

 <b>MINISTÈRE CHARGÉ DES TRANSPORTS</b> <i>Liberté Égalité Fraternité</i>	<b>FAQ</b> <b>on provisions relating to the conditions of implementation of secondment laws applicable to drivers or sailors of land transport companies</b>  <b>(Art. L. 1331-1 to L. 1331-3 and Art. R. 1331-1 to R. 1331-11 of the French Transport Code)</b>
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## **Presentation of the formalities applicable to the secondment of certain employees in the transport sector.**

Within the framework of Directives 96/71/EC of the European Parliament and of the Council of 16 December 1996 and 2014/67/EU of 15 May 2014, French regulations (Articles L. 1331-1 to L. 1331-3 and Articles R. 1331-1 to R. 1331-11 of the French Transport Codes) adapts the formalities provided for by the French Labour Code in the case of the secondment of workers to the specific situation of land transport.

The provisions of the French Labour Code governing secondment, from which there is no express derogation, shall continue to apply.

The rules have three objectives:

- to specify the formalities adapted to land transport companies that second drivers or sailors to domestic territory, the formalities provided for by the French Labour Code pursuant to Directive 96/71/EC of 16 December 1996 and Directive 2014/67/EC of 15 May 2014;
- to facilitate access by seconded land-based or seagoing to information on their rights;
- to strengthen the effectiveness of checks to better combat fraud during secondments, which constitutes unfair labour competition practices which are harmful to companies that respect the law and the working conditions of seconded workers.

### **What is the scope of the formalities?**

The formalities are applicable to companies established outside France that meet the following two cumulative conditions:

1) they perform one of the land transport activities defined in Article L. 1321-1 of the French Transport Code (in practice, a road or inland waterway transport activity), or are a temporary employment company;

2) secondment of a land-based or seagoing employee in French territory, in the cases provided for in Article L. 1262-1 or Article L. 1262-2 of the French Labour Code.

These different cases correspond to those listed in Article 1 of Directive 96/71/EC of 16 December 1996. This may involve:

- the transnational provision of a service, where the recipient of the service is established or

- conducts business in France;
- intra-group mobility, consisting of the secondment of staff between companies within the same group or establishments within the same company;
- the secondment by a temporary employment company established abroad of an employee to a user company established or temporarily conducting an activity in France.

### **Are industrial companies affected by this regulation?**

The formalities specifically provided for secondment in land transport are not applicable to businesses which do not themselves have the status of public transport businesses, such as industrial business which employ land-based or seagoing personnel to transport their production.

### **Are self-employed workers affected by this regulation? How to identify these workers**

Self-employed workers do not fall within the scope of the rules on secondments, and as such are not subject to the reporting obligation, whether under common law or laws specific to land transport;

The status of self-employed worker is independent to the rules laid set out in the French Transport Code. No specific document is required to prove self-employment status. However, in the framework of checks, it may be useful to present a document showing the self-employed status of the person concerned, as provided for by the regulations of the country where the self-employed person is established.

### **Are companies established outside a Member State of the European Union affected by secondment rules?**

Employers established outside the European Union are subject to rules on secondment. Article L 1262-1 of the French Labour Code effectively provides for the possibility of an employer established outside France to temporarily second employees. Provisions relating to secondment (applicable rights, formalities, conditions of the secondment) are therefore applicable to the employees of these companies, subject, as applicable, to treaties, conventions or agreements duly ratified or approved and published (Article L 1261-1 of the French Labour Code). In the road transport sector, no bilateral agreement with France providing for derogations from secondment rules or their implementing rules has been identified. Employers of road transport companies established in a third party country of the European Union shall therefore comply, amongst others, with the reporting formalities set out in the French Transport Code.

### **Why does French law not specify the cases in which secondment rules apply to the various transport operations?**

That is not its purpose. These regulations only define formalities adapted to the specific aspects of transport.

