

## Mobility Package: European Parliament Position on Market/Social Issues in Road Transport

During the mini-Plenary session on 3-4 April 2019, the European Parliament (EP) adopted its position on the social and market aspects of the 1<sup>st</sup> Mobility Package, proposed in May 2017. Following a long period of complex negotiations, MEPs adopted the following files (final texts):

- [Enforcement requirements and specific rules for posting drivers in the road transport sector](#)
- [Daily and weekly driving times, minimum breaks and rest periods and positioning by means of tachographs](#)
- [Proposal for a regulation of the European Parliament and of the Council amending Regulation \(EC\) 1071/2009 and Regulation \(EC\) 1072/2009 with a view to adapting them to developments in the sector](#) (access to the profession and to the market)

This paper summarises the main provisions of the Parliament position on the revised rules for posting of drivers, driving and rest times, as well as better enforcement of cabotage rules. The briefing also makes a comparison with the [Council General Agreement](#) adopted in December 2018.

### Enforcement requirements and specific rules for posting drivers in the road transport sector

#### Posting rules:

- Posting rules apply to international transport.
- Posting rules apply to cabotage [\[AM837, 2c\]](#).
- Posting rules are exempted in case of bilateral operations, transit without loading or unloading freight and the initial/final road leg of a combined transport operation [\[AM837, 2, 2d, 2e\]](#). The exclusion would also apply to bilateral operations with one extra activity of loading and/or unloading in each direction, provided that the driver does not load/unloads goods in the same Member State (or zero on the way out and up to two on return) [\[AM837, 2a\]](#). In the wording of the EP, Member States shall also apply the exemption when:

*...the driver performing a bilateral transport operation in addition thereto performs one activity of loading and/or unloading in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unloads them in the same Member State. Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the exception shall apply for up to two additional activities of loading and/or unloading.*

As per the Council position, this provision is the same.

On combined transport, the EP wording is as follows:

*In case where the driver is performing the initial or final road leg of a combined transport operation as defined in Directive 92/106/EEC, the driver shall not be*

considered posted for the purpose of Directive 96/71/EC if the road leg on its own consists of bilateral transport operations.

**Administrative requirements for the operator:**

[AM844]

**An obligation for the road transport operator established in another Member State to submit a declaration and any update to it in electronic form via the Internal Market Information System (IMI)** established by Regulation (EU) No 1024/2012 to the national competent authorities of the Member State to which a driver is posted at the latest at the commencement of the posting, in an official language of the EU, containing only the following information:

- (i) **the identity of the road transport operator by means of its intra-Community tax identification number or the number of the Community Licence;**
- (iii) information about the posted driver including the following: the identity, the country of residence, the country of payment of social contributions, the social security number and the number of the driving licence
- (iv) **the envisaged beginning date and the estimated duration, and end date of the posting and the law applicable to the employment contract**
- (iva) for the road haulage operators: **the identity and the contact details of consignees, provided that the transport operator does not use e-CMR; (via) for the road haulage operators: addresses of loading(s) and unloading(s), provided that the transport operator does not use e-CMR.**

**Implementation by means of IMI:**

*In order to facilitate the implementation, application and enforcement of this Directive, the internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 should be used in Member States for the enhanced exchange of information between regional and local authorities across borders. It could also be an advantage to extend the features of IMI to include the submission and transmission of simple declarations.*

*Article 8 notes: “The Commission shall develop an electronic application common to all EU Member States that will provide inspectors direct real-time access to the ERRU and IMI during roadside checks and premises by 2020. This application shall be developed via a pilot project.”*

[AM853]

**(f) an obligation for the road transport operator to send via the IMI public interface, after the period of posting [...] copies of documents referred to in points (b) and (c), at the request of the authorities of the Member State to which a driver is posted as well as documentation of the remuneration of posted drivers which relate to the period of posting and their employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC1a, timesheets relating to the driver's work and proof of payments.**

[AM836]

*Member States may, if appropriate, check on the joint liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with Regulations (EC) No 561/2006 and (EU) No 165/2014.*

*Following roadside checks and where the driver is not in capacity to submit one or more of the required documents, the drivers shall be released to continue their transport operation and the transport operator in the Member State of establishment is obliged to submit the required documents via competent authorities.*

**Liability:**

[AM862]

*Member States shall provide for penalties against consignors, freight forwarders, contractors and subcontractors for non-compliance with Article 2 of this Directive, where they know, or, in the light of all relevant circumstances ought to know, that the transport services that they commission infringe of this Directive. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory.*

**Daily and weekly driving times, breaks and rest periods and positioning by means of tachographs**

**Driving and rest times:**

- The regular 45-hour weekly rest (and any weekly rest taken in compensation for previous reduced weekly rest) should be taken outside the cabin. It shall be taken in a quality and gender friendly accommodation with adequate sanitary and sleeping facilities. [AM382] This rules out a possibility to spend the weekly rest in the cabin while parked on safe and secure parking areas with adequate facilities, which is of particular concern to CLECAT.
- At least every 4 consecutive weeks, drivers would be required to spend at least one regular weekly rest period (or a weekly rest taken in compensation for reduced weekly rest) at home or another location of the driver's choosing [AM385]. Originally, the Commission proposed that drivers return home every 3 consecutive weeks.
- The reference of 2 regular weekly rest periods within 2 consecutive weeks has been retained [AM379]. The Commission wanted to turn this into 4 regular weekly rest periods in 4 weeks.

The amendments by MEP Wim van de Camp who proposed to introduce a derogation to the general rule of not taking weekly rests in the cabin, provided it is taken in Dedicated Certified Parking Areas, has not been adopted.

## Tachograph:

- The EP would allow for a flexible introduction of the smart tachograph (retrofitting):

*Assuming the entry into force of the road package in 2019, the Commission's implementing act for smart tachograph version 2 by 2019/2020, applying thereafter a staggered approach to retrofitting.*

- The tachograph would continue to be used for the enforcement of other legislation, such as posting and cabotage [\[AM401\]](#). Thus, the tachograph would not only register when a vehicle crosses national borders, but also when the vehicle performs loading or unloading activities [\[AM409-410\]](#).
- The registration period would be extended from 28 to 56 days [\[AM420\]](#).

On tachograph, the Council has adopted a stricter position:

*The installation of smart tachographs should be advanced in the existing fleets which operate in international transport using analogue or digital tachographs. All vehicles carrying out international transport operations would have to be fitted with this device by the end of 2024.*

## Access to the international road haulage market

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### Cabotage and a 'cooling-off' period:

- The existing restriction on the number of cabotage operations (3 operations within 7 days) would be replaced with a 3-day time limit during which the unlimited number of operations would be permitted [\[AM169\]](#).
- Following the end of the above-mentioned 3-day period, there would be a 'cooling-off' period of 60 hours for vehicles, which must be spent in the country of establishment before the vehicle can start another cabotage operation [\[AM170\]](#).

The Council wants to maintain the current number of cabotage operations (3 operations within 7 days), but has introduced a 'cooling-off period' of 5 days:

*Road transport undertakings are not allowed to carry out cabotage operations, with the same vehicle, or the motor vehicle of that same vehicle, in the same Member State within 5 days following the end of its cabotage operation in that Member State.*

### Vehicle return:

- Vehicles would be obliged to return to the country of residence once every 4 weeks and perform at least one loading or one unloading of goods [\[AM128\]](#).

The Council is not proposing a return of the vehicle as proposed by the EP so there is flexibility.

## Timeline

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It is unlikely that the trilogue negotiations will start before a new European Commission and Parliament are in place and that the final legislation will enter into force before 2022.