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**REPORT**

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From: General Secretariat of the Council

To: Council

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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

Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road

– Progress report

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## I. INTRODUCTION

The Commission adopted the four proposals on 31 May 2017 as part of the first wave of the mobility package. A presentation to Council followed on 8 June 2017 (AOB item).

An overarching objective of the proposals is the improved enforcement of social and markets' rules through clarification, simplification and refined control provisions. The main approaches of the individual proposals are as follows:

- Access to the occupation and the market: tightening and harmonising of establishment conditions and creating a more effective Member State cooperation in order to fight so-called letterbox companies; enlarging obligatory licensing towards light commercial vehicles; revising and simplifying cabotage restrictions and setting of related control standards; moving towards electronic documents;
- Rest times and tachograph: introducing some flexibility into the distribution of the weekly rest periods in order to allow a certain concentration every third week; combining this flexibility with a clear obligation of operators to provide adequate and paid accommodation outside the driver's cabin, including a possibility to return to home regularly; obliging the driver to encode border crossings into the tachograph in order to facilitate the follow-up of social standards and cabotage rules;
- Posting of road transport workers and enforcement directive: clarifying the application of "posting of workers" principles by establishing a minimum time that the driver needs to have spent in a Member State (three days per month in case of international transport) in order for local minimum wage and annual leave rules to apply; improving enforcement through tailored checklists for roadside checks, through a harmonized risk-rating method and through incorporating the working time directive into the subjects of compulsory control;
- Hired vehicles: softening of the restrictions on using hired vehicles in international transport.

The Working Group on Land Transport studied the proposals on 17 occasions between 1 June and 6 November 2017. All delegations entered general scrutiny reservations; the discussion of specific topics therefore gathered a variable amount of interventions and positions. The DK, PL and UK delegations entered parliamentary scrutiny reservations. The NL delegation referred to an impact assessment which was ongoing at the national level.

On 13 and 21 June 2017, delegations discussed the impact assessment studies attached to the proposals, reserving the right to further comment at a later stage. Concerning the social pillar, delegations generally acknowledged the quality of the impact assessment. Several delegations, however, criticized the assumptions with regard to costs related to the application of "posting of workers" rules in international transport. These delegations also held the view that the control burden was adding up further through the new requirements on rest time. Some delegations also questioned the practicability of taking regular weekly rests outside the vehicles if no sufficient secured parking spaces were available. Others were of the view that more flexible rules on rest time might have negative implications for road safety.

With regard to the access to the market, delegations agreed with the Commission's impact assessment study that a key shortcoming was the practical difficulty of controlling rules on cabotage, while some of them highlighted that the control burden in practice rested with very few Member States where most cabotage takes place. Some delegations expressed doubts that the reformulation of cabotage rules was justified by the amount of illegal operations, which were estimated as not being very high in relative terms. These delegations disagreed with the assertion that the envisaged simplification of rules would largely secure a status quo on the amount of cabotage operations, as some of the presented calculations suggested a decrease in activity. They favoured a policy option that would see a raising of social standards happening in tandem with an opening of market access. Another group of delegations took the opposite view and predicted a considerable increase in cabotage activity, including the problem of systematic cabotage, which they considered inappropriate as long as social standards varied considerably across the EU.

Referring to the impact assessment study on the access to the profession, a considerable number of delegations considered the basis for licence requirements for light commercial vehicles to be weak. Some went further in holding the view that the study did not support, with evidence, the need to regulate at all light commercial vehicles at the EU level. Most delegations supported the approach to reinforce establishment requirements and to limit the possibility of setting additional access requirements at the national level. Some Member States were concerned about the proposed abolishment of additional national criteria, referring to a negative impact at the specific national level.

Finally, with regard to hired vehicles, delegations acknowledged the expected positive impact in the penetration of the market for hired vehicles, but several of them highlighted that possible negative effects needed additional analysis. These concerns related to a possible tax erosion and to controllability - both concerning then remaining restrictions on the circulation of hired vehicles and concerning cabotage operations. Some delegations were not convinced of the argument that a more efficient market for vehicle hire would definitely have a positive impact on the environment.

## **II. PRESIDENCY SCENARIOS FOR COMPROMISES**

### **a) Regulation (EC) No 1071/2009**

#### *Light commercial vehicles*

In relation to regulating the access to the profession for the operators of light commercial vehicles, the Presidency has proposed a compromise consisting of the following elements:

- Only operators operating **internationally** with LCVs with a **weight** between [2.5-2.8t] and 3.5t would fall under the scope of the directive, as the main concern from the Member States was related to these vehicles becoming more visible in the international road transport market. Establishing a minimum weight would avoid having to cover a very large amount of additional vehicles and operators with no presence in the international transport market. This would address the concerns of proportionality, avoiding an unnecessary administrative burden for operators who are using minivans of the size of a passenger car. A threshold between 2.5 and 2.8t was proposed.