The scope of application of the law on secondment is exclusively defined by the rules of Directive 96/71/EC of 16 December 1996, transposed in France by Articles L. 1262-1 and L. 1262-2 of the French Labour Code.

In practice, international transport to or from France, as well as cabotage operations on French soil, carried out with an employee temporarily sent to France and who continues employment relations with the sending company, meet the criteria for applying the law on secondment and are subject to the specific reporting obligations applicable to secondment in land transport.

On the contrary,, mere transit on national territory, which does not give rise to the loading or unloading of goods or the embarkation or disembarkation of passengers, does not meet the criteria for the application of the law on secondment, and is therefore not subject to any reporting obligation, whether under common law or laws specific to land transport.

**Are there different formalities for employees seconded by public transport companies that are drivers of vehicles of less than 3.5 t?**

Employees driving vehicles of less than 3.5T must be subject to the same reporting formalities when they are seconded to France.

**What about the "eight-day rule" which exempted employees carrying out cabotage operations over a period of less than eight days from having to declare a secondment?**

In the previous system, transport companies seconding drivers or sailors to cabotage operations in a period of less than eight consecutive days were exempt from the obligation to declare a secondment.

This rule was abolished on 1 July 2016.

The secondment certificate, which replaces the secondment declaration, must be drawn up prior to any first transport operation placing the employee in a secondment situation.

**Should different formalities be applied for employees in the passenger transport sector? What types of passenger transport will be affected?**

No, the specific formalities provided for by the French Transport Code apply regardless of the nature of the activity (transport of goods or passengers).

Regular road passenger transport services carried out by land-based workers of non-resident companies are subject to specific reporting formalities when their operation involves the embarkation or disembarkation of passengers on French territory. It is the original of the permit to operate the service or its certified copy kept on board the vehicle, particularly specifying the stopping points and timetables, which will enable it to be established whether or not the secondment is actually subject to the secondment rules.

When this permit includes points of embarkation or disembarkation of passengers in France, the driver of the vehicle is subject to the secondment declaration formalities. On the other hand, if it appears that the transport merely transits through French territory, these do not apply.

Moreover, the secondment reporting formalities apply to cabotage operations carried out within the framework of a regular service or a specialized regular service (defined by Regulation (EC) No 1073/2009 as "regular services which, whoever the organizer of the transport may be, provide for the carriage of specified categories of passengers to the exclusion of other passengers").

Occasional international services which start from the territory of another Member State, whether or not organized within the framework of a travel package pursuant to Directive (EU) No 2015/2302 of the European Parliament and of the Council of 25 November 2015, do not fall within the scope of the secondment reporting formalities insofar as the transport operation involves transporting a group of persons, without embarking or disembarking new passengers during the route (closed door circuit). In this case, the fact that the group carries out a stopover to sleep one or more nights in France does not change the type of the transport.

However, it should be noted that cabotage operations carried out within the framework of an occasional service are subject to the secondment rules.

It is the route map, a control document, whose model is set out in Annex I to Commission Regulation (EC) No 361/2014 setting detailed rules for the application of Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services, that will make it possible to establish whether or not the secondment rules are actually applicable, depending on the nature of the transport operation performed.

**Are the following cases subject to the secondment reporting formalities?**

- humanitarian operation where land transport is provided free of charge (some drivers are paid, others work on a voluntary basis):

the purpose of the transport does not determine the applicable regime. If the conditions are met and the driver is an employee, the provisions relating to secondment shall apply.

- international transport of goods, part of which is carried out unladen:

Provisions concern the secondment of drivers or sailors. They therefore apply once these employees are in a working situation, whether or not the vehicle is laden.

- import of vehicles purchased in France by a company and driven by that company's employees to the country where they are registered:

this involves the import of vehicles and not public transport. It is therefore not subject to formalities on secondment in transport.

Enterprises providing private passenger transport (e. g. taxis) do not fall within the scope of these regulations.

