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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council

No. prev. doc.:	14879/15
No. Cion doc.:	14877/15 + ADD 1

Subject:	Commission Regulation (EU) No .../.. of XXX supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council
	<ul style="list-style-type: none">- decision not to oppose adoption (regulatory procedure with scrutiny)- Statement by the Austrian delegation

Austria votes against the adoption of Commission Regulation (EU) No .../... of XXX supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council.

The grounds for this are:

The present proposal is already the European Commission's second attempt to supplement Regulation (EC) No 1071/2009. The first draft failed in 2014 in the face of opposition from the European Parliament (Motion for a resolution of the European Parliament B8-0325/2014 of 4.12.2014). Both legal grounds (the European Commission's going beyond its powers) and, more particularly, transport policy considerations (incompatibility with the aim of the basic legislative act) were cited. Austria considers that the present new proposal as set out in 14877/15 + ADD 1 is essentially the same as the draft rejected by the European Parliament; we therefore believe that the reasons the European Parliament gave for rejecting the text at the time are still valid.

The legal acts on which the present Regulation is based (particularly Regulation (EC) No 1071/2009) all fundamentally pursue the objectives: (1) of contributing to "improvements in road safety" (recital 1 of Regulation (EC) No 1071/2009); (2) of ensuring – in keeping with CJEU case-law – that closer monitoring is carried out and that there are effective and dissuasive sanctions (recitals 20 and 21). The main reason is that infringements of these provisions (such as non-compliance with driving time and rest requirements, tachograph manipulation, failure to declare or incorrect declaration of transport documents for the transport of dangerous goods, vehicles exceeding size and weight limits etc.) can have extremely serious negative consequences (accidents, death and/or very serious injury, but also severe environmental and infrastructural damage).

In Austria's view, the present draft Regulation is in breach of a number of legal principles:

1. The principle of proportionality, in that the set of criteria and the categorisation often contradict the basic legal acts and their objectives, making efficient monitoring virtually impossible; enforcement, too, would involve a disproportionate administrative and financial burden. This is in particular the case for Annex II. It is, after all, supposed to set out the relationship between the individual categories of seriousness of infringements.

Annex II therefore lays down implementing rules in respect of offences in the middle and lowest categories. However, there has been an obvious oversight in that nothing is said about the consequences for operators as a result of infringements of the highest category; this, too, in Austria's view, is incompatible with the objectives of the basic Regulation (Regulation (EC) No 1071/2009). And yet just that is urgently needed for the register that is due to be set up;

2. The principle of jurisdiction, in that it makes a substantive change to a legal act adopted on a broad democratic basis (by the Council and European Parliament) by introducing a fourth category of seriousness and skewing the categorisation to make offences appear almost 'harmless' (with serious negative consequences). Some particularly serious examples are the setting of new tolerances for dimensions and weights, but also the 'recategorisation' of driving and rest periods (enabling de facto weekly working times of over 100 hours). In this way, the Commission has infringed the rights of the European Parliament (codecision procedure). But there can also be no justification, from the perspective of transport policy, for 'allowing' in principle (i.e. merely treating as a serious infringement) heavy goods vehicles to operate with de facto tolerances of up to 20 % in width (i.e. vehicles with a width of 3.12m) and total weight (+ 8 tonnes, i.e. 48 to 53 tonnes) or for specifying such tolerances in general.
 3. In addition, Austria is of the opinion that the proposal ignores CJEU case-law, which states that sanctions must be effective and dissuasive. That is not the case if the present Regulation takes a softer approach as regards sanctions than the basic act, Regulation (EC) 1071/2009.
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