
The posting of workers in the road-transport sector, in the light of the Directive (EU) 2020/1057.

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Abstract

As the title suggests, the essay proposes a study of the regulation of the posting of workers in the road-transport sector, in the light of the Directive (EU) 2020/1057, focusing on the main aspects of this complex recent regulatory intervention. Taking the cue from a general introduction to transport work, the attention is focused on the 2020 Directive, putting it in relation to two previous ones (Directive 96/71/EC and Directive 2014/67/EU), to then analyze the focal points of the new discipline and then conclude with some critical reflections of a proactive nature, with a view to future interventions in the field.

Keywords: Posting of workers, Road transport, European Union.

1. Preliminary remarks.

The complexity that characterizes contemporary global societies can identify in the concept of “connection” one of its most emblematic features.

In the context of such a general trend, the transport sector -as well as the communications one- represents a sort of central “hub” of the economic, productive and social model, experiencing an unprecedented dynamism.

«Globalization, enhanced international trade liberalization and the prevalence of e-commerce have, in some cases, led to more efficient freight and passenger movements but,

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in other cases, have also led to negative consequences for the conditions of work of many transport workers».¹

Precisely the dimension of the work in this crucial sector and its regulatory models draws the thematic perimeter of a general reflection, which is perceived as necessary in the global and European scenario.

In such a context, the present contribution intends to shed light on the complex institution of the posting of workers in the road-transport sector, with specific reference to new regulatory framework designed by the Directive (EU) 2020/1057. What are the main innovation profiles of this intervention and how do they interact with the previous Directives over time approved on the subject?

Starting from an introductory discourse on the outlines of the concept of transport in general and road transport in particular, the main aspects of the new regulation will be analytically considered, reporting criticalities and profiles of intervention with a view to improving the regulatory framework recently introduced. The methodology used is based on the interpretation of the legal data.

2. Transport work: European coordinates for a complex concept.

“Transport work”: what is to be understood by this concept?

Before embarking on a critical study of the normative dimension of the topic above introduced, we must first explore briefly the conceptual background of the theme, trying to better understand the definitory dimension in which specific rules on posting of workers are inserted.

In fact, the same concept of “transport sector” provides a unifying category, that embraces a wide and heterogeneous spectrum of expressions, diversified on the basis of different taxonomic criteria. Thus, the phenomenal picture of a sector that seems to consist of a set of subsectors emerges clearly: just think, for example, of the classic partition in “water transport”, “air transport”, “land transport” and, within the latter subsector, in differentiating between “train transport” and “road transport”.

This heterogeneity deserves to be carefully kept in mind, to properly explore the research perspective that focuses on the different forms of work in this “macro-sector”: road transportation workers, civil aviation staff, railways staff, seafarers and inland waterway staff:

Already at an initial approximation, it can be said that the same empirical observation of the macrophenomenon “transport”, suggests considering a heterogeneous set of subcategories and sectors, which coincide with the methods, the contexts and the means by which the same transport is expressed and realized.

Moreover, the complexity inherent in the concept of transport is also confirmed by regulatory sources: in particular, if we consider the European context, it is worth pointing out the Treaty on the Functioning of the European Union (TFEU), whose Title VI is

¹ ILO, *Guidelines on the promotion of decent work and road safety in the transport sector*, Geneva, 2020, 7. See L. Battista, *Il lavoro sommerso e il ruolo dell’Autorità Europea del Lavoro*, Cacucci, Bari, 2022.

dedicated to “Transport” and is explicitly applied «to transport by rail, road and inland waterway».² It is thus evident that the very application profiles of the Treaty are projected into a heterogeneous dimension, in order to regulate different fields and areas of a unitary phenomenon, essential and crucial for the European Union project.

In fact, as article 90 TFEU makes clear, «The objectives of the Treaties shall, in matters governed by this Title, be pursued within the framework of a common transport policy», for whose concrete realization, it is recognized the need to determine -among other things- «common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States».³

Indeed, the establishment of a common transport policy in general, based on a common regulatory framework, is considered essential in order to realize and accomplish the design of a single market project: delimiting the perimeter of the analysis, more in particular, road-transport represents an emblematic and strategic sector for the European economy, functional to the free movement of people and capital.

In other words, it can be said that both the transport system and its infrastructure network, together, constitute a pillar of Community integration, which deserves to be carefully considered, governed and regulated, seeking solutions oriented towards sustainability (environmental, but also social) and safety.

