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From: General Secretariat of the Council

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Subject: Mobility Package I:

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

- general approach

Delegations will find, attached, the Council's general approach on the three above proposals, as agreed during the TTE Council on 3 December 2018.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

- (1) Experience with the implementation of Regulations (EC) No 1071/2009³ and (EC) No 1072/2009⁴ revealed that the rules provided for in those regulations offered scope for improvement on a number of points.
- (2) So far, and unless otherwise provided for in national law, the rules on access to the occupation of road transport operator do not apply to undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles not exceeding that limit. The number of such undertakings which are active in both national and international transport operations has been increasing. As a result, several Member States have decided to apply the rules on access to the occupation of road transport operator, provided for in Regulation (EC) No 1071/2009, to those undertakings. To ensure a minimum level of professionalisation of the sector using vehicles intended exclusively for the carriage of goods and with a permissible laden mass not exceeding 3.5 tonnes by way of common rules, and thus to approximate competitive conditions between all operators, this provision should be amended [...]. The requirements [...] for access to the profession should become [...] mandatory for operators using motor vehicles or combinations of vehicles intended exclusively for the carriage of goods and with a permissible laden mass between 2.5 tonnes and 3.5 tonnes involved in international transport.
- (2a) Under Regulation (EC) No 1072/2009 certain international haulage activities are exempted from the need for a Community licence in order to enter the European road haulage market. Within the framework of the organisation of that market road haulage undertakings carrying goods in motor vehicles or combinations of vehicles which have a permissible laden mass not exceeding 2.5 tonnes should be exempted from the need for a Community licence or other carriage authorisation.

³ Regulation (EC) No 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

⁴ Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

- (2b) Although vehicles having a permissible laden mass below a certain threshold are excluded from the scope of Regulation (EC) No 1071/2009, that Regulation gives Member States the possibility to apply part or all of the provisions thereof to such vehicles.
- (3) Currently, Member States are entitled to make access to the occupation of road transport operator subject to requirements additional to those specified in Regulation (EC) No 1071/2009. This possibility has not proven to be necessary in order to respond to imperative needs and has led to divergences in respect of such access. It should therefore be abolished.
- (4) In order to fight abusive practices based on so-called "letterbox companies", it is necessary to ensure that road transport operators established in a Member State have a real and continuous presence in that Member State and conduct their business from there. Therefore, and in light of experience, it is necessary to clarify the provisions regarding the existence of an effective and stable establishment and to allow Member States to introduce certain additional requirements reinforcing the necessary link between the transport operator and the Member State of establishment according to specific needs, for instance in respect of operational infrastructure such as easily accessible offices and necessary parking spaces.
- (4a) The real and continuous presence in the Member State of establishment should in particular require that the undertaking carries out transport operations with the appropriate technical equipment situated in that Member State.
- (5) To the extent that access to the occupation depends on the good repute of the undertaking concerned, clarifications are needed as regards the persons whose conduct must be taken into account, the administrative procedures which must be followed and waiting periods in respect of rehabilitation once a transport manager has lost good repute.
- (6) In view of their potential to considerably affect the conditions for fair competition in the road haulage market, serious infringements of national tax rules should be added to the items relevant to the assessment of good repute.

- (7) In view of their potential to considerably affect the road haulage market, as well as the social protection of workers, serious infringements of Union rules on the posting of workers and the law applicable to contractual obligations should be added to the items relevant to the assessment of good repute.
- (8) Given the importance of fair competition in the market, infringements of Union rules relevant to this issue, including rules on access to the market such as cabotage rules, should be taken into account in the assessment of the good repute of transport managers and transport undertakings. The empowerment of the Commission to define the degree of seriousness of relevant infringements should be clarified accordingly.
- (9) National competent authorities have had difficulties identifying the documents which may be submitted by transport undertakings to prove their financial standing, in particular in the absence of certified annual accounts. The rules regarding evidence required to prove financial standing should be clarified.
- (10) Undertakings engaged in the occupation of road haulage operator [...] by means of motor vehicles or combinations of vehicles intended exclusively for the carriage of goods, involved in international transport and which have a permissible laden mass [...] exceeding 2.5 tonnes but not 3.5 tonnes [...] should have a minimum [...] financial standing to ensure that they have the means to carry out operations on a stable and long-lasting basis. However, since the operations [...] conducted with these vehicles are generally of a limited size, the corresponding requirements for financial standing should be less demanding than those that apply to operators using vehicles [...] above that limit. Combinations of vehicles should be taken into account when determining the required financial standing. The competent authority should apply the higher level of financial requirement if the permissible laden mass of the combination of vehicles exceeds 3.5 tonnes.
- (10a) In order to maintain and create high standards for undertakings without creating negative impacts on the internal market in road transport, Member States should be allowed to apply the financial requirements referring to the use of heavy vehicles also to the undertakings established on their territories in respect of vehicles below 3.5 tonnes.

- (10b) In order to ensure a reliable road transport sector and to improve the collection of debt to the public sector, Member States should have the possibility to require compliance with payment obligations towards public entities, such as VAT debts and social security contributions, and to require that undertakings are not subject to proceedings that have been introduced to protect their assets.
- (11) The information about transport operators contained in the national electronic registers should be as complete as possible to allow national authorities in charge of enforcing the relevant rules to have a sufficient overview of the operators being investigated. In particular, information regarding the registration number of the vehicles at the disposal of operators [...], and their risk rating [...] should allow a better national and cross-border enforcement of the provisions of Regulations(EC) No 1071/2009 and (EC) No 1072/2009. The rules on the national electronic register should therefore be amended accordingly.
- (12) The definition of the most serious infringement concerning exceeding the daily driving time, as provided for in Annex IV of Regulation (EC) No 1071/2009, does not fit the existing relevant provision laid down in Regulation (EC) No 561/2006 of the European Parliament and of the Council⁵. That inconsistency leads to uncertainty and diverging practices among national authorities and ensuing difficulties in the enforcement of the rules in question. That definition should therefore be clarified to ensure consistency between the two Regulations.
- (13) The rules on national transport performed on a temporary basis by non-resident hauliers in a host Member State ('cabotage') should be clear, simple and easy to enforce, while maintaining the level of liberalisation achieved so far.

[...]

⁵ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (14a) Cabotage operations should help to increase the load factor of heavy duty vehicles and reduce empty runs, and should be allowed as long as they are not carried out in a way that creates a permanent or continuous activity within the Member State concerned. To ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity, hauliers should not be allowed to carry out cabotage operations in the same Member State within a certain time after the end of a period of cabotage operations.
- (15) The means by which road transport operators can prove compliance with the rules for cabotage operations should be clarified. Roadside controls should be based on transport documents and, if available, on tachograph records. The use and transmission of electronic transport information should be recognised as means to prove compliance, which should simplify the provision of relevant evidence and its treatment by the competent authorities. The format used for that purpose should ensure reliability and authenticity. Considering the increasing use of efficient electronic exchange of information in transport and logistics, it is important to ensure coherence in the regulatory frameworks and provisions addressing the simplification of administrative procedures.
- (16) Transport undertakings are the addressees of the rules on international carriage and are, as such, subject to the consequences of any infringements committed by them. However, in order to prevent abuses by undertakings contracting transport services from road haulage operators, Member States should also provide for sanctions on shippers and freight forwarders in case they knowingly commission transport services which involve infringements of the provisions of Regulation (EC) No 1072/2009.