## The secondment certificate

### **What is the purpose of the secondment certificate and when do employers have to provide issuance thereof?**

The secondment certificate replaces, for drivers and sailors of land transport companies, the declaration of secondment provided for in the French Labour Code. Land transport companies are not therefore required to use, for the secondment of drivers or sailors, the declaration of secondment required for other employees.

A secondment certificate must be drawn up for each seconded employee before the start of the first operation giving rise to the secondment of the driver or sailor, whatever the transport performed. The secondment certificate shall be valid for the period indicated by the company, up to a maximum of 6 months for all transport operations falling within the scope of the secondment. Thus, the certificate may cover several secondment operations.

The six-month period is defined as a rolling period, from date to date, of six consecutive months. The certificate is not required to include a timetable for the transnational transport services planned for the period. It is not necessary for the certificate to detail all trips made in France.

Moreover, the secondment certificate must be appended to the host company's unique personnel register in the case of an intra-group secondment or a secondment by a temporary employment company.

### **How to complete the certificate**

There are three types of CERFA forms to report the information specifically requested in each case of secondment and the employer must complete the form adapted to the employee's situation.

The certificate must be completed directly via the SIPSI tele-service on the website <https://www.sipsi.travail.gouv.fr/>

### **How can companies which, due to their domestic laws, do not have a registration in the national electronic register of transport companies complete the corresponding section of the certificate?**

This situation only applies to transport operations carried out by vehicles with an authorized laden mass exceeding 3.5 tonnes. Moreover, it only concerns, on a temporary basis, road transport companies from Member States which are not yet completely up to date with their European obligations to establish the national electronic register of road transport undertakings provided for in Article 16 of Regulation (EC) No 1071/2009.

In this case, the number of the license granted in accordance with the current practices of the Member State in question must be entered on the certificate.

### **How to enter the SIRET number when the host company is not established in France?**

Where the company to which the seconded employee is seconded by a temporary employment company is not established in France, it is not necessary to enter the SIRET number.

**Who prepares the certificate?**

Case of secondment	Person responsible for drawing up the certificate
Transnational transport services	<ul style="list-style-type: none"> <li>• The manager of the transport company that employs the employee.</li> </ul>
Intra-group mobility	<ul style="list-style-type: none"> <li>• The manager of the company that usually employs the employee</li> <li>• Or, failing that, the manager of the transport company using the employee in France.</li> </ul>
Provision by a temporary employment company	<ul style="list-style-type: none"> <li>• The manager of the temporary employment company</li> <li>• Or, failing that, the manager of the transport company using the employee in France.</li> </ul>

**What guarantees are available regarding the processing of the data entered in the form?**

The data controller shall set up protective measures to ensure the security of data processing, to prevent any misuse or fraudulent use, in particular by unauthorized third parties, and to preserve their integrity. A daily record of connections is made. The information resulting therefrom shall be retained for a maximum period of 12 months.

**Who should the certificate be submitted to?**

The certificate must be submitted to the seconded employee in order to be kept on board the vehicle and presented during the inspections.

Since 1 January 2017, the company's representative in France is no longer required to keep a copy.

**In addition to the certificate, which documents related to the secondment of the employee must be kept on board the vehicle?**

The documents to be kept on board the means of transport with which the service is provided, i.e. on board the vehicle or vessel, are listed in Article R. 1331-7-III of the French Transport Code.

A copy translated into French of all these documents must be kept on board and must be ready for presentation in the event of a roadside check

In all situations of secondment of drivers or sailors, the employee's employment contract must be kept on board. The translation of the employment contract into French is mandatory. Where the regulations of the seconded employee's country do not require a written employment contract, it is not required. However, it may be useful for the employer to provide a document attesting to the employment relations (cf Directive 91/533/EEC of the Council of 14 October 1991).

For situations of intra-group secondment, the presence on board of a copy translated into French of the secondment agreement and the amendment to the employment contract is also required.

