



Brussels, 30 May 2018
(OR. en)

9259/18

Interinstitutional Files:

2017/0123 (COD)
2017/0122 (COD)
2017/0121 (COD)

TRANS 220
SOC 301
EMPL 237
MI 379
COMPET 361
CODEC 832

REPORT

From: General Secretariat of the Council
To: Council

No. prev. doc.: ST 8919/18 TRANS 198 SOC 246 EMPL 190 MI 342 COMPET 306
CODEC 767 + ADD 1-4

No. Cion doc.: ST 9668/17 TRANS 212 CODEC 923
ST 9670/17 TRANS 214 SOC 440 CODEC 925
ST 9671/17 TRANS 215 SOC 441 EMPL 342 MI 456 COMPET 450
CODEC 926

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
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
– Progress report

I. INTRODUCTION

1. The Commission adopted the three proposals on 31 May 2017 as part of the first wave of the Mobility Package. The main approaches of the individual proposals are as follows:
 - *Access to the occupation and the market*: tightening and harmonising of conditions for establishment of companies and improving Member State cooperation against letterbox companies; obligatory licensing of operators of light commercial vehicles; revising and simplifying cabotage restrictions and related control mechanisms; moving towards electronic documents;
 - *Rest and driving times and tachograph*: increase flexibility in the use of weekly rest periods to facilitate a regular return to home of drivers; clear obligation of operators to provide adequate and paid accommodation outside the driver's cabin; obligation to encode border crossings in the tachograph to facilitate controls;
 - *Posting of road transport workers and enforcement of social legislation*: clarifying the application of 'posting of workers' principles by establishing a threshold for the time spent in a Member State (three days per month in case of international transport) after which the national minimum wage and annual paid leave rules apply; detailed checklists for controls in the host Member State, based on a harmonised risk-rating method and covering also the working time directive.
2. The European Parliament's Committee on Transport and Tourism (TRAN) appointed Mr Ismail Ertug (S&D, DE) as the rapporteur for the proposal amending Regulations 1071/2009 and 1072/2009, Mr Wim van de Camp (EPP, NL) as the rapporteur for the proposal amending Regulations 561/2006 and 165/2014, and Ms Merja Kyllönen (EUL/NGL, FI) as the rapporteur for the proposal amending Directive 2006/22/EC and laying down specific rules with respect to posting drivers in the road transport sector. The Committee plans to vote on the respective reports on 4 June 2018. The Committee on Employment and Social Affairs (EMPL) gave opinions on the first proposal on 30 April 2018, on the second on 26 April 2018, and on the third on 4 May 2018.

3. The European Economic and Social Committee adopted two opinions on the three proposals on 18 January 2018, and the European Committee of the Regions one opinion covering those proposals on 1 February 2018.

II. WORK WITHIN THE COUNCIL

4. The Working Party on Land Transport studied the proposals under previous Presidencies between 1 June and 6 November 2017, resulting in a progress report¹ which was presented to the Council on 5 December 2017.
5. The DK and UK delegations entered Parliamentary scrutiny reservations. A Parliamentary scrutiny reservation by PL was lifted recently. Several delegations maintain scrutiny reservations on parts of the texts, in particular with respect to the use of the Internal Market Information System (IMI) for administrative cooperation and with respect to empowerments to the Commission.
6. During the Bulgarian Presidency the working party examined draft Presidency compromises relating to those proposals on 16 occasions between 16 January and 14 May 2018. It is important to note that all delegations agree that the three proposals are so closely interlinked that progress depends on being achieved in parallel. Some delegations see a similarly important interconnection with the proposal on revising the Directive on combined transport².
7. Considerable progress was made on technical and some political issues. In particular, as regards Regulation 1071/2009 on access to the occupation, the Presidency compromise addresses the following concerns:

¹ doc. 14841/17.

² Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (doc. 14213/1/18 REV 1).

- limiting the incorporation into the licencing system of operators using light commercial vehicles (LCVs) to those operators using LCVs above 2.5 tonnes in international transport. This adaptation of the licencing requirement is accompanied by an enlargement, compared to the proposal, of the requirements to be fulfilled for such a licence: the operators of LCVs have to fulfil all standard requirements, and a grandfathering provision is added in respect of proving professional competence;
- reinforcing some of the elements required for showing an effective and stable establishment in a Member State. In addition, the compromise contains optional elements that a Member State may apply when assessing this link;
- maintaining the proposal's concept of differentiated financial requirements depending on the category of vehicles used, but providing some flexibility for higher requirements and for the means to prove the fulfilment of this requirement;
- as regards national registers, reducing the additional workload, while at the same time further detailing and standardising the procedure for administrative cooperation;
- reducing the additional reporting obligations of Member States, in terms of content and frequency, thus allowing to send a combined report on Regulations 1071/2009 and 1072/2009 to the Commission.

