified heavy

¹ <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-29/10>

² http://ec.europa.eu/dgs/legal_service/index_en.htm

³ http://ec.europa.eu/transport/modes/road/access/erru_en.htm

infringements have direct consequence on business. Answering to the ETF question, Ms Ptaszynska clarified that the Commission will probably launch the pre-litigation procedure of the infringement proceedings in January 2013⁴.

3. Cabotage in the context of the HLG Report on the Road Haulage Market – exchange of views between social partners (switched with the agenda item 2.)

In this important agenda point, both ETF and IRU discussed and adopted a *Joint Statement on the Further Opening of the EU Haulage Market*. Both sides of the social dialogue agreed on two guiding principles of the text: a) that they are against the liberalisation of cabotage until there is no further social and fiscal harmonisation; and b) that existing rules must be better reinforced. The major points of discussion evolved around the language of the statement; the text was agreed upon by both sides and the secretariats were asked to jointly issue it as soon as possible.

4. Revision of the Council Regulation (EEC) No 3821/85 on recording equipment - observations of the social partners on the 2nd reading

The IRU secretariat presented the state of play on the on-going legislative revision on tachographs, which was recently "passed on" to the Irish presidency due to diverging views between the Parliament and the Council. The IRU has a number of concerns relating to a) the scope of the regulation (lowering the weight – concern in terms of cost and administrative burden); b) retro-fitting of the new/"smart" tachographs – similar concern; c) proposed exemptions – raise an issue of the legal certainty; d) proposed deadlines – problematic to achieve. On the workers' side, ETF is generally supportive of the new regulation, as it might help better control of the working time. ETF has a different stand on most of the issues raised by the employers, and also supports the introduction of the *weight sensor*, as a possibility to better monitor employees' activities. Both sides acknowledged their diverging views and agreed to exchange information on this topic in the future.

5. Evaluation of the Work programme 2011-2012

ETF pointed out that the committee already evaluated the work programme during the preparation of mid-term review, and also looked at it, while establishing the 2013-2014 one. The secretariat also informed that the Urban Public Transport sub-group has sent their priorities. The 2013-2014 Work Programme was thus finalised.

6. Consideration of items for the next meeting

In the light of the ETF road section meeting of 19-20 February, the social partners agreed to exchange views on the topics afterwards and send the draft agenda to the Commission in a timely manner.

7. Any other business

Ms Durst announced that due to the reshuffle of her portfolio, it will be her last meeting with the committee. She thanked the social partners for the trustful cooperation and introduced Ms Winiarska, who will replace her in the role of promoting their dialogue. The social partners warmly thanked Ms Durst for her work and 10 years of fruitful cooperation.

⁴ See also: http://ec.europa.eu/eu_law/infringements/infringements_en.htm

Participants 7.12.2012

Employers (12 ♂, 7 ♀)

Ms Antignac (FR)
Ms Boisen (DK)
Mr Causse (FR)
Mr Csanyi (HU)
Mr Cunnom (UK)
Ms Egervall (SE)
Ms Galantino (IT)
Ms Ilie (RO)
Mr Kramer (NE)
Mr Larsen (DK)
Ms Maître (FR)
Mr Mannaerts (BE)
Ms Mets (EE)
Mr Nemec (IRU)
Mr M. Nielsen (IRU)
Mr Pardo (ES)
Mr Saile (DE)
Mr Salmon (UK)
Mr Yarsley (UK)

Workers (19 ♂, 6 ♀)

Mr Aarestrup (DK)
Ms Alonso (BE)
Mr Atema (NL)
Mr Brown (UK)
Mr Buenestado (ES)
Ms Coulet (FR)
Mr Falk (SE)
Ms Gällhagen (SE)
Mr Goument (FR)
Ms Heinisch (ETF)
Mr Kuchowski (PL)
Mr Matla (PL)
Mr Miladinov (BG)
Mr Minchev (BG)
Ms Mizzau (IT)
Mr Parrillo (BE)
Mr Pumont (FR)
Mr Peeters (BE)
Mr Sannen (BE)
Mr Sugic (FR)
Mr Tabot (UK)
Mr Teunissen (NL)
Ms Tilling (ETF)
Mr Todorovic (BE)
Mr Wolff (LU)

European Commission

Ms Durst (DG EMPL)
Ms Winiarska (DG EMPL)
Ms Ptaszynska (DG MOVE)
Ms Whittaker (DG MOVE)
Mr Wilderspin (Legal Services)
Ms Luboczki (Legal Services - trainee)