As well highlighted in the European Union context, there is a strong need to keep a constant focus on transport policies that help to develop effective solutions, integrated and intermodal, to structural problems, such as poor and uneven quality of infrastructure, poor environmental sustainability of transport, congestion of road and air traffic.⁴

However, despite this necessity, it should be noted that «*la evolución de la política de transportes, dirigida a la creación de un mercado común, donde se consagrarse la libre prestación de los servicios en el marco de la Unión Europea (en adelante UE) no ha dado lugar a una legislación conjunta adecuada a sus especialidades, ni tampoco se ha conformado un marco armonizado de normas sociales en dicho ámbito*».⁵

Actually, on the regulatory side there is a substantial general gap in European legislation on transport and much remains to be done, even if interesting and encouraging signals in this sense can be found, starting from the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on “Sustainable and Smart Mobility Strategy – putting European transport on track for the future”.⁶

² Article 100.1, TFEU.

³ Articles 90 and 91.1, TFEU.

⁴ European Union, *Transport. Safe, sustainable and connected transport*, <http://xurl.es/inby6> (last visit: 17.05.2023). See also European Commission, Directorate-General for Mobility and Transport, *EU transport in figures – Statistical pocketbook 2021*, Publications Office, 2021, <http://xurl.es/z4szg> (last visit: 17.05.2023).

⁵ Ribes Moreno I., *Los contratos de trabajo de los trabajadores del transporte desde la perspectiva del derecho social europeo y la política social europea: aspectos críticos*, in Fotinopoulou Basurko O. (Dir.), *Los trabajadores del transporte en el Derecho de la Unión Europea*, Aranzadi, Cizur Menor, 2022, 50: «the development of transport policy, aiming at the creation of a common market, where freedom to provide services is enshrined within the framework of the European Union (hereinafter EU) has not led to a joint legislation appropriate to their specialities, nor a harmonised framework of social standards has been established in this area».

⁶ COM(2020) 789 final, Bruxelles, 9.12.2020.

The Communication presents an interesting vision centred on the paradigm of a crucial transition: the «irreversible shift to zero-emission mobility»,⁷ whose chances of achievement pass for a set of flagship initiatives, strongly oriented to ecological, sustainable, smart and resilient mobility.

Nevertheless, from a labour point of view, the Communication presents very few references, merely pointing out that «The sector's most valuable asset by far is its people and the sustainable and smart transition will not be possible without the support and buy-in of transport workers. However, certain parts of the transport sector often suffer from harsh working conditions. Precarious working conditions, including long working hours, periods spent away from home and low paid work, are exacerbated by a lack of respect for, and proper enforcement of, applicable labour standards. Providing higher social standards would contribute directly to reverse the current general lack of attractiveness of the sector. The workforce is rapidly ageing and significant shortages of labour force are already very visible in certain occupations. The issues faced by the transport workers have been exacerbated by the COVID-19 pandemic. This situation risks deteriorating further if no action is taken».⁸

Working conditions, working hours, low wages, labour standards, workforce ageing: these are the priorities identified in the Communication, which, however, merely mentions a diagnosis of the phenomenon, identifying some of the main problems affecting work in the sector, but without going further, proposing lines of action and intervention.⁹

3. Posting of workers in the framework of a provision of services: the Directive (EU) 2020/1057 of the European Parliament and of the Council, of 15 July 2020, in the prism of two previous Directives (Directive 96/71/EC and Directive 2014/67/EU).

Focusing the attention on the road-transport work, it seems interesting to highlight that, within the heterogeneous profiles that make up the “social issue” of this specific sector, a peculiar interest is covered by the posting of workers in the framework of a provision of services.

As is known, in general terms, the posting of workers in the framework of a transnational provision of services occurs when, under a commercial agreement between companies resident in different States of the European Union, a company temporarily posts an employee abroad, in order to work in a Member State other than the usual one, in which the employer is established.

On the point, it is worth starting the reflection from the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996, that presents a «“hard core” of clearly defined protective rules»¹⁰ for posted workers: «This Directive shall apply to

⁷ COM(2020) 789 final, Bruxelles, 9.12.2020, 3.

⁸ COM(2020) 789 final, Bruxelles, 9.12.2020, § 93.

