



Subject: Response from Transport and Logistics Netherlands to TRIS Report December 21, 2023 (ref. no. 2023/0747/BE)

Zoetermeer, 22 maart 2023

Sir/Madam,

By means of this letter, Transport and Logistiek Nederland (TLN) responds to the TRIS notification, as made by the Belgian government on December 21, 2023 (ref. no. 2023/0747/BE). TLN has been informed by Belgium about the draft royal decree determining the detailed rules for the definitive time registration system that registers the postal parcel distribution time of parcel deliverers referred to in Article 5/4 of the law of 26/01/2018 on postal services. Since this law also applies to non-Belgian parcel deliverers, TLN would like to submit its response on behalf of the Dutch transport sector.

TLN respects and underlines the importance of the principles envisaged by this law; creating a socially level playing field within the transport sector.

However, the proposed Royal Decree will not achieve this in this way. There are concerns for the future of the sector regarding the introduction of restrictions of a technical nature, which create obstacles for the Belgian parcel delivery market. Both for transport from the Netherlands to Belgium and for domestic transport by Dutch companies based in Belgium. All provisions of this law together place a disproportionate burden on parcel delivery for professional freight transport. Furthermore, the measures, in particular time recording, are not compatible with EU law as they constitute an obstacle to the free movement of services and freedom of establishment.

The research, conducted by the Belgian regulator BIPT/IBPT, confirms that the new law could have serious economic consequences for several operators currently active in the Belgian parcel market.

In addition to the introduction of a time registration system, the law introduces a number of other far-reaching obligations. However, TLN would like to draw the Commission's attention to the fact that the time registration system should not be part of the new law and that it should be assessed separately from all the other measures in the amended Postal Act.

Firstly, Time Recording in itself, and the other measures as a whole, constitutes an obstacle to the freedom of establishment (Article 49 of the Treaty on the Functioning of the European Union ("TFEU")) and the freedom to provide services (Article 56 TFEU) on the Belgian postal parcel market:

- It imposes obligations on companies from other Member States and forces them to comply with them and to make certain investments (for example in tachographs or similar devices) and to impose a certain method of industrial relations and/or control thereof. The parliamentary preparations (Explanatory Memorandum to the Postal Act) show that the Kingdom of Belgium also does not dispute that the amendment to the Postal Act and accompanying Royal Decrees constitute an obstacle to these freedoms (see Article 6 of the Explanatory Memorandum, the title of which reads: "Compatibility with EU law").



- An obstacle to the free movement of services and the right of establishment for these purposes invoked by the Belgian State is only permissible if (i) it is non-discriminatory, (ii) it is an overriding reason of public interest and (iii) is proportionate. The fact that the law and the draft Royal Decree are not proportionate is evident from the fact that the time registration system itself, combined with the other measures, will create an excessive administrative burden for market participants.

There has also been no investigation into possible measures that are less drastic. Both the recent research by [WIK Consult](#) and the impact study by BIPT3 come to the same conclusion.

The new law, published on December 28, 2023, was already notified on April 20, 2023. At that time it was not sufficiently clear how the exact technical conditions should be worked out. Even though the latest notification of the Royal Decree on time registration contains more information, as far as the technical requirements are concerned, the Royal Decree is still not clear about the operation of the time registration system. The sector therefore still does not have clear guidance on how to fulfill its obligations and how to properly implement this new system, and therefore believes that the exact impact can still not be determined.

The transport sector believes that the European Commission should further investigate the impact of the introduction of a time registration system. The question for the Belgian government is to provide further concrete information on how these rules should be implemented. The draft royal decree provides for the introduction of 'registration equipment'. As defined in Article 1(1)(a), the development of these devices is subject to a TRIS evaluation.

In addition to the obstacles to the freedom of establishment and the freedom to provide services, the introduction of a time registration system will pose practical difficulties for economic operators and will make it impossible for control authorities to verify accuracy.

For the sake of completeness, it is noted that here too the proportionality requirement is not met with regard to the other measures. For example:

- The law achieves the exact opposite of a “social level playing field” with minimum rates based on employment conditions agreed between sector parties in the road transport sector, which do not apply to everyone. WIK Consult concludes in line with this. In any case, the minimum remuneration to be paid to subcontractors is not a proportionate measure under the free movement of services and the right of establishment.

- There is an excessive reporting obligation plus the creation of a large database into which market participants must upload data that is often business confidential.

The transport sector urges the European Commission to further investigate the impact of the revised directive and the postal law in the context of the effects of its implementation on the Belgische transportsector en de interne markt van de EU en wil de aandacht vestigen op de negatieve impact zoals voorzien door de WIK-studie en de impactanalyse uitgevoerd door de toezichthouder BIPT/IBPT.



8In this letter, TLN refers to the in-depth analysis of the changes to the Postal Act and the Royal Decree on timekeeping, which is included in the contribution from the Belgian transport sector. We are of course prepared to further explain our objections if necessary.

Jan Boeve, Director TLN