



Council of the
European Union

Brussels, 18 October 2018
(OR. en)

13203/18

LIMITE

TRANS 453
CODEC 1690

Interinstitutional File:
2017/0123(COD)

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	ST 12532/18 TRANS 419 SOC 577 EMPL 447 MI 675 COMPET 635 CODEC 1542 ADD 1
No. Cion doc.:	ST 9668/17 TRANS 212 CODEC 923
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector – revised Presidency compromise on Regulation No 1071/2009

In view of the Land Transport Working Party meeting on 22 October 2018, delegations will find, attached, a revised Presidency compromise on Regulation no 1071/2009.

Text added compared to the previous document is marked in **bold and grey shaded**.

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to
adapting them to developments in the sector

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

- (1) Experience with the implementation of Regulations (EC) No 1071/2009³ and (EC) No 1072/2009⁴ revealed that the rules provided for in those regulations offered scope for improvement on a number of points.
- (2) So far, and unless otherwise provided for in national law, the rules on access to the occupation of road transport operator do not apply to undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles not exceeding that limit. The number of such undertakings which are active in both national and international transport operations has been increasing. As a result, several Member States have decided to apply the rules on access to the occupation of road transport operator, provided for in Regulation (EC) No 1071/2009, to those undertakings. To ensure a minimum level of professionalisation of the sector using vehicles **intended exclusively for the carriage of goods and** with a permissible laden mass not exceeding 3.5 tonnes by way of common rules, and thus to approximate competitive conditions between all operators, this provision should be ~~amended~~~~deleted, whereas t.~~ The requirements ~~regarding effective and stable establishment and appropriate financial standing~~ **for access to the profession** should become ~~rendered~~ mandatory **for operators using motor vehicles or combinations of vehicles intended exclusively for the carriage of goods and with a permissible laden mass between 2.5 tonnes and 3.5 tonnes involved in international transport.**
- (2a) **Under Regulation (EC) No 1072/2009 certain international haulage activities are exempted from the need for a Community licence in order to enter the European road haulage market. Within the framework of the organisation of that market road haulage undertakings carrying goods in motor vehicles or combinations of vehicles which have a permissible laden mass not exceeding 2.5 tonnes should be exempted from the need for a Community licence or other carriage authorisation.**

³ Regulation (EC) No 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

⁴ Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

- (2b) **Although vehicles having a permissible laden mass below a certain threshold are excluded from the scope of Regulation (EC) No 1071/2009, that Regulation gives Member States the possibility to apply part or all of the provisions thereof to such vehicles.**
- (3) Currently, Member States are entitled to make access to the occupation of road transport operator subject to requirements additional to those specified in Regulation (EC) No 1071/2009. This possibility has not proven to be necessary in order to respond to imperative needs and has led to divergences in respect of such access. It should therefore be abolished.
- (4) **In order to fight abusive practices based on so-called "letterbox companies", it is necessary to ensure that road transport operators established in a Member State have a real and continuous presence in that Member State and conduct their business from there. Therefore, and in light of experience, it is necessary to clarify the provisions regarding the existence of an effective and stable establishment and to allow Member States to introduce certain additional requirements reinforcing the necessary link between the transport operator and the Member State of establishment according to specific needs, for instance in respect of operational infrastructure such as easily accessible offices and necessary parking spaces.**
- (4a) **The real and continuous presence in the Member State of establishment should in particular require that the undertaking carries out transport operations with the appropriate technical equipment situated in that Member State, and regularly receives its vehicles used in international transport at an operational centre there.**
- (5) To the extent that access to the occupation depends on the good repute of the undertaking concerned, clarifications are needed as regards the persons whose conduct must be taken into account, the administrative procedures which must be followed and waiting periods in respect of rehabilitation once a transport manager has lost good repute.

