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NOTE

This Communication refers to the three Legislative Proposals COM(2017) 281 with interinstitutional reference 2017/0123(COD), COM(2017) 278 with interinstitutional reference 2017/0121(COD) and COM(2017) 277 with interinstitutional reference 2017/122(COD).

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Regulation 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, a Regulation amending Regulation (EC) No 561/2006 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 and a Directive 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 and amending Regulation (EU) No 1024/2012

(Text with EEA relevance)

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1. BACKGROUND

On 31 May 2017, as part of the Mobility Package ("Europe on the Move"), the Commission adopted a comprehensive package of three legislative proposals covering social and internal market aspects of road transport in the EU.

The three legislative proposals in question are:

- (1) A proposal to amend Regulation 1071/2009 on access to the occupation of road transport operator and Regulation 1072/2009 on access to the international road transport market;
- (2) A proposal to amend Regulation 561/2006 on driving and rest time rules in road transport and Regulation 165/2014 on the tachograph;
- (3) A proposal to amend Directive 2006/22/EC on minimum requirements for controlling compliance with the driving and resting time rules and to establish sector specific rules for posting of drivers (lex specialis to posted workers Directive 96/71/EC and to its enforcement Directive 2014/67/EU).

Date of transmission of the proposal to the European Parliament and to the Council:

(documents COM(2017)281 final – 2017/0123 (COD),
COM(2017)278 final – 2017/0121 (COD) and COM(2017)277 final
– 2017/0122 (COD)

01/06/2017

Date of the opinion of the European Economic and Social Committee: 18/01/2018

Date of the opinion of the Committee of the Regions:	01/02/2018
Date of the position of the European Parliament, first reading:	04/04/2019
Date of adoption of the position of the Council:	07/04/2020

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The general objectives of the Commission proposals are to improve working and social conditions for road transport workers, while ensuring more equitable conditions of competition between operators.

The main objectives of the Commission proposal to revise the rules on access to the profession and to the market are to clarify and simplify those rules and to fight against letterbox companies, while broadly maintaining the current degree of market opening.

The proposal to revise the rules on driving and rest times and tachographs is intended to clarify certain provisions and adapt some rules to the changing needs of the sector and to step up smart enforcement of the social rules in road transport.

As regards the Commission proposal to revise the enforcement directive and to establish specific rules for posting in road transport, the objectives are to ensure proportionate and fit-for-purpose application of the posting rules and to improve enforcement and render administrative cooperation between Member States more structured and efficient.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position at first reading adopted by the Council on 7 April 2020 supports the main objectives of the Commission proposals to improve working and social conditions for road transport workers, while ensuring more equitable conditions of competition between operators.

The Council position is a meaningful step forward compared to the current EU social and internal market rules for road transport for several reasons:

- Organisation of the weekly rest periods

The Commission proposed to adapt the weekly rest requirements to actual practice in the sector, by allowing further flexibility in the organisation of the weekly rest periods, so that drivers can take two consecutive reduced weekly rests within a period of four weeks. The Council position upholds the objective of the Commission proposal, while limiting this possibility to drivers engaged in international freight transport, and subject to certain conditions, i.e. the two consecutive reduced rest periods must be taken outside of the Member State of establishment, the consecutive reduced rest periods must be compensated before the following regular rest period and the driver must return “to home” every 3 weeks. These conditions are in line with the Commission’s objective of providing further flexibility for long-distance freight transport, while ensuring that drivers return home regularly for a long rest period. As regards passenger transport, the Commission intends to further study the organisation of driving and rest periods to assess whether specific rules are necessary.

- *Regular return of the driver*

The Commission proposed to introduce an obligation for the transport undertakings to organise the drivers' work in such a way that they are able to return home for a weekly rest at least once every three consecutive weeks. This was intended to prevent a situation where drivers are working abroad for long periods, without the possibility to return home to their families. The Council position upholds the objective of the Commission proposal. It specifies that drivers should go back to the employer's operational centre where the driver is normally based or to the drivers' place of residence within each period of four consecutive weeks. A recital clarifies that "drivers are free to choose where to spend their rest period". The interval is reduced to three weeks in case the driver has taken two consecutive reduced weekly rests. The Council position does not go as far as the Commission proposal. However, the Commission recognises that the Council position is inspired by the same objective, in particular for international drivers, who will normally take two consecutive reduced weekly rests and will then return home at the end of the third week.

- *Ban to take the regular weekly rest in the cabin of the vehicle and safe and secure parking areas*

The Commission proposed to clarify, in line with jurisprudence, that drivers cannot take their regular weekly rests in the vehicle and that the employer is obliged to provide the driver with adequate accommodation with appropriate sleeping and hygiene facilities, if drivers are not able to take these weekly rests at a private place of their choice. This was intended to improve the working conditions of drivers and ensure that they have good conditions to rest. The Council position upholds the Commission proposal, by banning regular weekly rests in the vehicle. The Council goes further than the Commission proposal, by mandating the Commission to come up with detailed provisions concerning safe and secure parking areas, i.e. the level of service and the procedure for the certification of these parking areas. The Council position fully meets the Commission's objective to guarantee appropriate resting conditions for drivers and is even more ambitious in this respect.