- Relevant operators who wish to carry out international transport operations with an LCV above the weight threshold have to apply for an **EU licence**. The issuing authority is obliged to specify on the certified true copies that these are issued to a vehicle or combination of vehicles between [2.5-2.8t]-3.5t, to avoid circumvention of the rules on financial standing which are more demanding for heavy duty vehicles.
- All four **authorisation criteria** – stable establishment, good repute, professional competence, financial standing - would apply to the LCVs. This approach would set a level-playing-field for the operators engaged in international transport, as well for the operators of LCVs as for those of mixed fleets, the latter of which having to comply with all four criteria already.
- The Presidency also proposed certain **transitional measures** in relation to the application of these new rules in order to give Member States sufficient time to set up the administrative systems for licencing the operators of LCVs and for the LCV operators to comply with the new rules.

*Establishment criteria and additional national requirements*

The Presidency proposed a compromise that facilitates the Commission proposal to abolish the possibility for the Member States to add licencing requirements at the national level. This would provide transparency across the EU in relation to the access to profession. Certain national specificities might have to be accommodated mainly in relation to the establishment criteria and therefore the Presidency proposed to add a list of voluntary establishment criteria which Member States may require in addition to the obligatory ones if they so wish.

In addition, the Presidency proposed some more concrete wording in relation to obligatory establishment criteria (e.g. replacing "assets" and "staff" with "vehicles" and "drivers") and proposed to add two additional ones: namely, the undertaking needs to be registered in a national register of economic activity; and be subject to taxes in the Member State of establishment.

### *Financial standing*

The Presidency proposed that in case of a mixed fleet, similar lower financial requirements would apply to the LCVs as apply to the undertakings who are using only LCVs. This would guarantee an equal treatment between the operators whenever they use LCVs. The Presidency also proposed that this requirement will only apply to vehicles below 3.5t, but not to the combination of vehicles, as otherwise the enforcement of these rules would be complicated.

In relation to the proof of financial standing, the Presidency proposed to maintain the existing legal framework where the requirement for a bank guarantee or an insurance can be required as a choice of the administration, and not only in case that certified annual accounts of the undertaking are not available, as proposed by the Commission.

### **b) Regulation (EC) No 1072/2009**

#### *Cabotage operations*

For the sake of clarity, the Presidency proposed to clearly define in the legal text the start of the cabotage operation. The proposed definition would allow the start of the cabotage operations to take place only after all unloading has been finalised in the host Member State.

#### *Cabotage checks*

The Presidency proposed that no fixed number of cabotage checks should have to be carried out by the national competent authorities. A sufficient number of checks should take place based on a risk-based approach, which would allow the Member State to consider the total cabotage activity in the country as well as the risk rating of possible areas of illegal cabotage. The proposed approach would allow the Member States to undertake cabotage checks according to their specific situation.

In addition, the Presidency also proposed that the obligatory three annual concerted roadside checks should be allowed to be carried out under the already existing obligation to carry out six concerted roadside checks for other purposes under the Directive 2006/22/EC on enforcement.

c) **Regulation (EC) No 561/2006**

*Regular weekly rest in the driver's cabin*

The Presidency suggested following the Commission proposal in respect of a general ban on spending the regular weekly rest or equivalent compensation periods in the driver's cabin. At the same time, the Presidency proposed to introduce an exemption allowing a driver to spend the regular weekly rest in the cabin when it is equipped with suitable sleeping facilities for each driver and is parked at a suitable rest area providing safe and secure parking with adequate sanitary facilities for the comfort of the driver. The definition of a "suitable rest area" would then have to be defined in the Regulation. This suitable rest area should fulfil certain security, safety and service criteria.

The Presidency also emphasised that the information on these suitable rest areas would have to be easily accessible to the hauliers and the drivers, preferably from a single information access point for all of the Member States.

*Return to home and schedule of weekly rest*

The Presidency proposed that the obligation for a haulier to provide the driver with an opportunity to return to home would be fixed at a rhythm of six weeks in order to cater also for the hauliers from the peripheral Member States. The Presidency considered it important that the term "home" would not be defined in a restrictive manner, as the driver should be left with a certain degree of flexibility and choice.

On the schedule for the weekly rest, the Presidency proposed to keep the current biweekly approach requiring that the regular weekly rest will be taken at least every second week. The compensation for the reduced weekly rest could be added to a regular weekly rest or to another reduced weekly rest.

d) **Regulation (EU) No 165/2014**

*Purpose of the tachograph information*

The Presidency proposed to clarify in the text that the tachograph information can be used for the purposes of verifying the compliance with the cabotage rules, rules on the posted drivers and for the purpose of the combined transport directive.

*Entering the country codes*

The Presidency proposed to clarify that the obligation to insert a country code needs to be fulfilled after crossing a national border at a first planned or necessary stop for the purpose of a driver or a transport operation. There would not be any obligation for a driver to stop after crossing the border solely for the purpose of inserting the country code, even in situations where a driver crosses several borders without an foreseen stop. The obligation to enter the code is not connected to the type of transport operation.

e) **Directive for *lex specialis* on posted road transport workers and Directive 2006/22/EC**

*Scope*

The Presidency proposed to explicitly clarify in the legislation that transit operations do not constitute a posting of drivers. In addition, the Presidency proposed to clarify that the *lex specialis* rules should likewise apply to drivers who carry out activities for their own account.

