

 	<p style="text-align: center;">FREQUENTLY ASKED QUESTIONS</p> <p style="text-align: center;">concerning the new procedures governing the application of the right of secondment of workers to the transportation or navigation employees of land transportation companies</p> <p style="text-align: center;">(Art. L. 1331-1 to L. 1331-3 and Art. R. 1331-1 to R. 1331-11 of the Transportation Code)</p>

Overview of the new formalities applicable to the secondment of certain transportation sector employees

Overall, what are the objectives of the new French regulation?

Pursuant to Directives 96/71/EC of the European Parliament and the Council of 16 December 1996 and 2014/67/EU of 15 May 2014, the new French regulation (Articles L. 1331-1 to L. 1331-3 and Articles R. 1331-1 to R. 1331-11 of the Transportation Code) adapts the formalities established by the Labour Code for the secondment of workers to the particular requirements of the land transportation sector.

The provisions of the Labour Code governing secondment which are not expressly derogated from by the regulation shall continue to apply.

The new rules have three objectives:

- To specify the formalities specific to land transportation companies posting transportation or navigation employees to the national territory based on the standard formalities established by the 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 transportation or navigation workers to information concerning their rights;
- To enhance oversight effectiveness in order to better prevent secondment fraud, which constitutes a type of unfair competition, harms businesses that comply with the law and adversely affects the working conditions of seconded workers.

What is the effective date for these new formalities? Is a transitional period expected to allow companies to make changes?

The new formalities are fully applicable starting from 1 July 2016.

The oversight services are encouraged to take into account the innovative nature of these formalities during the period following their implementation.

What is the scope of application for these new formalities?

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

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1°) Perform land transport activities as defined in Article L. 1321-1 of the Transportation Code (in practice, these consist of road and river transportation) or constitute a temporary employment undertaking;

2°) Post a transportation or navigation employee in the French territory under the cases provided for in Article L. 1261-1 or Article L. 1262-2 of the Labour Code.

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

- performance of a transnational service, when the recipient of the service is established or performs its activities in France;
- intra-group mobility, consisting of the secondment of personnel between undertakings belonging to the same group or establishments of the same company;
- secondment by a temporary employment undertaking established abroad of an employee with a user undertaking in France.

The formalities specifically required for secondment in land transport operations are not applicable to companies which are not themselves public transport companies, such as industrial undertakings which employ transportation or navigation personnel to transport their products.

Will self-employed workers be affected by the new regulation? How are these workers identified?

Nothing has changed for self-employed workers:

- They do not fall under the scope of the rules of secondment and therefore are not subject to any reporting obligation, either under common law or laws specific to land transportation;
- The status of self-employed workers remains independent of the new rules established by the Transportation Code. Self-employed workers have no obligation to establish proof of their situation in advance or submit proof of their situation, which can be simply shown by the documents required by the regulations on company law as well as the transportation regulations.

Why doesn't the French regulation specify the conditions for application of secondment rules for the different types of transport operations?

This is not its purpose. The new regulation only defines the formalities specific to the requirements of the transport sector.

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

In practice, international transport to and from France, as well as cabotage operations in the French territory, carried out using an employee temporarily posted in France with an employment relationship with the posting undertaking meet the criteria for application of the right of secondment and are subject to the reporting obligations specific to secondment in the land transportation sector.

Conversely, simple transit through the national territory which does not involve loading or unloading of goods or embarkation or disembarkation of passengers does not meet the criteria for application of the right of secondment and consequently is not subject to any reporting obligation either under common law or under laws specific to land transportation.

Are different formalities applied for employees driving vehicles under 3.5 T?

No. The specific formalities required by the Transportation Code are the same for seconded employees driving light vehicles. This regulation is therefore applicable.

Are different formalities applied for employees in the passenger transport sector? What types of passenger transport are concerned?

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No, the specific formalities required by the Transportation Code are independent of the nature of the activity (transport of goods or passengers).

Regular passenger road transport services performed by transportation workers of non-resident undertakings may result in specific reporting requirements if these services involve the embarkation or disembarkation of passengers in the French territory. An original or certified true copy of the authorisation to perform the service must be kept on board the vehicle, specifying the stops and schedule, in order to determine whether or not the service is subject to the rules of secondment.

When this authorisation includes points of embarkation or disembarkation of passengers in France, the driver of the vehicle will be subject to the rules of secondment. However, if the French territory is only transited, the rules of secondment will not apply.

Furthermore, when cabotage operations are performed as part of a regular service, the rules of secondment will apply to the driver.

Occasional international services with a starting point in another Member State, whether or not they are organised as part of a travel package pursuant to Directive (EU) no. 2015/2302 of the European Parliament and Council of 25 November 2015, do not fall under the scope of the secondment regulation since the operation of the transport consists of transporting a set group of passengers without embarkation or disembarkation of other passengers during the itinerary.