- *Application of posting rules to road transport*

The Commission proposed to introduce specific criteria for the application of posting rules to road transport, which take into account the highly mobile nature of the sector and which guarantee fair payment for drivers working abroad for a significant amount of time. The Commission proposed to exempt from posting rules on minimum wage and minimum leave international transport operations involving a period of posting of up to 3 days per calendar month, while cabotage operations were proposed to remain fully subject to posting rules. The Council position upholds the principle of sector-specific posting rules for road transport, while proposing a new operation-based system, as an alternative to the time-based system proposed by the Commission. Bilateral operations involving the Member State of establishment of the operators are fully exempted from the application of posting rules, while cross-trade and cabotage operations, which do not involve the Member State of establishment of the operators, are fully subject to the application of posting rules.

There is also an exemption from the application of posting rules for additional activities linked to bilateral operations. For freight transport, the driver may perform one activity of loading and/or unloading in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unload them in

the same Member State. Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the exemption for additional activities is extended to a maximum of two additional activities of loading and/or unloading.

For passenger transport, in the context of bilateral operations, the driver may pick up passengers once and/or set down passengers once in Member States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same applies to the return journey.

The exemptions from posting rules for additional activities linked to bilateral operations will apply from the date when drivers will be obliged to record border crossing data manually in the tachographs. They will cease to apply on the date on which smart tachographs complying with the requirement of recording border crossings and additional activities are required to be fitted in the vehicles.

The Council position also clarifies that, with regard to the application of posting rules, undertakings established in a non-EU Member State must not be given more favourable treatment than undertakings established in a Member State, including when performing transport operations under bilateral or multilateral agreements granting access to the Union market.

Finally, the Council position clarifies the application of the concept of long-term posting which was introduced in the revised posting directive (Directive (EU) 2018/957), to international road transport operations, to the effect that periods accomplished in one Member State are not cumulated with those accomplished in any other Member State.

Like the Commission proposal, the Council position relies on the objective of ensuring that drivers who are subject to the living costs of Member States other than the one where they live are paid in accordance with those costs and can therefore have an appropriate standard of living. The clarifications in the Council position as regards long-term posting and application of posting rules to third countries are needed and welcome in order to remove doubts on the application of posting rules by Member States. The Commission also proposed specific administrative requirements for the application of the posting rules in road transport, to avoid undue administrative burden on operators. The Council position upholds the Commission proposal and provides that exchanges of information between national authorities and the submission of posting declarations by road transport undertakings will be done through the Internal Market Information System (IMI). The use of IMI will further reduce the administrative burden, both for administrations and undertakings, and will therefore contribute to the overall objective of the Mobility Package.

- *Introduction of new tachograph technology*

The Commission did not propose to modify the tachograph regulation. However, the Council considered necessary to introduce a new generation of ‘smart’ tachographs to make it possible to more precisely position vehicles used for cross-border transport operations, thereby easing enforcement of the social and internal market rules. The Council position specifies a time schedule for the uptake of this new technology in new vehicles (two years from the date of adoption of the technical specifications) and in the existing fleet (retrofit three years from the date of adoption

of the technical specifications for all vehicles equipped with a tachograph other than the smart tachograph version 1; retrofit four years from the date of adoption of the technical specifications for all vehicles equipped with a smart tachograph version 1). The Council position is fully in line with a core objective of the Mobility Package, which is to allow for effective and efficient enforcement of the new social and internal market rules.

- *Application of rules on access to the profession and driving and rest times to light commercial vehicles*

In order to introduce a minimum level of professionalization of operators using light commercial vehicles and thus to approximate competitive conditions between operators, the Commission proposed to extend some of the rules on access to the occupation of road haulage operator to undertakings using light commercial vehicles. Namely, these operators would be subject to the criteria on stable and effective establishment and appropriate financial standing. The Council position upholds the inclusion of operators using light commercial vehicles in the scope of the rules on access to the occupation of road transport operator, while applying all of the rules to such operators. However, only operators involved in international transport for hire and reward and using vehicles with permissible laden mass above 2.5 tons are subject to these rules. Additionally, the Council position extends the rules on driving and rest times and tachographs to these operators. The Council position meets the objective of the Commission proposal to introduce a minimum level of professionalization of operators using light commercial vehicles and setting a level playing field between these and operators using heavy goods vehicles. The Council position to, in addition, subject these operators to driving and rest time rules and tachographs is acceptable, as it will further increase road safety for this type of vehicles involved in international transport for hire and reward.