*Calculating the periods of posting*

The Presidency proposed that for the purpose of calculating the period of posting in a host Member State the following activities of the driver need to be taken into account: driving time, working time, availability time, breaks and daily rest time. According to the proposed compromise, the weekly rest should not be calculated into the period of posting.

When a driver enters the host country by means of other transport modes, for example by train or ferry, the start of the posting period should be calculated when the driver starts to operate the vehicle to leave the train or ferry.

### *Administrative requirements and control measures*

The Presidency proposed that the administrative requirements and control measures for enforcing the posting rules in the road transport sector should be presented in the sector-specific *lex specialis* exhaustively ("closed list"). In case there is a need to update these requirements or measures over time due to technological developments or similar, it should be done through secondary legislation. This would guarantee that the posting rules are set at the European level and are enforced in the same manner in all Member States.

#### **f) Directive 2006/1/EC**

The Presidency proposal foresaw that a Member State can restrict the usage of a hired vehicle from another Member State only for the undertakings established in its own country. A Member State would no longer be allowed to restrict the use of a hired vehicle on its territory by an undertaking established in another Member State.

Should a Member State want to restrict the use of a hired vehicle by an undertaking established in its territory, it may limit the use of any hired vehicle to a consecutive period of three months within a calendar year. In addition, the Member State may limit the number of hired vehicles from another Member State to a maximum of 25% of the total fleet owned by the undertaking.

The Presidency also proposed that the foreseen review by the Commission, expected five years after the deadline of transposition, would assess possible negative impacts from the increased use of hired vehicles on tax income of the Member States, on road safety and on illegal cabotage.

### **III. COMMENTS ON THE MAIN ISSUES**

#### **a) Regulation (EC) No 1071/2009**

##### *Light commercial vehicles*

Many Member States claimed that licensing requirements for LCV operators would trigger significant costs for this sector, while there was no clear evidence of a need for intervention at the EU level. Other Member States argued that the Commission proposal provided only an insufficient reaction to the worrying situation of rapidly increasing LCV activity, because the more critical criteria for checking the soundness of an operation (professional competence, good repute) would not have to be complied with. They underlined that this sector needed proper surveillance and that fair competition with the heavy duty operators needed to be ensured. Several Member States compared the proposal with solutions at the national level where licencing requirements for LCVs started only at a certain minimum weight.

All Member States except one could support the Presidency's suggestion to limit the licensing requirement to **international transport**. Most Member States could support this requirement beginning to apply from a certain **minimum weight**. Four Member States did not support this idea. Many Member States had no definite position in respect of the appropriate minimum weight; they supported the Presidency guidance of 2.5 to 2.8t laden weight. Some Member States clearly supported the lower minimum weight limit.

In relation to the **authorisation criteria**, a large majority of Member States preferred the application of all four criteria should the scope cover only LCVs engaged in international transport. Some other Member States preferred to stick to the Commission proposal also in this case. In particular, they questioned the relevance of "good repute" in the absence of tachograph surveillance of this sector, and considered the hurdle for "professional competence" too cumbersome, reflecting on the related requirements in Annex I to the Regulation. Most delegations taking the floor preferred not to amend Annex I for the specific purpose of LCVs. One Member State rejected the specific requirement for the financial standing and said it would result only in additional paper-work rather than being a meaningful hurdle.

A couple of Member States considered the specific amounts for financial standing to be still too high. Most Member States accepted the application of financial standing, as long as the issue of mixed fleets composed of heavy duty and light commercial vehicles would be dealt with. In relation to the application of all four authorisation criteria, some Member States asked for a sufficient transitional period.

Finally, Member States largely accepted, in principle, the proposal in respect of new administrative **reporting requirements** linked to LCVs. However, many requested a review of this part of the proposal in order to reduce the administrative burden (biannually instead of yearly, and only based on readily available statistics) and to improve clarity (treatment of exempted vehicles).

#### *Establishment criteria and additional national requirements*

While most Member States agreed that the conditions for a stable establishment as set out in Article 5 of the Regulation should be strengthened, some questioned the conditions and criticised the lack of clarity thereof. On the other hand, the Commission proposal to delete Article 3(2) of the Regulation, meaning that the Member States no longer would be allowed to add licensing requirements at the national level, was opposed by several Member States, arguing that their national rules catered for specific needs and served also the objective of reinforcing the link to the country of establishment.

The Presidency proposal of adding precision and clarity to some of the establishment criteria, and incorporating additional voluntary elements into Articles 5 and 7 which reflected national specificities in exchange of deleting Article 3(2), was supported by a large majority of Member States. However, the details of formulating those elements continued to be scrutinised. In particular, a number of Member States felt that there was a lack of precision and controllability in some of the elements, while others wanted more flexibility to keep national specificities.

Other delegations advocated strengthening the list of obligatory requirements, e.g. concerning required assets and local sourcing of finance, rather than adding new voluntary ones, for the purpose of providing a level playing field in the fight against letterbox companies. Some Member States also observed that the checking of some of the listed criteria was not possible at the start of operations, but only when the company has been established already.