These two documents are provided for in Article L. 8241-2 of the French Labour Code in the case of non-profit labour loans between companies. The secondment agreement between the lending company and the user company defines the duration and mentions the identity and qualification of the employee in question, as well as the method of determining the salaries, social security contributions and professional expenses

that will be invoiced to the user company by the lending company. The amendment to the employment contract specifies the work entrusted to the user company, the hours and place of performance of the work, as well as the particular characteristics of the position.

In the event of secondment by a temporary employment company, a copy of the temporary employment contract (contract between the worker and his temporary employment company) and the contract of secondment to the company established in France must also be carried on board.

**Do translations of documents, when required, have to be made by a sworn translator?**

The certificate must be translated into French. However, the information to be included in the certificate shall include only identification data and quantified figures that do not require any specific translation. The recourse to a sworn translator is not mandatory.

**Is the collective branch agreement to be indicated in the secondment certificate the French agreement or that of the country of origin?**

This is one of the following French collective agreements: road transport of goods or persons, inland river transport of goods or persons.

**Does the company from a third country (outside the European Union) have to complete Form A1 in addition to the certificate?**

The regulations resulting from the law of 6 August 2015 on growth, activity and equal economic opportunities and the decree of 7 April 2016 specify the formalities specific to labour law for secondment without prejudice to other applicable rules, in particular those of social security. Regarding social security provisions, the available information can be consulted on the CLEISS website: <http://www.cleiss.fr/>

## The rights of seconded drivers or sailors

### What are the rights of drivers or sailors?

There are no specific rules for seconded drivers or sailors, who enjoy the same fundamental rights as those granted to employees seconded from other sectors.

These rights are listed in Article L. 1262-4 of the French Labour Code:

- 1° Individual and collective freedoms in the employment relations;
- 2° Discrimination and professional equality between women and men;
- 3° Maternity protection, maternity and paternity leave and childcare, leave for family events;
- 4° Conditions of availability and guarantees due to employees by companies carrying out temporary work activities;
- 5° Exercise of the right to strike;
- 6° Working hours, time off in lieu, paid annual leave, working hours and night work for young workers;
- 7° Conditions of application of holiday and bad weather funds;
- 8° Minimum salary and payment of salaries, including overtime increases, as well as salary ancillaries legally or contractually fixed;
- 9° Rules relating to health and safety at work, legal working age, child labour;
- 10° Illegal work.

### How does the certificate facilitate the employee's information concerning his rights in the event of secondment?

A copy of the certificate must be kept on board the vehicle, which will enable the driver to be fully informed of his situation and to be able, if necessary, to assert his rights.

### What are the compensation guarantees for seconded employees?

In particular, the seconded employee must be paid on the basis of the French minimum wage or the contractual wage if it is higher than the wage resulting from the law applicable to the employment contract. However, the benefit of the rights guaranteed by French law does not prevent the maintenance of more favourable rights, as they derive from the law applicable to the employment contract of the seconded employee. For example, the seconded employee retains his contractual remuneration if it is higher than the minimum wage or the French contractual wage

### In practice, what elements must be taken into account when calculating the minimum benchmark wage?

Within the framework of Article 3(1) of Directive 96/71/EC of 16 December 1996, Article L. 1262-4 of the French Labour Code provides that the elements of the minimum benchmark wage applicable in France include:

- the minimum wage (hourly or monthly);
- overtime increases,
- as well as salary ancillaries legally or contractually fixed.

The amounts are expressed as gross amounts.

It is important to recall that the employee keeps the salary paid to him under the law applicable to his employment contract, when it is higher than the minimum benchmark salary.

**Which elements of the remuneration paid to the employee by the company not established in France can be used to verify compliance with the minimum wage rate in France?**

Pursuant to Article 3(7) of Directive 96/71/EC of 16 December 1996, the elements that may be considered are:

- the salary;
  - any overtime increases;
  - any salary ancillaries (e.g. length of service bonus);
  - any allowances related to the secondment (e.g. expatriation bonus);
  - any benefits in kind.
- These amounts are expressed as gross amounts.

