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REPORT

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 1)

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Subject: Mobility Package I:
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
Proposal for a Regulation of the European Parliament and of the Council
amending Regulation (EC) No 561/2006 as regards on minimum
requirements on maximum daily and weekly driving times, minimum breaks
and daily and weekly rest periods and Regulation (EU) 165/2014 as
regards positioning by means of tachographs
Proposal for a Directive of the European Parliament and of the Council
amending Directive 2006/22/EC as regards enforcement requirements and
laying down specific rules with respect to Directive 96/71/EC and
Directive 2014/67/EU for posting drivers in the road transport sector
– general approach

I. INTRODUCTION

1. The Commission adopted the three proposals on 31 May 2017 as part of the first wave of the Mobility Package. The main approaches of the individual proposals are as follows:
 - *Access to the occupation and the market*: tightening and harmonising of conditions for establishment of companies and improving Member State cooperation against letterbox companies; obligatory licensing of operators of light commercial vehicles; revising and simplifying cabotage restrictions and related control mechanisms; moving towards electronic documents;
 - *Rest and driving times and tachograph*: increase flexibility in the use of weekly rest periods to facilitate a regular return to home of drivers; clear obligation of operators to provide adequate and paid accommodation outside the driver's cabin; obligation to register border crossings in the tachograph to facilitate controls;
 - *Posting of road transport workers and enforcement of social legislation*: clarifying the application of 'posting of workers' principles by establishing a threshold for the time spent in a Member State (three days per month in case of international transport) after which the national minimum wage and annual paid leave rules apply; detailed checklists for controls in the host Member State, based on a harmonised risk-rating method and covering also the working time directive.

2. The European Parliament's Committee on Transport and Tourism (TRAN) appointed Mr Ismail Ertug (S&D, DE) as the rapporteur for the proposal amending Regulations 1071/2009 and 1072/2009, Mr Wim van de Camp (EPP, NL) as the rapporteur for the proposal amending Regulations 561/2006 and 165/2014, and Ms Merja Kyllönen (EUL/NGL, FI) as the rapporteur for the proposal amending Directive 2006/22/EC and laying down specific rules with respect to posting drivers in the road transport sector. The Committee on Employment and Social Affairs (EMPL) gave opinions on the first proposal on 30 April 2018, on the second on 26 April 2018, and on the third on 4 May 2018. The Parliament's Plenary, in its meeting on 4 July 2018, voted amendments to the TRAN reports, but no majority was found for endorsing any of them. Deliberations continue in the TRAN Committee.
3. The European Economic and Social Committee adopted two opinions on the three proposals on 18 January 2018, and the European Committee of the Regions one opinion covering those proposals on 1 February 2018.

II. WORK WITHIN THE COUNCIL

4. The Working Party on Land Transport studied the proposals under previous Presidencies between 1 June 2017 and 14 May 2018, resulting in progress reports presented to the Council on 5 December 2017 and 7 June 2018.¹ The DK and UK delegations maintain Parliamentary scrutiny reservations.
5. During the Austrian Presidency the working party discussed the possible way forward and draft Presidency compromises between 1 October and 6 November 2018. The Presidency compromises aim to strike a balance between adequate social protection and the functioning of the internal market while reducing administrative burden. They are built on the following principal pillars which are seen as a package:

¹ docs. 14841/17 and 9259/18.

6. Tachographs (Regulation 165/2014)

- As of June 2022, new vehicles shall be fitted with the second version smart tachograph. Vehicles equipped with the first version of smart tachograph from June next year must receive a software update towards the second version by the end of 2024.
- All vehicles carrying out international transport operations shall be retrofitted with the second version of smart tachograph by the end of 2024.
- The second version will make it possible to register automatically when and where a border has been crossed, and to localise loading and unloading activities.
- Until the process of retrofitting will have been completed, drivers should be obliged to manually register the country code at the first stopping place after the border when using an analogue or digital tachograph.
- Due to the larger amount of data to be recorded by the new smart tachographs and the necessity to save the past 56 days of input, as proposed by the Presidency, the driver cards will have to be replaced by 2024.²

The latest draft of the Presidency compromise can be found in document ST 13205/2/18 REV 2.

7. Cabotage (Regulation 1072/2009)

- The current rule of maximum 3 operations in 7 days (Art. 8(2)) should be maintained, while tackling the shortcomings identified by the ex-post evaluation through better monitoring by way of tachograph information as well as freight documents in paper or electronic form accessible during roadside checks (Art. 8(3) and (4a)).

² Driver cards need to be exchanged every 5 years. As driver cards technically will be rejected after 5 years, an extension of the validity of existing driver cards to exactly match with the tachograph renewal year 2024 is not possible.

- In order to tackle abuse in the form of systematic cabotage, a "cooling off" period of 7 days (Art. 8 (2a)), following the last cabotage operation within the time limit permitted, should be introduced before further cabotage operations can be carried out in the same Member State with the same vehicle.