## *Financial standing*

The main issue of discussion on the financial standing was the treatment of **mixed fleets**. The Presidency compromise consisting of an equal treatment for LCVs in the fleets of all operators was generally welcomed by delegations, while the need for some additional precision was noted. Some delegations were concerned that combinations of vehicles should be taken into account for determining which thresholds apply. The Presidency was of the view that combinations of vehicles were too variable to be taken into account for this purpose, and referred to its proposal that the certified true copy of the Community licence would state clearly whether it is allocated to a LCV which stays below the weight limit including its trailer, or is allocated to a vehicle above the weight limit. Some Member States proposed lower amounts for the LCVs than contained in the Commission proposal. The Presidency did not take this on board as it was of the opinion that the fleet itself (the asset value of the vehicles) will provide for sufficient equity capital. A couple of Member States mentioned that these amounts should be even higher.

A few delegations questioned the reformulation of "capital and reserves" into "**equity capital**" in the proposal. They were seeking reassurance that all components of own resources available to the applicant could be taken into account for assessing the financial requirement. One delegation suggested an **indexation** of the financial threshold, in view of the stability of the Regulation over many years.

As regards the means of providing **proof of the financial standing**, a couple of delegations were not in agreement with the changes proposed by the Commission, which they considered going further than a clarification. In particular, these delegations wanted to continue national systems that required a bank guarantee even in case of available annual accounts, and also the mention of insurances. The Presidency's proposal of maintaining the current wording of this provision gathered support but also disagreement, because some delegations considered the Commission proposal to be beneficial to smaller companies which might lack access to financial guarantees. The Presidency concluded that further work was needed in order to see if these views could be reconciled.

Concerning **national electronic registers** and **Member State cooperation**, delegations generally welcomed the Commission proposal. However, in respect of national electronic registers, several of them highlighted the need to strike a balance between compulsory data and administrative costs of regular updating, and these delegations also argued that additional efforts needed to be compensated by a well-performing ERRU.<sup>1</sup> Some delegations considered certain data sets excessive (e.g. detailed financial data, number of employees, risk rating).

On reinforced Member State cooperation, delegations welcomed the Commission intention of structuring the procedure. However, views varied in respect of the different steps of the procedure. While some Member States asked for more transparency about the reasons according to which a request for cooperation may be refused, and considered valuable a confirmation of receipt of such a request, others asked for longer deadlines in order to be able to comply with such requests. Some made a distinction depending on what kind of investigation the request would entail, or suggested expressly limiting the kind of information that may be requested. The Presidency concluded that as a way forward, the text should specify the minimum reasoning of a request (e.g. indicating the purpose of the procedure and specifying in sufficient detail the requested information) and/or specify the grounds upon which delivery of information may be refused. An alignment of the wordings of the cooperation procedures (Article 8 of Directive 2006/22/EC and Article 18 of Regulation 1071/2009) should be pursued.

Concerning the scope of the Regulation, some Member States considered that explaining the "**non-commercial**" character of transport operations should be done in a harmonized way across EU legislation, while a few doubted whether this was practical. At the same time, it was accepted that efforts be made to add clarity to this concept.

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<sup>1</sup> European Register of Road Transport Undertakings.

With respect to the proposed replacement of the regulatory procedure with scrutiny by the **delegated acts procedure**, some delegations considered that parts of the annexes to the Regulation were essential in nature and therefore not amenable to amendments through delegated acts, and one delegation spoke against an unlimited duration of the empowerment. Many delegations needed further study of the intended changes.

*Commission remarks*

The Commission reserved its position. As regards LCVs, the Commission representative showed a certain openness towards focusing the scope of the Regulation on LCV operators involved in international transport, but held the view that in this case the full application of licensing requirements may be warranted. He considered that discontinuing the Member States' flexibility to add national licensing requirements could be compensated by accommodating some of them in the text of the Regulation, provided they did not hamper in a disproportionate fashion the freedom of establishment.

**b) Regulation (EC) No 1072/2009**

*Cabotage operations*

On the **amount of allowed cabotage operations** or **cabotage days**, there was very limited progress in converging the positions. Several Member States insisted that the future compromise needed to encompass the modalities of applying rules on "posting of workers". Generally, the intention of simplifying the cabotage rules was welcome. However, many Member States requested keeping the current seven days of allowed cabotage, but without limiting the number of operations, while many others requested reducing the number of allowed cabotage days substantially below five. These Member States argued that cabotage is temporary in its nature and that this needs to be guaranteed. A reduction substantially below five days was strongly opposed by the first group of Member States, which also referred to the Commission's impact assessment of varying the number of days.

On the other hand, the Member States who requested a substantial reduction of the number of cabotage days argued that the Commission proposal would bring along a further liberalisation of the market through the lifting of the cap on the number of cabotage operations. A few of the Member States argued that no restrictions within the internal market should be imposed if the rules on posted workers and new rules on rest time will be applied, because this will level out the situation of drivers from different countries. Another set of Member States did not agree as they argued that other factors, such as social contributions and taxation, needed to be taken into account as well.

Several Member States requested specific safeguards to overcome the problem of targeted and permanently repeated cabotage cycles (**systematic cabotage**), for instance by imposing a "cooling off" period. Others considered this to add restrictions to the internal market, to be complex to control and disproportionate in view of the size of the problem and thus opposed the introduction of any additional safeguards. A majority of Member States in general acknowledged that systematic cabotage might be a problem in certain areas where cabotage operations are concentrated, though some also emphasized that no problem of systematic cabotage existed.

