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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs

– Draft Statement of the Council's reasons

I. INTRODUCTION

1. On 31 May 2017, the European Commission adopted a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards 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.
2. This proposal was presented as part of the Mobility Package I, and the legislative procedure was organised in conjunction with two other legislative proposals, one on the access to the occupation of road transport operator and to the road haulage market, and one on enforcement provisions for social legislation and posting of drivers.
3. The Council (Transport, Telecommunications and Energy) agreed on a general approach on 3 December 2018.¹

¹ document ST 15084/18.

4. The European Parliament adopted its first reading position on 4 April 2019.
5. Between October and December 2019, negotiations took place between the European Parliament, the Council and the Commission with a view to reaching an agreement on the proposal. On 11 December 2019, the negotiators agreed on a compromise text, which was subsequently endorsed by the Committee of Permanent Representatives on 20 December 2019.²
6. The European Parliament Committee on Transport and Tourism (TRAN) confirmed the political agreement on 21 January 2020, and the Council gave its confirmation on 20 February 2020.³
7. In carrying out its work, the Council took account of the opinions of the European Economic and Social Committee of 18 January 2018 and of the Committee of the Regions of 1 February 2018.
8. Taking this agreement into account and following legal and linguistic revision, the "General Affairs" Council on 24 March 2020 has been invited to adopt the Council's position at first reading, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

II. OBJECTIVE

9. The general objective of the proposal is to harmonise the rules on driving times, breaks and rest periods in road transport and the delivery of these provisions through the use of tachographs in order to avoid distortion of competition, improve road safety and ensure good working conditions for drivers within the European Union.

² document ST 15083/19.

³ document ST 5424/20 + ADD 1-4.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A) General

10. On the basis of the Commission proposal, the Parliament and the Council have conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading. The text of the draft Council position fully reflects the compromise reached between the two co-legislators.

B) Key policy issues

11. The compromise reflected in the Council position at first reading contains the following key elements:

a) Coverage of light commercial vehicles

12. In its initial proposal, the Commission did not include light commercial vehicles within the scope of Regulation (EC) No 561/2006, while the Parliament favoured it. The Council's text includes those vehicles within the scope of the Regulation when their maximum permissible mass, including any trailer or semi-trailer, exceeds 2,5 tonnes and they are used in international transport for hire or reward (Article 2(1) in conjunction with Article 3 (ha) of Regulation (EC) No 561/2006). As a consequence, these vehicles will also fall within the scope of Regulation (EU) No 165/2014, so that they will have to be equipped with smart tachographs.
13. A transitional period (1 July 2026) will be used by the Commission to adopt implementing acts detailing the data, functions and installation of tachographs in light commercial vehicles within 18 months from the entry into force of the amending Regulation, so that the production of equipment and fitting of vehicles may be arranged within the remainder of the period.
14. Against this background, amendments 353/rev, 368, 373 and 375 were accepted, after redrafting, in the Council position.

b) Organisation of the weekly rest period

15. In order to reach a compromise on provisions for weekly rest periods (Article 8(6) of Regulation (EC) No 561/2006), the Council accepted retention of the rule that a driver has to take two regular weekly rest periods or one regular weekly rest period and one reduced weekly rest period of at least 24 hours within any two consecutive weeks.
16. However, the Council insisted in the compromise, in line with the Commission's initial proposal, on a certain flexibility for drivers in long-haul goods transport. In particular, a driver involved in the international transport of goods outside the Member State of establishment may take two consecutive reduced weekly rest periods, provided that the driver in any four consecutive weeks takes at least two regular weekly rest periods. In this case, after two reduced weekly rest periods have been taken consecutively, the following weekly rest period must be preceded by a rest period taken as compensation for the two reductions in resting time. During that extended rest period, the driver benefits from the "return to home" (see point 19 below). Against this background, amendment 379 was kept as a baseline in the Council position; amendment 381 was not kept.
17. In order to ensure the checking of rests at the roadside over a schedule of 4 weeks, the provisions on supporting evidence on board the vehicle were extended from 28 to 56 days (Article 36 of Regulation (EU) No 165/2014), see amendments 365, 420-422.