However, it should be noted that cabotage operations performed in the context of an occasional service or a specialised regular service, as defined by Regulation (EC) no. 1073/2009, are subject to the rules of secondment.

The journey form, a control document for which the model is provided in Annex I of Regulation (EC) no. 361/2014 of the Commission establishing the terms of application of Regulation (EC) no. 1073/2009 establishing the common rules for access to the international market of coach and bus transportation services, is used to determine whether or not the rules of secondment apply according to the nature of the transport operation performed.

Companies providing individual passenger transport services (e.g. taxis) do not fall within the scope of application of the new regulation.

The secondment certificate

What is the purpose of the secondment certificate and when must employers issue one?

The secondment certificate replaces the secondment declaration required under the Labour Code for transportation and navigation employees of land transportation companies. Therefore, land transportation companies will no longer use the secondment declaration required for other employees for the secondment of transportation or navigation employees.

A secondment certificate must be issued for each seconded employee before the start of the first operation giving rise to the secondment of the transportation or navigation employee, regardless of the type of transport in question. The secondment certificate will be valid for the period indicated by the company, up to a maximum of six 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 understood as a rolling period from one given date to another given date of six consecutive months.

The certificate is not required to include a schedule of the transnational transportation services planned for the period.

Furthermore, the secondment certificate must be attached to the official employee register of the host company in case of an intra-group secondment or a secondment by a temporary employment undertaking.

Where can the model of the certificate be found and what does it include?

Given the technical procedures currently in place, the certificate is available in the form of a downloadable document from the [site travail-emploi.gouv.fr](http://site.travail-emploi.gouv.fr). This document contains fields that can be directly completed before printing.

There are three types of forms to take into account information specifically required for each type of secondment, and the employer must complete the form that is applicable for its employee's situation.

How do companies that are not registered with a national electronic registry of transportation companies as a result of their national laws complete the corresponding section of the certificate?

This situation is only applicable to transportation operations performed using vehicles of an authorised laden mass of more than 3.5 tons. Furthermore, it only concerns, on a temporary basis, road haulage companies in Member States which are not yet definitively up to date with their European obligations with respect to the creation of the electronic national road transport company register required under Article 16 of Regulation (EC) no. 1071/2009.

In this case, it is the licence number granted in accordance with the current practices of the Member State in question that must be indicated on the certificate.

Who drafts the certificate?

Type of secondment	Person responsible for drafting the certificate
Transnational transportation services	<ul style="list-style-type: none">The head of the transportation company which employs the employee.

Intra-group mobility	<ul style="list-style-type: none">• The head of the company which normally employs the employee• Or, otherwise, the head of the transportation company using the employee in France.
Secondment by a temporary employment undertaking	<ul style="list-style-type: none">• The head of the temporary employment undertaking• Or, otherwise, the head of the transportation company using the employee in France.

What guarantees are provided concerning the processing of the data indicated on the form?

The online form is a simple downloadable document. The data indicated by the employer is not recorded.

How many copies of the certificate must be issued?

The certificate must be drafted in two copies.

A copy is submitted to the seconded employee to be kept on board the vehicle and presented during inspections.

The other copy will be kept:

- either by the employer's representative, in case of secondment for transnational services;
- or by the company in France using the transportation or navigation employee in the event of an intra-group secondment or secondment by a temporary employment undertaking.

For practical reasons, the second copy that must be kept by the representative or company in France using the seconded employee in case of intra-group secondment or secondment by a temporary employment undertaking may be kept electronically (in .pdf format) if it is not published in paper form. It may be transmitted in electronic format to the oversight services upon request.

In addition to the certificate, what documents concerning the secondment of the employee must be kept on board the vehicle?

The documents that must be kept on board the means of transport with which the service is performed, in other words on board the vehicle or vessel, are listed in Article R. 1331-7-III of the Transport Code.

In all situations of secondment of transportation or navigation employees, the employment contract of the employee must be kept on board the vehicle. Translation of the employment contract into French is not mandatory.

For intra-group secondment situations, a copy of the secondment agreement translated into French and the amendment to the employment contract must also be kept on board the vehicle.

These two documents are required by Article L. 8241-2 of the Labour Code in case of labour lending between companies on a not-for-profit basis. The secondment agreement between the company lending the labour and the company using the labour defines the duration and indicates the identity and qualification of the employee concerned as well as the method of determination of their wages, social security contributions and professional fees, which will be billed by the lender undertaking to the user undertaking. The amendment to the employment contract specifies the nature of the work performed in the user undertaking, the working hours and the location of the workplace, as well as the particular characteristics of the position.

