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Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (2017/0121 (COD))
Outcome of the written procedure initiated by CM 1907/20
- Adoption of the Council's position at first reading and of the statement of the Council's reasons

Delegations are informed that the written procedure, opened by CM 1907/20 of Friday, 3 April 2020 was completed on Tuesday, 7 April 2020 and that:

All delegations voted in favour of, except for Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland and Romania that voted against, the adoption of the Council's position at first reading on the Directive of the European Parliament and of the Council laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, as set out in document 5112/20 and the statement of the Council's reasons as set out in the ADD 1 to that document.

The required qualified majority has been reached. Therefore, the above position of the Council at first reading and the statement of the Council's reasons are adopted.

The statement by Belgium, three statements by Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland and Romania, the statement by Estonia and the statement by Hungary are reproduced in the Annex to this CM.

The above statements will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with the third subparagraph of Article 12(1) of the Council's Rules of Procedure.

Statement by Belgium

Belgium has taken note of the results of the provisional agreement reached on December the 11th between the European Parliament and the Council on the social and market pillar of Mobility Package I.

Belgium welcomes the substantial improvement in the working conditions of truck drivers, in particular by prohibiting weekly rest in the cabin, and by applying posting to cabotage operations. A better level playing field should be reached in the future, through the integration of light commercial vehicles within the scope of the entire Mobility package, the return of trucks every 8 weeks to the base, and the ambitious timetable for the deployment of new smart tachographs that will allow a better enforcement of the existing and new rules.

Therefore, Belgium considers it is incoherent to further restrict access to the market by imposing a cooling-off period of 4 days on cabotage, while at the same time the European Union will ensure upward social convergence.

To our understanding, the cooling-off period is a trade barrier contrary to the spirit of the internal market, and to the efficiency of the logistics chain, since cabotage operations makes it possible to avoid empty journeys.

We regret as well, the inclusion of a proposal on long-term posting, which did not appear in the Commission proposal neither in the agreements of the two co-legislators, and hasn't been carefully assessed yet.

Despite the positive social elements contained in the Package, Belgium will therefore abstain on the agreement.

Statement by Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland and Romania

Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland and Romania express deep concerns that the provisional agreement on Mobility Package I contradicts the basic freedom to provide services on the Single Market, the principle of free movement of workers, as well as the key EU policies and goals on climate.

In particular, the requirement to return heavy vehicles to the Member State of establishment at least once every 8 weeks contradicts the EU ambitious climate goals, set out by the European Commission in the new Green Deal on December 11, 2019. Such an obligation, if adopted, will result in a major increase in the number of empty runs of trucks on the European roads and, subsequently, in a substantial increase of CO₂ emissions from the transport sector. This sector already accounts for approximately a quarter of GHG emissions in the EU.

Despite our efforts to highlight these points and regardless of scientific evidence from studies on the impact of such an obligation on the increase of empty runs and CO₂ emissions, there is no sensitivity for the expected impact of this provision and rational arguments are being dismissed. At the same time, even though the better regulation agenda requires impact assessment at EU level for all such measures, no such assessment has been presented yet.

Returning vehicles to the Member State of establishment is just one example of excessively restrictive and discriminatory measures proposed in Mobility Package I. We share similar concerns about the limitations on cabotage in the form of an excessive cooling off period. This cooling off period amounts to a protectionist measure, which will have a rather negative effect on the Single Market. The obligation for a truck to return as well as the restrictions imposed on cabotage operations, according to estimates of renowned research institutes, will generate additional millions of tons of CO₂ emissions per year.

Another major point of concern is that the mandatory return of the vehicle will put in a disadvantaged position Member States which due to their geographical location will have substantial difficulties in providing truck transport services on the Single Market, as their vehicles will have to cover far greater distances and to overcome significant natural barriers, especially in the case of islands.

Unfair competition from third countries' operators is also a factor that has not been properly addressed. This is especially worrisome since the solution to be enacted will have long-term effects not only on the transport sector, but also on the EU economy as a whole.

