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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 Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector

– 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 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector.
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 drivers' rest periods and on tachograph rules and one on enforcement provisions for social legislation and the posting of drivers.
3. The Council (Transport, Telecommunications and Energy) agreed on a general approach on 3 December 2018¹.
4. The European Parliament adopted its first reading position on 4 April 2019.

¹ 15084/18.

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 Permanent Representatives Committee on 20 December 2019².
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 opinion of the European Economic and Social Committee of 18 January 2018 and that 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 modernise the rules governing admission to the occupation of road transport operator and access to the road transport market, with a view to ensuring the smooth functioning of the single market in road transport. This is achieved by adjusting the existing rules to the current circumstances and expanding the scope of the Regulations, thus dealing with the shortcomings in the rules and their enforcement. In particular, the requirements in Regulation (EC) No 1071/2009 for engaging in the occupation of road transport operator have been updated in order to fight letterbox companies and unfair competition. In addition, the rules on cabotage in Regulation (EC) No 1072/2009 have been expanded to prevent abuse of those provisions. In both Regulations, relevant control standards have been further clarified and administrative cooperation between the competent authorities of different Member States will be made easier, to ensure a level playing field and equal enforcement for all operators in all Member States.

² 15085/19.

³ 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) Light commercial vehicles between 2,5 and 3,5 tonnes (Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009)

12. The Commission initially proposed to make certain rules under Regulation (EC) No 1071/2009 mandatory for hauliers operating solely with light commercial vehicles with a permissible mass not exceeding 3,5 tonnes; the Commission did not propose a similar extension in Regulation (EC) No 1072/2009. Similar to the Parliament's position, the Council supports including them in the scope of Regulation (EC) No 1071/2009 (Article 1(4)) when their maximum permissible mass, including any trailers or semi-trailers, exceeds 2,5 tonnes and they are used in international transport for hire or reward. For reasons of consistency, the Council position also includes these vehicles in the scope of Regulation (EC) No 1072/2009 (Article 1(5)).

13. The Council position introduces a phasing-in period of 21 months before the relevant light commercial vehicles will fall under the scope of the Regulations. This transitional period will be essential in order to allow hauliers to get the drivers of the relevant light commercial vehicles ready with the required paperwork and administrative procedures. This period should also be used by the Commission to adopt implementing acts (under Regulation (EC) No 1071/2009 (Article 16)) detailing the functionalities to allow for data related to (1) the registration numbers of an undertaking's vehicles, (2) the number of people employed in an undertaking and (3) the risk rating of an undertaking to be made available to the competent authorities during roadside checks, once a common formula for calculating the risk rating as referred to in Article 9(2) of Directive 2006/22/EC has been adopted.

b) Conditions relating to the requirements for engagement in the occupation of road transport operator (Regulation (EC) No 1071/2009)

14. The Council position confirms the need to amend three of the four requirements for engagement in the occupation of road transport operator, as proposed by the Commission, with a view to ensuring fair competition and the proper functioning of the single market in road transport.

15. As regards the requirement of establishment, the Council agrees that a clearer link needs to be ensured between the operations of the undertaking and the Member State in which the undertaking is established. The Commission proposed to add two additional criteria to the existing three. The Council position includes two additional obligatory criteria, resulting in seven criteria to be fulfilled under Article 5. The Parliament's proposals under amendments 130, 131, 132 and 133 were not maintained, as most of the elements in those proposals are sufficiently covered by the final list of criteria. The Council position also includes two optional criteria that Member States may impose on transport undertakings.