c) Ban on sleep in the cabin

18. The Council's position upholds the Commission's initial proposal as regards the ban on rest taken in a vehicle during regular weekly rest periods and any weekly rest of more than 45 hours taken in compensation for previous reduced weekly rest (Article 8(8) of Regulation (EC) No 561/2006). The Council accepted parts of the Parliament's amendment 382 that provide details on the requisite accommodation. In this context, it is specified that any costs for accommodation outside the vehicle are to be covered by the employer, a position shared by the Parliament in its amendment 383.

d) Regular return of the driver

19. The Council's position, developing the Commission's initial proposal that a transport undertaking must organise the work of drivers such that drivers are able to regularly return home in order to take a long rest period (Article 8(8a) of Regulation (EC) No 561/2006), strengthens this requirement as regards proof and monitoring, and favours more clarity on the location the driver returns to. As such, the Council's text requires a driver to return to the employer's operational centre where the driver is normally based and where the driver's weekly rest begins, in the Member State of establishment, or to the driver's place of residence, with the understanding that it is for the driver to choose the location where to spend the rest periods, while the employer is responsible for guaranteeing the regular ability to return. The baseline frequency was agreed as four-weekly, in accordance with amendment 385. For reasons of simplicity and unequal negotiating positions between drivers and their employers, the Council did not accept elements of additional flexibility supported by the Parliament in amendments 355, 377, 385.

e) Minimum standards for parking infrastructure

20. While the Commission proposal did not include any specific provisions with regard to parking areas, in the course of discussions with the Parliament and the Commission, the Council agreed to a requirement for the Commission to publish and regularly update on an official website a list of all certified parking areas with adequate infrastructure available for drivers engaged in the carriage of goods and passengers by road (Article 8a of Regulation (EC) No 561/2006). The Council's text requires the Commission to establish service and security standards, as well as a certification procedure for these parking areas through delegated acts. As a result of this compromise, which catered for the Parliament's key interest contained in amendment 387, requests aiming at more detailed provisions in the Regulation (amendment 400) were not included in the Council text.

f) Interruption of weekly rest on a ferry or train

21. The Council's text maintains the Commission proposal's amendment to the rules on a driver accompanying a vehicle which is transported by ferry or train during rest. The driver's daily or reduced weekly rest period may be interrupted not more than twice by other activities not exceeding one hour in total (Article 9(1) of Regulation (EC) No 561/2006). With regard to regular weekly rest periods, the Council's text extends the derogation to journeys by ferry or train scheduled for 8 hours or more, provided that the driver has access to a sleeper cabin. As such, amendments 364, 388 and 389 have been accepted, partially redrafted, in the Council's position.

g) Driving time in exceptional circumstances

22. The Council's text expands on the Commission proposal with regard to exceptional circumstances, so that drivers may exceed, under strict conditions and within safeguards, the daily and weekly driving time by up to one hour, or by up to two hours provided that an uninterrupted break of 30 minutes was taken immediately prior to the additional driving, in order to reach the employer's operational centre or the driver's place of residence. This exception may only be used prior to the start of longer rest periods, and a full compensation is necessary (Article 12(2) of Regulation (EC) No 561/2006). Therefore, amendment 391 has been accepted, partially redrafted, in the Council's position.
23. Furthermore, the Council's text provides for the Commission to immediately publish information on a public website relating to urgent cases in which Member States may grant, under exceptional circumstances, temporary exceptions to the driving and rest time rules (Article 14 of Regulation (EC) No 561/2006). Therefore, amendment 395 has been accepted, partially redrafted, in the Council's position.