The transport sector deserves a fair and robust EU legal framework, which will further stimulate its development, while ensuring realistic and enforceable rules. Instead of balanced provisions and a genuine compromise, the provisional agreement imposes restrictive, disproportionate and protectionist measures.

Mobility Package I is a crucial dossier for the European Single Market, as well as for the road transport sector. Today, more than ever, we need to preserve the smooth functioning of the Single Market and the economies of all Member States in the EU while being consistent with other EU policies.

Statement by Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland and Romania

Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland and Romania express their objection to the automatic inclusion of the subsidiarity and proportionality clause in the adopted political agreement on the three legal acts of the Mobility Package I during the technical revision of the texts by the lawyer linguists.

We acknowledge that the principles of subsidiarity and proportionality are of primary importance for the exercise of the EU's competences. Nevertheless, addition of such a clause at this late stage of legislative process is not a good practice in general and, in case of the Mobility Package I, it is especially difficult to accept due to the political sensitivity of the whole dossier and taking into account the long-term consequences of the proposed provisions for the functioning of the European road transport sector.

Regretfully, it also demonstrates that the speedy proceedings affected negatively the quality of the adopted legislation. Moreover, we would like to underline the lack of impact assessment of some key provisions of the political agreement. This fact has also been acknowledged by the Commission in their Statement presented at the Coreper I meeting on 20 December 2019, in which the Commission confirmed that some measures had not been part of the Commission's proposals presented on 31 May 2017 and had not been the subject of an impact assessment.

The lack of thorough analysis impedes a proper evaluation of measures proposed in the three legislative acts of the Mobility Package I in terms of their compliance with proportionality rule.

Statement by Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland and Romania

Bulgaria, Cyprus, Hungary, Latvia, Lithuania, Malta, Poland and Romania, taking into account the unprecedented spread of the coronavirus COVID-19 that already impacts and will, unfortunately, continue to affect the road transport sector profoundly, call for the suspension of the work on the Mobility Package I until the pandemic is over. Therefore, we vote against adopting the file through a written procedure at this difficult time.

It is expected that most undertakings will suspend or close down operations, which will lead to a significant reduction in the supply of transport services and, therefore, in the delivery of goods to the detriment of the EU citizens and of the smooth functioning of the economy.

In view of the indispensable role of road transport for the post-COVID-19 outbreak recovery effort and the extensive losses, suffered by the sector in the course of handling the outbreak, the road transport and the economy of the EU will be in no position to sustain the unnecessary regulation-imposed shock to be caused by Mobility Package I. In this context we need to bear in mind that the vast majority of road transport undertakings in the European Union are small and medium-size enterprises, which are especially vulnerable.

In the current circumstances, the adoption of the Mobility Package I in its current form is neither reasonable nor justified. We would like to stress that the economic landscape of the EU when the coronavirus crisis is over will be completely different and we believe that the road transport sector will need new solutions addressing this new reality.

Having in mind the above-mentioned situation, we are convinced that the solutions envisaged in Mobility Package I need to be reshaped to be able to account for the new economic reality. Therefore, we propose to suspend the further works on this dossier until the pandemic is over.

Statement by Estonia

Estonia fully supports the objectives of the original proposals of the social and market pillar of Mobility Package I¹, which were intended to pave the way towards clear road transport rules. Estonia believes that the international road haulage market in the European Union must be in line with the general principles of the Single Market, open to competition, efficient and environmentally friendly. Estonia believes that additional requirements must not impose an unreasonable administrative burden on businesses or public sector authorities or conflict with the objectives of the European Union's climate policy.

During the negotiations of the Package, Estonia adopted a constructive approach by striving to take into account and support proposals that would improve the working conditions for drivers, combat illegal market practices and reduce the negative effects for the environment. However, the negotiations resulted in an agreement that puts Estonian carriers in a competitive disadvantage, notably by imposing an obligation for road transport undertakings to organise their fleet's activity in such a way as to ensure its vehicles to return to the Member State of establishment within 8 weeks after leaving it ("return of the vehicle obligation").

This obligation was not part of the original package. It has not been subject to a substantive impact assessment, which raises concerns about its relationship with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making².