Member States clearly supported the need for more clarity on the **start of the cabotage** operations. Most Member States intervening agreed with the Presidency proposal that cabotage operations could be started in the host Member State only after all unloading of the international transport has been completed. They agreed that this should be clearly stated in the Regulation. A smaller number of Member States favoured a more liberal approach that would also allow cabotage operations to take place in parallel with the international transport operations before full unloading in the host Member State. Finally, some Member States requested adding precision to the definition of cabotage also in other respects.

The discussion on **contiguous Member States** was not conclusive. Some Member States supported the Commission proposal. Some others supported the Presidency proposal to make the Commission text clearer by defining the "contiguous Member State" (those having a land border). A few Member States supported a more liberal approach to allow cabotage operations in any other Member State for certain days. A couple of Member States supported a more limited adjustment to the status quo, allowing cabotage operations in any other Member States within a precise time frame lower than the period of five days for the period of cabotage operations proposed by the Commission. A few other Member States stated that cabotage operations should only be allowed in the host Member State where the international transport operation has finished, certainly if the number of operations stays unlimited during the cabotage days.

#### *Cabotage checks*

On **cabotage checks** Member States broadly agreed with the Presidency approach that no fixed number of checks was needed. Some of them pointed out that the appreciation of a "sufficient" number of checks should be done at the national level dependent on the local situations. Member States could broadly support both Presidency compromises, stating that these should be seen in full complementarity.

#### *Other issues*

Member States generally welcomed the Commission's intention to move towards **electronic documents at roadside checks**, but some were concerned that the inspection services might lose efficiency if the driver was allowed to refer to other persons outside the truck to provide evidence. With respect to the possible new obligation of Member States to **sanction certain behaviours** of consignors, freight forwarders, contractors and subcontractors, delegations entered specific scrutiny reservations. A few delegations stressed that the **road leg of a combined transport** operation taking place within one Member State should be governed by the same conditions of market access as a cabotage operation. Finally, with respect to **delegated acts** procedures, several delegations did not agree with changing the period of validity of the Community licence through secondary law.

### *Commission remarks*

The Commission representative defended the proposal on the cabotage operations. He considered that arguments around the figure of five days should be further analysed, provided the objective of the proposal, namely to simplify the rules and improve control, was followed. He acknowledged that with the intended simplification the problem of systematic cabotage, which is concentrated in a few Member States, might persist. Any safeguard discussed as part of a compromise would have to pass the test of effective enforcement.

#### c) **Regulation (EC) No 561/2006**

##### *Regular weekly rest in the driver's cabin*

The Member State reactions to the Commission proposal on more explicitly prohibiting to sleep in the driver's cabin during regular weekly rests and equivalent compensation periods showed the very different starting points among them. While a strong number of Member States welcomed the proposal as a confirmation of how they interpreted the current rules, even more Member States deplored it as being unpractical and discriminatory. These groups of Member States had differing views, like on other issues of this proposal, about the capacity of drivers to effectively use to their advantage flexibilities that may exist or be provided in the law, and were in disagreement about the value, and controllability, of regulating in detail the way in which regular weekly rests should be taken.

The Presidency compromise to make a distinction between a prohibited weekly rest in the cabin as such, and an allowed weekly rest in the cabin where the truck is situated in a secure and comfortable parking area, attracted a lot of support. However, some Member States maintained their position of a strict ban on spending weekly rests in the cabin as initially proposed by the Commission. A couple of Member States were not convinced that the rest time Regulation should be used for regulating the criteria for places of rest, and others were not convinced of the practical value of this distinction, as there was either no "market" for such rest areas, or a huge shortage, depending on the density of traffic in certain regions.

Most Member States agreed that if standards should be fixed in the rules, they should be combined with a possibility of updating them through secondary legislation, and that easily accessible information needed to be available for drivers. Many Member States agreed with the Presidency that a procedure of certification of suitable rest areas might not be required, but that a reliable source of information on the availability of these areas was necessary, monitored by the administration. One Member State suggested reinforcing the Commission proposal by effective control means, such as obliging the driver to provide evidence of where he/she took the regular weekly rest. However most Member States agreed with the Presidency suggestion not to ask for such documentation, but to rely instead primarily on tachograph information while undertaking roadside checks.

There was general understanding that in some EU areas the parking places were so crowded that even the prohibition of weekly rests in the cabin was not going to ease the situation considerably.

#### *Return to home and schedule of weekly rest*

On the right of the driver to a regular **return to home**, one big group of Member States supported the Commission proposal of a three weeks' rhythm. A smaller group of Member States voiced support for 12 weeks, while the relatively largest group could go along with the Presidency proposal of six weeks. Four Member States mentioned a possible compromise of four weeks. One Member State put forward that the text should be amended to state clearly that the travel time during the return to home should not be subtracted from the rest period.

On the definition of the term "home", most Member States agreed with the Presidency that a broad term was needed in order not to restrict the driver too much. However, concerns were raised that the obligation needed to be practical for the operator as well who has to organise the driver's schedule of work. Other Member States proposed that it should be the country of establishment or country of employment.