- (17) Insofar as this Regulation introduces a degree of harmonisation in certain areas so far not harmonised by Union law, in particular in respect of transport with light commercial vehicles and enforcement practices, its objectives, namely to approximate conditions of competition and improve enforcement, cannot be sufficiently achieved by the Member States but can rather, by reason of the nature of the objectives pursued in combination with the cross-border nature of road transport, be better achieved at Union level. Therefore, the Union may adopt measures, in line with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve the objectives pursued.
- (18) In order to take into account market developments and technical progress the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to Regulation (EC) No 1071/2009 [...] and to amend Annexes I, II and III to Regulation (EC) No 1072/2009. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in line with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁶. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to the Commission's expert groups meetings dealing with the preparation of delegated acts.
- (19) Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

⁶ OJ L 123, 12.5.2016, p. 1.

Article 1
Amendments to Regulation (EC) No 1071/2009

Regulation (EC) No 1071/2009 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) point (a) is [...] replaced by the following:

'(a) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes engaged exclusively in national transport operations in their Member State of establishment;';

(ii) the following point (aa) is inserted:

'(aa) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 2.5 tonnes;';

(iii) point (b) is replaced by the following:

'(b) undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator.

Any carriage by road for which no remuneration is received and which does not create any income, such as carriage of persons for charity purposes or for strictly private use, is to be considered as carriage exclusively for non-commercial purposes;';

(b) [...]

- (2) in Article 3, paragraph 2 is deleted;
- (3) Article 5 is [...] replaced by the following:

'Article 5

Conditions relating to the requirement of establishment

- i) In order to satisfy the requirement laid down in Article 3(1)(a), in the Member State of establishment an undertaking shall:
 - (a) have premises in which it keeps the originals of its core business documents, or in case of documents in electronic form secures access to them, in particular its [...] transport contracts, documents relating to the vehicles at the disposal of the undertaking, accounting documents, personnel management documents, labour contracts, social security documents, documents containing data on the dispatching of drivers, documents containing data relating to driving time and rest periods and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Regulation;
 - (aa) be registered in the register of commercial companies of that Member State or in a similar register whenever required under national law;
 - (aaa) be subject to tax on revenues and, whenever required under national law, have assigned a VAT registration number;
 - (b) once an authorisation has been granted, have at its disposal one or more vehicles which are registered or put into circulation and authorised to be used in conformity with the legislation of that Member State, regardless of whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or under a hire or leasing contract;

- (c) effectively and continuously conduct its administrative and commercial activities with the appropriate [...] facilities at premises situated in that Member State, and its transport operations using the vehicles referred to in point (e) with the appropriate technical equipment situated in that Member State;

[...]

- (e) [...] on an ongoing basis have at its regular disposal a number of vehicles complying with the conditions laid down in point (b) and drivers proportionate to the volume of transport operations carried out by the undertaking.

ii) In addition to the requirements laid down in paragraph 1, Member States may require an undertaking to have, in the Member State of establishment:

- (a) proportionate to the size of the activity of the undertaking, duly qualified administrative personnel at the premises or the transport manager reachable during customary business hours;
- (b) proportionate to the size of the activity of the undertaking, operational infrastructure other than the technical equipment referred to in paragraph 1(c) in the territory of that Member State, including an office which is open during customary business hours.;

(4) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the second subparagraph is replaced by the following:

'In determining whether an undertaking has satisfied that requirement, Member States shall consider the conduct of the undertaking, its transport managers, executive directors [...] and any other relevant person as may be determined by the Member State. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers, executive directors [...] and any other relevant person as may be determined by the Member State.';

(ii) in point (a) of the third subparagraph the following point (vii) is added:

'(vii) tax law.';

(iii) in point (b) of the third subparagraph the following points (xi) and (xii) are added:

'(xi) the posting of workers in road transport;

(xii) the law applicable to contractual obligations.';

(b) paragraph 2 is replaced by the following:

2. For the purposes of point (b) of the third subparagraph of paragraph 1, where the transport manager or the transport undertaking has been convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements of Union rules as set out in Annex IV, in one or more Member States, the competent authority of the Member State of establishment shall carry out and complete in an appropriate and timely manner an administrative procedure, which shall include, if appropriate, an on-site inspection at the premises of the undertaking concerned.

During the administrative procedure, the transport manager or other legal representatives of the transport undertaking, as the case may be, shall be given the right to present their arguments and explanations.

During the administrative procedure, the competent authority shall assess whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. In that assessment, the competent authority shall take into account the number of serious infringements of national and Union rules as referred to in the third subparagraph of paragraph 1, as well as the number of most serious infringements of Union rules as set out in Annex IV, for which the transport manager or the transport undertaking have been convicted or had penalties imposed on them. Any such finding shall be duly reasoned and justified.

Where the competent authority finds that the loss of good repute would be disproportionate, it shall decide that the undertaking concerned continues to be of good repute. The reasons for this decision shall be recorded in the national register. The number of such decisions shall be indicated in the report referred to in Article 26(1).

Where the competent authority does not find that the loss of good repute would be disproportionate, the conviction or penalty shall lead to the loss of good repute;'

(c) the following paragraph 2a is inserted:

'2a. The Commission [...] shall adopt [...] implementing acts laying down a list of categories, types and degrees of seriousness of serious infringements of Union rules as referred to in point (b) of the third subparagraph of paragraph 1 which, in addition to those set out in Annex IV, may lead to the loss of good repute. Member States shall take into account information on those infringements, including information received from other Member States, when setting the priorities for checks pursuant to Article 12(1).

To that end, the Commission shall:

- (a) lay down the categories and types of infringement which are most frequently encountered;
- (b) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries and to distort competition in the road transport market, including by undermining the working conditions of transport workers;
- (c) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, taking into account the number of vehicles [...] used for the transport activities managed by the transport manager.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3a). ';

(5) Article 7 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall, on a permanent basis, be able to meet its financial obligations in the course of the annual accounting year. The undertaking shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal [...] capital and reserves:

- totalling at least EUR 9 000 [...] for the first motor vehicle or combination of vehicles used that has a permissible laden mass exceeding 3.5 tonnes or which is suitable for carrying more than nine persons, including the driver, and EUR 5 000 for each such additional vehicle used [...];
- totalling at least EUR 1 800 [...] for the first motor vehicle or combination of vehicles used that is involved in international transport and has a permissible laden mass exceeding 2.5 tonnes but not 3.5 tonnes and EUR 900 for each such additional vehicle used. Member States may require that the undertaking established in their territories demonstrate to have at its disposal for these vehicles the same amounts of capital and reserves as for vehicles referred to in the previous point. In that case the competent authority of the Member State concerned shall inform the Commission accordingly and the Commission shall make this information publicly available.';

(a1) the following paragraph is inserted after paragraph 1:

'1a. In addition to the requirements set out in the first subparagraph of paragraph 1, Member States may require that the undertaking, the transport manager or any other relevant person as may be determined by them, not have outstanding non-personal debts owed to bodies governed by public law, and that it not be bankrupt or subject to insolvency or winding-up proceedings.';

(b) paragraph 2 is replaced by the following:

'2. By way of derogation from paragraph 1, [...] the competent authority [...] may require that an undertaking demonstrate its financial standing by means of a certificate determined by the competent authority, such as a bank guarantee [...] or an insurance, including a professional liability insurance from one or more banks or other [...] financial institutions including insurance companies [...] or another binding document [...] providing a joint and several guarantee for the undertaking in respect of the amounts specified in the first subparagraph of paragraph 1.