16. Based on the Parliament's position (amendment 128), the Council agrees to include a provision in Article 5 that obliges an undertaking to make sure that vehicles used in international transport return at least every eight weeks to one of the operational centres of the undertaking; initially, the Parliament had envisaged such a return every four weeks. The Commission accepted this provision with a view to the overall compromise, but issued a statement regretting this aspect of the agreement, as such returns could lead to inefficiencies in the transport system and to an increase in unnecessary emissions, pollution and congestion.
17. The Council generally agrees with the Commission proposal to clarify and further harmonise the assessment of good repute. In addition to redrafting the text of paragraphs 1 and 2 of Article 6, the Council accepted the Parliament's proposal (amendment 134) to include unauthorised cabotage in the list of serious criminal offences or serious infringements in point (b) of the third subparagraph of paragraph 1. The Council position provides that the Commission is to adopt implementing acts in accordance with the examination procedure to establish a list of categories, types and degrees of seriousness of serious infringements which, additionally to those categories and types set out in Annex IV, may lead to the loss of good repute.
18. The Council agrees with the Commission's proposal to introduce in Article 7 specific and less demanding conditions to be fulfilled in terms of financial standing for those operators solely operating light commercial vehicles. In order to make it easier for newly created undertakings to enter the market, the Council proposes to clarify the means by which undertakings may prove their financial standing.
19. The Council agrees with the Commission's proposal to delete the provision in Article 3(2) allowing Member States to impose additions to the four requirements to be satisfied by undertakings in order to engage in the occupation of road transport operator. Instead, the Council position allows for Member States to introduce specific requirements related to the establishment criteria (Article 5(2)) and the criteria for financial standing (Article 7), and exemptions from the examination referred to in Article 8(1) for road haulage undertakings which only operate light commercial vehicles and can justify their professional competence from experience (Article 9).

20. In relation to professional competence (Article 8(5)), the Council agrees with the Parliament's proposal (amendment 138) to allow Member States to promote periodic training on subjects listed in Annex I at three-year intervals, shortening the period from the original 10 years.

c) Enforcement and checks (Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009)

21. In Regulation (EC) No 1071/2009, the Commission only proposed to update Article 12 on 'checks', while in Regulation (EC) No 1072/2009, the Commission proposed to add a new article to introduce 'checks'. The Council generally agrees with the importance of checks and enforcement in both Regulations and agrees that the procedure and the checks should be explained in more detail.

22. In Regulation (EC) No 1071/2009 (Article 12(1)), the Council agrees to put in place regular monitoring of the requirements laid down in Article 3. To that end, Member States are to consider on-site inspections at the premises of the undertaking and are to take into account the risk rating of an undertaking, based on the risk-rating system established under Directive 2006/22/EC, which will also need to cover all the infringements specified in Article 6 of Regulation (EC) No 1071/2009.

23. In Regulation (EC) No 1072/2009, the Council agrees with the Commission proposal to include Article 10a requiring Member States to carry out a minimum number of checks on cabotage and also to organise a minimum of two concerted roadside checks per year. Based on a proposal from the Parliament (amendment 174), the Council agrees that each Member State will ensure that a national enforcement strategy is applied and that such a strategy should focus on undertakings with a high risk rating (amendment 175). The Council also agrees with the Parliament's proposal to include checks on cabotage during the checks provided for in Directive 2006/22/EC (amendment 174). The Council did not agree with amendments 176, 177, 178 and 179 of the Parliament, because these would be very difficult to implement due to technical challenges.

d) Declaration of unfitness of the transport manager and rehabilitation of the transport manager (Regulation (EC) No 1071/2009)

24. The Council agrees with the Commission proposal to harmonise (to one year) the minimum time frame within which a transport manager, having lost good repute, may be rehabilitated (Article 14). The Council also generally agrees to a proposal from the Parliament (amendment 140) but decided to be more specific by including in the Regulation the requirement for a transport manager having lost good repute to demonstrate having followed a minimum amount of training or having passed an exam demonstrating knowledge of the subjects listed in part I of Annex I, and not to instruct the Commission to draw up a list of rehabilitation measures.

e) Administrative cooperation (Regulation (EC) No 1071/2009)

25. The Council agrees with the Commission proposal to include additional elements in the national electronic registers (Article 16) and to give more detail on the administrative cooperation between Member States (Article 18). These elements should allow for better enforcement of the amended rules.