8. In respect of Regulation 1072/2009 on access to the market, the Presidency compromise addresses the following concerns:

- aligning the licencing requirements for carrying out international carriage of goods with the new licencing requirement for operating LCVs above 2.5 tonnes; where differentiated financial requirement for accessing the profession apply, the Community licence for the vehicle has to specify if it is for a LCV only;
- providing guidance, through a recital, on the appreciation of empty containers or pallets in the context of ensuing cabotage operations;

- inserting some flexibility into the planning and exercising of roadside checks concerning cabotage rules;
 - aligning the Member States' reporting to the Commission with their reporting under Regulation 1071/2009.
9. In respect of Regulation 561/2006 on drivers' rest times, the Presidency compromise addresses the following concerns:
- limiting the exemption for vehicles used in non-commercial carriage to a maximum weight of 12 tonnes, where the Commission proposal suggested removing the weight limit; further detailing the new definition of 'non-commercial carriage';
 - keeping the existing flexibility offered for attaching compensation for reduced weekly rest to another rest period of at least nine hours;
 - slightly increasing the flexibility to depart from rules on driving and resting times in exceptional circumstances, when the driver wants to reach the employer's operational centre or his place of residence;
 - modifying the list of optional national exemptions to include remote areas which are not attached to the mainland, and by allowing exemptions for vehicles that deliver ready-mixed concrete, in view of the perishable load and the limited range of operation;
 - avoiding further competitive advantages for third country operators on the EU territory by pointing out the necessity for the Commission to assess the situation and thereafter propose solutions.

10. In respect of Regulation 165/2014 on tachographs, the Presidency compromise addresses the following concerns:

- updating the scope of Union law that the rules on tachographs are supposed to support through better monitoring of compliance, and updating related data protection provisions;
- obliging the Commission to adopt specifications for the second version³ of smart tachographs within 12 months after the entry into force of the amending act; obliging newly registered vehicles to have this latest version on board;
- obliging the use of tachographs that provide an interface with an external device in vehicles which will be registered after the development of the second version of smart tachographs;
- allowing the re-sealing of tachographs by qualified and authorised control officers who have broken the seal for control purposes;
- specifying the obligation to enter border-crossing information into tachographs that do not provide for this automatically; thereby giving the driver the flexibility to wait for the next regular stop in order to comply with this obligation;
- upgrading the obligations of drivers using analogue tachographs in terms of documenting border-crossings and in terms of the period of record-keeping on board.

³ The first version of smart tachographs will be introduced in 2019, having as main feature a satellite connection. The second version would allow the automatic registration of border crossings, which is a new feature proposed by the Commission.

11. In respect of Directive 2006/22/EC on enforcing social rules and on specific rules for posting drivers in the road transport sector, the Presidency compromise addresses the following concerns:
- maintaining the concept in the Commission proposal to incorporate the control of compliance with the Directive on working conditions into the Directive on enforcing social rules, while providing more flexibility on how to organise the control; adding clarity about which rules in that Directive shall, in general, be checked at the roadside;
 - using the Commission's Internal Market Information System (IMI) for the administrative cooperation;
 - providing the Commission with an empowerment to adopt delegated acts for updating the list, and related weightings, of infringements, as well as for updating the rules on standard equipment for enforcement units and the lists detailing subjects of roadside checks and checks at the premises;
 - avoiding further competitive advantages for third country operators on the EU territory by pointing out the necessity for the Commission to assess the situation and thereafter propose solutions.
12. Concerning some of these solutions, a number of delegations keep reservations or require additional elements.
13. The Committee of Permanent Representatives provided guidance for further work on 2 May 2018. The discussion confirmed that while delegations in general agree with the objectives of the proposals and share the willingness to move forward, their views still differ on how best to achieve those objectives. On 25 May 2018, the Committee prepared the file for Council.

