



SECRETARY GENERAL

**President Jean-Claude Juncker**  
European Commission  
Rue de la Loi / Wetstraat 200  
1049 Brussels  
Belgium

*re: Application of German Minimum Wage  
Act to international haulage sector*

**Dear Mr. President,**

As regards objections to the extension of the German minimum wage to foreign employees in the transport industry by the European Commission, the Hungarian Road Transport Association (MKFE), the largest interest representation organisation of the Hungarian transport market, a member of IRU, hereby intends to inform the Commission on its position in this matter.

Parties involved in the international public road transport of goods and passengers are increasingly concerned about the recent series of measures in certain Member States of the European Union, which is contrary to the basic principles and basic objective of the European Union, namely a barrier-free single internal market (Article 26 (2) to the Treaty on the Functioning of the European Union – hereinafter TFEU), as well as to the results of internal studies and surveys by the EU. The facts and arguments to substantiate our concerns are detailed below.

Our present position paper was framed in view of the fact that the Commission had initiated a Pilot procedure regarding the extension of the Minimum Wage Act of Germany – adopted on 11 August 2014 and entered into force on 01 January 2015 (hereinafter MiLoG by the German abbreviation) – to employees of foreign transport companies. In the scope thereof, Germany submitted its response document to uphold its opinion, the content whereof is not known to us.

We were greatly influenced in producing our position paper by the piece of news received on 17 February 2015, according to which France was preparing to extend the minimum wage regulation also on parties performing transport operations related to loading tasks in France.

Other restrictive measures of minor importance have also been introduced, including the obligation in Belgium or France to leave cabins providing proper working conditions for the regular weekly rest period without ensuring transport equipment security. Overall these measures are considered to restrict the market for stakeholders from Hungary and other Member States, while protecting the internal market in favour of resident entrepreneurs and persons.

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The issue arises that Germany's minimum wage measure may be qualified as an indirect Member State tax, which is prohibited as such. This is deemed to run counter to basic EU norms, to be unnecessary at the same time and disproportionate with the objective intended to be achieved.

1. As regards Treaties of the European Union, general references are made to TFEU Article 56, providing for the protection of the freedom to provide services, as well as to TFEU Article 110, prohibiting to impose any internal taxation by Member States to afford indirect protection for the internal market. In essence, the MiLoG can be interpreted as a Member State tax to jeopardize one of the most important values of the EU – its internal market.

The special rules set out in the TFEU title on transport confirm the unrestricted freedom of enterprise and services within the Union. The principle is also formulated here that provisions by Member States directly or indirectly in favour of domestic carriers as compared to carriers of later acceded States are subject to Council approval (Article 92); in addition, it is required to take account of the economic circumstances of carriers (Article 94), and the imposition of rates or conditions to protect a Member State market is prohibited (Article 96 (1)). In our position, Article 98 is not applicable in 2015 in respect of Germany's authorisation with the objective of overcoming gaps by its internal divisions.

2. After the millennium, and with particular regard to the accession of the 12 new Member States, EU legislation renewed the rules on the freedom of international transport as a service, as well as on access to domestic transport as a market by carriers not established in a Member State, and cabotage operations. Regulations (EC) No 1071/2009, (EC) No 1072/2009, and (EC) No 1073/2009, as well as Regulation (EC) No 561/2006 prescribe in sufficient detail the criteria for both market involvement and participation in traffic itself, in terms of market involvement and safe transport. MKFE persists in its position that it is required to continue the gradual liberalisation of the EU transportation market by taking into consideration the diverse economic and social circumstances of Member States and market realities, rather than to raise new market barriers. In November 2012, MKFE proposed an amendment to cabotage rules, cancelling restrictions on the number of transport operations, but otherwise leaving rules unchanged, including the seven-day time limit.
3. The European Commission's White Paper on Transport, titled Road Map to a Single European Transport Area (Brussels, 28.3.2011, COM(2011) 144 final) identifies comprehensive transport development directions in addition to a survey of environmental and economic considerations by reckoning transport as a market. It states that the current standards of workplaces and working conditions can be improved together with professional skills; and actually, there is a lack of specialists in several sections of this industry, including public road transport. The White Paper sets (confirms) basic requirements, such as: a harmonisation of competitiveness and social schedules to prevent social conflicts; elimination of existing cabotage restrictions; increasing the efficiency of implementation control; and the identification of development directions in respect of the working conditions of travelling employees performing road transport operations.
4. Reference is made to the "Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market (Brussels 14.4.2014 COM(2014) 222 final)", stating on the basis of a detailed survey and data disclosure that

there is still a difference on the market between Member States acceded in 2004-2007 and older Member States, but it has decreased favourably and substantially in many respects. It specifically mentions safety and social security by the fact that the Eastern part of the Union has caught up with the Western part, or at least reached the level of certain older Member States. Costly developments on safety and labour conditions have been implemented by carriers of the later acceded 12, making remarkable progress towards providing social conditions and carrying norms into effect voluntarily.