2a. By way of derogation from paragraph 1, in the absence of certified annual accounts for the year of an undertaking's registration, the competent authority shall agree that an undertaking demonstrate its financial standing by means of a certificate, such as a bank guarantee, a document issued by a financial institution establishing access to credit in the name of the undertaking, or another binding document as determined by the competent authority proving that the undertaking has at its disposal the amounts specified in the first subparagraph of paragraph 1.';

(6) in Article 8, paragraph 9 is replaced by the following:

'9. The Commission is empowered to adopt delegated acts in line with Article 24a to amend Annexes I, II and III in order to adapt them to market developments and technical progress.';

(6a) in Article 9 the following paragraph is added:

'2. For the purpose of granting a licence to a road haulage undertaking which only operates motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes, Member States may decide to exempt from the examinations referred to in Article 8(1) persons who provide proof that they have continuously managed, for the period of ten years before [date of entry into force of this amending Regulation], an undertaking of the same type.';

- (7) in Article 11(4), the third subparagraph is deleted;
- (8) in Article 12(2), the second subparagraph is deleted;
- (9) in Article 13(1), point (c) is replaced by the following:
- '(c) a time limit not exceeding six months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement is again satisfied on a permanent basis.';
- (10) in Article 14(1), the following second subparagraph is added:
- 'The competent authority shall not rehabilitate the transport manager earlier than one year from the date of the loss of good repute.';
- (11) Article 16 is amended as follows:
- (a) paragraph 2 is amended as follows:
- (i) the following points are added:
- '(g) the registration numbers of the vehicles at the disposal of the undertaking pursuant to Article 5 [...] (1)(e);
- [...]
- (j) the risk rating of the undertaking pursuant to Article 9 of Directive 2006/22/EC.';

- (ii) the second, third and fourth subparagraphs are replaced by the following:

'Member States may choose to keep the data referred to in points (e) to (j) of the first subparagraph in separate registers. In such a case, the relevant data shall be available upon request or directly accessible to all the competent authorities of the Member State in question. The requested information shall be provided within five working days of receipt of the request. The data referred to in points (a) to (d) of the first subparagraph shall be publicly accessible, in line with the relevant provisions on personal data protection.

In any case, the data referred to in points (e) to (j) of the first subparagraph shall only be accessible to authorities other than the competent authorities where they are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to, or otherwise are under a formal obligation of secrecy.';

- (b) paragraph 4 is replaced by the following:

'4. Member States shall take all necessary measures to ensure that all the data contained in the national electronic register is kept up to date and is accurate.;

- (c) paragraph 7 is deleted;

- (12) in Article 18, paragraphs 2 and 3 are replaced by the following:

'2. The competent authorities of the Member States shall exchange information on convictions and penalties for any serious infringements referred to in Article 6(2). A Member State which receives notification of a serious infringement referred to in Article 6(2) which has resulted in a conviction or a penalty in another Member State during the last two years shall record that infringement in its national electronic register.

3. Member States shall reply to requests for information from all competent authorities of other Member States and, where necessary, carry out checks, inspections and investigations concerning compliance with the requirement laid down in Article 3(1)(a) by road transport operators established in their territory. Requests for information by competent authorities of Member States shall be reasoned. To this end, requests shall include credible indications of possible infringements of Article 3(1)(a), indicate the purpose of the request and specify in sufficient detail the information which is being requested.
 - 3a. Member States shall submit the information requested by other Member States pursuant to paragraph 3 within thirty working days from the receipt of the request. A shorter time limit may be mutually agreed between the Member States.
4. Where the requested Member State considers that the request is insufficiently reasoned, it shall inform the requesting Member State accordingly within ten working days. The requesting Member State shall further substantiate the request. Where this is not possible, the request may be rejected by the requested Member State.
5. Where it is difficult [...] to comply with a request for information or to carry out checks, inspections or investigations, the requested Member State in question shall inform the requesting Member State accordingly within ten working days, giving reasons. The Member States concerned shall discuss with each other with a view to finding a solution for any difficulty raised.

[...]

 - 6a. The exchange of information referred to in paragraph 2 shall take place through the message exchange system ERRU (European Registers of Road Transport Undertakings) established by Regulation (EU) No 1213/2010*.

The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in paragraphs 3 to 5 of this Article shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012**. For this purpose, each Member State may designate the contact point referred to in paragraph 1 as competent authority and shall inform the Commission thereof through IMI.

* Commission Regulation (EU) No 1213/2010 of 16 December 2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings (OJ L 335, 18.12.2010, p. 21).

** Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, p. 1).';

7. Member States shall ensure that the information transmitted to them in line with this Article is used only in respect of the matter(s) for which it was requested. Any processing of personal data shall be carried out solely for the purposes of complying with this Regulation and shall be in accordance with Regulation (EU) No 2016/679 of the European Parliament and of the Council.
8. Mutual administrative cooperation and assistance shall be provided free of charge.
9. A request for information shall not preclude the competent authorities from taking measures in line with the relevant national and Union law to investigate and prevent alleged breaches of this Regulation.

(12a) in Article 23 the following paragraphs are added:

- '2. By way of derogation from Article 1(2), until [*OJ*: two years after the entry into force of this amending Regulation] road haulage undertakings engaged in international transport operations solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3,5 tonnes shall be exempted from the provisions of this Regulation, unless otherwise provided for in the law of the Member State of establishment.

3. By way of derogation from Article 16(2), the requirement to include the risk rating of the undertakings in the national electronic registers shall apply from the entry into force of the implementing act on a common risk rating formula referred to in Article 9(1) of Directive 2006/22/EC. '

(13) Article 24 is deleted;

(14) the following Article 24a is inserted:

'Article 24a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 8(9) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this (amending) Regulation].
3. The delegation of power referred to in [...] Article 8(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in line with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.*
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted under [...] Article 8(9) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

* OJ L 123, 12.5.2016, p. 1.;

(15) Article 25 is amended as follows:

- (a) paragraph 3 is deleted;
- (b) The following paragraph is added:

'3a. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.'

(16) Article 26 is amended as follows:

- (a) point (b) in paragraph 1 is amended as follows:
 - (b) the number of authorisations granted under this Regulation by year and by type, those suspended, those withdrawn, the number of declarations of unfitness and the reasons on which those decisions were based. Reports relating to the period after [*OJ*: the date referred to in Article 23(2)] shall also include a breakdown of these items by: 1) road passenger transport operators; 2) road haulage operators using exclusively motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes; and 3) all other road haulage operators;'

(b) the following paragraph [...] is inserted:

[...]

'1a. Every two years Member States shall report to the Commission on the requests made by them under Article 18(3) [...] to (7), on the replies received from other Member States and on the actions that they have taken on the basis of the information provided.';

(17) Annex IV is amended as follows:

(a) in point 1, point (b) is replaced by the following:

'(b) exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more.';

(b) point 2 is replaced by the following:

2. Not having a tachograph and/or speed limiter, or having in the vehicle and/or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.'

Article 2
Amendments to Regulation (EC) No 1072/2009

Regulation (EC) No 1072/2009 is amended as follows:

(1) [...] in paragraph 5 of Article 1, point (c) is replaced by the following:

'(ca) until [*OJ*: the day before two years after the entry into force of this amending Regulation]: carriage of goods in vehicles the permissible laden mass of which does not exceed 3.5 tonnes;

(cb) from [*OJ*: two years after the entry into force of this amending Regulation]: carriage of goods in vehicles the permissible laden mass of which does not exceed 2.5 tonnes;';

[...]

(3) Article 4 is amended as follows:

(a) in paragraph 2, the third subparagraph is [...] deleted. [...]

(b) paragraph 4 [...] is replaced by the following:

'The Community licence and the certified true copies shall correspond to the model set out in Annex II, which also lays down the conditions governing its use. They shall contain at least two of the security features listed in Annex I.

In the case of vehicles used for the carriage of goods the permissible laden mass of which does not exceed 3.5 tonnes and for which lower financial requirements established in Article 7 (1) second indent of Regulation (EC) No 1071/2009 are applied, the issuing authority shall write in the section 'particular remarks' of the Community licence, or of the certified true copy thereof: ' ≤ 3.5 t'.