- (6) In view of their potential to considerably affect the conditions for fair competition in the road haulage market, serious infringements of national tax rules should be added to the items relevant to the assessment of good repute.
- (7) In view of their potential to considerably affect the road haulage market, as well as the social protection of workers, serious infringements of Union rules on the posting of workers and the law applicable to contractual obligations should be added to the items relevant to the assessment of good repute.
- (8) Given the importance of fair competition in the market, infringements of Union rules relevant to this issue, **including rules on access to the market such as cabotage rules**, should be taken into account in the assessment of the good repute of transport managers and transport undertakings. The empowerment of the Commission to define the degree of seriousness of relevant infringements should be clarified accordingly.
- (9) National competent authorities have had difficulties identifying the documents which may be submitted by transport undertakings to prove their financial standing, in particular in the absence of certified annual accounts. The rules regarding evidence required to prove financial standing should be clarified.
- (10) Undertakings engaged in the occupation of road haulage operator ~~solely~~ by means of motor vehicles **or combinations of vehicles intended exclusively for the carriage of goods, involved in international transport and which have** ~~with a permissible laden mass exceeding not exceeding~~ **2.5 tonnes but not 3.5 tonnes** ~~or with combinations of vehicles not exceeding that limit~~ should have a minimum level of financial standing, to ensure that they have the means to carry out operations on a stable and long-lasting basis. However, since the operations ~~concerned~~ **conducted with these vehicles** are generally of a limited size, the corresponding requirements **for financial standing** should be less demanding than those ~~that apply~~ **applicable** to operators using vehicles ~~or combinations of vehicles~~ above that limit. **Combinations of vehicles should be taken into account when determining the required financial standing. The competent authority should apply the higher level of financial requirement if the permissible laden mass of the combination of vehicles exceeds 3.5 tonnes.**

- (10a) In order to maintain and create high standards for undertakings without creating negative impacts on the internal market in road transport, Member States should be allowed to apply the financial requirements referring to the use of heavy vehicles also to the undertakings established on their territories in respect of vehicles below 3.5 tonnes.
- (10b) In order to ensure a reliable road transport sector and to improve the collection of debt to the public sector, Member States should have the possibility to require compliance with payment obligations towards public entities, such as VAT debts and social security contributions, and to require that undertakings are not subject to proceedings that have been introduced to protect their assets.
- (11) The information about transport operators contained in the national electronic registers should be as complete as possible to allow national authorities in charge of enforcing the relevant rules to have a **sufficient** overview of the operators being investigated. In particular, information regarding the registration number of the vehicles at the disposal of operators, ~~the number of employees they hire, and their risk rating and their basic financial information~~ should allow a better national and cross-border enforcement of the provisions of Regulations(EC) No 1071/2009 and (EC) No 1072/2009. The rules on the national electronic register should therefore be amended accordingly.
- (12) The **definition** of the most serious infringement concerning exceeding the daily driving time, as provided for in Annex IV of Regulation (EC) No 1071/2009, does not fit the existing relevant provision laid down in Regulation (EC) No 561/2006 of the European Parliament and of the Council⁵. That inconsistency leads to uncertainty and diverging practices among national authorities and ensuing difficulties in the enforcement of the rules in question. That definition should therefore be clarified to ensure consistency between the two Regulations.
- (...)

⁵ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (17) Insofar as this Regulation introduces a degree of harmonisation in certain areas so far not harmonised by Union law, in particular in respect of transport with light commercial vehicles and **enforcement** practices, its objectives, namely to approximate conditions of competition and improve enforcement, cannot be sufficiently achieved by the Member States but can rather, by reason of the nature of the objectives pursued in combination with the cross-border nature of road transport, be better achieved at Union level. Therefore, the Union may adopt measures, in line with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve the objectives pursued.
- (18) In order to take into account market developments and technical progress the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be **delegated** to the Commission to amend Annexes I, II and III to Regulation (EC) No 1071/2009, ~~to supplement that Regulation by drawing up a list of categories, types and degrees of seriousness of serious infringements which, in addition to those set out in Annex IV to Regulation (EC) No 1071/2009, may lead to the loss of good repute~~ and to amend Annexes I, II and III to Regulation (EC) No 1072/2009. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in line with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁶. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to the Commission's expert groups meetings dealing with the preparation of delegated acts.

⁶ OJ L 123, 12.5.2016, p. 1.

- (18a) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1071/2009, implementing powers should be conferred on the Commission to draw up a list of categories, types and degrees of seriousness of serious infringements which, in addition to those set out in Annex IV to Regulation (EC) No 1071/2009, may lead to the loss of good repute. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.
- (19) Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EC) No 1071/2009

Regulation (EC) No 1071/2009 is amended as follows:

- (1) Article 1 is amended as follows:
- (a) paragraph 4 is amended as follows:
- (i) point (a) is **replaced by the following**~~deleted~~:
- '(a) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes engaged exclusively in national transport operations in their Member State of establishment;'**

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(ii) the following point (aa) is inserted:

'(aa) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 2.5 tonnes;';

(iii) point (b) is replaced by the following:

'(b) undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator.