The report expresses concerns regarding the appearance of various national legal regulations to counter the further development and balance of a balanced rise of salaries and improved working conditions in the internal market of public road transport.

In the internal market of the European Union, cabotage operations represent a negligible proportion both in terms of participation and income, even in spite of their growth. Nevertheless, this seems to be a neuralgic issue for Germany and France. Drafters of the report have been faced with statements proved to be unfounded in respect of this issue, e.g. that the competition of carriers within the frames of cabotage would have resulted in job losses.

5. Reference is made to the study titled Social and Working Conditions of Road Transport Hauliers (European Parliament - 2013), providing an assessment of the impact of EU regulations on the social and working conditions of drivers. It did not reveal any striking differences calling for action.

However, it revealed fears, such as unlawful, illegal, irregular forms of employment; circumvention of controls or abuses with the absence thereof; delays in social harmonisation among the EU 27; illegal cabotage operations and otherwise. All of these are circumstances which are not caused but suffered by carriers from Hungary and other later acceded Member States, so they are companions of German or French carriers.

6. Let us emphasize that the Hungarian carriers within MKFE love their profession and respect EU and Member State norms, and wish to comply with obligatory standards. The general statement confirmed by the studies referred to, namely that Hungarian carriers are unwilling to take part in irregular actions and do not intend to abuse with deficiencies of control. They have conformed to professional requirements by undertaking costs and making efforts, which excludes cheap or illegal uses of labour – Hungarian carriers could not even allow themselves to do so.

The fears revealed by the Commission study have been failed to be justified in case of Hungarian carriers: they do not resort to unlawful, illegal, and irregular forms of employment, e.g. they do not use the "letter box entity" trick ; they are not prone to outwit controls; and they strive for social harmonisation.

In addition, it should be noted that due to Hungary's geographic position, Hungarian carriers are severely afflicted by Eastern transport market anomalies and differences in record systems.

7. Issues of cross-border employment between Member States, including social issues are basically and properly regulated by EU norms in respect of transportation as well.

We hereby submit our present position paper in view of the fact that Regulations (EC) No 883/2004 and (EC) No 987/2009, as well as the court practices confirming them, order to apply the law of the Member State where work is habitually carried out in respect of the social circumstances of employees taking part in providing services; in other words, which has the closest relationship with the performance of performance of labour contract. These two Regulations expressly refuse to make a statement on categorisation: they provide that essentially, each case must be assessed on the basis of all criteria investigated.

8. International transportation: *posting or not posting?* Directive 96/71/EC concerning the posting of workers in the framework of the provision of services regulates an area not regulated by other EU norms, affecting a small number of participants, but still becoming important. Provisions on posting are intended to assist employers and employees where people need to be sent temporarily to another country for work, and not to hinder them, as also set out in Paragraphs (2) and (5) of the Preamble.

In the implementation of this Directive, it is requested to take into consideration Article 5 – especially Paragraph (1) – to the TFEU, based on Articles 3 and 4 of the same, setting out the requirements of subsidiarity and proportionality. Requirements for transport market access and safety – in a renewed form, so with antecedent norms in 1996 too – were regulated appropriately and in sufficient detail by directly applicable norms, by regulations. Conversely, it is contrary to the principles of both subordination and proportionality to construe a meaning into a directive that it does not actually and expressly or implicitly contain, therefore is unacceptable.

For this reason, MKFE is of the firm position that it cannot be explicitly stated that carrier employees would be subject to this legal regulation. MKFE agrees with the Commission initiative related to the Pilot procedure in the matter.

We adopt the firm stance that no further regulation is necessary at Member State level. From the labour law point of view, employee protection is provided at satisfactory standards; its further regulation by further Member State legislation – using the German or the planned French method – leads to market distortions.