Secondly, having the vehicles returning to the Member State of establishment limits the geographical area of operations for road transport undertakings of that Member State and as such, it is not in line with the aim of Mobility Package I to ensure a level playing field.

¹ Docs 9668/17 - COM(2017) 281 final; 9670/17 - COM(2017) 277 final; 9671/17 - COM(2017) 278 final.

² Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making;
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29>

Thirdly, as this obligation increases the number of empty runs and additional CO₂ emissions, Estonia is of the position that this requirement contradicts the EU's climate policy objectives and the Paris Agreement goals. It is not line with the Conclusions of 12 December 2019 of the European Council³.

Moreover, Estonia considers this requirement disproportionate as the agreement already contains measures to fight against the phenomenon of so-called "letterbox companies". The return of the vehicle obligation will potentially incentivize such practices and, in addition, encourages road transport undertakings from peripheral Member States to relocate, causing a decrease in jobs and tax revenues.

Finally, as the measure can potentially increase traffic volumes, Estonia is concerned about its impact on road safety.

Consequently, and yet again stressing its support to the objectives of the original proposals of the social and market pillar of Mobility Package I, Estonia regrets the inclusion of the return of the vehicle obligation in the agreement. In the context outlined above, Estonia will vote against said agreement.

Statement by Hungary

Hungary would like to reiterate deep concern on the harmful, market-distorting and negative climate effects of different components of the First Mobility Package and expresses severe dissatisfaction with the lack of proper and extensive impact assessments that run counter to the initial objectives of the First Mobility Package.

³ Section 1, paragraph 5: *All relevant EU legislation and policies need to be consistent with, and contribute to, the fulfilment of the climate neutrality objective while respecting a level playing field. /.../*
<https://data.consilium.europa.eu/doc/document/ST-29-2019-INIT/en/pdf>

Hungary has always showed readiness towards the fight against fraud, abuses and unfair practices as well as addressing the social conditions of drivers in the road transport sector. Whilst tackling these issues, we should avoid any fragmentation, protectionism and imposing excessive administrative burden for European transport undertakings, operating fairly on the internal market of road transport. For us, preserving the effective functioning of our internal market is non-negotiable, as it will lead to more jobs and competitiveness for Europe in an era of increasing global economic tensions.

Therefore, with this package, we should have ensured that the future EU legal framework allows competitive advantages to be exploited at their full potential while safeguarding fair competition and an adequate level of working conditions for drivers. Rather, the final agreement does not strike this balance and favours only one approach based on national protectionism and unenforceable rules in the sector.

Namely and in particular, we are convinced that specific rules for posting drivers in the road transport sector (“lex specialis”) constitutes an unjustified restriction on the fundamental freedoms and as a result, is distorting the level-playing field within the EU. We note that the final agreement justifies our misgivings about splitting the issue of road transport from the amendment to the Directive on posting of workers [Directive (EU) 2018/957]. In particular, the introduced split model regarding the posting of drivers was not part of the Commission’s proposal, and as such was not subjected to an impact assessment.

Secondly, we also find it highly problematic that the full ban on taking weekly rest in the cabin does not take into account the shortage of suitable rest areas within the EU with proper accommodation for drivers. Thus, such a ban would constitute an EU provision, which could not be enforced, putting in question its legality.

Thirdly, as regards our climate goals, an obligation for the vehicle to return to the Member State of establishment at least once every 8 weeks contradicts the ambitious EU climate goals which were presented by the European Commission in the European Green Deal on December 11, 2019. Such measure, if adopted, will result in an increased number of empty runs of trucks on European roads and subsequently, a growth of CO₂ emissions originating from the road transport sector.

The risk of creating an unfair competitive advantage for third country operators is also a factor that is not taken properly into account in the final agreement. In addition, the mandatory replacement of high-cost tachographs brings with it a competitive advantage for third-country carriers, as the date of installation smart tachographs for AETR-based undertaking's vehicles is uncertain.

Modernising the European road transport sector, a crucial building block of the European economy is a necessity both from a social and competitiveness aspect. This goal cannot be achieved without full regard to preserving the achievements and the functioning of the internal market and without acting responsibly to meet ambitious climate goals.