The latest draft text of the Presidency compromises can be found in document ST 13204/2/18 REV 2.

8. Establishment criteria for road transport operators (Regulation 1071/2009)

- The necessity of an effective establishment of road transport operators, as opposed to mere letterbox companies, should be reinforced by a regular return within an average of 4 weeks to an operational centre in the Member State of establishment of vehicles used in international transport (Art 5. (1) (ca)). This obligation should be modified for insular Member States in order to avoid a disproportionate burden.

The latest draft of the Presidency compromise can be found in document ST 13203/2/18 REV 2.

9. Driving and rest times (Regulation 561/2006)

- The haulier should be obliged to organise the working schedules in such a way that the driver is able to return to an operational centre of the haulier in the Member State of establishment at least every 4 weeks (Art. 8(8a)). The haulier needs to prove that he has fulfilled this obligation by providing duty rosters, tachograph records and any other evidence available.
- The current rule on maximum driving time (90 hours over two weeks, Art. 6(3))) should remain in place. At the same time, it should be possible to have 2 consecutive reduced weekly rests over a period of 4 weeks (Art. 8(6)). The objective of this proposal is to create an incentive for taking a longer rest (regular weekly rest of 45 hours + compensation for reduced rests) at home towards the end of the 4 week cycle. The Presidency compromise does not deviate from the Commission proposal in this respect.

- The regular weekly rest (of at least 45 hours) shall be spent outside the cabin in a suitable location paid or provided for by the employer (unless the driver returns home), Art. 8 (8). This ban on the sleep in cabin corresponds to the Commission proposal.
- In order to address practical problems in finding suitable accommodation in proximity of the road network, the regular weekly rest may exceptionally be spent in the vehicle if it is parked in a dedicated zone with adequate amenities for the driver and if the cabin fulfils certain minimum criteria (Art. 8(8)). Any access fees charged for dedicated zones shall be paid by the haulier.
- As a transitional measure, in view of the lack of dedicated parking zones, sleep in a qualifying cabin may be allowed while it is parked in a non-qualifying parking area that provides at least sanitary facilities. The latest draft of the Presidency compromise can be found in document ST 13205/2/18 REV 2.

10. Posting of drivers (lex specialis to the Posting of Workers Directive)

- The Presidency proposes to abandon the concept of grace period and to focus on the nature of the operation instead. If an operation is organised in such a way that the link of the driver's work with the Member State of establishment remains intact, it should be excluded from posting rules. This approach also avoids the difficult identification of the preferable number of days or hours.
- Transit should be explicitly excluded from the posting rules (Art. 2 (2a)).
- Bilateral transport operations should also be explicitly excluded from the posting rules (Art. 2(2)). Bilateral transport operation means the movement of goods³, based on a transport contract, from the Member State of establishment where the goods are loaded, to another Member State or a third country, where they are unloaded. If the bilateral transport operation is followed by the return journey to the Member State of establishment, the driver should also be excluded from posting rules for that journey.

³ A similar provision is proposed for passenger transport.

If other Member States are crossed on this journey to the destination country, a maximum of 2 additional activities of loading/unloading are permitted without falling under the posting regime. If the same Member States are crossed on the way back to the Member State of establishment, another 2 additional activities of loading/unloading are permitted without that posting rules will apply.

- For all other types of operations, including cabotage, the full posting regime would apply from the first day of operation, as there are no special rules foreseen (except for special rules on control and enforcement).
- As regards the road leg of a combined transport operation, the driver should not be considered posted if the road leg on its own is a bilateral transport operation from the Member State of establishment. In all other cases, notably when the road leg is performed *within* another Member State, the driver should be considered posted.
- To reduce administrative burden, a closed list of documents required for inspection on the road-side should be introduced (Art. 2(4)), as proposed by the Commission. The Internal Market Information System (IMI) should be used for the cooperation between Member States and for the submission of posting declarations and remuneration documents by the transport company.
- The special rules on posting should start to be applied in parallel with the roll-out of version two smart tachographs (Art. 4). The setting-up of the IMI communication tools will take some time, and control of the driver's presence in a host country as well as distinguishing between types of transport will rely on reinforced tachograph information (border-crossing, loading and unloading activities).

The latest draft of the Presidency compromise can be found in [document ST 13206/2/18 REV 2.](#)

III. MAIN OUTSTANDING ISSUES

11. Tachographs (Regulation 165/2014)

- A number of delegations consider a retrofitting towards the latest version of smart tachographs by end of 2024 too ambitious; these delegations, however, still could accept advancing the current date for retrofitting (2034). Some of these delegations also expressed concerns about the disruptive and costly effect of a unique date for replacing driver cards by new cards with larger memory.