⁹ COM(2020) 789 final, Bruxelles, 9.12.2020, § 94: «This is why the Commission will consider measures across the different modes of transport to strengthen the legislative framework on conditions for workers, and ensure the correct implementation and give more clarity on the applicable social rights in line with the various instruments available to implement the European Pillar of Social Rights».

¹⁰ § 14, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996.

undertakings established in a Member State which, in the framework of the transnational provision of services, post workers (...), to the territory of a Member State».¹¹ It is, as is evident from just these few words, a Directive which is not expressly designed exclusively for the transport sector, but which is at the same certainly applicable, with exclusion of «merchant navy undertakings as regards seagoing personnel».¹²

As clearly highlighted in doctrine, the Directive 96/71/EC represents a significant intervention of the European legislator, in order to identify «*in via generale e preventiva il punto di equilibrio fra la libertà fondamentale dell'impresa di esercitare la propria attività "a tutto campo" sul territorio dell'Unione e le esigenze imperative di tutela dei lavoratori sul territorio dello Stato membro nel quale l'attività economica dell'impresa era temporaneamente esercitata*».¹³

Precisely these imperative protection requirements arise from the risk of fraud and abuse in the application of labour and social security legislation in this field and, without going unnecessarily into the details of the Directive 96/71/EC, it is sufficient to highlight that in order to ensure a more effective implementation of the Directive 96/71/EC, the Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014, «on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System («the IMI Regulation»)» has been adopted.

The Directive 2014/67/EU emphasizes that an «adequate and effective implementation and enforcement are elements in protecting the rights of posted workers and in ensuring a level-playing field for the service providers, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area. Close cooperation between the Commission and the Member States, and where relevant, regional and local authorities, is therefore essential, without neglecting the important role of labour inspectorates and the social partners in this respect. Mutual trust, a spirit of cooperation, continuous dialogue and mutual understanding are essential in this respect».¹⁴

Within this trajectory of these regulatory interventions, the Directive (EU) 2020/1057 is situated and deserves to be interpreted as the «*adaptación de la Directiva 96/71 al transporte, establece el marco legal por el que determinadas operaciones de transporte por carretera deben considerarse desplazamiento de trabajadores*».¹⁵

It is precisely the idea of adapting the regulatory framework of the Directives 96/71/CE and 2014/67/EU to the specific road-transport sector that inspires the Directive (EU) 2020/1057, also in the light of events that occurred in the years preceding its approval, in

¹¹ Art. 1.1, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996.

¹² Art. 1.1, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996. Cf. ECJ 1 December 2020, case C-815/18 (Federatie Nederlandse Vakbeweging v Van den Bosch Transporten BV and Others).

¹³ Traversa E., *Il distacco dei lavoratori*, in Carinci F., Pizzoferrato A. (Eds.), *Diritto del lavoro dell'Unione Europea*, Giappichelli, Turin, 2015, 154-155. See also Hennion S., Le Barbier-Le Bris M., Del Sol M., *Droit social européen et international*, PUF, Paris, 2013, 233-308.

¹⁴ § 16, Directive 2014/67/EU of the European Parliament and of the Council of 16 December 1996.

¹⁵ Parra Gutiérrez J.P., *La directiva 2020/1057 sobre desplazamiento de trabajadores en el sector de transporte por carretera. Primeros pasos de una regulación esperada y necesaria*, in *Labos*, 2023, 1, 96.

the national regulatory landscape, which had highlighted the real risk of the adoption by each individual Member State of a heterogeneous spectrum of fragmented and inconsistent measures, hampering the smooth and correct functioning of the road-transport dynamics¹⁶.

In any case, it would not be correct to say that the perimeter of the Directive 2020/1057 is limited only to the issue of posting workers in the road-transport sector: in fact, it also intervenes -especially on the conditions for carrying out checks on compliance with the limits in driving times and rest periods- on the ground of Directive 2006/22/EC, of the European Parliament and of the Council of 15 March 2006, “on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC”.¹⁷

4. The posting of drivers in the Directive (EU) 2020/1057: a focus on the main aspects.

Focusing on the posting of workers profile, it can be said that the Directive (EU) 2020/1057 is conceived as *lex specialis* of the Directive 96/71, with regard to the road-transport sector, as clearly specified in the article 1.1, that refers to «specific rules as regards certain aspects of Directive 96/71/EC relating to the posting of drivers in the road transport sector and of Directive 2014/67/EU relating to administrative requirements and control measures for the posting of those drivers». ¹⁸

