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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	ST 9668/17
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 – Analysis of the final compromise text with a view to agreement

1. On 31 May 2017, the Commission submitted three legislative proposals as part of the Mobility Package I, on the access to the occupation of road transport operator and to the road haulage market, on, on drivers' rest periods and on tachograph rules, as well as on enforcement provisions for social legislation and posting of drivers. The general objectives of these proposals is to further harmonise and simplify the rules for the European road transport sector, which will result in more consistent enforcement across all Member States, support social fairness and fair competition, and make businesses more efficient.
2. 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.
3. The Council adopted its general approach on all three files on 3 December 2018.¹

¹ document ST 15084/18.

4. The European Parliament adopted its first reading positions on 4 April 2019.
 5. The Committee for Transport and Tourism of the European Parliament adopted a decision to open interinstitutional negotiations on 24 September 2019.
 6. The institutions held informal trilogues on 3 October, 4 and 5, 25 November, and 11 December 2019. The meetings were prepared by the Working Group on Land Transport and by Coreper mandates for negotiations, given on 25 October and 20 November 2019. The trilogue meeting of 11 December 2019 concluded with a provisional political agreement.
 7. The Permanent Representatives Committee is invited to analyse the final compromise text with a view to agreement, as set out in the Annex to the present note.
 8. The TRAN committee is expected to vote on the political agreement in January 2020, following which, the TRAN chair will address a letter to the Presidency confirming that, should the Council approve the text in first reading, after legal-linguistic revision, the Parliament would approve the Council's position in their second reading.
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Proposal for a
Regulation of the European Parliament and of the Council
amending Regulation (EC) No 1071/2009, Regulation (EC) No 1072/2009 and Regulation (EU) No
1024/2012 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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

² OJ C [\[...\]](#), [\[...\]](#), p. [\[...\]](#).

³ OJ C [\[...\]](#), [\[...\]](#), p. [\[...\]](#).

- (1) Experience with the implementation of Regulations (EC) No 1071/2009⁴ and (EC) No 1072/2009⁵ 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. In order to avoid possible loopholes and to ensure a minimum level of professionalisation of the sector using motor 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. The requirements for access to the profession should become 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.
- (3) 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.

⁴ 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).

⁵ Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

- (4) 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.
- (5) 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.
- (6) In order to combat the phenomenon of so-called "letterbox companies" and guarantee fair competition and a level playing field in the internal market, 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 transport business from there. Therefore, and in light of experience, it is necessary to clarify and strengthen the provisions regarding the existence of an effective and stable establishment while avoiding a disproportionate administrative burden.
- (7) 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.

- (8) Regulation 1071/2009 requires undertakings to conduct effectively and continuously their operations with the appropriate technical equipment and facilities at an operating centre situated in the Member State of establishment and it allows for additional requirements at the national level, the most common being to have parking spaces available in the Member State of establishment. However, those, unevenly applied, requirements have not been sufficient to ensure a genuine link with that Member State in order to efficiently fight letter-box companies and reduces the risk of systematic cabotage and nomadic drivers organised from an undertaking to which the vehicles do not return. Considering that for the proper functioning of the internal market in the area of transport specific rules on the right of establishment and provision of services may be necessary, it is appropriate to further harmonize the establishment requirements and to strengthen the requirements linked to the presence of the vehicles used by the transport operator in the Member State of establishment. Defining a clear minimum interval for when the vehicle has to return also contributes to ensuring that those vehicles can be correctly maintained with the technical equipment situated in the Member State of establishment and facilitates controls. The cycle for such returns should be synchronized with the obligation on the transport undertaking in Regulation 561/2006 to organize its operations in a manner that enables the driver to return home at least every four weeks so that both obligations can be fulfilled through the return of the driver together with the vehicle at least every second four week cycle. This synchronisation strengthens the right of the driver to return and reduces the risk that the vehicle has to return only to fulfil this new establishment requirement. The requirement to return to the Member State of establishment should, however, not require a certain number of operations to be conducted in the Member State of establishment or otherwise limit the operators possibility to provide services throughout the internal market.
- (9) 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.

- (10) 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.
- (11) 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 in road transport, cabotage and the law applicable to contractual obligations should be added to the items relevant to the assessment of good repute.
- (12) 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.
- (13) 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.
- (14) Undertakings engaged in the occupation of road haulage operator by means of motor vehicles or combinations of vehicles intended exclusively for the carriage of goods, involved in international transport and which have a permissible laden mass exceeding 2.5 tonnes but not 3.5 tonnes should have a minimum financial standing to ensure that they have the means to carry out operations on a stable and long-lasting basis. However, since the operations conducted with these vehicles are generally of a limited size, the corresponding requirements for financial standing should be less demanding than those that apply to operators using 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.