The Commission is empowered to adopt delegated acts in line with Article 14b to amend Annexes I and II in order to adapt them to technical progress.';

(4) in Article 5, paragraph 4 is replaced by the following:

'4. The Commission is empowered to adopt delegated acts in line with Article 14b to amend Annex III in order to adapt it to technical progress.';

(5) Article 8 is amended as follows:

(a) [...] the following paragraph is inserted:

'2a. Road transport undertakings are not allowed to carry out cabotage operations, with the same vehicle, or, in the case of a coupled combination, 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.';

(b) in paragraph 3, the first subparagraph is replaced by the following:

'National road haulage services carried out in the host Member State by a non-resident haulier shall only be deemed to comply with this Regulation if the haulier can produce clear evidence of the preceding international carriage and of each consecutive cabotage operation carried out. In the event that the vehicle has been in the territory of the host Member State within the period of 5 days preceding the international carriage, the haulier shall also produce clear evidence of all operations that were carried out during that period.';

(c) the following paragraph 4a is inserted:

'4a. Evidence referred to in paragraph 3 shall be kept on board of the vehicle concerned and shall be presented or transmitted to the authorised inspecting officer of the host Member State on request [...] at the roadside check. It may be presented or transmitted electronically, using a revisable structured format which can be used directly for storage and processing by computers, such as the eCMR.* During the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity [...] in order to provide, within the duration of the roadside check, any evidence referred to in paragraph 3 which is found missing on board.';

(d) paragraph 5 is amended as follows:

'5. Any haulier entitled in the Member State of establishment, in accordance with that Member State's legislation, to carry out the road haulage operations for hire or reward specified in Article 1(5)(a), (b), (ca) and (cb) shall be permitted, under the conditions set out in this Chapter, to carry out, as the case may be, cabotage operations of the same kind or cabotage operations with vehicles in the same category.';

* Electronic consignment note under the 'Convention on the Contract for the International Carriage of Goods by Road.

(6) in Article 10(3), the first subparagraph is replaced by the following:

'The Commission shall examine the situation on the basis in particular of the relevant data and, after consulting the committee established pursuant to Article 42(1) of Regulation (EC) No 165/2014 of the European Parliament and of the Council,** shall decide within one month of receipt of the Member State's request whether or not safeguard measures are necessary and shall adopt them if they are necessary.;

** Regulation (EC) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).;

(7) the following Article 10a is inserted:

'Article 10a

Checks

1. [...] Member States shall organise a number of checks [...] of cabotage operations that they consider necessary in order to ensure proper enforcement of cabotage rules in their territory [...].
2. [...] Member States shall, at least [...] twice per year, undertake concerted roadside checks on cabotage operations. Such checks shall be undertaken at the same time by the national authorities in charge of enforcing the rules in the field of road transport of two or more Member States, each operating in its own territory. Member States may combine those activities with those provided for by Article 5 of Directive 2006/22/EC***. The national contact points designated in accordance with Article 18(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council**** shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.

*** Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities (OJ L 102, 11.4.2006, p. 35).

**** Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).';

(8) the following Articles 14a and 14b are inserted:

'Article 14a

Liability

Member States shall provide for sanctions against consignors, freight forwarders, contractors and subcontractors for non-compliance with Chapters II and III, where they knowingly commission transport services which involve infringements of this Regulation.

Article 14b

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4 [...] (4) and Article 5(4) is conferred on the Commission for an indeterminate period of time from [date of entry into force of this (amending) Regulation].

3. The delegation of power referred to in Article 4 [...] (4) and Article 5(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in line with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.*****
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted under Article 4 [...] (4) and Article 5(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

***** OJ L 123, 12.5.2016, p. 1.;

(9) Article 15 is deleted;

(10) Article 17 is replaced by the following:

'Article 17

Reporting

1. By 31 [...] March of every second year, at the latest, Member States shall inform the Commission of the number of hauliers possessing Community licences on 31 December of each of the previous two years and of the number of certified true copies corresponding to the vehicles in circulation on that date. Reports relating to the period after [the date referred to in point (ca) of Article 1(5)] shall also include a breakdown of these items by road haulage operators engaged in international transport operations solely by means of vehicles the permissible laden mass of which does not exceed 3.5 tonnes and the remaining road haulage operators.
2. By 31 [...] March of every second year, at the latest, Member States shall inform the Commission of the number of driver attestations issued in each of the previous two calendar years, as well as the total number of driver attestations in circulation on 31 December of each of the previous two [...] years. Reports relating to the period after [the date referred to in point (ca) of Article 1(5)] shall also include a breakdown of these items by road haulage operators engaged in international transport operations solely by means of vehicles the permissible laden mass of which does not exceed 3.5 tonnes and the remaining road haulage operator.
3. By 31 [...] March of every second year, at the latest, Member States shall inform the Commission on the number of cabotage checks performed in the previous two [...] years pursuant to Article 10a. This information shall include the number of roadside checks performed and and the number of vehicles checked [...].

4. The Commission shall draw up a report on the state of the Community road transport market by the end of [four years after the entry into force of this amending Regulation]. The report shall contain an analysis of the market situation, including an evaluation of the effectiveness of controls and the evolution of employment conditions in the profession, as well as an assessment as to whether harmonisation of the rules in the fields, inter alia, of enforcement and road user charges, as well as social and safety legislation, has progressed to such an extent that the further opening of domestic road transport markets, including cabotage, could be envisaged.';

Article 3

Review

1. The Commission shall evaluate the implementation of this Regulation, in particular the impact of Article 2 amending Article 8 of Regulation (EC) No 1072/2009, by [*OJ*: 3 years after the date of entry into force of this Regulation] and report to the European Parliament and the Council on the application of this Regulation. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.
2. Following the report referred to in paragraph 1, the Commission shall regularly evaluate this Regulation and submit the evaluation results to the European Parliament and the Council.
3. Where appropriate, the reports referred to in paragraphs 1 and 2 shall be accompanied by relevant proposals.

Article 4
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [*OJ*: 18 months after date of entry into force] [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Good working conditions for drivers and fair business conditions for road transport undertakings are of paramount importance to creating a safe, efficient and socially accountable road transport sector. To facilitate that process it is essential that the Union social rules in road transport are clear, fit for purpose, easy to apply and to enforce and implemented in an effective and consistent manner throughout the Union.

⁷ OJ C , , p. .

⁸ OJ C , , p. .

- (2) Having evaluated the effectiveness and efficiency of the implementation of the existing set of Union social rules in road transport, and in particular Regulation (EC) No 561/2006 of the European Parliament and of the Council⁹, certain deficiencies were identified in the existing legal framework. Unclear and unsuitable rules on weekly rest, resting facilities, breaks in multi-manning and the absence of rules on the return of drivers to their home, lead to diverging interpretations and enforcement practices in the Member States. Several Member States recently adopted unilateral measures further increasing legal uncertainty and unequal treatment of drivers and operators.
- (3) The ex-post evaluation of Regulation (EC) No 561/2006 confirmed that inconsistent and ineffective enforcement of the Union social rules was mainly due to unclear rules, inefficient use of the control tools and insufficient administrative cooperation between the Member States.
 - (3a) In order to improve clarity and consistency, the exemption from the scope of Regulation (EC) No 561/2006 for the non-commercial use of a vehicle should be defined.
- (4) Clear, suitable and evenly enforced rules are also crucial for achieving the policy objectives of improving working conditions for drivers, and in particular ensuring undistorted competition between operators and contributing to road safety for all road users.
- (5) The existing requirement on breaks turned out to be unsuitable and impractical for drivers in a team. Therefore, it is appropriate to adapt the requirement on recording breaks to the specificity of the transport operations carried out by drivers driving in a team, without jeopardising the safety of the driver and road safety.

⁹ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (6) Drivers engaged in long-distance international transport operations spend long periods away from their home. The current requirements on the regular weekly rest may prolong those periods unnecessarily. It is thus desirable to adapt the provision on the regular weekly rest in such a way that it is easier for drivers to carry out transport operations in compliance with the rules and to reach their home for a regular weekly rest, and be fully compensated for all reduced weekly rest periods. For drivers engaged in national transport, the current requirements may be maintained through an exception established by the Member State concerned.