¹⁶ Reference is made here to a specific profile of significant interest: the measures adopted in the Austrian, German and French legal systems, emblematically represented, in the latter, by the so-called *Loi Macron (Décret n° 2016-418 du 7 avril 2016, adaptant le titre VI du livre II de la première partie du code du travail aux entreprises de transport détachant des salariés roulants ou navigants sur le territoire national et modifiant le code des transports*; on the point, see -*ex multis*- Cascales M., Fernando J., *Medidas nacionales unilaterales versus quebra del mercado interior. La “Ley Macron”*, in *Tráfico y Seguridad Vial*, 2016, 209). In a nutshell, the 2016 *Ley Macron* “emphasizes” the scope of Article 9.1, letter b) of the Directive 2014/67, about “Administrative requirements and control measures”, providing for particularly stringent checks on drivers passing through French territory: «*La actitud de estos países pone de manifiesto que existía un riesgo evidente de que cada Estado adoptara sus propias medidas de control, que convertirían al transporte internacional en Europa en una inadmisibile gymkana*» (Parra Gutiérrez J.P., *ibidem*, 97). So, in such a critical scenario, between 2015 and 2017, a plurality of infringement procedures was promoted against the aforementioned Member States, until reaching, in 2017, a proposal for a Directive on the workers in road transport, presented by the European Commission.

¹⁷ With reference to the Italian legal system, see the “*Legge delega*” 4 August 2022, No. 127 and the related Legislative Decree 23 February 2023, No. 27 – Implementation of the Directive (EU) 2020/1057; regarding the Spanish legal system, see the “*Real Decreto-ley*” 1 March 2022, No. 3, “*de medidas para la mejora de la sostenibilidad del transporte de mercancías por carretera y del funcionamiento de la cadena logística, y por el que se transpone la Directiva (UE) 2020/1057, de 15 de julio de 2020, por la que se fijan normas específicas con respecto a la Directiva 96/71/CE y la Directiva 2014/67/UE para el desplazamiento de los conductores en el sector del transporte por carretera, y de medidas excepcionales en materia de revisión de precios en los contratos públicos de obras*”.

¹⁸ Article 1.1, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020. Cf. Parra Gutiérrez J. P., nt. (15) 98; Velázquez Fernández M., *La transposición al ordenamiento español del artículo 1 de la Directiva 2020/1057 (lex specialis) sobre desplazamientos en el sector del transporte internacional por carretera*, in *Laborum. Revista de Derecho de la Seguridad Social*, 2022, 31, 243-263; Ojeda Avilés A., *Trabajadores transfronterizos y migrantes: los círculos aplicativos en los desplazamientos transnacionales*, en *Revista de Derecho Social*, 2022, 99, 17-38; Contreras Hernández O., *Desplazamiento de trabajadores y la revisión del marco legal europeo: ¿el principio del fin del dumping social y la competencia desleal?*, en *Revista de Derecho Comunitario Europeo*, 2021, 69, 601-650.

Highlighted the essential relationship between the Directive 96/71 and the Directive 2020/1057, it is important to delimit the field of application of the latter, well determined by its article 1.2: «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»,¹⁹ which refers to «post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting».²⁰

In these words, we can find, therefore, the typical situation of posting of workers, in the context of a transnational provision of services. But how can we identify the situations that do not fall within the scope of the Directive 2020/1057? The heterogeneity of scenarios and cases determines the complexity of the differentiation operation in question.

However, the Directive itself defines the basic criterion to be taken as a reference, which is that of the so called “sufficient link”, presented in the following terms: «Balanced sector specific rules on posting should be based on the existence of a sufficient link between the driver and the service provided, and the territory of a host Member State. To facilitate enforcement of those rules a distinction should be made between different types of transport operations depending on the degree of connection with the territory of the host Member State».²¹

Driver-service provided-territory of a host Member State: this is the fundamental trinomial; the key concept is represented by the existence of a “sufficient link” between the driver, the service provided and the territory of a host Member State. And, precisely by applying the fundamental criterion in question, the Directive proceeds to differentiate some types of transport, clarifying which cases remain outside the scope of the posting of drivers Directive.