26. The Council agrees to add three of the four categories of information which the Commission proposed to add in the national electronic registers (Article 16(2)): (1) the registration numbers of vehicles at the disposal of the undertaking, (2) the number of people employed by the undertaking and (3) the risk rating of the undertaking. The Parliament (amendment 143) also proposed to have labour contracts included in these registers, but the Council could not agree to that. The Council agrees with the Parliament (amendment 148) that this new information should be made available to the competent authorities during roadside checks; the Council does not agree with the Parliament (amendment 148) that this should be done with a delegated act but instead proposes to empower the Commission to do so by means of implementing powers.

27. The Council agrees in Article 16(2) that the requested authority is to provide requested information related to serious infringements (point (e)) and the name of any person declared to be unfit (point (f)) within five days, rather than the previous time frame of 30 days.
28. The Council agrees to set out the terms of the administrative cooperation between Member States in more detail, as provided for in Article 18. The Council agrees to clearly state the principle of close and swift cooperation (Article 18(2)), as proposed by the Parliament (amendment 149). The Council position defines in Article 18(5) a maximum period (of 30 days) for Member States to reply to reasoned requests; Member States can agree mutually to shorten this period. Additionally, the Council is of the opinion in Article 18(7) that a Member State should be able, within 10 days of the submission of an initial request, to ask the requesting Member State to substantiate the request. Within the same period of 10 days, the requested Member State can also inform the requesting Member State of possible issues with the request, in order to find a solution to any difficulties raised. The Commission could also be asked to take appropriate measures. Finally, the Council agrees to include provisions in Article 18(9) on data protection aspects and on the fact that such administrative cooperation is to be provided free of charge, and it has been clarified that a request for information does not preclude competent authorities from taking measures to investigate and prevent alleged breaches of the Regulation.
29. The Council position explains in Article 18(8) that both the European Register of Road Transport Undertakings (ERRU) message exchange system on convictions and penalties for serious infringements and the Internal Market Information System (IMI) will need to be used to facilitate administrative cooperation and mutual assistance. To that end, the Council proposes to amend the IMI Regulation (Regulation (EU) No 1024/2012) to bring Regulation (EU) No 1071/2009 within the scope of the IMI Regulation and to amend the title of the amending act accordingly. As both systems will need to be used in parallel and in a complementary manner, depending on the information to be exchanged, the Council could not agree with the Parliament's proposal in amendment 150 to implement the administrative cooperation only through the Internal Market Information System (IMI).

30. The Parliament's proposal to include a detailed provision and accompanying measures to further facilitate administrative cooperation (amendment 155) was not retained, as it became clear that there are sufficient elements in the Regulation to ensure good cooperation.

f) Cabotage operations (Regulation (EC) No 1072/2009)

31. The Commission proposed to make the rules on cabotage in Article 8 easier to enforce by removing the maximum number of cabotage operations and by reducing the maximum number of days for carrying out such cabotage operations. The Council does not agree with the Commission proposal on cabotage and decided to keep the current model of three cabotage operations within seven days.

32. The Council position introduces in Article 8(2a) a new concept of a cooling-off period of four days after each cabotage period in a Member State. The Parliament had in amendment 170 a similar concept, but in the end the Council model was retained. This cooling-off period is to ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity in the Member State where the cabotage was performed.

33. The Council agrees with the Commission proposal and the Parliament (amendment 171) that the need for the haulier to produce clear evidence to demonstrate compliance with the cabotage rules should be clarified in Article 8(3), that this evidence may also be produced by electronic means and that in relevant cases the driver may contact the head office for help in producing the evidence.