It is also necessary to provide that operators organise the work of drivers in such a way that these periods away from home are not excessively long and that drivers can benefit from long rest periods taken in compensation for reduced weekly rest periods. Organising the return should allow reaching an operational centre of the undertaking in its Member State of establishment or the driver's place of residence. The operator should be able to prove the organisation of the regular return through tachograph records, duty rosters of the drivers or similar evidence.

- (7) [...] In order to promote social progress it is appropriate to specify where the weekly rest may be taken ensuring that drivers enjoy adequate rest conditions. The quality of accommodation is particularly important during the regular weekly rest, which the driver should spend away from the vehicle's cabin in a suitable accommodation, at the cost of the employer.
- (7a) Safe and secure parking areas equipped with adequate resting facilities are crucial for improving working conditions in the sector and maintaining road safety. Therefore it is of utmost importance to promote a development of parking infrastructure, including rest areas, which would guarantee desired safety, security and service standards. It is important that sufficient opportunities of co-funding by the European Union exist in accordance with current and future Union legal acts establishing the conditions for financial support, in order to accelerate and promote the construction of this parking infrastructure. However, Member States are not obliged to finance additional parking infrastructure on their territory beyond their existing obligations under the Union guidelines for TEN-T infrastructure. The Commission should review the availability of safe and secure parking areas

- (8) Drivers are [...] faced with unforeseeable circumstances which make it impossible to reach a desired destination for taking a weekly rest without violating Union rules. It is desirable to make it easier for drivers to cope with those circumstances and enable them to reach their destination for a weekly rest. Such exceptional circumstances are sudden circumstances that are unavoidable and may not be anticipated, where it unexpectedly becomes impossible to apply the Regulation's provisions in their entirety for a short period of time. In order to ensure proper enforcement, the driver should document the circumstances. In addition, a safeguard should ensure that driving time is not excessive [...].
- (9) To reduce and prevent diverging enforcement practices and to further enhance the effectiveness and efficiency of cross-border enforcement it is crucial to establish clear rules for regular administrative cooperation between Member States.
- (10) In order to ensure uniform conditions for the implementation of Regulation (EC) No 561/2006 implementing powers should be conferred on the Commission in order to clarify any of the provisions of that Regulation and to establish common approaches on their application and enforcement. Those powers should be exercised in accordance with Regulation (EU) No 182/2011¹⁰.
- (11) To enhance cost-effectiveness of enforcement of the social rules the potential of the current and future tachograph systems should be fully exploited. Therefore the functionalities of the tachograph should be improved to allow for more precise positioning, in particular during international transport operations. For the same purpose, the installation of smart tachographs should be advanced in the existing fleets which operate in international transport using analogue or digital tachographs.
- (11a) In particular, in vehicles which are not equipped with a smart tachograph, the crossing of Member State borders should be recorded in the tachograph at the nearest stopping place at or after the border.

¹⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (11b) To ensure that drivers, operators and control authorities benefit at the soonest from the advantages of smart tachographs including their automated recording of border crossings, the existing vehicle fleet should be equipped with such devices within an appropriate period after the entry into force of the detailed technical provisions thus ensuring sufficient time for preparation.
- (11c) To reduce the burden on operators and control authorities in case that a control officer removes the seal of a tachograph for control purposes, the re-sealing by the control officer should be allowed under certain well documented circumstances.
- (11d) It is important that road transport operators established in third countries, while performing road transport operations in the territory of the EU, are subject to rules which are equivalent to this legislation. The Commission should assess the fulfilment of this principle at EU level and propose adequate solutions to be negotiated by the EU in the context of AETR.
- (12) Regulations (EC) No 561/2006 and (EU) 165/2014 of the European Parliament and of the Council¹¹ should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 561/2006 is amended as follows:

(1) [...] in Article 4, the following point is added:

"(r) 'non-commercial carriage' means any carriage by road, other than carriage for hire or reward or for own account, for which no direct or indirect remuneration is received and which does not directly or indirectly generate any income for the driver of the vehicle or others and where there is no link with professional or commercial activity;

¹¹ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

- (2) Article 6(5) is replaced by the following:

"A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability, as defined in Article 3(b) of Directive 2002/15/EC, in accordance with Article 34(5)(b)(iii) of Regulation (EU) No 165/2014. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.";

- (3) in Article 7, the following third paragraph is added:

"A driver engaged in multi-manning may ~~decide to~~ take a break of 45 minutes in a vehicle driven by another driver provided that the driver taking the break is not involved in assisting the driver driving the vehicle.";

- (4) Article 8 is amended as follows:

- (a) paragraph 6 is replaced by the following:

"6. In any four consecutive weeks a driver shall take at least four weekly rest periods, of which at least two shall be regular weekly rest periods. [...]"

The reduced weekly rest periods shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question. In case that two reduced weekly rest periods are taken consecutively, the weekly rest period following thereafter shall be preceded or followed by a rest period taken as compensation.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.";

[...]

(c) [...] Paragraph 8 is replaced by the following:

"8. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

Regular weekly rest periods and any weekly rest of more than 45 hours taken in compensation for previous reduced weekly rest shall not be taken in a vehicle.
[...]

Any costs for accommodation outside the vehicle shall be covered by the employer.

At the latest [OJ: three years after entry into force], the Commission shall assess the availability of safe and secure parking places allowing for a comfortable rest while the vehicle is stationary.";

(d) The following paragraph is inserted:

"8a. A transport undertaking shall organise the work of drivers in such a way that the drivers are able to [...] return to one of the operational centres in the Member State of the employer's establishment or to the drivers' place of residence within each period of four consecutive weeks, in order to spend at least one regular weekly rest period or a weekly rest of more than 45 hours taken in compensation for reduced weekly rest. However, in case that a driver has taken two reduced weekly rest periods consecutively without return, the transport undertaking shall organise the work of the driver in such a way that the driver is able to return already at the end of the third week.

The undertaking shall document how it fulfils this obligation and shall keep the documentation at its premises in order to present it on request of control authorities.";

(5) in Article 9, paragraph 1 is replaced by the following:

"1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period or weekly rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest or weekly rest period the driver shall have access to a bunk or couchette at their disposal.";

(5a) Article 11 shall read as follows:

"A Member State may provide for longer minimum breaks and rest periods or shorter maximum driving times than those laid down in Articles 6 to 9 in the case of carriage by road undertaken wholly within its territory. In so doing, Member States shall take account of relevant collective or other agreements between the social partners. Nevertheless, this Regulation shall remain applicable to drivers engaged in international transport operations.

A Member State may under the same conditions provide that a driver engaged exclusively in carriage by road undertaken wholly within its territory shall in any two consecutive weeks take at least:

- two regular weekly rest periods, or
- one regular weekly rest period and one reduced weekly rest period of at least 24 hours, whereby the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question."