- (15) 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.
- (16) 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.
- (17) The information about transport operators contained in the national electronic registers should be as complete and up-to-date 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, and their risk rating 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.
- (18) The Commission is empowered to adopt inter alia the technical procedures for electronic consultation of the national electronic registers of the other Member States. That may entail procedures necessary to ensure that it is possible for the competent authorities to access the harmonized risk rating of an undertaking under Article 9 of Directive 2006/22/EC during roadside checks.
- (19) 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 Council. 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.

- (20) 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.
- (21) 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.
- (22) While the further liberalisation contained in Article 4 of Directive 92/106/EEC compared to cabotage in Regulation (EU) No 1072/2009 has been beneficial in promoting combined transport and should, in principle, be retained, it is necessary to ensure that it is not misused. Experience shows that, in certain parts of the Union, that provision has been used in a systematic manner to circumvent the temporary nature of cabotage and as the basis for the continuous presence of vehicles in a Member State other than that of the establishment of the undertaking. Such unfair practices risk leading to social dumping and jeopardize respect of the legal framework relating to cabotage. It should therefore be possible for a Member State to derogate from Article 4 of Directive 92/106/EEC and apply the provisions relating to cabotage in Regulation 1072/2009 to address such problems, by introducing a proportionate limit to the continuous presence of vehicles within their territory.

- (23) Effective and efficient enforcement of the rules is a prerequisite for fair competition in the internal market. Further digitalisation of enforcement tools is essential in order to free up enforcement capacity, reduce unnecessary administrative burden on international transport operators and in particular SMEs, better target high-risk transport operators and detect fraudulent practices. 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 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.
- (24) 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 clear and foreseeable rules on sanctions on consigners, shippers, freight forwarders, contractors and sub-contractors in case they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they commission involve infringements of this Regulation.
- (25) The European Labour Authority, whose scope of activities, as set out in Article 1(4) of Regulation (EU) 2019/1149, covers Regulation (EC) No 1071/2009, will play an important role in assisting Member States to adequately enforce the rules of this Regulation. This role will in particular concern concerted checks, facilitation of cooperation and exchange of information between Member States, promotion and sharing of best practices, supporting capacity building, training and awareness raising campaigns.

- (26) 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.
- (27) 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 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.
- (28) Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 should therefore be amended accordingly,

⁶ OJ L 123, 12.5.2016, p. 1.

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:

'(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;'

(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, other than carriage for hire or reward or for own account, for which no direct or indirect remuneration is received and which does not directly or indirectly generate any income for the driver of the vehicle or others and where there is no link with professional activity, is to be considered as carriage exclusively for non-commercial purposes;'

- (2) in Article 3, paragraph 2 is deleted;
- (3) Article 5 is replaced by the following:

'Article 5

Conditions relating to the requirement of establishment

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, at which it is able to access the originals of its core business documents, whether in electronic or any other form in particular its 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 and posting of drivers, documents containing data relating to cabotage, 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;
- (b) organise its vehicle fleet's activity in such a way as to ensure that vehicles at the disposal of the undertaking and used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it;
- (c) be registered in the register of commercial companies of that Member State or in a similar register whenever required under national law;
- (d) be subject to tax on revenues and, whenever required under national law, have assigned a VAT registration number;

- (e) 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;
 - (f) effectively and continuously conduct its administrative and commercial activities with the appropriate equipment and facilities at premises as referred to in point (a) situated in that Member State and manage effectively and continuously its transport operations using the vehicles referred to in point (g) with the appropriate technical equipment situated in that Member State;
 - (g) on an ongoing basis have at its regular disposal a number of vehicles complying with the conditions laid down in point (e) and drivers normally based at an operational centre in that Member State, proportionate to the volume of transport operations carried out by the undertaking.
- i) 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 customary business hours;
 - (b) proportionate to the size of the activity of the undertaking, operational infrastructure other than the technical equipment referred to in paragraph 1(f) in the territory of that Member State, including an office which is open during customary business 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 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 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), (xii) and (xiii) are added:

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

(xii) the law applicable to contractual obligations;

(xiii) cabotage.';

(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 shall adopt 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 vehicles 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(3).';

(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 capital and reserves:

- totalling at least EUR 9 000 when only one motor vehicle is used, EUR 5 000 for each additional motor vehicle or combination of vehicles that has a permissible laden mass exceeding 3.5 tonnes used and EUR 900 for each additional motor vehicle or combination of vehicles that has a permissible laden mass, exceeding 2.5 tonnes but not 3.5 tonnes;
- Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles that have a permissible laden mass exceeding 2.5 tonnes but not 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 capital and reserves totalling at least EUR 1 800 when only one vehicle is used and EUR 900 for each 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.';

(b) 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.';

(c) paragraph 2 is replaced by the following:

- '2. By way of derogation from paragraph 1, the competent authority may agree or 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 financial institutions including insurance companies or another binding document 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.';

(5a) in Article 8, paragraph 5 is replaced by the following:

- '5. Member States may promote periodic training on the subjects listed in Annex I at three year intervals to ensure that the person or persons referred to in paragraph 1 are sufficiently aware of developments in the sector.'