For cases of secondment by a temporary employment undertaking, a copy of the temporary employment contract (contract between the worker and the temporary employment undertaking) translated into French must also be kept on board the vehicle in addition to the contract of secondment to the company established in France.

When translations of the documents are required, must they be performed by a sworn translator?

The use of a sworn translator is not required.

How does this certificate help to notify employees of their rights during secondment?

A copy of the certificate must be kept on board the vehicle, which will ensure that the driver is fully informed of their situation and can exercise their rights as necessary.

What is the "eight-day rule" which waives the secondment declaration requirement for employees performing cabotage operations for a period of less than eight days?

Under the previous system, transportation companies posting transportation or navigation employees [in France] to carry out cabotage operations for a period of less than eight consecutive days were released from the obligation to issue a secondment declaration.

This rule is eliminated starting 1 July 2016.

The secondment certificate, which replaces the secondment declaration, must be drafted prior to any transport operation putting the employee in a secondment situation.

Employer representative in France

Who can be appointed as an employer representative in France?

In accordance with Article 9-1.e) of Directive 2014/67/EU of 15 May 2014, Article L. 1262-2-1 of the Labour Code provides that all employers who post employees in France must appoint a representative in the national territory who will act as a liaison with the oversight services.

There are no rules specific to the land transportation sector concerning the representative's appointment. The representative may be any natural or legal person internal or external to the company, at the employer's discretion, who is located in the national territory and has the means and skills required to carry out the task. The representative's remuneration is established contractually with the company appointing said representative. If a representative violates their obligations, the representative is civilly liable to the employer that appointed them.

For how long will representatives of employers posting transportation or navigation employees in France have to answer to the oversight services?

This period, which is specific to the land transportation sector, is set for 18 months after the end date of the employee's secondment period.

What happens if the employer decides to change representatives?

Former representatives will have to continue to answer to the oversight services for secondment operations taking place during the period in which they were appointed and for 18 months after the end of the employee's secondment.

Will representatives incur penalties, for example for failing to respond or responding in an incomplete manner to the demands of the oversight services?

No. However, their potential violations may result in criminal or administrative penalties against the employer (for example, an administrative fine, if it appears that the employer did not issue a certificate).

What is the role of the employer's representative?

Representatives must respond to the requests of the oversight services. For this purpose, they must possess a certain number of documents.

In case of secondment of transportation or navigation employees, they must retain the employee's payslips corresponding to the secondment period. Other documents may be substituted for these payslips, provided that these documents specifically list information concerning the employee's gross hourly wage, working hours (with indication of overtime), leave and holidays and elements of their remuneration.

Representatives must also possess documents:

- documenting actual payment of wages;
- indicating their appointment by the company;
- indicating the title of the collective bargaining agreement applicable to the seconded employee.

What is the deadline within which the representative must answer the oversight services and what is the proper response format?

Representatives must be able to immediately present or communicate the documents requested by the oversight services. These documents must pre-date the request for communication and must not be prepared for the sole purpose of being submitted in response to a request by the oversight services.

It is possible to transmit the documents in a commonly used digital format (such as .pdf).

What actions must the principal take when its contractor posts employees falling within the scope of this new regulation?

The principal must verify that the secondment certificate has been properly issued.

What are the recipient's obligations in the context of the transportation contract?

As a general rule, the recipient has no particular obligation under the transportation contract.

However, alternatively, (professional) recipients established in France may be contacted:

- if the secondment takes place as part of a transnational transportation service;
- and neither the principal nor the carrier are established in France.

If these conditions are met, the recipient may be alerted by the oversight service when it has instructed the employer to regularise certain irregular situations (non-payment of minimum salary, inappropriate housing conditions, non-compliance with labour laws).

The recipient will only be declared jointly liable for violations if it does not intervene or account for its actions.

Rights of seconded transportation or navigation employees

What rights are recognised for transportation or navigation employees?

Seconded transportation or navigation employees are not granted any special rights; they benefit from the same fundamental rights recognised for seconded employees in other sectors.

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

- 1° Individual and collective liberties in the employment relationship;
- 2° Discrimination and professional equality between men and women;
- 3° Maternity protection, maternity and paternity leave, adoption leave, leave for family events;
- 4° Terms of secondment and guarantees owed to employees by companies providing temporary employment;
- 5° Exercise of the right to strike;
- 6° Working hours, compensatory leave, holidays, paid annual vacation, working hours and night shift work for young workers;
- 7° Conditions governing leave funds and weather risk funds;
- 8° Minimum salary and payment of salary, including increases for overtime and legally or contractually established wage supplements;
- 9° Rules governing workplace health and safety, working age and child labour;
- 10° Illegal labour.

The seconded employee must be remunerated according to the minimum French salary or standard wage, where greater than the salary resulting from the law applicable to the employment contract.