9. Implementing Directive 2014/67/EU is intended to ensure the efficient control of compliance with the requirements set out in the posting directive. So the provisions thereof are applicable to transportation only to the extent – and marginally – to which the posting directive is applicable to transportation, but not in other cases.
10. MiLoG: MKFE accepts and holds in respect Germany's measure to enact a law on the minimum wage and its conditions in line with a number of other Member States, with reference to social security within that country. However, as a general remark, the uncertainty is immediately conspicuous, which causes problems to the foreign hauliers affected in connection with the obligatory use of the German language – the use of at least one foreign language would be reasonable -, with cross-references to other German laws in respect of the definition of working hours required for specifying the minimum wage, the content of wages, and the method of reporting. The act designates the German customs authority for implementation as a body of competence. In this case, customs authority involvement means that Germany intends to enforce this burden as a tax and to collect the imposed penalty consequences like a special tax.

These rules can only be complied with by those who are familiar in detail with German legislation. There is no legal or juridical consultancy to operate by taking full responsibility, and this is recognised by the act through obligating the authority to provide information and consultancy (Art. 12) in minimum wage issues of employees and companies.

11. Extensive application of the MiLoG: The text of the act does not contain any express or indicative provision on travelling employees working in the transport industry. Therefore we were informed with astonishment and extraordinary delay about the fact that Germany intended to apply the MiLoG to workers in the transport industry as well. We received indirect, that is, unofficial information on 25 and 26 November, 2014. We received the text of the MiLoG in German (!) as it was not available in any other language at the time. Practically, we received the form (no. 033037) required for implementing the MiLoG on 19 December 2014, the last workday preceding the Christmas holidays as a general European practice, specifying questions also in German and expecting answers in the German language. Afterwards, we posed questions to German authorities on an on-going basis, but we received deficient and contrary answers. We were only confirmed that Germany intended to apply the MiLoG to the transport industry as well. The opinion included in such replies is also found to be prejudicial whereby German authorities refer Hungarian carriers to court, as the length of court proceedings and the uncertainties in the meantime represent an unjustified disadvantage to them.
12. In February 2015, we received news of French attempts to extend the application of minimum wages to employees of non-resident undertakings working in France, typically to building industry workers, but also – for an unfathomable consideration – to those involved in public road transport. France arrogates the right to regulate this issue by picking out selections from the Posting Directive and the Implementing Directive, as well as certain expressions from legal norms, thus by exceeding the actual legislative intent, objective, and the meaning of the text.
13. MKFE agrees with the position of the Swedish International Freight Association (SIFA) (request submitted to the Commission, 27 January 2015), which questions the legality for application of recently introduced minimum wages for persons (non-Germans) who perform services in transit through or to/from Germany; and, it states in addition, the prospective prejudice (500,000 EUR) for legal infringements is exaggerated. Yes, indeed.  
  
MKFE agrees with the legal and proportionality and unjustifiability concerns expressed in a letter signed by the Ministers of eleven Member States and forwarded to the German Federal Minister of Labour and Social Affairs and to the Federal Minister for Transport and Digital Infrastructure, urging Germany to alter the scope of the MiLoG.
14. Hungarian road transport undertakings and their employees are seriously disadvantaged by the exclusive use of the German language. It cannot be considered as a market-friendly approach by German legislators and authorities that any kind of information in English was made available in February 2015, still only to a limited extent. Information by the German customs authority in mid-January 2015 only indicated that the homepage for information in English was in the making.

Production and preservation of employment documents in two languages is a burden unjustified by the Posting Directive and its Implementing Directive.

In addition to certain unjustified formal requirements, the definition of wages and working hours and the elements to be lawfully included is considered to be a content-related concern. And Hungarian payroll clerks are not familiar with German legislation. As of 01 January 2015, Hungarian carriers had no realistic chances at all to get to know the new German regulations e.g. on daily subsistence allowance.

Exchange rates are defined by the German authority to the detriment of Hungarian carriers; the extent of such detriment on the whole is considerable and unjustified.

An uncertainty is caused by the fact that the roles and responsibilities of German consigners are unclear in respect of the MiLoG rules to be applied in the course of completing a transport task. From late December on, offers by German companies were started to be received by Hungarian transport undertakings, in which the senders offered their services as delivery assistants to comply with the MiLoG, for special and considerably high consideration.

The situation still exists that detailed information on MiLoG is impossible or very difficult to access on the homepage specified – at [www.zoll.de](http://www.zoll.de) – in other than German.

15. Contacts with German authorities are erratic in spite of the respective legal obligation (MiLoG Art. 12). MKFE made attempts at several authorities on several occasions to obtain information, attempting to get information on fellow associations as well.