Any carriage by road for which no remuneration is received and which does not create any income, such as carriage of persons for charity purposes or for strictly private use, is to be considered as carriage exclusively for non-commercial purposes;';

~~(b) the following paragraph 6 is added:~~

~~'6. Article 3(1)(b) and (d) and Articles 4, 6, 8, 9, 14, 19 and 21 shall not apply to undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles with a permissible laden mass not exceeding 3.5 tonnes.~~

~~Member States may, however:~~

~~(a) require those undertakings to apply some or all of the provisions referred to in the first subparagraph;~~

~~(b) lower the limit referred to in the first subparagraph for all or some categories of road transport operations.';~~

(2) in Article 3, paragraph 2 is deleted;

(3) Article 5 is **replaced by the following**~~amended as follows~~:

~~(a) point (a) is replaced by the following:~~

'Article 5

Conditions relating to the requirement of establishment

1. In order to satisfy the requirement laid down in Article 3(1)(a), in the Member State of establishment an undertaking shall:

- (a) have premises in which it keeps **the originals of** its core business documents, **or in case of documents in electronic form secures access to them**, in particular its ~~commercial~~ **transport contracts, documents relating to the vehicles at the disposal of the undertaking**, accounting documents, personnel management documents, labour contracts, **social security documents, documents containing data on the dispatching of drivers**, documents containing data relating to driving time and rest **periods** and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Regulation.
- (aa) **be registered in the register of commercial companies of that Member State or in a similar register whenever required under national law;**
- (aaa) **be subject to tax on revenues and, whenever required under national law, have assigned a VAT registration number;**
- (b) **once an authorisation has been granted, have at its disposal one or more vehicles which are registered or put into circulation and authorised to be used in conformity with the legislation of that Member State, regardless of whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or under a hire or leasing contract;**
- ~~(b) — point (c) is replaced by the following:~~
- (c) **effectively and continuously** conduct its administrative and commercial activities with the appropriate ~~administrative equipment and~~ facilities at premises situated in that Member State, **and its transport operations using the vehicles referred to in point (e) with the appropriate technical equipment situated in that Member State;**

(ca) organise its vehicle fleet's activity in a way as to ensure that vehicles used in international carriage ~~and their drivers~~ return to one of the operational centres in that Member State at least within four weeks of leaving that Member State;

~~(c) — the following point (d) is added:~~

~~(d) — manage the transport operations carried out with the vehicles referred to in point (b) with the appropriate technical equipment situated in that Member State;~~

~~(d) — the following point (e) is added:~~

(e) hold assets on an ongoing basis have at its regular disposal a number of vehicles complying with the conditions laid down in point (b) and employ staff drivers proportionate to the volume of transport operations carried out by the undertaking activity of the establishment.

2. In addition to the requirements laid down in paragraph 1, Member States may require an undertaking to have, in the Member State of establishment:

(a) proportionate to the size of the activity of the undertaking, duly qualified administrative personnel at the premises or the transport manager reachable during suitable hours;

(b) proportionate to the size of the activity of the undertaking, operational infrastructure other than the technical equipment referred to in paragraph 1(c) in the territory of that Member State, including an office which is open during suitable hours.';

(4) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

- (i) the second subparagraph is replaced by the following:

'In determining whether an undertaking has satisfied that requirement, Member States shall consider the conduct of the undertaking, its transport managers, executive directors, ~~general partners in the case of partnerships, other legal representatives~~ and any other relevant person as may be determined by the Member State. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers, executive directors, ~~general partners in the case of partnerships, other legal representatives~~ and any other relevant person as may be determined by the Member State.';

- (ii) in point (a) of the third subparagraph the following point (vii) is added:

'(vii) tax law.';

- (iii) in point (b) of the third subparagraph the following points (xi) and (xii) are added:

'(xi) the posting of workers **in road transport**;

'(xii) the law applicable to contractual obligations.';

- (b) paragraph 2 is replaced by the following:

2. For the purposes of point (b) of the third subparagraph of paragraph 1, where the transport manager or the transport undertaking has been convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements of Union rules as set out in Annex IV, in one or more Member States, the competent authority of the Member State of establishment shall carry out and complete in an appropriate and timely manner an administrative procedure, which shall include, if appropriate, an on-site inspection at the premises of the undertaking concerned.

