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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
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Subject: COMMISSION STAFF WORKING DOCUMENT Ex-post evaluation of the
social legislation in road transport: Regulation (EC) No 561/2006 on driving
times, breaks and rest periods of drivers, Directive 2002/15/EC on the
working time of road transport mobile workers and Directive 2006/22/EC on
enforcement requirements. EXECUTIVE SUMMARY Accompanying the
document 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 and 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

Delegations will find attached document SWD(2017) 185 final.

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COMMISSION STAFF WORKING DOCUMENT

Ex-post evaluation of the social legislation in road transport: Regulation (EC) No 561/2006 on driving times, breaks and rest periods of drivers, Directive 2002/15/EC on the working time of road transport mobile workers and Directive 2006/22/EC on enforcement requirements.

EXECUTIVE SUMMARY

Accompanying the document

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

and

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

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EXECUTIVE SUMMARY

The EU framework of social rules in road transport has been developed gradually since 1969, when the first EU provisions on driving times and rest periods were established¹. The existing social rules in road transport are set in two main legislative acts²:

- 1) Regulation (EC) 561/2006 (also known as the **Driving Time Regulation**) establishes the minimum requirements on daily and weekly driving times, breaks and daily and weekly rest periods to be observed by drivers and road transport operators.
- 2) Directive 2002/15/EC (also known as the **Road Transport Working Time Directive**) lays down rules on the organisation of the working time of drivers.

The minimum requirements for enforcement of the provisions of the Driving Time Regulation are in:

- 1) Directive 2006/22/EC (also known as the **Enforcement Directive**), which establishes minimum levels of roadside checks and controls at the premises of transport undertakings to be carried out every year by Member States.
- 2) Regulation (EU) No 165/2014 (also known as the **Tachograph Regulation**), which sets the requirements on the installation and the use of tachographs in the vehicles in scope of the Driving Time Regulation. The tachograph serves as the main tool for monitoring and controlling compliance with the provisions of that Regulation.

Since the adoption of the social rules and the mechanisms for their enforcement, the social and business environment of the road transport sector has changed significantly. This is mainly due to the EU enlargements in 2004 and 2010 and the economic downturn in 2007-2008 as well as the Eurozone crisis that started in 2009. The increasingly fierce cost-based competition creating downward pressures on profits and wages leads to suspicious employment practices and complex business models that may affect the protection of rights and social conditions of workers, the level playing field for operators and road safety. This has also given rise to the adoption of unilateral national measures based on national interpretations of the common EU rules or benefitting from their deficiencies.

These challenges hamper the achievement of a fair, efficient and socially responsible internal market.

The ex-post evaluation of the Commission confirmed that the social legislations remain an appropriate legal framework. However, they were only partially successful in achieving a fair level playing field, mainly due to diverging national interpretations and implementation of the rules, inconsistent and ineffective enforcement practices as well as certain deficiencies of the legal provisions, which cannot not address the new risks arising from the market and the sector.

These unaddressed risks are: complex employment arrangements (usually characterised by multiple employers and/or long subcontracting chains), drivers' long periods away from home/base, time pressure and stress related to the performance-based payments, applying the terms and conditions of employment of the Members States with lower labour and social protection standards. While the current social rules remain relevant, they are not sufficient to effectively address new risks which go beyond the current social rules. A holistic approach is hence required whereby the social, internal market and posting of workers rules work better together to ensure the balance between working conditions of workers and fair competition between operators.

¹ OJ L 77, 29.3.1969, p. 49–60

² The overview of main provisions of the relevant legal acts is in Annex 10

A number of shortcomings in the current social legislation have been identified which hamper its effectiveness. One of them is a lacking clarity of certain provisions (e.g. the regular weekly rest and whether it can be taken within the vehicle, how to record a driver's activities when away from the vehicle). Unclear rules lead to diverging national interpretations and enforcement practices, which results in unequal treatment of drivers and operators during checks in different Member States and creates legal uncertainty for drivers, operators and for enforcers.

Another major shortcoming is flexibility in the application of the rules in force. Flexibility should be given to take into account the character of certain specific transport operations or external circumstances in which they are carried out, but at the same time should not disturb the level playing field.

The enforcement measures are only partially effective due to different control practices based on diverging national interpretations of the rules, differences in the use of control tools, as well as differences in types and levels of national penalties. In addition, insufficient administrative cooperation between the national enforcement authorities renders the cross-border enforcement more difficult and less efficient.

Even though the impact of the social legislation on road safety is impossible to discern all stakeholder groups perceived it as having a positive effect.

The benefits of the social legislation would have outweighed the administrative costs borne by Member States if the available enforcement tools and data exchange systems had been better exploited leading to more cost-effective cross border enforcement. The compliance costs for operators and for drivers is difficult to weigh against the benefits which remain subjective (some aspects of working conditions, health and safety of drivers, fair competition) and/or difficult to discern and quantify (road safety).

The social legislation is generally coherent with other road transport provisions, but in light of new social challenges arising it should seek more consistency and coordination with the internal market rules on access to profession³, access to international haulage market⁴ and on the posting of workers⁵.

The social legislation provides the EU added value but its full potential has not been reached so far, due to the weak and inconsistent enforcement and diverging national implementation. None of those problems though call into question the importance of the substantive principles and provisions, which the social legislation established.

Based on the analysis above, the evaluation concludes that the road transport social legislation has only partly met its original objectives. There are significant shortcomings and ambiguities, which are in part responsible for their ineffective and inconsistent enforcement and which contribute to persistent and newly arising social challenges in the sector.

³ OJ L 300, 14.11.2009, p. 51–71

⁴ OJ L 300, 14.11.2009, p. 72–87

⁵ OJ L 18, 21.1.1997, p. 1–6