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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 – General approach

In view of the Coreper meeting on 23 November 2018, delegations will find, attached, the Presidency compromise on Regulation No 1072/2009.

Text added compared to the previous document can be found on page 14 and is marked in **bold and grey shaded**. The change concerns both Regulations, 1072/2009 and 1071/2009.

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
(Text with EEA relevance)

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) 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.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

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).

(...)

(13) The rules on national transport performed on a temporary basis by non-resident hauliers in a host Member State ('cabotage') should be clear, simple and easy to enforce, while maintaining the level of liberalisation achieved so far.

~~(14) To this end, and in order to facilitate checks and to eliminate uncertainty, the limitation on the number of cabotage operations subsequent to an international carriage should be abolished, while the number of days available for such operations should be reduced.~~

(14a) To ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity, hauliers should not be allowed to carry out cabotage operations in the same host Member State within a certain time after the end of a period of cabotage operations.

(15) The means by which road transport operators can prove compliance with the rules for cabotage operations should be clarified. **Roadside controls should be based on transport documents and, if available, on tachograph records.** The use and transmission of electronic transport information should be recognised as ~~such~~ **means to prove compliance**, which should simplify the provision of relevant evidence and its treatment by the competent authorities. The format used for that purpose should ensure reliability and authenticity. Considering the increasing use of efficient electronic exchange of information in transport and logistics, it is important to ensure coherence in the regulatory frameworks and provisions addressing the simplification of administrative procedures.

(16) Transport undertakings are the addressees of the rules on international carriage and are, as such, subject to the consequences of any infringements committed by them. However, in order to prevent abuses by undertakings contracting transport services from road haulage operators, Member States should also provide for sanctions on shippers and freight forwarders in case they knowingly commission transport services which involve infringements of the provisions of Regulation (EC) No 1072/2009.

- (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 2016⁵. 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.
- (19) Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

(...)

⁵ OJ L 123, 12.5.2016, p. 1.

Article 2
Amendments to Regulation (EC) No 1072/2009

Regulation (EC) No 1072/2009 is amended as follows:

(1) ~~Article 1 is amended as follows:~~

~~(a) in paragraph 1 of Article 1, the following subparagraph is added:~~

~~'The carriage of empty containers or pallets shall be considered as carriage of goods for hire or reward whenever it is subject to a transport contract.';~~

In paragraph 5 of Article 1, point (c) is replaced by the following:

'(ca) until [OJ: the day before two years after the entry into force of this amending Regulation]: carriage of goods in vehicles the permissible laden mass of which does not exceed 3.5 tonnes;

(cb) from [OJ: two years after the entry into force of this amending Regulation]: carriage of goods in vehicles the permissible laden mass of which does not exceed 2.5 tonnes;'

~~(2) Article 2 is amended as follows:~~

~~(a) point 6 is replaced by the following:~~

~~'6. 'cabotage operation' means national carriage for hire or reward carried out on a temporary basis in a host Member State, involving the carriage from the picking up of the goods at one or several loading points until their delivery at one or several delivery points, as specified in the consignment note;'~~

(3) Article 4 is amended as follows:

(a) in paragraph 2, the third subparagraph is ~~deleted. replaced by the following:~~

~~'The Commission is empowered to adopt delegated acts in line with Article 14b to amend this Regulation to adapt the maximum period of validity of the Community licence to market developments.';~~

- (b) ~~in paragraph 4, the second subparagraph~~ is replaced by the following:

'The Community licence and the certified true copies shall correspond to the model set out in Annex II, which also lays down the conditions governing its use. They shall contain at least two of the security features listed in Annex I.

In the case of vehicles used for the carriage of goods the permissible laden mass of which does not exceed 3.5 tonnes and for which lower financial requirements established in Article 7 (1) second indent of Regulation (EC) No 1071/2009 are applied, the issuing authority shall write in the section 'particular remarks' of the Community licence, or of the certified true copy thereof: ' ≤ 3.5 t'.