During the administrative procedure, the transport manager or other legal representatives of the transport undertaking, as the case may be, shall be given the right to present their arguments and explanations.

During the administrative procedure, the competent authority shall assess whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. In that assessment, the competent authority shall take into account the number of serious infringements of national and Union rules as referred to in the third subparagraph of paragraph 1, as well as the number of most serious infringements of Union rules as set out in Annex IV, for which the transport manager or the transport undertaking have been convicted or had penalties imposed on them. Any such finding shall be duly reasoned and justified.

Where the competent authority finds that the loss of good repute would be disproportionate, it shall decide that the undertaking concerned continues to be of good repute. The reasons for this decision shall be recorded in the national register. The number of such decisions shall be indicated in the report referred to in Article 26(1).

Where the competent authority does not find that the loss of good repute would be disproportionate, the conviction or penalty shall lead to the loss of good repute;'

(c) the following paragraph 2a is inserted:

'2a. The Commission ~~is empowered to~~ **shall** adopt ~~delegated acts in line with Article 24 establishing~~ **implementing acts laying down** a list of categories, types and degrees of seriousness of serious infringements of Union rules as referred to in point (b) of the third subparagraph of paragraph 1 which, in addition to those set out in Annex IV, may lead to the loss of good repute. Member States shall take into account information on those infringements, including information received from other Member States, when setting the priorities for checks pursuant to Article 12(1).

To that end, the Commission shall:

- (a) lay down the categories and types of infringement which are most frequently encountered;
- (b) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries and to distort competition in the road transport market, including by undermining the working conditions of transport workers;
- (c) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, taking into account the number of drivers used for the transport activities managed by the transport manager.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3a). '

(5) Article 7 is amended as follows:

- (a) in paragraph 1, the first subparagraph is replaced by the following:

'In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall, on a permanent basis, be able to meet its financial obligations in the course of the annual accounting year. The undertaking shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal **equity capital and reserves:**

- totalling at least EUR 9 000 for the first ~~when only one~~ motor vehicle or combination of vehicles is used that has a permissible laden mass exceeding 3.5 tonnes or which is suitable for carrying more than nine persons, including the driver, and EUR 5 000 for each such additional vehicle used. ~~Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles with a permissible laden mass not exceeding 3.5 tonnes shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, they have at their disposal equity capital~~

- totalling at least EUR 1 800 for the first motor vehicle or combination of vehicles used that is involved in international transport and has a permissible laden mass exceeding 2.5 tonnes but not 3.5 tonnes ~~when only one vehicle is used~~ and EUR 900 for each **such** additional vehicle used.
Member States may require that the undertaking established in their territories demonstrate to have at its disposal for these vehicles the same amounts of capital and reserves as for vehicles referred to in the previous point. In that case the competent authority of the Member State concerned shall inform the Commission accordingly and the Commission shall make this information publicly available.';

(a1) the following paragraph is inserted after paragraph 1:

'1a. In addition to the requirements set out in the first subparagraph of paragraph 1, Member States may require that the undertaking, the transport manager or any other relevant person as may be determined by them, not have outstanding non-personal debts owed to bodies governed by public law, and that it not be bankrupt or subject to insolvency or winding-up proceedings.';

(b) paragraph 2 is replaced by the following:

2. By way of derogation from paragraph 1, ~~in the absence of certified annual accounts~~ the competent authority ~~shall agree~~ may require that an undertaking demonstrate its financial standing by means of a certificate **determined by the competent authority, such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other ~~, a document issued by a financial institutions including insurance companies establishing access to credit in the name of the undertaking,~~ or another binding document proving that the undertaking has at its disposal, **providing a joint and several guarantee for the undertaking in respect of** the amounts specified in the first subparagraph of paragraph 1.;**

2a. By way of derogation from paragraph 1, in the absence of certified annual accounts for the year of an undertaking's registration, the competent authority shall agree that an undertaking demonstrate its financial standing by means of a certificate, such as a bank guarantee, a document issued by a financial institution establishing access to credit in the name of the undertaking, or another binding document as determined by the competent authority proving that the undertaking has at its disposal the amounts specified in the first subparagraph of paragraph 1.'