(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 **[OJ: 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, paragraph (1) is replaced by the following:

- '1. Competent authorities shall regularly monitor whether undertakings which they have authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3. To that end, Member States shall carry out checks, including where appropriate on-site inspections at the premises of the undertaking concerned, targeting those undertakings which are classed as posing an increased risk. For that purpose, Member States shall extend the risk classification system established by them pursuant to Article 9 of 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 to cover all infringements specified in Article 6 of this Regulation.'

(8a) in Article 12, the second subparagraph of paragraph (2) 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 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 and before the transport manager has demonstrated to have followed appropriate training for a period of at least 3 months or an exam on the subjects listed in part I of Annex I of this Regulation.';

(10a) Article 14(2) is replaced by the following:

2. 'Unless and until a rehabilitation measure is taken in accordance with the relevant provisions of national law and paragraph 1 of this Article, the certificate of professional competence, referred to in Article 8(8), of the transport manager declared to be unfit shall no longer be valid in any Member State.'

(11) Article 16 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) point (c) is replaced by the following

'(c) the names of the transport managers designated to meet the requirements laid down in Article 3 relating to good repute and professional competence or, as appropriate, the name of a legal representative;'

(ii) the following points are added:

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

(h) the number of people employed in the undertaking on 31 December the previous year, which shall be updated to the national register by 31 March each year;

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

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

'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.

Member States may choose to keep the data referred to in points (e) to (i) of the first subparagraph in separate registers. In such a case, the data referred to in points (e) and (f) 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 (g) to (i) of the first subparagraph shall be available to the competent authorities during roadside checks by 12 months from the entry into force of the implementing act specifying the functionalities to allow for the data to be available to the competent authorities during roadside checks adopted pursuant to Article 16(7).

The data referred to in points (e) to (i) 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) the following subparagraph is added to Article 16(6);

'By 14 months after the adoption of an implementing act on a common formula for calculating the risk rating as referred to in Article 9(2) of Directive 2006/22/EC, the Commission shall specify, by way of an implementing act, the functionalities to allow for the data referred to in points (g) to (i) of paragraph 2 to be made available to the competent authorities during roadside checks.'

(12) Article 18 is replaced by the following:

'Article 18

Administrative cooperation between Member States

1. Member States shall designate a national contact point responsible for the exchange of information with the other Member States with regard to the application of this Regulation. Member States shall forward to the Commission the names and addresses of their national contact points by 4 December 2011. The Commission shall draw up a list of all contact points and forward it to the Member States.
2. The competent authorities of the Member States shall cooperate closely and swiftly provide one another with mutual assistance and any other relevant information in order to facilitate the implementation and enforcement of this Regulation.
3. 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.
4. Member States shall reply to requests for information from all competent authorities of other Member States and 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. Such requests for information may include access to documents required to prove that the conditions laid down in Article 5 are met. Requests for information by competent authorities of Member States shall be duly justified and 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 and documents which are being requested.
5. Member States shall submit the information requested by other Member States pursuant to paragraph 4 within thirty working days from the receipt of the request. A shorter time limit may be mutually agreed between the Member States.

6. 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 Member State.
7. Where it is difficult 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, giving reasons. The Member States concerned shall discuss with each other with a view to finding a solution for any difficulty raised. In the event of persistent delays in the provision of information to the requesting Member State, the Commission shall be informed and shall take appropriate measures.
8. 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 4 to 7 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.
9. 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.
10. Mutual administrative cooperation and assistance shall be provided free of charge.
11. 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: 21 months 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 14 months after 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 8(9) shall be conferred on the Commission for an indeterminate period of time from [**OJ: date of entry into force of this amending Regulation**].
3. The delegation of power referred to in 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 2016⁷.
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 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.';

(15) Article 25 is amended as follows:

- (a) paragraph 3 is replaced by;

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

(16) Article 26 is amended as follows:

- (a) the title is replaced by the following:

'Reporting and review'

⁷ OJ L 123, 12.5.2016, p. 1

(b) 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: 21 months after the entry into force of this amending Regulation]** 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;';

(c) the following paragraphs are added:

- '3. 'Every two years Member States shall report to the Commission on the requests made by them under Article 18(4) to (9), on the replies received from other Member States and on the actions that they have taken on the basis of the information provided;
4. On the basis of the information gathered by the Commission under paragraph 3 and of further evidence, the Commission shall, by **[OJ: insert 36 months after the entry into force of this amending Regulation]** at the latest, present a detailed report to the European Parliament and the Council on the extent of administrative cooperation between Member States, on any possible shortcomings in this respect and on possible ways to improve the cooperation. On the basis of this report, it shall assess whether it is necessary to propose additional measures.
5. The Commission shall evaluate the implementation of this Regulation by **[OJ: 3 years after the date of entry into force of this amending Regulation]** and report to the European Parliament and the Council on the application of this Regulation.