The Commission is empowered to adopt delegated acts in line with Article 14b to amend Annexes I and II in order to adapt them to technical progress.';

- (4) in Article 5, paragraph 4 is replaced by the following:

'4. The Commission is empowered to adopt delegated acts in line with Article 14b to amend Annex III in order to adapt it to technical progress.';

- (5) Article 8 is amended as follows:

~~(a) paragraph 2 is replaced by the following:~~

~~'2. Once the goods carried in the course of an incoming international carriage from another Member State or from a third country to a host Member State have been delivered, hauliers referred to in paragraph 1 shall be allowed to carry out, with the same vehicle or, in the case of a coupled combination, the motor vehicle of that same vehicle, cabotage operations in the host Member State or in contiguous Member States. The last unloading in the course of a cabotage operation shall take place within 5 days from the last unloading in the host Member State in the course of the incoming international carriage.~~

(a) the following paragraph is inserted:

'2a. Road transport undertakings are not allowed to carry out cabotage operations, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, in the same Member State within [7] days following the end of its cabotage operation in that Member State.';

[NOTE: Related Recitals:

"The rules on national transport performed on a temporary basis by non-resident hauliers in a host Member State ('cabotage') should be clear, simple and easy to enforce, while maintaining the level of liberalisation achieved so far.

~~To this end, and in order to facilitate checks and to eliminate uncertainty, the limitation on the number of cabotage operations subsequent to an international carriage should be abolished, while the number of days available for such operations should be reduced.~~

Cabotage operations should help to increase the load factor of heavy duty vehicles and reduce empty runs, and should be allowed as long as they are not carried out in a way that creates a permanent or continuous activity within the Member State concerned. To ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity, hauliers should not be allowed to carry out cabotage operations in the same Member State within a certain time after the end of a period of cabotage operations."]

- (b) in paragraph 3, the first subparagraph is replaced by the following:

'National road haulage services carried out in the host Member State by a non-resident haulier shall only be deemed to comply with this Regulation if the haulier can produce clear evidence of the preceding international carriage **and of each consecutive cabotage operation carried out. In the event that the vehicle has been in the territory of the host Member State within the period of [7] days preceding the international carriage, the haulier shall also produce clear evidence of all operations that were carried out during that period.**';

- (c) the following paragraph 4a is inserted:

'4a. Evidence referred to in paragraph 3 **shall be kept on board of the vehicle concerned and** shall be presented or transmitted to the authorised inspecting officer of the host Member State on request ~~and within the duration of~~ **at** the roadside check. It may be presented or transmitted electronically, using a revisable structured format which can be used directly for storage and processing by computers, such as the eCMR.* During the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity **in order to** ~~which may~~ provide, **within the duration of the roadside check, any** the evidence referred to in paragraph 3 **which is found missing on board.**

- (d) **paragraph 5 is amended as follows:**

'5. Any haulier entitled in the Member State of establishment, in accordance with that Member State's legislation, to carry out the road haulage operations for hire or reward specified in Article 1(5)(a), (b), **(ca)** and **(cb)** shall be permitted, under the conditions set out in this Chapter, to carry out, as the case may be, cabotage operations of the same kind or cabotage operations with vehicles in the same category.';

* Electronic consignment note under the 'Convention on the Contract for the International Carriage of Goods by Road'.⁵;

(6) in Article 10(3), the first subparagraph is replaced by the following:

'The Commission shall examine the situation on the basis in particular of the relevant data and, after consulting the committee established pursuant to Article 42(1) of Regulation (EC) No 165/2014 of the European Parliament and of the Council,^{**} shall decide within one month of receipt of the Member State's request whether or not safeguard measures are necessary and shall adopt them if they are necessary.