(6) in Article 8, paragraph 9 is replaced by the following:

'9. The Commission is empowered to adopt delegated acts in line with Article 24a to amend Annexes I, II and III in order to adapt them to market developments and technical progress.';

(6a) in Article 9 the following paragraph is added:

'2. For the purpose of granting a licence to a road haulage undertaking which only operates motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes, Member States may decide to exempt from the examinations referred to in Article 8(1) persons who provide proof that they have continuously managed, for the period of ten years before [date of entry into force of this amending Regulation], an undertaking of the same type.';

(7) in Article 11(4), the third subparagraph is deleted;

(8) in Article 12(2), the second subparagraph is deleted;

(9) in Article 13(1), point (c) is replaced by the following:

'(c) a time limit not exceeding six months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement is again satisfied on a permanent basis.';

(10) in Article 14(1), the following second subparagraph is added:

'The competent authority shall not rehabilitate the transport manager earlier than one year from the date of the loss of good repute.';

(11) Article 16 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the following points ~~(g), (h), (i) and (j)~~ are added:

'(g) the registration numbers of the vehicles at the disposal of the undertaking pursuant to Article 5**(b) (1) (e)**;

~~(h) — the number of employees;~~

~~(i) — the total assets, liabilities, equity and turnover during the last two years;~~

(j) the risk rating of the undertaking pursuant to Article 9 of Directive 2006/22/EC.';

(ii) the second, third and fourth subparagraphs are replaced by the following:

'Member States may choose to keep the data referred to in points (e) to (j) of the first subparagraph in separate registers. In such a case, the relevant data shall be available upon request or directly accessible to all the competent authorities of the Member State in question. The requested information shall be provided within five working days of receipt of the request. The data referred to in points (a) to (d) of the first subparagraph shall be publicly accessible, in line with the relevant provisions on personal data protection.

In any case, the data referred to in points (e) to (j) of the first subparagraph shall only be accessible to authorities other than the competent authorities where they are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to, or otherwise are under a formal obligation of secrecy.';

(b) paragraph 4 is replaced by the following:

'4. Member States shall take all necessary measures to ensure that all the data contained in the national electronic register is kept up to date and is accurate.;

(c) paragraph 7 is deleted;

(12) in Article 18, **paragraphs 2 and 3 are** ~~is~~ replaced by the following:

- '2. **The competent authorities of the Member States shall exchange information on convictions and penalties for any serious infringements referred to in Article 6(2).**
A Member State which receives notification of a serious infringement **referred to in Article 6(2)** which has resulted in a conviction or a penalty in another Member State during the last two years shall record that infringement in its national electronic register.
3. Member States shall reply to requests for information from all competent authorities of other Member States and, where necessary, carry out checks, inspections and investigations concerning compliance with the requirement laid down in Article 3(1)(a) by road transport operators established in their territory. Requests for information by competent authorities of Member States shall be reasoned. To this end, requests shall include credible indications of possible infringements of Article 3(1)(a), **indicate the purpose of the request and specify in sufficient detail the information which is being requested.**
- 3a. **Member States shall submit the information requested by other Member States pursuant to paragraph 3 within thirty working days from the receipt of the request. A shorter time limit may be mutually agreed between the Member States.**
4. Where the requested Member State considers that the request is insufficiently reasoned, it shall inform the requesting Member State accordingly within ten working days. The requesting Member State shall further substantiate the request. Where this is not possible, the request may be rejected by the **requested** Member State.

5. Where it is difficult ~~or impossible~~ to comply with a request for information or to carry out checks, inspections or investigations, the **requested** Member State in question shall inform the requesting Member State accordingly within ten working days, ~~with giving~~ reasons. The Member States concerned shall discuss with each other with a view to finding a solution for any difficulty raised.
- ~~6. In response to requests under paragraph 3, Member States shall supply the requested information and carry out the required checks, inspections and investigations within twenty-five working days from the receipt of the request, unless they have informed the requesting Member State that the request is insufficiently reasoned or of the impossibility or the difficulties pursuant to paragraphs 4 and 5.~~
- 6a. **The exchange of information referred to in paragraph 2 shall take place through the message exchange system ERRU (European Registers of Road Transport Undertakings) established by Regulation (EU) No 1213/2010*.**

The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in paragraphs 3 to 5 of this Article shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012. For this purpose, each Member State may designate the contact point referred to in paragraph 1 as competent authority and shall inform the Commission thereof through IMI.**

* Commission Regulation (EU) No 1213/2010 of 16 December 2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings (OJ L 335, 18.12.2010, p. 21).