- *Rules on cabotage*

The Commission proposed to revise the rules on cabotage, by allowing an unlimited number of operations within a period of 5 days from the unloading of the international incoming carriage in the host Member State. This rule would replace the current limitation to 3 operations in 7 days and was intended to ease enforcement, while broadly keeping the existing level of market opening. The Council position keeps the current cabotage restrictions (3 operations in 7 days), while introducing a cooling-off period of four days, during which operators are not allowed to carry out more cabotage operations in the same Member State. The Council does not follow the approach proposed by the Commission, which was mainly intended to facilitate enforcement. Keeping the current model for cabotage is more challenging in terms of enforcement, but the Commission believes that with the new generation of ‘smart’ tachographs, which is part of the Council position, it will be easier to identify the type of operation carried out by hauliers and the respective number. This should improve enforceability of the cabotage rules when compared to the present situation. The Commission can accept the idea of a cooling-off period, to deal with the issue of “systematic cabotage”, i.e. operators repeating several consecutive periods of cabotage in the same Member State, by leaving and re-entering that Member State, in violation of the limits imposed by Regulation (EU) No 1072/2009, maintained in the amending text.

- *Establishment criteria relating to drivers (Rome I)*

The Commission did not propose any new requirement on the hiring of workers in relation to the criterion of stable and effective establishment for access to the occupation of road transport operator. The Council position includes a new establishment criterion requiring that the operators have, on an ongoing basis, at their regular disposal drivers normally based at an operational center in the Member State of establishment, proportionate to the volume of transport operations. The Council position is intended to contribute to a sufficient staffing of what is supposed to be a stable and effective establishment. It leaves enough margin so as to not unduly restrict the freedom of operators when hiring personnel.

- *Implementation deadlines / dates of application*

The Commission did not propose specific dates for the application of the new rules. The Council position determines that the regulation amending Regulations (EC) No 1071/2009 and 1072/2009 will be applicable 18 months following the date of its entry into force. However, Regulation (EC) No 1071/2009 in its entirety and the requirement to hold a Community licence under Regulation (EC) No 1072/2009 will only apply to operators using light commercial vehicles above 2.5 tons engaged in international transport 21 months following the date of entry into force of the amending regulation. The revised enforcement directive (Directive 2006/22/EC) and the *lex specialis* on the posting of workers will have a date of transposition of the national measures by the Member States of 18 months from the entry into force of the act. Whereas the revised Regulations (EC) No 561/2006 and 165/2014 will be applicable immediately upon entry into force, they include transitional provisions for the application of the provisions related to the implementation of the smart tachograph (see above) and the application of the rules to light commercial vehicles (from 1 July 2026). The new rules will require significant time for adaptation by Member States, operators and the Commission. Notably, the further development of the Internal Market Information System for the application of the posting rules, the new training and examination requirements for operators using light commercial vehicles and the technical developments required for the new tachograph technologies require sufficient implementation time. The Council position is therefore acceptable in this respect.

However, the Commission has reservations concerning two measures included in the Council position, namely the obligation for the regular return of the trucks to the Member State of establishment of the operators and the possibility for Member States to apply cabotage restrictions to the national road legs of combined transport operations. For this reason, the Commission issued the following declaration regarding the political agreement reached by the European Parliament and Council on 12 December 2019:

“The Commission takes note of the provisional agreement on the social and market aspects of Mobility Package I reached by the Council and European Parliament during the 4th trilogue which took place on 11-12 December 2019.

The Commission regrets that the political agreement reached by the Council and European Parliament includes elements that are not in line with the ambitions of the European Green Deal and the EUCO endorsement of the objective of achieving a climate-neutral EU by 2050. These are the compulsory return of the vehicle to the Member State of establishment every 8 weeks and the restrictions imposed on combined transport operations. These measures were not part of the Commission’s proposals adopted on 31 May 2017 and have not been the subject of an impact assessment. The obligation of return of the truck will lead to

inefficiencies in the transport system and an increase in unnecessary emissions, pollution and congestion, while the restrictions on combined transport diminish its effectiveness to support multimodal freight operations.

The social improvements in this proposal are significant. The Commission will now closely assess the climate, environmental, and single market functioning impact of these two aspects. The Commission will do so in view of the Green Deal and measures to decarbonise transport and protect the environment, whilst ensuring a well-functioning Single Market.

After impact assessment, the Commission, if necessary, will exercise its right to come forward with a targeted legislative proposal before the two provisions enter into force.”

Since the two measures in question are part of the Council position, the Commission confirms the position taken in the declaration.

4. CONCLUSION

The Commission considers that, despite some shortcomings of the Council position, the introduction of new and clearer provisions described above will provide better working and social conditions, fair competition and more legal certainty in the road transport sector. The new provisions will also constitute a solid basis for future enforcement of the road transport rules.

In a spirit of compromise, the Commission accepts the position adopted by the Council, thus allowing the European Parliament to adopt the final text in a second reading. Indeed, the Commission considers that adopting the social and market proposals would bring substantial benefits to the road transport sector. However, the Commission maintains its reservations concerning two of the measures included in the Council position.