So, «a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations in respect of goods. For the purpose of this Directive, a bilateral transport operation in respect of goods means the movement of goods, based on a transport contract, from the Member State of establishment, as defined in Article 2(8) of Regulation (EC) No 1071/2009, to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment».²²

Certain operations of an “additional” nature compared to bilateral international transport are also excluded from the scope of the legislation on posting of drivers provided for in this Directive, as well as the mere international transport in transit through the territory of a Member State, that is, «without loading or unloading freight and without picking up or setting

¹⁹ Article 1.2, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020.

²⁰ Article 1.3.a, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996.

²¹ § 9, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020.

²² Article 1.3, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020. See also § 10, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020: «It would be a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and therefore the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations».

down passengers and there is therefore no significant link between the driver's activities and the Member State transited».²³

Not even the initial and final phases of a combined transport complement a case of international posting of drivers, «if the road leg on its own consists of bilateral transport operations, as defined in paragraph 3 of this Article».²⁴

Instead, «Where a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, there is a sufficient link to the territory of the host Member State. The link exists in case of cabotage operations as defined by Regulations (EC) No 1072/2009 (6) and (EC) No 1073/2009 (7) of the European Parliament and of the Council since the entire transport operation takes place in a host Member State and the service is thus closely linked to the territory of the host Member State. A non-bilateral international transport operation is characterized by the fact that the driver is engaged in international carriage outside of the Member State of establishment of the undertaking making the posting. The services performed are therefore linked with the host Member States concerned rather than with the Member State of establishment. In those cases, sector-specific rules are only required with regard to the administrative requirements and control measures».²⁵

Article 1.9 of the Directive clearly highlight that «Member States shall ensure that, in accordance with Directive 2014/67/EU, 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. The relevant information shall, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments, including, where relevant, by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned».²⁶

With regard to the administrative requirements and controls measures which the Member States may impose in case of posting of drivers, article 1.11 significantly limits the perimeter of the bureaucratic obligations that can be introduced, providing for a *numerus clausus*,²⁷ thus

²³ § 11, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020: «The qualification of the driver's presence in a Member State as transit is, therefore, not affected by stops, for example, for hygiene reasons».

²⁴ Article 1.6, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020. See also § 12, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020: «When a driver is engaged in a combined transport operation, the nature of the service provided during the initial or final road leg is closely linked with the Member State of establishment if the road leg on its own is a bilateral transport operation. By contrast, when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, there is a sufficient link with the territory of a host Member State and therefore the posting rules should apply».

²⁵ § 13, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020.

²⁶ Article 1.9, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020.

²⁷ Article 1.11, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020: «a) an obligation for the operator established in another Member State to submit a posting declaration to the national competent authorities of a Member State to which the driver is posted at the latest at the commencement of the posting, using a multilingual standard form of the public interface connected to the

overcoming the criticalities emerged in the previous regulatory scenario,²⁸ and enhancing the potential of a fundamental tool: the so called “Internal Market Information System” (‘IMI’).

The latter -established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012, on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’)- has been defined as a «*“red social” para autoridades de los Estados de la Unión Europea, a través de la que intercambian información sobre cuestiones tan variadas como restitución de bienes culturales, cualificaciones profesionales o control de armas de fuego*» and «*una de las secciones de IMI se dedica a la cooperación administrativa para el control de desplazamiento de los trabajadores en el marco de una prestación transnacional de servicios*».²⁹

It is a fundamental instrument -both in general and in particular, with regard to the complex road-transport sector- to facilitate communications (especially between the European authorities) and administrative cooperation.

With specific reference to the relationship between transport companies and IMI, it should be noted that, as of 2 February 2022, the European Commission has made operational a dedicated public interface system, connected to the Internal Market Information System, on which the declaration of posting of drivers by road-transport operators may be transmitted to the competent authorities of a Member State, pursuant to article 1 of the Directive 2020/1057.³⁰

Internal Market Information System (‘IMI’), established by Regulation (EU) No 1024/2012 (...); b) an obligation for the operator to ensure that the driver has at his or her disposal in paper or electronic form and an obligation for the driver to keep and make available when requested at the roadside: (i) a copy of the posting declaration submitted via IMI; (ii) evidence of the transport operations taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009; (iii) the tachograph records and in particular the country symbols of the Member States in which the driver was present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006 and (EU) No 165/2014; (c) an obligation for the operator to send via the public interface connected to IMI, after the period of posting, at the direct request of the competent authorities of the Member States where the posting took place, copies of documents referred to in point (b) (ii) and (iii) of this paragraph as well as documentation relating to the remuneration of the driver in respect of the period of posting, the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC (21), time-sheets relating to the driver’s work, and proof of payments».