(6) [...] Article 12 is replaced by the following:

" [...] Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 6 to 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. Provided that road safety is not thereby jeopardised, the driver may, in exceptional circumstances, also depart from Article 6(1) and (2) and Article 8(2) by exceeding the daily and weekly driving time by up to one hour in order to reach the employer's operational centre for taking a weekly rest. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the destination or the suitable stopping place.";

(7) Article 13 (1) is amended as follows:

(a) point (e) is replaced by the following:

"(e) vehicles operating exclusively on islands or isolated regions from the rest of the national territory not exceeding 2.300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles, nor are they bordering any other Member State. ";

(b) the following point (q) is added:

"(q) vehicles used for the delivery of ready-mixed concrete.";

(8) in Article 14, paragraph 2 is replaced by the following:

"2. In urgent cases Member States may grant, under exceptional circumstances, a temporary exception for a period not exceeding 30 days, which shall be duly justified and notified immediately to the Commission.";

(9) Article 15 is replaced by the following:

"Article 15

Member States shall ensure that drivers of vehicles referred to in Article 3(a) are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods. Member States shall inform the Commission about the relevant national rules applicable to such drivers.";

(9a) Article 16, paragraph 3, subparagraph (a) is replaced by the following:

"(a) include all the particulars specified in paragraph 2 for a minimum period covering the day of control and the previous 56 days; these particulars must be updated on regular intervals, the duration of which may not exceed one month;"

(10) in Article 19, paragraph 1 is replaced by the following:

"1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EU) No 165/2014 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate to their gravity as determined in accordance with Annex III to Directive 2006/22/EC of the European Parliament and of the Council¹², dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EU) No 165/2014 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of those measures and the rules on penalties by the date specified in the second subparagraph of Article 29. They shall notify without delay any subsequent amendments thereto. The Commission shall inform Member States accordingly.";

¹² Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

(11) Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall work in close cooperation and provide each other with mutual assistance without undue delay in order to facilitate the consistent application of this Regulation and its effective enforcement, in line with the requirements set out in Article 8 of Directive 2006/22/EC.";

(b) in paragraph 2, the following point (c) is added:

"(c) other specific information, including the risk rating of the undertaking, liable to have consequences for compliance with the provisions of this Regulation.";

(c) the following paragraphs 3a and 3b are inserted:

"3a. For the purpose of the exchange of information within the framework of this Regulation, Member States shall use the bodies for intracommunity liaison designated pursuant to Article 7 of Directive 2006/22/EC.

3b. Mutual administrative cooperation and assistance shall be provided free of charge.";

(11a) in Article 24, the following paragraph is inserted:

"2a. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.";

(12) in Article 25, paragraph 2 is replaced by the following:

"2. In the cases referred to in point (b) of paragraph 1 the Commission shall adopt implementing acts setting out common approaches in accordance with the examination procedure referred to in Article 24(2a).";

Article 2

Regulation (EU) No 165/2014 is amended as follows:

(-1) In Article 1, the first subparagraph of paragraph 1 is replaced by the following:

"1. This Regulation sets out obligations and requirements in relation to the construction, installation, use, testing and control of tachographs used in road transport, in order to verify compliance with Regulation (EC) No 561/2006, Directive 2002/15/EC of the European Parliament and of the Council¹³ and Council Directive 92/6/EEC¹⁴, Council Directive 92/106/EEC¹⁵, Regulation (EC) No 1072/2009, Regulation (EC) No 1073/2009, Directive 96/71 and Directive 2014/67/EU as far as posting of workers in road transport is concerned, and with the Directive xxx/xxx/EU laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in road transport.*"

* Note: References to rules on posting of workers to be aligned with the final compromise on those files.

¹³ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

¹⁴ Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 2.3.1992, p. 27).

¹⁵ Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States, OJ L 368, 17.12.1992, p. 38.

(-1a) In Article 3, paragraph 4 is replaced by the following:

"4. No later than four years after the end of the year of entry into force* of detailed provisions referred to in the second sentence of the first paragraph of Article 11 which contain specifications for the recording of border-crossing and additional activities, all vehicles operating in a Member State other than their Member State of registration which are fitted with a tachograph not complying with the specifications in those detailed provisions, shall be fitted with a smart tachograph as provided in Articles 8, 9 and 10 of this Regulation.";

* [NOTE: expected as being end of 2024.]

(-1b) Article 7 is replaced by the following:

"Article 7

Data protection

1. Member States shall ensure that the processing of personal data in the context of this Regulation is carried out solely for the purpose of verifying compliance with this Regulation and with Regulation (EC) No 561/2006, Directive 2002/15/EC, Council Directive 92/6/EEC, Council Directive 92/106/EEC, Regulation (EC) No 1072/2009, Regulation (EC) No 1073/2009, Directive 96/71 and Directive 2014/67/EU as far as posting of workers in road transport is concerned, and with the Directive xxx/xxx/EU laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in road transport, in accordance with Regulation (EU) No 2016/679 and Directives-2002/58/EC and under the supervision of the supervisory authority of the Member State referred to in Article 51 of Regulation (EU) No 2016/679.

2. Member States shall, in particular, ensure that personal data are protected against uses other than those strictly linked to the legal acts referred to in paragraph 1, in relation to:
 - the use of a global navigation satellite system (GNSS) for the recording of location data as referred to in Article 8,
 - the use of remote communication for control purposes as referred to in Article 9, the use of tachographs with an interface as referred to in Article 10, the electronic exchange of information on driver cards as referred to in Article 31, and in particular any cross-border exchanges of such data with third countries,
 - the keeping of records by transport undertakings as referred to in Article 33.
3. Digital tachographs shall be designed in such a way as to ensure privacy. Only data necessary for the purposes of referred to in paragraph 1 shall be processed.
4. Owners of vehicles, transport undertakings and any other entity concerned shall comply, where applicable, with the relevant provisions on the protection of personal data.";

(1) Article 8(1) is amended as follows:

(a) the first subparagraph [...] is replaced by the following:

"In order to facilitate the verification of compliance with the relevant legislation, the position of the vehicle shall be recorded automatically at the following points, or at the closest point to such places where the satellite signal is available:

- the starting place of the daily working period;
- every time the vehicle crosses the border of a Member State;
- every time the vehicle performs loading or unloading activities;
- every three hours of accumulated driving time; and

- the ending place of the daily working period.";

(b) the following sentence is added to the second subparagraph:

"However, the recording of the border-crossing and additional activities referred to in the second and third indent of the first subparagraph shall concern vehicles registered in a Member State¹⁶ for the first time after two years* after the entry into force of the detailed provisions referred to in the second sentence of the first paragraph of Article 11, without prejudice to the obligation to retrofit certain vehicles later in accordance with Article 3(4)."

* [NOTE: expected as being no later than June 2022.]

(1a) Article 9 is amended as follows:

(a) The first sentence of paragraph 2 is amended as follows:

"Four years after the entry into force of detailed provisions referred to in the second sentence of paragraph 1 of Article 11 which contain specifications for the recording of border-crossing and additional activities referred to in the second and third indent of Article 8(1), Member States shall equip their control authorities to an appropriate extent with remote early detection equipment necessary to permit the data communication referred to in this Article, taking into account their specific enforcement requirements and strategies.";

¹⁶ NOTE: other provisions of this Regulations, which contain a similar reference to a vehicle registration date, will be aligned with this addition of precision ("in a Member State").

(b) Paragraph 3 is replaced by the following:

"3. The communication referred to in paragraph 1 shall be established with the tachograph only when so requested by the equipment of the control authorities. It shall be secured to ensure data integrity and authentication of the recording and control equipment. Access to the data communicated shall be restricted to control authorities authorised to check infringements of legal acts referred to in Article 7 (1), and of this Regulation and to workshops in so far as it is necessary to verify the correct functioning of the tachograph.";

(c) In Paragraph 4 the following indent is added:

"- exceeding maximum driving time.";

(1aa) In Article 10 the following paragraph is added:

2. "The tachographs of vehicles registered for the first time in a Member State two years* after the entry into force of detailed provisions referred to in the second sentence of paragraph 1 of Article 11 which contain specifications for the recording of border-crossing and additional activities referred to in the second and third indent of Article 8(1), shall be equipped with the interface referred to in paragraph 1.";

* [NOTE: expected as being no later than June 2022.]