On the **schedule for the weekly rest**, meaning the creation of enlarged rest periods through compensations for reduced rest periods, a majority of Member States wanted to keep the current biweekly approach rather than moving towards four weeks as proposed by the Commission. At the same time, several Member States welcomed the Commission's proposal for its additional flexibility during a period of four weeks. In respect of the ensuing question whether Article 6(3) of Regulation 561/2006 would have to be amended as a consequence, a couple of Member States proposed to raise the limitation of accumulated driving time to four weeks, corresponding to 180h during four weeks instead of 90h during two weeks, but received strong opposition from some other Member States.

As to **compensation for the reduced weekly rest**, several Member States preferred keeping the current flexibility of using the compensation in combination with daily rest as well as with weekly rests. Other Member States supported the Presidency's compromise proposal of allowing drivers to combine the compensation with weekly rest periods including reduced weekly rests, but not with daily rest periods.

#### *Other issues*

A relevant number of Member States could not support the abolition of a weight limit of 7,5t in the exemption for **non-commercial carriage of goods**. One of these Member States put forward a new threshold of 18t, a threshold that still needs to be assessed by other delegations. Some dissatisfaction was also raised concerning the attempt to circumscribe the meaning of "non-commercial". While some delegations considered this to be too complex to solve satisfactorily, others advocated that at least a coherent approach across EU legislation should be established.

Two Member States entered specific scrutiny reservations concerning the codification of the guidance on breaks during **multi-manning operations**.

Delegations taking the floor reflected positively on the Commission proposal to provide a certain **flexibility to the drivers** to deviate from certain rest rules in order to reach a suitable accommodation, but questions were raised how to assess that such an action would not jeopardise road safety. One Member State expressed the need to add some flexibility on driving time when regular weekly rest is starting.

Delegations also entered reservations concerning the use of the advisory procedure for adopting **implementing acts** in order to define harmonised approaches towards implementation.

#### *Commission remarks*

The Commission representative was instrumental in the Presidency's attempts to prepare ground for compromises that can be supported by a majority of delegations. He reserved the Commission's position and stated clearly that the Presidency approach towards rest in cabin and return to home/schedule of weekly rest was deviating considerably from its proposal, but had merits in meeting different elements of concern, in particular with regard to suitable parking and rest areas.

#### **d) Regulation (EU) No 165/2014**

Member States supported the Commission proposal to widen the **information recorded in the tachograph** by including border crossings in order to be better able to follow up social and market rules. In this context, a large majority of Member States supported the Presidency's proposal to **clarify the purposes of the collection of tachograph information**, while some of them suggested to refer also to the monitoring of obligations under Regulation (EC) No 1073/2009 (access to the market of coach and bus services). However, some Member States held the view that the increased "tracking" of the driver, for different purposes, could conflict with data protection interests, and needed special attention in respect of necessity and proportionality. These delegations suggested obtaining an opinion from the European data protection supervisor, without reaching a majority position needed. The Council Legal Service provided an assessment as well.

The Presidency's proposals on adding specifications to the text on when and where the driver would have to **insert country codes** after the border crossing, at the first planned or necessary stop, were largely welcomed. A majority of the Member States opposed an obligation for an additional stop solely for the purpose of inserting the country code, thus supporting the Presidency's approach of requiring the insertion of the country code in a transit operation only at a planned or necessary stop. However, a minority of Member States opposed these specifications mainly out of considerations of very precise enforcement. They expected to be able to rely on very precise timing of the border crossing information in order to follow up the social rules, wanted an obligatory stop for transit operations and wanted to widen this obligation to drivers still using analog tachographs. They also argued that adding a certain practical flexibility could provide a wrong incentive to delay the installation of smart tachographs, the latter which would provide all the information required electronically.

From this discussion a larger debate ensued on whether the compulsory **introduction of smart tachographs** into the existing fleet (so-called retrofitting, mandatory by 2034) should be brought forward, e.g. by 5 or ten years. A considerable part of delegations expressing their opinion on the matter was in favour of such a step, while others wanted to await the Commission's study and assessment which were forthcoming. Some delegations were not in agreement with bringing the date forward during the negotiations on the road package, arguing that the compromise on the tachograph Regulation was only three years old and had been difficult to achieve. Part of the delegations have not expressed their opinion yet.

One Member State, referring to the shortcomings of a **data series** of only 28 days in the tachographs when controlling social rules, suggested an extension of the coverage towards 60 days. Other delegations entered scrutiny reservations.

The Commission representative considered pertinent the additions proposed by the Presidency, partly out of practical considerations (insertion of the country codes), and partly for legal robustness (completing the purposes of data collection).

e) Directive for *lex specialis* on posted road transport workers and Directive 2006/22/EC

*General*

The discussion on the proposal was largely overshadowed by the question whether **posting of workers rules** should apply at all to international road transport operations. As the debate on the revision of the Posting of Workers Directive<sup>2</sup> was more advanced, certain elements of discussion were drawn into the preparation of the general approach for that revision, and the general approach was achieved at EPSCO Council on 23 October 2017. In particular, the treatment of transport operations in transit were discussed in that context, and agreement was found on applying the changes to the Posting of Workers Directive to the road transport sector only once the *lex specialis* would enter into force.