On the other hand, amounts paid for the reimbursement of expenses such as travel, accommodation or food, even if these amounts are lump sums, are not taken into account.

In the event of a general lump sum allowance, the employer shall declare, under his responsibility, the share he considers corresponds to compensation for accommodation, meals and, if applicable, travel expenses.

It cannot be considered that in all cases, the accommodation of the driver is the vehicle provided by the employer and that, as a result, no part of the overall lump-sum allowance paid to the employee can correspond to the payment of accommodation costs outside the place of origin. While Article 8 of Regulation (EC) No 561/2006 of 15 March 2006 effectively allows reduced daily rest periods and weekly rest periods away from the home base to be taken in the vehicle, as long as the vehicle is equipped with suitable sleeping equipment for each driver and has been stopped, the same Article specifies that this option is at an employee's "discretion". Accordingly, the employer must effectively enable the employee to choose accommodation other than the vehicle, either by paying him a daily allowance to cover accommodation expenses (overnight stay) or by providing accommodation outside the vehicle. Moreover, as normal weekly rest cannot be taken in the vehicle, the employer must always cover the costs of accommodating the employee during this rest period, if it is taken away from the home base.

Furthermore, the part of the allowance that the employer considers to correspond to the employee's meals must be assessed objectively and justifiably in the event of an inspection.

For information, the following are the scales of reimbursement of expenses applicable to road drivers covered by the national collective agreement for road transport, according to the extended protocol applicable :

• **Road Transportation of goods:**

Amendment no. 70 of 26 June 2019 relating to workers' travel expenses (Annex I)

(In euros)

Type of indemnities	Rate	Reference to Articles of the protocol
Meal allowances	13,78 €	Art. 3, paragraph 1
Single meal allowance	8,48 €	Art. 4
Single “night” meal allowance	8,26 €	Art. 12
Special allowances	3,73 €	Art. 7
Snack allowance	7,47 €	Art. 5
Long trip allowance: 1 meal + 1 night stay	44,06 €	Art. 6
2 meals + 1 night stay	57,84 €	

– **Road Transportation of passengers:**

Amendment no. 69 of 24 June 2019 relating to workers' travel expenses (Annex I)

(In euros)

Type of indemnities	Rate	Reference to Articles of the protocol
Meal allowances	13,38 €	Art. 8.1 – paragraph 2 et 3 ; article 9.10 – paragraph 1 ; article 11
Single meal allowance	8,26 €	Article 8.1 – paragraph 1
Special allowance	3,74 €	Article 8.2 – paragraph 2 ; article 11 bis
Snack allowance	6,68 €	Article 12
Special breakfast allowance	3,74 €	Article 10 – paragraph 2
Room and special breakfast allowance	28,40 €	Article 10 – paragraph 1
Daily rest allowance (room and snack)	31,33 €	Article 11

**What exchange rate should be used when the salary is not in euros?**

The salary paid in foreign currency shall be converted into Euros out in accordance with the latest [benchmark rate](#) published by the European Central Bank on the date on which the secondment is due to begin. The company can use the published price for the six month period, or the published price for a shorter reference period.

**Is the hourly rate the same as that applied to the French part of the journey or to the entire journey?**

The French hourly rate applies, provided that it is more favourable, only to the hours worked in France by the employee on secondment.

**In concrete terms, how to establish the date and time of entry and exit from French territory**

There are no specific rules for the transport sector. The employer shall establish, by all appropriate means, the working time of the employee in France.

Generally speaking, in the event of a suspicion of a reduction in working time in France, the burden of proof lies with the inspection services, the employer being able to dispute the inspectors' assessments by any appropriate means.