^{**} Regulation (EC) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).⁵

(7) the following Article 10a is inserted:

'Article 10a

Checks

1. ~~Each~~ Member States shall organise **a number of checks in such a way that, as from 1 January 2020, in every calendar year at least 2 % of all cabotage operations that they consider necessary in order to ensure proper enforcement of cabotage rules in their territory.** ~~performed in their territory are checked. They shall increase the percentage to at least 3 % from 1 January 2022. The basis for the calculation of that percentage shall be the total cabotage activity in the Member State in terms of tonnes-kilometres in year t-2, as reported by Eurostat.~~

~~2. Member States shall target those undertakings which are classed as posing an increased risk of infringing the provisions of the present Chapter, applicable to them. For that purpose, Member States shall, within the risk classification system established by them under Article 9 of Directive 2006/22/EC of the European Parliament and of the Council*** and extended in accordance with Article 12 of Regulation (EC) No 1071/2009 of the European Parliament and of the Council,**** treat the risk of such infringements as a risk in its own right.~~

32. Member States shall, at least ~~three times~~ **twice** per year, undertake concerted roadside checks on cabotage operations. Such checks shall be undertaken at the same time by the national authorities in charge of enforcing the rules in the field of road transport of two or more Member States, each operating in its own territory. **Member States may combine those activities with those provided for by Article 5 of Directive 2006/22/EC***.** The national contact points designated in accordance with Article 18(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council**** shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.

*** Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities (OJ L 102, 11.4.2006, p. 35).

**** Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 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).';

(8) the following Articles 14a and 14b are inserted:

'Article 14a

Liability

Member States shall provide for sanctions against consignors, freight forwarders, contractors and subcontractors for non-compliance with Chapters II and III, where they knowingly commission transport services which involve infringements of this Regulation.

Article 14b

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 4(2) ~~and~~ (4) and Article 5(4) is 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 4(2) ~~and~~ (4) and Article 5(4) 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 4(2) and (4) and Article 5(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 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.';

- (9) Article 15 is deleted;
- (10) Article 17 is replaced by the following:

'Article 17

Reporting

1. By 31 **March January** of every **second** year, at the latest, Member States shall inform the Commission of the number of hauliers possessing Community licences on 31 December of **each of** the previous **two** years and of the number of certified true copies corresponding to the vehicles in circulation on that date. **Reports relating to the period after [the date referred to in point (ca) of Article 1(5)] shall also include a breakdown of these items by road haulage operators engaged in international transport operations solely by means of vehicles the permissible laden mass of which does not exceed 3.5 tonnes and the remaining road haulage operators.**

2. By 31 ~~March~~ ~~January~~ of every **second** year, at the latest, Member States shall inform the Commission of the number of driver attestations issued in **each of** the previous **two** calendar years, as well as the total number of driver attestations in circulation on 31 December of **each of** the previous ~~two calendar~~ years. **Reports relating to the period after [the date referred to in point (ca) of Article 1(5)] shall also include a breakdown of these items by road haulage operators engaged in international transport operations solely by means of vehicles the permissible laden mass of which does not exceed 3.5 tonnes and the remaining road haulage operator.**
3. By 31 ~~March~~ ~~January~~ of every **second** year, at the latest, Member States shall inform the Commission on the number of cabotage checks performed in the previous ~~two calendar~~ years pursuant to Article 10a. This information shall include the number of **roadside checks performed and and the number of** vehicles checked ~~and the number of tonnes-kilometres checked.~~;
4. **The Commission shall draw up a report on the state of the Community road transport market by the end of [four years after the entry into force of this amending Regulation]. The report shall contain an analysis of the market situation, including an evaluation of the effectiveness of controls and the evolution of employment conditions in the profession, as well as an assessment as to whether harmonisation of the rules in the fields, inter alia, of enforcement and road user charges, as well as social and safety legislation, has progressed to such an extent that the further opening of domestic road transport markets, including cabotage, could be envisaged.**;

Article 3

Review

1. The Commission shall evaluate the implementation of this Regulation, in particular the impact of Article 2 amending Article 8 of Regulation (EC) No 1072/2009, by [3 years after the date of entry into force of this Regulation] and report to the European Parliament and the Council on the application of this Regulation. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.
2. Following the report referred to in paragraph 1, the Commission shall regularly evaluate this Regulation and submit the evaluation results to the European Parliament and the Council.
3. Where appropriate, the reports referred to in paragraphs 1 and 2 shall be accompanied by relevant proposals.

Article 4

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [**18 months one year** after date of entry into force~~xx~~].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