** 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 (OJ L 316, 14.11.2012, p. 1).';

7. Member States shall ensure that the information transmitted to them in line with this Article is used only in respect of the matter(s) for which it was requested. **Any processing of personal data shall be carried out solely for the purposes of complying with this Regulation and shall be in accordance with Regulation (EU) No 2016/679 of the European Parliament and of the Council.**
8. Mutual administrative cooperation and assistance shall be provided free of charge.
9. A request for information shall not preclude the competent authorities from taking measures in line with the relevant national and Union law to investigate and prevent alleged breaches of this Regulation.

(12a) in Article 23 the following paragraphs are added:

- '2. By way of derogation from Article 1(2), until [OJ: two years after the entry into force of this amending Regulation] road haulage undertakings engaged in international transport operations solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3,5 tonnes shall be exempted from the provisions of this Regulation, unless otherwise provided for in the law of the Member State of establishment.**
- 3. By way of derogation from Article 16(2), the requirement to include the risk rating of the undertakings in the national electronic registers shall apply from the entry into force of the implementing act on a common risk rating formula referred to in Article 9(1) of Directive 2006/22/EC. '**

(13) Article 24 is deleted;

(14) the following Article 24a is inserted:

'Article 24a
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in ~~Article 6(2)~~ and Article 8(9) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this (amending) Regulation].
3. The delegation of power referred to in ~~Article 6(2)~~ and Article 8(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in line with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.*
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted under ~~Article 6(2)~~ and Article 8(9) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

* OJ L 123, 12.5.2016, p. 1.;

(15) ~~in~~ Article 25 **is amended as follows:**

(a) paragraph 3 is deleted;

(b) **The following paragraph is added:**

'3a. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.'

(16) ~~in~~ Article 26 **is amended as follows:**

(a) **point (b) in paragraph 1 is amended as follows:**

'(b) the number of authorisations granted under this Regulation by year and by type, those suspended, those withdrawn, the number of declarations of unfitness and the reasons on which those decisions were based. Reports relating to the period after [*OJ*: the date referred to in Article 23(2)] shall also include a breakdown of these items by: 1) road passenger transport operators; 2) road haulage operators using exclusively motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes; and 3) all other road haulage operators;'

(b) **the following paragraphs ~~3, 4 and 5~~ 1a is inserted ~~are added~~:**

~~'3. Every year, Member States shall draw up a report on the use of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles with a permissible laden mass not exceeding 3.5 tonnes in their territory, and shall forward it to the Commission no later than 30 June of the year after the end of the reporting period. This report shall include:~~

~~(a) the number of authorisations granted to operators engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles with a permissible laden mass not exceeding 3.5 tonnes;~~

- ~~(b) — the number of vehicles with a permissible laden mass not exceeding 3.5 tonnes registered in the Member State in each calendar year;~~
- ~~(c) — the overall number of vehicles with a permissible laden mass not exceeding 3.5 tonnes registered in the Member State as of 31 December of each year;~~
- ~~(d) — the estimated share of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles with a permissible laden mass not exceeding 3.5 tonnes in the overall road transport activity of all vehicles registered in the Member State, broken down by national, international and cabotage operations.~~

~~4. — On the basis of the information gathered by the Commission under paragraph 3 and of further evidence, the Commission shall, by 31 December 2024 at the latest, present a report to the European Parliament and the Council on the evolution of the total number of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles with a permissible laden mass not exceeding 3.5 tonnes engaged in national and international road transport operations. On the basis of this report, it shall reassess whether it is necessary to propose additional measures.~~

1a5. Every **two** years Member States shall report to the Commission on the requests made by them under Article 18(3) **to (7) and (4)**, on the replies received from other Member States and on the actions that they have taken on the basis of the information provided.';

(17) ~~in Annex IV,~~ **is amended as follows:**

(a) in point 1, point (b) is replaced by the following:

'(b) exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more.';

(b) point 2 is replaced by the following:

'2. Not having a tachograph and/or speed limiter, or having in the vehicle and/or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.'

(...)