### **How to apply working time rules, especially in the case of short-term secondments**

Compliance with the maximum working hours and the minimum rest periods provided for by French law may be required only if the employee is seconded to France for a period at least equal to the reference period.

For example, the maximum weekly working time over a particular week must be complied with if the employee is seconded for at least one week, but not if the period of secondment is shorter.

Only hours worked are taken into account when calculating the minimum wage. It is not possible to provide for a daily fixed rate of hours.

### **Specific cases:**

#### **Do secondment rights, and in particular the right to the minimum wage, apply when the driver is the owner of the lorry?**

In terms of secondment, the ownership of the vehicle is irrelevant.

#### **In the case of a double crew, should both drivers (the one driving and the one on break) be paid at the same hourly rate?**

In France, only hours worked are paid. In the special case of a double crew, time not spent driving by the second driver while the vehicle is in motion shall be remunerated for 100% of its duration.

For road passenger transport, only 50% of this time is taken into account as actual working time for the calculation of daily or weekly working time thresholds.

On the other hand, for road freight transport, this time not spent driving while the vehicle is in motion is considered as actual working time for 100% of its duration.

## The employer's representative in France

### **Who can be appointed as the employer's representative in France?**

Pursuant to Article 9-1(e) of Directive 2014/67/EU of 15 May 2014, Article L. 1262-2-1 of the French Labour Code provides that any employer who seconded employees to France must appoint a representative in the national territory, whose role is to liaise with inspection services.

Since Decree No. 2019-555 of 4 June 2019 on various provisions relating to the posting of workers and the strengthening of the fight against illegal labour, which amended Articles R. 1331-1 et seq. of the French Transport Code, the company representative must hold a SIRET number.

There are no rules specific to the land transport sector concerning the appointment of the representative. It may be any individual or legal entity, at the employer's discretion, with the means and skills required to carry out his/its duties and present in the national territory. The representative's remuneration is fixed contractually with the appointing company. In the event of a breach by the representative of his obligations, he shall be civilly liable to the employer who appointed him.

### **How is the employer representative in France appointed?**

Since the aforementioned decree of 4 June 2019, the employer's representative has been appointed directly in the secondment certificate.

### **Can the representative be domiciled abroad if he has a post code address in France or must he have premises in France?**

The representative in France must be a company (or individual) actually established in France (for example, another transport company, a consulting firm or a law firm, etc.). A simple address shall not suffice.

### **For how long must the representative of the employer seconding drivers or sailors in France answer to the inspection services?**

This period, which is specific to the land transport sector, is set at eighteen months after the end date of the employee's secondment period. The length of the contract or mandate of the representative is discretionary.

### **Can a single contract or representation mandate cover all drivers seconded to France by the same company for a given period of time?**

There is discretion when it comes to establishing a single mandate per company (covering all drivers or sailors) or to agree a mandate per employee.

### **May the representative be replaced while on leave? If so, what are the formalities to be respected?**

It is up to the representative and the company that appointed him to take all necessary measures concerning his absence to ensure contact in the event of an inspection.

**What happens if the employer decides to change representatives?**

The former representative must continue to respond to the inspection services for the secondment operation(s) during the period for which he was appointed, and for 18 months after the date on which the employee's secondment ends.

**What is the role of the employer representative?**

The representative must be able to respond to requests from the inspection services.

For this purpose, he must hold a certain number of documents.

In the case of secondments of drivers or sailors, he must retain the employee's pay slips corresponding to the secondment period. These pay slips may be replaced by other documents, as long as these documents contain specific statements relating to the employee's gross hourly wage, working hours (distinguishing between over time), leave and public holidays and elements of their remuneration.

He must also hold documents:

- showing the actual payment of salary;
- mentioning the title of the collective agreement applicable to the seconded employee.

**Within what time frame and how should the representative respond to the inspection services?**

He must be able to immediately present and submit the documents requested by the inspection services. These documents must exist before the request for disclosure and not be drawn up for the sole purpose of being disclosed in the event of a request to the inspection services.