(1ab) In Article 11, the following sentence is inserted after the first sentence of the first paragraph:

"The Commission shall bring into force the implementing acts providing the detailed provisions for the uniform application of the obligation to record and store data relating to any border crossing of the vehicle and additional activities referred to in the second and third indent of Article 8(1), by [OJ: 12 months after the entry into force of this amending Regulation].";

(1ac) In Article 22, paragraph 5, the two last subparagraphs shall be replaced by the following:

"The seals removed or broken shall be replaced by an approved fitter or a workshop without undue delay and at the latest within seven days of their removal. When the seals have been removed or broken for control purposes, they may be replaced by a control officer equipped with a sealing equipment and unique special mark without undue delay.

When a control officer removes a seal, the control card shall be inserted in the tachograph from the moment of the removal of the seal until the inspection is finished, including in case of placement of a new seal. The control officer shall issue a written statement containing at least the following information:

- vehicle identification number;
- name of the officer;
- control authority and Member State;
- number of the control card;
- number of the removed seal;
- date and time of seal removal;
- number of the new seal, in case the control officer has placed a new seal.

Before replacing the seals, a check and calibration of the tachograph shall be performed by an approved workshop, except where a seal has been removed or broken for control purposes and replaced by a control officer.";

(1ad) In Article 26, the following paragraph is added:

"(7a) The competent authority of the issuing Member State may require a driver to replace the driver card by a new one if this is necessary to comply with the relevant technical specifications.";

(1b) in Article 34, the first paragraph is replaced by the following:

"Drivers shall use records sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised or is necessary to enter the symbol after having crossed a border. No record sheet or driver card may be used to cover a period longer than that for which it is intended.";

(1c) in Article 34(6), the following point (f) is added:

"(f) the symbols of the countries in which the daily working period started and finished. The driver shall also enter the symbol of the country that the driver enters after crossing a border of a Member State at the beginning of the driver's first stop in that Member State. That first stop shall be made at the nearest stopping place at or after the border. Where the crossing of the border of a Member State takes place on a ferry or train, the driver shall enter the symbol of the country at the port or station of arrival.";

(2) in Article 34(7), the first subparagraph is replaced by the following:

"7. The driver shall enter in the digital tachograph the symbols of the countries in which the daily working period started and finished [...].

One year after the entry into force of detailed provisions referred to in the second sentence of paragraph 1 of Article 11 which contain specifications allowing to enter and store border crossing data, the driver shall also enter the symbol of the country that the driver enters after crossing a border of a Member State at the beginning of the driver's first stop in that Member State. That first stop shall be made at the nearest stopping place at or after the border. Where the crossing of the border of a Member State takes place on a ferry or train, the driver shall enter the symbol of the country at the port or station of arrival.

Member States may require drivers of vehicles engaged in transport operations inside their territory to add more detailed geographic specifications to the country symbol, provided that those Member States have notified those detailed geographic specifications to the Commission before 1 April 1998.";

(3) Article 36 is amended as follows:

(a) paragraph 1(i) is replaced by the following:

"(i) the record sheets for the current day and the preceding 56 days,";

(b) paragraph 1(iii) is replaced by the following:

"(iii) any manual records and printouts made during the current day and the preceding 56 days.";

(c) paragraph 2(ii) is replaced by the following:

"(ii) any manual records and printouts made during the current day and the preceding 56 days.";

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Articles 1(9a) and 2(3) shall apply from 31.12.2024. Until that date Article 16, paragraph 3, subparagraph (a) of Regulation (EC) No 561/2006 and Article 36, paragraphs 1(i), 1(ii) and 2(ii) of Regulation (EU) 165/2014 shall apply in their wording prior to the amendments introduced by this Regulation.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

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 and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹⁷,

Having regard to the opinion of the Committee of the Regions¹⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to create a safe, efficient and socially responsible road transport sector it is necessary to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable business and fair competition conditions for operators, on the other.

¹⁷ OJ C , , p. .

¹⁸ OJ C , , p. .

- (2) The inherent high mobility of road transport services requires particular attention in assuring that drivers benefit from the rights to which they are entitled and that operators are not faced with disproportionate administrative barriers unduly restricting their freedom to provide cross-border services.
- (3) The balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators is crucial for the smooth functioning of the internal market.
- (4) Having evaluated the effectiveness and efficiency of the current Union social legislation in road transport, certain loopholes in the existing provisions and deficiencies in their enforcement were identified. Furthermore a number of discrepancies exist between Member States in interpretation, application and implementation of the rules. This creates legal uncertainty and unequal treatment of drivers and operators, which is detrimental to the working, social and competition conditions in the sector.
- (5) Adequate, effective and consistent enforcement of the working time provisions is crucial for protecting the working conditions of drivers and preventing the distortions of competition resulting from non-compliance. Therefore it is desirable to extend the existing uniform enforcement requirements set out in Directive 2006/22/EC to controlling compliance with the working time provisions set out in Directive 2002/15/EU. In doing so, the necessary checks on compliance should be targeted towards undertakings which are not compliant with driving and rest time rules. Comprehensive checks can only be carried out at the premises of the undertakings. Roadside checks should be limited to the rules which can be controlled based on the documentation on board the vehicle.
- (6) The administrative cooperation between Member States with regard to the implementation of the social rules in road transport has proven insufficient, making cross-border enforcement more difficult, inefficient and inconsistent. It is therefore necessary to establish a framework for effective communication and mutual assistance, including exchange of data on infringements and information on good practices in enforcement.

- (6a) In order to facilitate roadside checks, updating of posting information and communication in a format standardised across official languages, the posting declaration should be processed through the Internal Market Information System (IMI).
- (6b) Exchange of information in the framework of administrative cooperation and mutual assistance between the Member States should comply with the rules on protection of personal data laid down in Regulation (EU) 2016/679. With regard to the exchange of information through the Internal Market Information System (IMI), it should also comply with Regulation (EC) No 45/2001* and Regulation (EU) No 1024/2012.**

* Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1)

** Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p.1)

- (7) In order to further improve the effectiveness, efficiency and consistency of enforcement, it is desirable to develop the features and the use of the existing national risk rating systems. Access to the data contained in risk rating systems would enable better targeting of controls at non-compliant operators and a uniform formula for assessing risk rating of a transport undertaking should contribute to fairer treatment of operators at controls.
- (8) In order to ensure uniform conditions for the implementation of Directive 2006/22/EC, implementing powers should be conferred on the Commission. The Commission should ensure the equal treatment of undertakings when taking into account the criteria specified in this Directive for the development of a common formula for calculating a risk rating of undertakings. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011¹⁹.

¹⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (9) Difficulties have also been experienced in applying the rules on posting of workers specified in Directive 96/71/EC of the European Parliament and of the Council²⁰ and the rules on the administrative requirements laid down in Directive 2014/67/EU of the European Parliament and of the Council²¹ to the highly mobile road transport sector. The uncoordinated national measures on the application and enforcement of the provisions on posting of workers in the road transport sector have generated high administrative burdens for non-resident Union operators. This created undue restrictions to the freedom to provide cross-border road transport services having negative side-effects on jobs.
- (10) The Commission, in its proposal of 8 March 2016²² for the revision of Directive 96/71/EC, recognized that the implementation of that Directive raises particular legal questions and difficulties in the highly mobile road transport sector and indicated that those issues should be best addressed through sector-specific road transport legislation.
- (11) In order to ensure the effective and proportionate implementation of Directive 96/71/EC in the road transport sector, it is necessary to establish sector-specific rules reflecting the particularity of the highly mobile workforce in the road transport sector and providing a balance between the social protection of drivers and the freedom to provide cross-border services for operators.
- (12) Such balanced criteria should be based on a concept of a sufficient link of the service provided and the driver with a territory of a host Member State. To facilitate enforcement of the rules a distinction should be made between different types of transport operations depending on the degree of connection with the territory of the host Member State. [...]