h) Introduction of smart tachographs (version 2) into the fleets

24. As regards the data recorded by the smart tachograph, the Council text adds that tachographs must be able to record the position of the vehicle every time it crosses the border of a Member State, an element already foreseen in the Commission proposal, and every time the vehicle performs loading or unloading activities, as well as record whether the transport service is in passengers or goods (Article 8(1) of Regulation (EU) No 165/2014). Thus, amendments 409 to 411 were essentially retained in the Council's position.
25. As regards the introduction of smart tachographs, both Parliament and Council favoured bringing forward considerably the introduction of smart tachographs to the vehicle fleet (Article 3(4) of Regulation (EU) No 165/2014). The compromise requires the main retrofit of vehicles (i.e. vehicles previously fitted with an analogue or digital tachograph) no later than three years after the end of the year of entry into force of detailed provisions for the new generation of smart tachographs, and no later than four years after the entry into force of those detailed provisions when the vehicle is already fitted with a smart tachograph (version 1). The Commission will have 12 months in which to adopt the specifications for the second generation of smart tachographs (Article 11(2) of Regulation (EU) No 165/2014); vehicles registered for the first time 24 months after the entry into force of these specifications must already have the new version on board (Article 8(1) of Regulation (EU) No 165/2014). As such, amendments 368, 369, 403-406, 412, 415 were accepted, partially redrafted, in the Council's position, while amendment 402 was not.
26. Linked to this change, the Council agreed on the requirement for Member States to equip their control authorities to an appropriate extent with remote early detection equipment within three years from the entry into force of the detailed provisions as referred to previously (Article 9(2) of Regulation (EU) No 165/2014); amendment 413/rev was thus partially retained.
27. Still in this context, the Council text adds precision to the Commission's proposal on manual recording of border crossings until this is ensured automatically by the smart tachographs (Article 34 (1), (6) and (7) of Regulation (EU) No 165/2014), taking into consideration amendment 417.

i) Other elements of the Council position

28. The following other elements, which were added by the Council to the Commission proposal, entered the final text of the Council position:
- a) A further detailed definition of ‘non-commercial carriage’ (Article 4 of Regulation (EC) No 561/2006);
 - b) An optional exception for vehicles used for the delivery of ready-mixed concrete (Article 13(1)(r) of Regulation (EC) No 561/2006);
 - c) Examination procedure for certain implementing acts (Article 25(2) of Regulation (EC) No 561/2006);
 - d) The requirement for tachograph data on exceeding maximum driving time to be communicated to control authorities for the remote early detection of possible manipulation or misuse (Article 9(4) of Regulation (EU) No 165/2014);
 - e) The requirement for next generation tachographs to allow for data use in operational mode by an external device (Article 10(2) of Regulation (EU) No 165/2014);
 - f) A procedure for re-sealing removed or broken seals of tachographs which had been opened by control officers (Article 22(5) of Regulation (EU) No 165/2014);
 - g) An authorisation for the competent authority to require a replacement of the driver card, if necessary, to comply with new technical specifications (Article 26(7a) of Regulation (EU) No 165/2014).
29. The Council accepted, fully or in principle, the following other Parliament amendments to the Commission proposal:
- a) An extension of the exemption for driving craftsmen (Article 3(1) of Regulation (EC) No 561/2006), amendment 374;

- b) The need for a Commission assessment of possible special rest rules for drivers engaged in occasional passenger transport services (Article 8(9a) of Regulation (EC) No 561/2006), amendments 354, 372, 380;
- c) Adding rewards for speed of delivery to the catalogue of harmful incentives (Article 10(1) of Regulation (EC) No 561/2006), amendment 390;
- d) An optional exception for construction vehicles operating within a radius of 100 km (Article 13(1)(q) of Regulation (EC) No 561/2006), amendment 394;
- e) A special Commission report on autonomous driving systems and their impact on driving time and rest time rules (Article 9a of Regulation (EC) No 561/2006), amendment 397;
- f) A clarification is added that tachographs and tachograph cards must have enough memory capacity to store required data (Article 4(2) of Regulation (EC) No 165/2014), amendment 406;
- g) Refresher training for drivers (the costs of which are to be paid by the employer) and control authorities (amendments 418 and 419, recitals 30 and 31);
- h) A more complete documentation of the rests, breaks, and leaves, as well as rest spent on a ferry or train (Article 34(5) of Regulation (EC) No 165/2014), amendment 416.

IV. CONCLUSION

30. The Council's position at first reading fully reflects the compromise reached in the negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter of the Chair of the European Parliament's TRAN Committee to the Chair of the Permanent Representatives Committee (23 January 2020). In this letter, the Chair indicates that she will recommend to the members of the TRAN Committee, and subsequently to the plenary, that they accept the Council's position at first reading without amendments at Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.
31. The Council therefore believes that its position at first reading represents a balanced result and that, once adopted, the amended Regulations will improve driver's working conditions and contribute to road safety and a level playing field in the road transport sector through harmonisation, clarification of rules and better control.
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