The Working Party on land transport had received explanations from the Council Legal Service and written contributions from the Commission on various aspects of posting. Many delegations attached particular importance to those contributions, as well as to the debate at the EPSCO Council including a Commission statement and intervention provided at that occasion.

As regards a **grace period** for applying the main components of Posting of Workers rules, a number of Member States maintained their principle opposition to applying these standards to drivers at all. However, most Member States in this group were prepared to move their position if the grace period was to be all-embracing and set at a level which left room in practice for benefitting from the exemption. These Member States added more conditions to such a move, for instance a reduced number of social standards and administrative requirements that would apply.

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<sup>2</sup> Directive 96/71/EC.

A smaller group of Member States shared the concerns from their particular situation of remoteness or heavy trans-border traffic. Another group of Member States, by contrast, insisted on applying all posting of workers rules from the entry into their territory by drivers from other EU Member States, or very shortly afterwards, and they were against exempting cabotage operations. Delegations, in principle, agreed with the Commission that if Posting of Workers rules applied, a *lex specialis* was necessary in order to cater for specificities of the road transport sector and to ensure a level playing field for controls at the level of host Member States. It appeared that the majority of Member States was primarily concerned about the increasing administrative burden resulting from those rules, including the huge paperwork required to deal with Posting of Workers rules, while at the same time urging for action in the fight against inhuman working conditions of certain drivers.

### *Scope*

In relation to **transit**, a large majority of the delegations taking position shared the Presidency's view that during transit operations drivers are not posted. A majority of delegations also expressed their preference that the situation of transit should be addressed in the legal text (whether in the principal Directive or in *lex specialis*). One Member State expressed a clear view that drivers are posted also in a transit situation.

The discussion on the **road leg of a combined transport operation** was not conclusive, because a considerable number of Member States preferred analysing this question after submission of the proposal for amending the relevant Directive.<sup>3</sup> Others wanted to keep a comprehensive view of the international operation, and not splitting it into different sections for the purpose of applying posting rules. Most delegations expressing their view shared the Presidency's concern that the situation needed to be clarified one way or another.

The Presidency suggestion to enlarge the derogations of the *lex specialis* to **own account (road transport) operations** as defined in the Posting of Workers Directive was supported by some Member States, while others needed more time to assess the implications of such an amendment.

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<sup>3</sup> Directive 92/106/EEC.

### *Calculating the periods of posting*

The discussions around **calculating the periods of posting** followed broadly two avenues. A considerable number of Member States supported the Commission's approach of using a six-hour reference period for calculating half and full days. Another likewise strong group of Member States wanted to take account of the actual amount of hours spent in the host Member State, arriving at a "day of presence" only after expiry of any given 24 hours. In respect of the inclusion of rest periods and periods of availability, the Presidency suggestion to exclude from the calculation weekly rest periods was not supported by a majority. A few Member States, on the other hand, wanted to go further and also exclude daily rest periods and availability times from the calculation.

A discussion similar to the one on the timing of entering border-crossing information into the tachograph took place on **how the presence under posting rules should be counted when the truck entered the host Member State by train or ferry**. In general delegations supported the Presidency's suggestion that posting starts in the port or station of arrival. Two Member States expressed their preference for referring to the moment when the driver finally leaves the port or station of arrival. One Member State insisted that calculation needs to start at the border, not dependent on the mode of transport. Discussions were not conclusive on how to treat the time (of availability or rest) spent on a ferry or on a train, for instance whether a certain flexibility should be given to the driver for allocating those periods to the country that he/she leaves or enters.

### *Administrative requirements and control measures*

A very large majority of the Member States taking the floor expressed a wish to have a "closed list" of **administrative requirements and control measures** for enforcing the posting rules in road transport sector presented in the *lex specialis*. These Member States argued that an exhaustive list of harmonised rules across the Member States would ensure operations to be carried forward as smoothly as possible in this sector that is highly mobile and international in essence. They also spoke in favour of making more explicit this exclusive nature in the Directive and considered the option that the legislation could foresee an act of secondary legislation for updating the list of requirements and control measures according to the technological developments in control and in transport.

Few Member States expressed their support for a non-exhaustive list. A couple of Member States reserved their position as they were concerned that the list would not provide all desired elements.

On the content of the list, two Member States made concrete suggestions to shorten the list of control elements proposed by the Commission for roadside checks and to shift some elements of investigation into a second phase of cross-border enforcement through administrative cooperation and checks at premises. These suggestions were welcomed by some Member States. However, others insisted on the particular importance of the availability of up-to-date posting declarations, while opinions were split on the usefulness of payslips to be checked at the roadside, considering that these cover periods in the past and show differences in format, content and language. Throughout the discussion, key considerations were the need for inspection personnel to be provided with easily assessable documents and to have a basis for taking decisions on the spot, including through the use of modernised information systems, while others admitted that decisions might only be taken following checks in premises.

#### *Other issues*

Two Member States expressed concern about the practical application and enforcement of the posting rules to **non-EU hauliers and drivers**. As they consider it impossible to apply and enforce the posting rules in practice, non-EU hauliers might get into a more favourable position than EU hauliers.