The submission of documents in digital form in a commonly used format (such as.pdf) is possible.

**Should the representative be available 24 hours a day, 7 days a week in order to respond "immediately" to requests from the inspection services?**

No, this is not mandatory, however this availability can be arranged if the company wishes.

**Can the pay slips kept by the representative be issued after the employee is seconded (1 to 2 months later)?**

French regulations do not modify rules concerning the issue of pay slips provided for by the law applicable to the employment relations.

**How should the documents collected by the representative be stored (hard copy or digital)?**

There is no obligation in terms of format, but the document must be available for consultation at any time during the given period (secondment time + 18 months).

## Liabilities and sanctions incurred

### **What must the principal do when its co-contractor partner posts employees falling within the scope of the regulations?**

The principal must be provided with a copy of the secondment certificate (due diligence obligation).

### **To whom does the principal's liability apply to in the case of a subcontract?**

Each subcontractor, whatever its rank, is deemed to be a principal vis-à-vis its own subcontractors.

In the case of multiple forwarding agents (subcontractors of the commission contract) operating in a transport chain (often multimodal), it is the last forwarding agent in the chain established in France who is subject to the extended due diligence obligation towards the co-contracting carriers.

### **Within the framework of the carrier contract, what are the obligations of the recipient of the goods?**

As a general rule, the recipient of the goods has no particular secondment obligations within the framework of the carrier contract. The recipient (professional) established in France may, however, in the alternative, be approached and possibly be held liable:

- if the secondment is carried out within the framework of a transnational transport service;
- and when no direct or indirect principal (including the initial shipper or the commission agent) of the carrier is established in France.

If these conditions are met, the recipient may be alerted by the inspection service to instruct the employer to resolve certain irregular situations (non-payment of the minimum wage, unsuitable accommodation conditions, failure to comply with the basic labour law).

only if he fails to intervene, or does not report on his actions, may he be held jointly and severally liable for the employer's failings.

### **Does the administrative authority have the power to suspend the transport operation when it detects irregularities linked to the secondment of workers?**

As in all economic sectors, the administrative authority has the right to suspend the provision of services in certain cases of serious or repeated breaches provided for in the French Labour Code.

Nevertheless, the suspension must be preceded by a requirement to put an end to the irregular situations encountered. Due to this formalism, the procedure should only concern certain situations where the transport service is provided for a sufficient period of time.

### **What are the penalties for breach of these rules?**

The driver does not incur any penalty.

A 4th class fine is payable to the employer for failure to provide a certificate on board the vehicle or a non-compliant certificate of up to €750 (art. R.1331-9 of the French Transport Code) and a 3rd class fine of up to

€450 (art. R.1331-10 of the French Transport Code) for a lack of the employee's employment contract on board and, as applicable, the employee secondment agreement.

Moreover, administrative fines in the event of a breach by the employer the obligations to declare the secondment (which has been replaced by the certification), to submit the documents listed in Article R.1331-7-III of the Code des transports translated into French and to appoint a representative, provided for in Article L. 1264-1 of the French Labour Code, are also applicable (maximum amount of €2000/employee).

The principal incurs an administrative fine provided for in Articles L. 1264-2 and L. 1264-3 of the French Labour Code in the event of failure to comply with the obligation of oversight for a maximum amount of €2000 per employee and a maximum of €4000 per employee in the event of a repeat offence, the total amount being limited to €500,000.

Nevertheless, the same offence may not give rise to an accumulation of criminal and administrative fines for the same employee.

**Are any sanctions provided for against the representative, for example if he fails to respond or responds incompletely to requests from the inspection services?**

No. However, any failures may reveal breaches attributable to the employer and lead to criminal or administrative sanctions against the latter (for example, an administrative fine if it appears that the employer has not issued a certificate).