12. Cabotage (Regulation 1072/2009)

- The Presidency's suggestion of a "cooling off" period (latest compromise: 7 days) is considered disproportionate by many Member States; some of them are not prepared to accept a cooling off period at all, or only at the scale of a weekly rest. Some Member States consider the period of 7 days insufficient. Some other delegations supported the idea of an alternative safeguard which would provide for a return of the vehicle to the Member State of establishment before new cabotage, following an international carriage, could be started.
- Delegations have divergent views about the definition of a cabotage operation. Some would prefer the clarification provided by the Commission proposal, others prefer a different way of clarification which would tally with their national practice. Again others would be in agreement with keeping the current definition, as proposed by the Presidency in its latest compromise.
- Several delegations consider very important that a safeguard is established against misusing the freedom to provide combined transport services⁴ for continuous cabotage operations.

⁴ Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States, in particular its Article 4.

13. Establishment criteria for road transport operators (Regulation 1071/2009)

- Many delegations oppose to have, as element of effective establishment, an obligation for the regular return of a vehicle used in international transport to an operational centre in the Member State of establishment. In their view, such a requirement discriminates against peripheral Member States, is disproportionate in scope and goes against policies on the Single Market and on the reduction of emissions. Some other delegations voice concerns about the enforceability of such an obligation through labour or trade inspectorates. Other delegations support the Presidency in strengthening the establishment criteria in this respect, in order to reduce the practice of letterbox companies.

14. Driving and rest times (Regulation 561/2006)

- As regards the drivers regular "return to home", some delegations consider the Presidency's approach not ambitious enough and would prefer the Commission proposal in terms of frequency (every three weeks).
- Other delegations consider the compromise too restrictive because, in their view, it does not pay sufficient attention to the driver's liberty to chose the place where to spend the longer rest periods. These delegations suggest introducing a declaration by the driver in which he or she establishes the choice; such a provision would also facilitate enforcement.
- Some of these delegations also consider the frequency of 4 weeks too low, but would accept 6 or 8 weeks.

- As regards the ban on sleep in the cabin during the regular weekly rest, several delegations maintain their position that no exemption should be granted, as these periods need to imply a physical detachment of driver and vehicle so that the driver has a real sense of free time. In addition, they consider that the emphasis on qualifying parking areas misleads into a discussion on infrastructure without really solving the problem of congested parkings. Some of these delegations could consider accepting a derogation, but would then require much more regulatory detail on the driver's comfort.
- A larger number of delegations supports the approach of the Presidency. As regards the introduction of a transitional period allowing the use of non-qualifying parkings, the two groups of delegations are split as well.
- Some delegations maintain a negative scrutiny reservation on the proposal's flexibility to take two reduced weekly rest periods in a row, for road safety concerns.

15. Posting of drivers (lex specialis to the Posting of Workers Directive)

- The large majority of delegations follows the Presidency in the approach to exempt certain types of transport from the PoW Directive, and to let this Directive apply without restriction to others. However, some delegations remain negative, for different reasons: either they deplore discrimination against certain business models as a consequence, and possible competitive advantages for third country operators, or they miss the safeguard of a strict time limit after which posting rules should apply in every case.
- Delegations generally accept that posting rules should not apply in a situation of transit, and should apply during operations on the national market (cabotage). As regards the exemption for bilateral transport operations proposed by the Presidency, most delegations can accept this as a principle, but views differ on important details of it, namely:
 - the scope of "bilateral", whether it has to originate in the Member State of establishment and whether the return journey should be exempted only subject to restrictions. Some delegations prefer a wider definition;

- the flexibility for additional loading and/or unloading activities on the way. Some Member States consider the proposed 2 activities as an absolute minimum. Others oppose this additional flexibility, arguing that it dilutes the concept of the distinction between types of transport and leads to control problems;
 - application of the concept to the road leg of combined transport operations.
- Concerning the special rules on control and enforcement, the Presidency compromise is largely supported. However, several delegations are not convinced that the Commission's IMI system will have the capabilities needed to be effective.
 - Delegations take different views on the proposal to apply special posting rules from the moment of full roll-out of smart tachograph version 2.
16. The Commission representative supported the Presidency in its attempt of finding a balance in the compromise package. He showed sympathy for a number of new elements compared to the proposal (in particular earlier retrofitting, limited exemptions from the ban on sleep in cabin, use of the IMI system) and requested, as regards cabotage rules, that the compromise, at this stage of evolution of the common transport policy, should not result neither in enhanced nor reduced market access, which was the idea underlying the Commission's proposal. As regards posting rules, he stressed that whatever model is established it should respect the principle of a balance between the protection of social rights of drivers and freedom of cross-border provision of services by operators.

IV. CONCLUSIONS

17. Coreper is invited to consider the main outstanding issues, with a view to achieving general approaches at the TTE Council on 3rd December 2018.