On 9 and on 13 January 2015, the German customs authority replied that the authority had a timeframe of 4 weeks to answer - which we find too long.

On another occasion, in respect of reporting a new driver employee not included in the list of reported drivers, we realized that the German customs authority gave different replies: they wrote about a reporting obligation to our Polish fellow association and qualified the same as non-reportable in its reply to MKFE.

MKFE called upon the German Ministry of Labour and Social Affairs in an electronic letter, inquiring for information – reliant on MiLoG Art. 12 (2) – on whether the application of the collective agreement applied at MKFE was to be accepted in respect of the MiLoG. The reply included no statement of rejection or acceptance, but contrary to their own regulation, it denied to provide information and referred MKFE to resort to legal services (see annex). At the same time, it came to our attention that the German customs authority gave a negative answer to the same question posed by one of our members in December 2014.

The reason for the difference between the two answers is believed to be the fact that in its request, MKFE referred to the judgment passed in case no. C-164/99 by the Court of Justice of the European Union, stating that *"the fact that, in concluding a collective agreement specific to one undertaking, a domestic employer can pay wages lower than the minimum wage laid down in a collective agreement declared to be generally applicable, whilst an employer established in another Member State cannot do so, constitutes an unjustified restriction on the freedom to provide services"* (sections 34-35 of the judgment referred to).

16. We welcome Germany's move to suspend the application of the MiLoG on transit traffic. Still, it should be noted that German regulations are also uncertain in terms of the

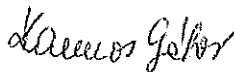
definition of transit. The reply received to the question arisen in passenger transport, "unless it affects the German economy", fails to provide sufficient guidance.

**Respected Mr. Juncker,**

Having regard to the above, the Hungarian Road Transport Association kindly requests the Commission not to grant permission to Germany to maintain the measure made grievance of; in addition, if our position is found to be legally well-grounded, to institute proceedings for infringement of an obligation against Germany under Article 258 of the TFEU.

Dated in Budapest, 4 May, 2015

Yours sincerely,



on behalf of  
Hungarian Road Transport Association:  
Secretary General Gábor Katmos



Cc:

Mr. Frans Timmermans  
First Vice-President

Ms. Violeta Bulc  
European Commissioner for Mobility and Transport

Ms. Marianne Thyssen  
European *Commissioner* for Employment, Social Affairs, Skills and Labour Mobility

Ms. Margrethe Vestager  
EU Competition Commissioner

Ms. Elżbieta Bieńkowska  
European Commissioner for Internal Market, Industry, Entrepreneurship and SMEs

Mr. Eddy Liegeois  
Head of Unit, Land Transport Policy, DG MOVE D3



**From:** info@bmas.bund.de [mailto:info@bmas.bund.de]  
**Sent:** Wednesday, February 25, 2015 6:10 PM  
**To:** csanyi@mkfe.hu  
**Subject:** AW: BJS/MAS RE: BJS RE: questions on the application of German minimum wage

Sehr geehrter Herr Csanyi,

vielen Dank für Ihre Email.

Wir müssen darauf hinweisen, dass uns die Erteilung von Rechtsauskünften oder die Unterstützung in Angelegenheiten der individuellen Rechtsverfolgung durch das Rechtsdienstleistungsgesetz untersagt ist. Dies obliegt den Angehörigen rechtsberatender Berufe. Sie haben die Möglichkeit, sich mit Ihrem Anliegen an einen Rechtsanwalt oder - falls Sie gewerkschaftlich organisiert sind - an Ihre Gewerkschaft zu wenden.

Wir bitten Sie daher um Verständnis, dass eine rechtliche Beurteilung des von Ihnen beigefügten Sachverhaltes an dieser Stelle nicht erfolgen kann.

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Bundesministerium für Arbeit und Soziales

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**Von:** Csányi Gábor [mailto:csanyi@mkfe.hu]  
**Gesendet:** Freitag, 20. Februar 2015 15:16  
**An:** [info.bmas@buergerservice.bund.de](mailto:info.bmas@buergerservice.bund.de)  
**Cc:** MKFE Karmos Gábor  
**Betreff:** BJS RE: BJS RE: questions on the application of German minimum wage  
**Wichtigkeit:** Hoch

**Bundesministerium für Arbeit und Soziales (BMAS)**

Dear Madam/Sir,

thanking you for your below answer I hereby attach the letter of Mr. Gabor Karmos, Secretary General of MKFE and the collective agreement referred.

Sincerely yours:  
Gabor Csanyi