6. Following the report referred to in paragraph 5, the Commission shall regularly evaluate this Regulation and submit the evaluation results to the European Parliament and the Council.
7. Where appropriate, the reports referred to in paragraphs 5 and 6 shall be accompanied by relevant legislative proposals.';

(17) 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.';

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

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

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

- '(ca) until [***OJ*: the day before 21 months 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*: 21 months 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 4 is amended as follows:

- (a) in paragraph 2, the third subparagraph is deleted;
- (b) paragraph 4 is replaced by the following:

'4. 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.';

(3) 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.';

(4) Article 8 is amended as follows:

(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 4 days following the end of its cabotage operation in that Member State.';

(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 4 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 presented or transmitted to the authorised inspecting officer of the host Member State on request and within the duration of 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 an electronic consignment note under the Convention on the Contract for the International Carriage of Goods by Road (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 provide, within the duration of the roadside check, any evidence referred to in paragraph 3.';

(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.';

(5) 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 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.'

(6) in Article 10, the following paragraph is added:

'7. In addition to what is provided for in paragraph 1 to 6 and by derogation from Article 4 of Directive 92/106/EEC, Member States may, where necessary to avoid misuse of the latter provision through the provision of unlimited and continuous services consisting in initial or final road legs within a host Member State that form part of combined transport operations between Member States, provide that Article 8 of this Regulation apply to hauliers when they carry out such initial and/or final road haulage legs within that Member State. With regard to such road haulage legs Member States may provide for a longer period than the 7 day period provided for in Article 8(2) and may provide for a shorter period than the 4 day period provided for in Article 8(2a). The application of Article 8(4) to such transport operations shall be without prejudice to requirements following from Directive 92/106/EEC. Member States making use of the derogation foreseen in this paragraph shall notify the Commission thereof before applying the relevant national measures. They shall review those rules at least every 5 years and notify that review to the Commission. They shall make the rules, including the length of the respective periods, publically available in a transparent manner.';

(7) the following Article 10a is inserted:

'Article 10a

Checks

1. In order to further enforce the obligations stipulated under this Chapter, Member States shall ensure that a coherent national enforcement strategy is applied on their territory. That strategy shall focus on undertakings with a high risk rating, referred to in Article 9 of Directive 2006/22/EC.
2. Each Member State shall ensure that the checks provided for in Article 2 of Directive 2006/22/EC will include, where relevant, a check on cabotage operations.
3. Member States shall, at least 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 shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.'

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

'Article 14a

Liability

Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and subcontractors for non-compliance with Chapters II and III, where they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they have commissioned 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(4) and Article 5(4) is conferred on the Commission for an indeterminate period of time from [**OJ: date of entry into force of this amending Regulation**].
3. The delegation of power referred to in Article 4(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 2016⁸.
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(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.';

⁸ OJ L 123, 12.5.2016, p. 1.

(9) Article 15 is deleted;

(10) Article 17 is replaced by the following:

'Article 17

Reporting and review

1. By 31 March 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 [***OJ*: the day before 21 months after the entry into force of this amending Regulation**] 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 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 years. Reports relating to the period after [***OJ*: the day before 21 months after the entry into force of this amending Regulation**] 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 [***OJ*: two years after the date of entry into force of this amending Regulation**], at the latest, Member States shall forward to the Commission their national enforcement strategy adopted pursuant to Article 10a. By 31 March of every year, at the latest, Member States shall inform the Commission on the enforcement operations performed in the previous calendar year pursuant to Article 10a, including, where appropriate, the number of checks performed. This information shall include the number of vehicles checked.

4. The Commission shall draw up a report on the state of the Community road transport market by the end of [**OJ: 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.
5. The Commission shall evaluate the implementation of this Regulation, in particular the impact of the amendments of Article 8 introduced by [**OJ:reference to this amending Regulation**], by [**OJ: 3 years after the date of entry into force of this amending Regulation**] and report to the European Parliament and the Council on the application of this Regulation.
6. Following the report referred to in paragraph 5, the Commission shall regularly evaluate this Regulation and submit the evaluation results to the European Parliament and the Council.
7. Where appropriate, the reports referred to in paragraphs 5 and 6 shall be accompanied by relevant legislative proposals.';

Article 3

Amending Regulation (EU) No 1024/2012

In the Annex to Regulation (EU) No 1024/2012 the following point is added:

- '(xx) 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.';

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 [***OJ*: 18 months after date of entry into force of this amending Regulation**].

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