However, the benefits of the rights guaranteed by French law shall not preclude the enjoyment of more favourable rights arising from the law applicable to the employment contract of the seconded employee. For example, seconded employees retain their contractual remuneration if it is higher than the French minimum salary or standard wage.

Does the new French regulation create new rights for workers in the land transportation sector posted in France?

The new French regulation does not create new rights for workers; rather, it modifies the existing procedures for application of the right of secondment to better ensure that transportation and navigation workers in the land transport sector are effectively benefiting from the rights recognised by Directive 96/71/EC of 16 December 1996, which are listed in Article L. 1262-4 of the French Labour Code.

In practice, what elements must be taken into account when calculating the minimum reference salary?

Pursuant to Article 3§1 of Directive 96/71/EC of 16 December 1996, Article L. 1262-4 of the Labour Code provides that the elements of the minimum reference salary applicable in France include:

- the minimum salary (hourly or monthly),
- increases for overtime,
- and legally or contractually established wage supplements. These amounts are expressed as a gross figure.

The elements currently in place for **transportation** employees are described in detail in a fact sheet available online at <http://www.developpement-durable.gouv.fr/Formalites-declaratives,47857.html>.

The elements currently in place for **navigation** employees are described in detail in a fact sheet available online at <http://www.developpement-durable.gouv.fr/Detachement-dans-le-transport.html>.

It is important to remember that employees retain the salaries to which they are entitled under the law applicable to their employment contract whenever they are higher than the minimum reference salary.

Which elements of remuneration paid to employees by companies not established in France may be retained for the purpose of verifying compliance with the minimum salary in France?

In accordance with section 7 of Article 3 of Directive 96/71/EC of 16 December 1996, the following elements may be retained:

- salary;
- increases for overtime;
- wage supplements (e.g. seniority bonuses);
- any secondment-related compensation (e.g. expatriation bonuses);
- any benefits in kind.

These amounts are expressed as a gross figure.

However, amounts paid in reimbursement of expenses such as travel, accommodation or meal costs are not taken into account/included, even when these amounts are paid at a fixed rate.

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

Salaries paid in foreign currency are converted into euros using the [reference rate](#) published by the European Central Bank on the date indicated for the start of the secondment. The company may use the rate published for the semester or the rate published for a shorter reference period.

In practice, how is the date and time of entry in and exit from the French territory determined?

There is no rule specific to the transportation sector.

In general, if it is suspected that working hours in France have been underestimated, the oversight services bear the burden of proof and the employer may contest the controllers' assessments by any appropriate means.

How are the rules governing working hours applied, particularly in case of short-term secondments?

Compliance with the maximum working hours and minimum rest period requirements established by French regulations is only required where the employee is posted in France for a period that is at least equal to the reference period.

For example, the maximum number of weekly working hours for an individual week must be respected if the employee is posted for at least one week but not if the secondment period is shorter than one week.

The reference rules currently in place for **transportation** employees are described in detail in a fact sheet available online at <http://www.developpement-durable.gouv.fr/Formalites-declaratives.47857.html>.

The elements currently in place for **navigation** employees are described in detail in a fact sheet available online at <http://www.developpement-durable.gouv.fr/Detachement-dans-le-transport.html>.

Control policies and penalties incurred

What will the control policy be for these new rules?

The oversight services are charged with implementing the new regulation judiciously, in accordance with the severity of the violations and the characteristics of the duties performed by the seconded employee in France.

The services are therefore encouraged to be particularly vigilant whenever it appears that non-compliance with the formalities and substantive rules of secondment manifestly cause significant harm to the employee and seriously undermine the conditions of competition. The proper application of the new rules in cabotage situations is considered a priority.

In general, an assessment will be performed in order to continuously adapt the control strategy to the situations encountered in the field.

What sanctions may be imposed in case of violation of these new rules?

A 4th class fine is charged if there is no certificate in the vehicle or if the certificate is non-compliant (€750 maximum), and a 3rd class fine is charged if the employment contract and, as applicable, the secondment agreement for the employee, is not present in the vehicle (€450 maximum).

Furthermore, the administrative fines charged to the employer for violation of its obligations to issue a secondment declaration and appoint a representative in accordance with Article L. 1264-1 of the Labour Code are also applicable. Therefore, they punish breaches of the obligations involving secondment certificates under the same conditions as non-compliance with the obligations involving the secondment declaration.

However, the same violation cannot result in a combination of criminal fines and administrative fines for the same employee.

Does the administrative authority have the power to suspend transport operations when it discovers irregularities involving the posting of workers?

As in all economic sectors, the administrative authority is entitled to suspend services in certain cases involving serious or repeated breaches of the Labour Code.

However, the suspension must be preceded by an injunction to put an end to any irregular situations. Due to this formality, the procedure should only concern certain situations in which the transportation service is performed for a sufficient period of time.