²⁸ § 18, Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020: «Difficulties have also been experienced in applying the rules on the posting of workers specified in Directive 96/71/EC and the rules on the administrative requirements laid down in Directive 2014/67/EU to the highly mobile road transport sector. Uncoordinated national measures on the application and enforcement of the provisions on the posting of workers in the road transport sector have generated legal uncertainty and a heavy administrative burden on non-resident Union operators. This has created undue restrictions to the freedom to provide cross-border road transport services, with negative side-effects for jobs and the competitiveness of operators. Therefore, administrative requirements and control measures need to be harmonised. This would also prevent operators from suffering unnecessary delays».

²⁹ Parra Gutiérrez J.P., nt. (15),101.

³⁰ See Commission Implementing Regulation (EU) 2021/2179 of 9 December 2021, on the functionalities of the public interface connected to the Internal Market Information System for posting drivers in the road transport sector, that «specifies the functionalities of the public interface connected to the Internal Market Information System (‘IMI’) for the purposes of Article 1(11) of Directive (EU) 2020/1057» (article 1).

5. Final remarks. Between employment and self-employment: the qualification dilemma of road-transport work

The critical consideration of the most peculiar aspects characterizing the Directive (EU) 2020/1057 allows to develop some short observations -here presented as final remarks and conceived as possible basis for future reflections, in a *de jure condendo* perspective- around a key aspect of the theme.

In general terms, with specific reference to the road-transport sector, the recent intervention in posting of workers in the framework of a provision of services field, can be considered as necessary and appropriate, in the light of the critical evidences previously emerged.

In particular, especially positive is the critical consideration of two pillars of the Directive (EU) 2020/1057: on one hand, the taxonomical contribution developed regarding the different categories of transport -as above highlighted, based on the “sufficient link” criterion, functional to make clear about the scope of application of the discipline on posting of workers- and, on the other hand, the simplifying effort realized on the administrative requirements and control measures ground.

But, if we examine the topic in a broader perspective, it seems essential to point out a question that seems to be crucial, in order to evaluate the real and effective impact the Directive (EU) 2020/1057 can concretely produce, represented by the qualification dilemma of road-transport work, as a sector situated just in the middle of a decisive tension between employment and self-employment.

Actually, the qualification -precisely in terms of self-employment or employment- of the road-transport work relationship is undoubtedly one of the major open questions that characterize the subject under study. As is known, in fact, the relevance of the theme derives, in general terms, from a specific profile: «fraudulent contracting of work in the grey area between genuine forms of employment and self-employment is a source of low-wage competition and social dumping».³¹

As pointed out, «Regarded in the wider social context, the use of false self-employed drivers can be related to the free movement of labor and services and the possibility exploit the economic and social cleft between East and West in the EU. The deregulation and liberalization of the road haulage market and the lack of social harmonization within the EU help to explain the complex background to the problem as well».³²

So, matching the topic object of the present study, with the basic essence of the qualification’s question here briefly introduced, it emerges clearly the relevance of the problem, being the perimeter of the Directive (EU) 2020/1057 evidently limited to the only employment relationship area.

³¹ Thörnquist A., *Truck Drivers in the Grey Area between Employment and Self-employment: Swedish Experiences*, in *Nordic Journal of Working Life Studies*, 2019, 9, 33. In general terms, see also García Murcia J. (Ed.), *El concepto de trabajador asalariado: notas legales, indicios y otros indicadores de origen jurisprudencial*, Tecnos, Madrid, 2023.

³² Thörnquist A., *ibid*, 45. See also Luján Alcaraz J., *Los transportistas en las fronteras del contrato de trabajo calificación jurídico-laboral de la actividad de transporte*, en *Revista del Ministerio de Trabajo e Inmigración*, 2009, 83, 101-123.

With reference to self-employment in the road-transport sector, in order to avoid a possible elusive effect of the positive impact Directive (EU) 2020/1057 can produce, it seems mature the time for a debate on a possible regulation, expressively dedicated to autonomous drivers, so as to the social-dumping practices, focused to strengthen the regulation of the “social issue” characterizing the phenomenon.

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