#### *Risk-rating system in Directive 2006/22/EC*

While a solid majority, in principle, supported the Commission's approach for improving the risk rating system under the enforcement directive, a few Member States voiced caution and asked first to concentrate on the full implementation of the risk-rating systems at national level. Many Member States similarly asked for a transition period. A couple of Member States were also questioning the proposed privileged criteria for trucks with “smart tachographs” or saw difficulties in calculating the risk in the situation of hauliers using many hired vehicles.

### *Control of the working time Directive*

Many Member States expected practical difficulties if obligatory roadside checks would have to cover compliance with the working time Directive.<sup>4</sup> The Commission explained that a reformulation of parts of the working time Directive in order to facilitate controls had been considered but was currently not feasible due to lack of support from the social partners.

The Presidency then suggested, in order to find a cost-effective way to ensure the enforcement of the working time directive, that the control requirements would be limited to checks at the premises of the hauliers. This would reconcile the objective of improving the enforcement of the working time directive with the concern that minimum levels of control at the roadside could be ineffective. Delegations agreed with this way forward.

### *Commission remarks*

The Commission representative was very helpful in trying to clarify the complex questions and doubts surrounding the application of posting of workers rules to the road transport sector. He provided support to a number of Presidency initiatives for clarifying the text in particular in respect of the scope of operations covered by posting rules and for making the calculation of periods more operational, while insisting on the principles of the proposal. These principles included namely the application of posting of workers rules, with certain derogations, and the taking into account in the calculation of posting of all the periods which were related to working periods. The Commission representative confirmed that transit does not constitute a posting situation. He also stated that when it comes to administrative requirements and control measures, these rules should be fully and exhaustively harmonised at the EU level (i.e. “closed list”). He then considered that, while improving enforcement of the working time directive was an important objective, enforcement means should take into account practical constraints.

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<sup>4</sup> Directive 2002/15/EC.

f) Directive 2006/1/EC

On the proposal that introduces more flexibility to the cross-border use of vehicles hired without drivers for the carriage of goods by road, a number of Member States maintained their reservations related to the possible erosion of vehicle tax income. These Member States welcomed the Presidency compromise to reduce the **minimum period** of allowed circulation to three months (instead of four), but some of them preferred a duration of two or even one month only. Likewise, delegations welcomed the Presidency's suggestion to allow Member States to cap the proportion of hired vehicles in the overall owned vehicle fleet, while some delegations needed to further scrutinise the relevant figure, and one delegation wanted to apply the cap to the overall fleet in use by the undertaking. Four Member States rejected the Commission proposal, while some others welcomed the proposal as it is, referring to the liberalisation already introduced at the national level. One Member State proposed that a Member State should be allowed to limit the use of hired vehicles that are below a certain weight limit. Two Member States expressed differing views on the proposed deletion of a weight restriction for hired vehicles used for **own account operations**.

Most delegations welcomed the Presidency proposal as far as facilitating the **control of the remaining time limitations** is concerned. For some delegations, there remained considerable risks with respect to controlling other rules, in particular cabotage, and some others also were concerned about vehicles moving from one contract to another, and about the burden of enforcing more infringements cross-border. One Member State considered desirable to expressly require in the rules the proper **registration** of the hired vehicles in the EU.<sup>5</sup>

Many delegations were prepared to follow the Presidency in reformulating the conditions for allowing the circulation of hired vehicles that were orderly put into circulation in another Member State and **hired by an undertaking established in another Member State**. However, as there was a deviating proposal brought forward by one Member State, a number of Member States still needed to find their position on it.

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<sup>5</sup> See Council Directive 1999/37/EC.

Finally, the Presidency proposal of catering for certain remaining risks through a **review by the Commission** five years after implementation of the new rules, was welcome by delegations.

The Commission representative expressed a general reservation and showed openness towards formulating certain safeguards into the proposal.

#### **IV. CONSIDERATIONS FOR FURTHER WORK**

The Estonian Presidency made considerable progress on many aspects of the markets and social pillar of the first mobility package. The outcome of its work represents a solid basis for future discussions. The four files have advanced in parallel, and the building of a compromise among Member States has advanced more on some than on others.

In particular, the technical work on the proposals on access to the profession (in relation to the establishment criteria and the light commercial vehicles), on hired vehicles and on tachographs is well advanced. The Presidency believes that possible compromises are in a reach.

More work is needed in relation to the proposal on rest times to find a suitable compromise for all. A majority of the Member States seem to agree with the direction of the compromise, whereas a number of others have still substantial concerns. To move forward, concrete amendments will have to be developed.

The proposals on posting of road transport workers and on access to the market will require most work. Not much progress has been achieved so far, as these files are highly political and closely linked. Also, many Member States have stated not to have official positions yet. A further complication results from the interrelation with the legislative work on amendments to the general posting of workers directive, where the Council general approach was adopted only on 23 October 2017 and trilgues have recently started.

The work in the preparatory bodies under the Estonian Presidency has confirmed the advantage of keeping a coherent and parallel approach between the different elements of the package.

## V. CONCLUSION

Coreper, following its meeting on 22 November 2017, invites Council to take note of the report with a view to preparing further progress on the proposals of the package.

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