Moreover, the representative in France may be held criminally liable if he intentionally obstructs the inspection officer.

**What are the penalties for non-payment of the minimum wage?**

An employer who fails to pay the minimum wage due to the seconded employee incurs (mainly) the following measures:

- **either a criminal sanction**: in the event of non-payment of the legal minimum wage (SMIC) or the legal minimum monthly remuneration, a 5th class fine (maximum €1500), pursuant to Article R. 3233-1 of the French Labour Code. This is a common law penalty which is not specific to the secondment;

- **or an administrative penalty** : in the event of non-payment of the legal or contractual minimum wage, an administrative penalty of a maximum amount of €2000, pursuant to Article L. 8115-1 of the French Labour Code. Here also, this is a common law sanction which is not specific to the secondment.

The following measures may also be taken:

- **suspension of the provision of transnational services for a maximum period of one month**, in the event of failure to remedy a serious breach of the rules relating to a salary below the minimum wage, pursuant to Articles L. 1263-3 and L. 1263-4 of the French Labour Code. The employer's failure to comply with the suspension decision is punishable by an administrative fine, less than or equal to €10,000 per employee affected by the breach. Nevertheless, this measure remains limited in scope for transport, except for regular lines imposed within the framework of a contract between the principal and the carrier.

- **criminal penalty in the event of concealment of overtime on pay slips**: pursuant to Article L8224-1 of the Labour Code, a fine of 45,000 euros and 3 years' imprisonment. This is a penalty not specific to the secondment.

### **What remedies are open to an aggrieved employee?**

Pursuant to Directive 96/61/EC (Article 6), "to enforce the right to the working and employment conditions guaranteed in Article 3, legal proceedings may be brought in the Member State in whose territory the worker is or was seconded, without prejudice, as applicable, to the right to bring legal proceedings in another State in accordance with existing international conventions on jurisdiction".

Moreover, the French Labour Code (Art. L. 1265-1) provides that in matters of secondment of employees by a company not established in France "trade union organizations may take all[necessary] legal action in favour of an employee, without having to provide evidence of a mandate from the person concerned. The employee must merely have been notified, under conditions determined by regulation, and not have objected to it within a period of fifteen days from the date on which the trade union organization notified him of its intention.

The interested party may always intervene in the proceedings initiated by the union and terminate them at any time".

## **Implementation of Directive (EU) 2018/957 amending Directive 96/71/EC concerning the secondment of workers in the framework of the provision of services.**

**Is Directive (EU) 2018/957 amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the secondment of workers in the framework of the provision of services applicable to road transport? Is it applicable to inland waterway transport?**

Employees seconded to France benefit from core social rights, modelled on the rights granted to national employees, derived from the French Labour Code and the contractual stipulations specific to the land transport sector.

The (EU) 2018/957 directive makes changes to the 96/71/EC directive of the European Parliament and Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Order no 2019-116 of 20 February 2019 implements this directive. It came into force on 31 July 2020.

It makes various changes to article L. 1262-4 of the French Labour Code.

Therefore, in addition to the rights currently provided for by this article, posted employees shall also be entitled to:

- all the elements of remuneration as defined in article L. 3221-3 of the French Labour Code.
- reimbursement of expenses related to the assignment (transport, meals, accommodation)

### ➤ **Inland waterway transport**

In France, [order n° 2019-116 of 20 February 2019](#), makes Directive 2018/957 applicable to employees seconded to inland waterway transport as of 30 July 2020.

### ➤ **Road transport**

The Ordinance of 20 February 2019, like the Directive it transposes, is not immediately applicable to drivers of the road transport companies mentioned in Article L. 1321-1 of the Transport Code, which continue to be governed by the provisions of the Labour Code as drafted prior to said ordinance. It will be applicable to them starting from the date of transposition of the *lex specialis* relating to the secondment of drivers in road transport (Article 1 of the Directive 2020/1057).