34. Based on an initial idea of the Parliament (amendment 164), the Council position introduces in Article 10 the option for Member States to apply cabotage rules to combined transport operations, as provided for in Directive 92/106/EC. The Commission accepted this provision in view of the overall compromise, but issued a statement regretting this aspect of the agreement, as it could diminish the effectiveness of support for multimodal freight operations.

g) Liability (Regulation (EC) No 1072/2009)

35. The Council agrees with the Commission proposal to introduce article 14a to specify that Member States are to lay down rules which would subject consignors, freight forwarders, contractors and sub-contractors to sanctions in cases where they knew, or in the light of all relevant circumstances ought to have known, that transport services which they had commissioned involved infringements of the Regulation.

h) Exercise of the delegation and committee procedure (Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009)

36. While the Commission proposed in Articles 6 and 8 of Regulation (EC) No 1071/2009 to empower the Commission to adopt delegated acts, the Council only agrees to empower the Commission to adopt delegated acts pursuant to Article 8(9). The Council agrees to empower the Commission to adopt implementing acts to establish a list of categories, types and degrees of seriousness of serious infringements, pursuant to Article 6.

37. In its proposal amending Regulation (EC) No 1072/2009, the Commission proposed to introduce an empowerment to adopt delegated acts. The Council position empowers the Commission to adopt delegated acts, but only as referred to in Article 4(4) and Article 5(4). The Council position does not empower the Commission to adapt the period of validity of the Community licence (Article 4(2)), as the Commission had proposed.

i) Reporting and review (Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009)

38. In order to allow the Commission to evaluate the functioning of the amended Regulations, the Council position reflects what the Parliament also asked for and provides clearer guidance on what the Commission is to report on, the time frame within which the Commission is expected to do so and which information Member States need to share with the Commission.

39. In Regulation (EC) No 1071/2009, the essence of the Parliament's amendments (amendments 156, 157, 158, 159, 160, 161 and 162) has been retained in Article 26. The Council also agrees with the Parliament's proposal (amendment 163) to have a detailed report drawn up on the administrative cooperation between Member States.
40. As proposed by the Parliament (amendment 182), the Council agrees that Member States are to inform the Commission of their national enforcement strategies under Regulation (EC) No 1072/2009 (Article 17(3)). The Council also agrees with the Parliament (amendment 183) that the Commission should draw up a report on the state of the Community road transport market (Article 17(4)).
41. The Council agrees with the Parliament to include a review clause for both Regulations.

j) Other elements of the Council position:

- a) the third subparagraph of Article 11(4) of Regulation (EC) No 1071/2009 is deleted, as this has become obsolete;
- b) a clarification is added in Annex IV of Regulation (EC) No 1071/2009;
- c) in Article 4 of Regulation (EC) No 1072/2009, the Council position explains how light commercial vehicles need to be mentioned in the Community licence.

k) Other Commission proposals or Parliament amendments not included in the Council position at first reading

42. These include in particular:
- a) a reference to the carriage of empty containers or pallets in Article 1 of Regulation (EC) No 1072/2009;
- b) a change to the definition of 'cabotage operation' in Article 2 of Regulation (EC) No 1072/2009;

- c) a definition of ‘transit’ in Regulation (EC) No 1072/2009 (amendment 167), as this aspect is covered under the proposal laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector;
- d) the proposal from the Parliament (amendment 58) that being equipped with smart tachographs should be one of the requirements for a Community licence (Article 4 of Regulation (EC) No 1072/2009), as this aspect is covered under the proposal amending Regulation (EU) No 165/2014 as regards positioning by means of tachographs;
- e) amendment 172 of the Parliament to Article 9 of Regulation (EC) No 1072/2009 as regards remuneration and paid annual leave, as this aspect is covered under the proposal laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

IV. CONCLUSION

- 43. 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.
- 44. The Council therefore believes that its position at first reading represents a balanced result and that, once adopted, the amended Regulations will improve the functioning of the single market in road transport and will contribute to ensuring a level playing field in the road transport sector thanks to further clarification of the rules and improved cooperation between authorities, which will ensure better control and enforcement.