III. OUTSTANDING ISSUES

14. Considering the interconnection between the files, and in view of substantial progress made on technical issues, the following issues are the most sensitive ones for moving towards an overall compromise for an indicative Council position:

- transitional phase for the new licencing requirement for light commercial vehicles (Regulations 1071/2009 and 1072/2009);
- cabotage rules (Regulation 1072/2009);
- organisation of weekly rest periods and where to take them (Regulation 561/2006);
- frequency of the right to 'return to home' (Regulation 561/2006);
- retrofitting of circulating vehicles with smart tachographs (Regulation 165/2014);
- special rules on posting drivers, in terms of their scope, duration and control (*lex specialis*).

a) Transitional phase for the new licencing requirement for light commercial vehicles (Regulations 1071/2009 and 1072/2009)

15. In its latest compromise proposal, the Presidency suggests phasing in, within two years after entry into force of the amending act, the licencing requirements for operators of LCVs above 2.5 tonnes used in the international road haulage market. This proposal is supported by many delegations, while a considerable group of delegations requests a longer transition.

b) Cabotage rules (Regulation 1072/2009)

16. In order to overcome the stalemate caused by differing assessments on the impacts of simplified cabotage rules, the Presidency in its latest compromise proposal suggests maintaining the current rules, supplemented by a 'cooling off' period of two days between allowed cycles of cabotage operations, in order to provide a tool against misuse. Many delegations consider this step as a possible way out, regretting that the desired simplification would thus not take place, but also noting that the control technology will in future improve. A considerable group of delegations refuses the introduction of any additional element of constraint in the existing cabotage rules.

c) Organisation of weekly rest periods and where to take them (Regulation 561/2006)

17. In its latest compromise proposal, the Presidency suggests endorsing the Commission's approach of organising the weekly rests within a schedule of four weeks (rather than two as at present), while amending the proposal in the sense that the compensation for a reduced weekly rest needs to be taken before the end of the fourth week following the week when the reduced weekly rest was taken. Delegations are split about this approach.

18. Delegations are also split about the Presidency suggestion to allow a derogation from the prohibition to spend the regular weekly rest in the cabin of the vehicle, provided that qualifying secure and comfortable parking areas are used. Delegations that refuse such a derogation consequently also do not agree with giving an empowerment to the Commission to specify the criteria that such parking areas would have to comply with. Some delegations that support the idea of the derogation have pointed out that there is no sufficient number of dedicated zones where drivers would be able to use such a derogation. In its latest compromise the Presidency has proposed a text which specifies that the drivers should be allowed to take the weekly rest in the cabin of the truck until a sufficient number of dedicated zones are available in the EU.

d) Frequency of the right to 'return to home' (Regulation 561/2006)

19. While delegations largely agree with the Presidency compromise that the location of the return to home which the operator would be obliged to offer to his drivers should be either the operational centre or the residence of the driver, they maintain diverging positions on the regular schedule of such a return. The Presidency has suggested a frequency of every six weeks, compared to the Commission's proposal of three weeks. A considerable number of delegations requests a shorter period. The Presidency has also suggested to clarify that this obligation does not affect the right of the drivers to choose any other location for their rest. The observance of this obligation (Art. 8(8a)) by the undertakings is envisaged, in the Presidency compromise text, to be checked at the premises of the undertaking.

e) Retrofitting of circulating vehicles with smart tachographs (Regulation 165/2014)

20. Delegations in principle agree with the Presidency's work on advancing the retrofitting of vehicles with smart tachographs. The Commission presented a study on the operational aspects of such retrofitting. There are still differing views mainly on the following elements:

- which tachograph categories should enter into the first wave of retrofitting (four years after the adoption of specifications for version 2 of the smart tachograph);
- when the second wave should be accomplished (the Presidency suggests 7 years after the adoption of those specifications);
- whether vehicles which will already use the smart tachograph that will be introduced in 2019 should be obliged to also retrofit towards the more advanced version.

f) Special rules on posting drivers, in terms of their scope, duration and control
(lex specialis)

21. According to the discussion so far, the application of posting rules to professional truck drivers operating in Member States other than the one where their company is established, represents a major difficulty. Delegations are split about the application of a grace period to apply essential posting rules to vehicles operating in international carriage of goods, and about whether vehicles operating in cabotage should also be subject, under stricter conditions, to such a grace period. The divergence in opinion is also reflected in the question of calculating such a grace period, in particular whether half days should be counted and whether regular weekly rests should be included in the calculation. The Presidency's latest compromise proposal foresees a differentiation between the grace period to be applied in international carriage of goods (seven consecutive days in one calendar month) and a shorter grace period (three consecutive days in one calendar month) to be applied when the driver is doing cabotage operations.
22. Almost all delegations support the Commission proposal in limiting the documentary requirements on the road to a closed list. However, a considerable number of delegations is not in agreement with the details of this list as modified by the Presidency, and some of these delegations likewise have expressed reservations about the use of the IMI system for the submission of posting declarations.
23. The latest draft Presidency compromises can be found in addenda 1 to 4 to this report.

IV. CONCLUSIONS

24. Council is invited to take note of this progress report with a view to preparing further progress on the main outstanding issues on these proposals of the package.