²⁰ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.97, p.1)

²¹ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

²² COM(2016)128

- (12a) It should be clarified that international carriage in transit across the territory of a Member State does not constitute a situation of posting. Such operations are characterised by the fact that the driver passes the Member State without loading or unloading freight and without picking up or setting down passengers and there is for those reasons only a very weak link between the driver's activities and the Member State transited.
- (12b) Moreover, when a driver engages in bilateral transport operations from the Member State where the undertaking is established to the territory of another Member State or a third country or to the Member State of establishment, the nature of the service is closely linked with the Member State of establishment. A driver may undertake several bilateral transport operations during one journey. It would constitute a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and thereby the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations.
- (12c) To ensure the efficient use of transport resources, a limited number of additional transport activities on the way should be possible without triggering the posting rules. Such activities consist of loading goods in a Member State that is crossed on the journey of the bilateral operation, and unloading the same goods in another Member State, or, during return before reaching the Member State of establishment, loading goods and unloading the same goods in another Member State.

- (12d) On the other hand, there is a sufficient link with the territory of a host Member State when a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, in that Member State. Cabotage operations are national carriage carried out on a temporary basis in a host Member State and thus closely linked to the territory of the host Member State without any close link with the Member State of establishment. A non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State in which the undertaking is established. The services performed are therefore linked with the host Member States concerned rather than the home Member State. In these cases, sector-specific rules are only required with regard to the enforcement regime.
- (12e) Similarly, in case that the driver is engaged in a combined transport operation, the nature of the service provided during the initial or final road leg is closely linked with the Member State of establishment if the road leg on its own is a bilateral transport operation. On the other hand, there is a sufficient link with the territory of a host Member State when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, and therefore posting rules should apply in such a case.
- (13) In order to ensure effective and efficient enforcement of the sector-specific rules on posting of workers and to avoid disproportionate administrative burdens for non-resident operators sector, specific administrative and control requirements should be established in the road transport sector, taking full advantage of control tools such as the digital tachograph. In order to monitor compliance with the obligations set out in this Directive and Directive 96/71/EC, Member States should be allowed to impose on road operators only the administrative requirements specified in this Directive, which are adapted to the road transport sector. While certain documents should be available in case of roadside inspection, other documents should be made available by the road operators via the competent authorities of the Member State where the operator is established, in the framework of mutual assistance between Member States set out in Chapter III of Directive 2014/67/EU.

- (13a) To facilitate better and more uniform application of the minimum conditions for the implementation of Regulation (EC) No 561/2006, Regulation (EU) No 165/2014 and Directive 2002/15/EC, and to facilitate road transport operators' compliance with administrative requirements when posting drivers, the Commission should develop one or several modules of IMI.
- (13b) In order to adapt the Annexes of this Directive to developments in best practice, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending those Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (13c) It is important that road transport operators established in third countries, while performing road transport operations in the territory of the Union, are subject to rules which are equivalent to rules set out in this Directive. The Commission should assess the fulfilment of this principle at Union level and propose adequate solutions for efficient enforcement of the rules.
- 13d) This Directive will apply from 30 July 2020. That date will be the date from which Directive 2018/957 should apply to the road transport sector, in accordance with its Article 3(3).

* OJ L 123, 12.5.2016, p. 1.

(14) Directive 2006/22/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/22/EC is amended as follows:

(1) the title is replaced by the following:

"Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC of the European Parliament and of the Council as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC";

(2) Article 1 is replaced by the following:

"This Directive lays down minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014* and Directive 2002/15/EC**."

* Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

** Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).";

(3) Article 2 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

"These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles falling within the scope of Regulations (EC) No 561/2006 and (EU) No 165/2014 and of mobile workers and drivers falling within the scope of Directive 2002/15/EC.";

(b) in paragraph 3, the first subparagraph is replaced by the following:

"Each Member State shall organise checks in such a way that at least 3% of days worked by drivers of vehicles falling within the scope of Regulation (EC) No 561/2006 and Regulation (EU)165/2014 [...] are checked.";

(ba) The following paragraph is inserted:

"3a. Each Member State shall organise checks on compliance with the provisions of Directive 2002/15/EC taking into account the risk rating system provided for in Article 9c of this Directive. Those checks shall be targeted to an undertaking if one or more of its drivers have been continuously or seriously infringing the provisions of Regulation (EC) No 561/2006 or Regulation (EU) No 165/2014.";

(c) paragraph 4 is replaced by the following:

"4. The information submitted to the Commission in accordance with Article 17 of Regulation (EC) No 561/2006 and Article 13 of Directive 2002/15/EC shall include the number of drivers checked at the roadside, the number of checks at the premises of undertakings, the number of working days checked and the number and type of infringements reported, together with a record of whether passengers or goods were transported.";

(4) in Article 6, paragraph 1 is replaced by the following:

"1. Checks at premises shall be planned in the light of past experience in relation to the various types of transport and undertakings. They shall also be carried out if serious infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014 or Directive 2002/15/EC have been detected at the roadside.";

(5) in Article 7(1), the following point (d) is added:

"(d) to ensure exchange of information with the other Member States pursuant to Article 8 of this Directive with regard to the application of national provisions transposing this Directive and Directive 2002/15/EC.";

(6) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Information exchanged bilaterally under Article 22 of Regulation (EC) No 561/2006 or Article 40 of Regulation (EU) No 165/2014 shall be exchanged between the designated bodies notified to the Commission in accordance with Article 7(2):

(a) at least once every six months after the entry into force of this Directive;

(b) upon reasoned request by a Member State in individual cases.";

(b) the following paragraph 1a is inserted:

"1a. Member State shall submit the information requested by other Member States pursuant to paragraph 1(b) of this Article within 30 working days from the receipt of the request [...]. A shorter time limit may be mutually agreed between the Member States. In urgent cases or cases requiring simple consultation of registers, such as of a risk rating system, the requested information shall be submitted within three working days.

Where the requested Member State considers that the request is insufficiently reasoned, it shall inform the requesting Member State accordingly within 10 working days. The requesting Member State shall further substantiate the request. Where this is not possible, the request may be rejected by the Member State.

Where it is difficult [...] to comply with a request for information or to carry out checks, inspections or investigations, the Member State in question shall inform the requesting Member State accordingly within 10 working days, giving reasons. The Member States concerned shall discuss with each other with a view to finding a solution for any difficulty raised.";

(c) paragraph 2 is replaced by the following:

"2. The exchange of information provided for in this Article shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012*.";

* Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).";

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall introduce a risk rating system for undertakings based on the relative number and severity of any infringement of Regulation (EC) No 561/2006 or of Regulation (EU) No 165/2014 or of national provisions transposing Directive 2002/15/EC that an individual undertaking has committed.

The Commission shall, by means of implementing acts, establish a common formula for calculating a risk rating of undertakings, which shall take into account the number, severity and frequency of occurrence of infringements as well as the results of controls where no infringement has been detected and whether a road transport undertaking has been using the smart tachograph, pursuant to Chapter II of Regulation (EU) No 165/2014, on all its vehicles. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive.";

(b) in paragraph 2, the second sentence is deleted.

(ba) paragraph 3 is replaced by the following:

"3. An initial list of infringements of Regulation (EC) No 561/2006 and Regulation (EC) No 165/2014 and their weighting of gravity is set out in Annex III.

The Commission is empowered to adopt delegated acts in accordance with Article 15a of this Directive amending Annex III in order to take account of regulatory developments and considerations of road safety.

The category for the most serious infringement should include those where failure to comply with the relevant provisions of Regulation (EC) No 561/2006 and Regulation (EC) No 165/2014 create a serious risk of death or serious personal injury.";

(c) the following paragraphs 4 and 5 are added:

"4. In order to facilitate targeted roadside checks, the data contained in the national risk rating system shall be accessible at the time of control to all the competent control authorities of the Member State concerned.

5. Member States shall make the information contained in the national risk rating system available upon request or directly accessible to all competent authorities of other Member States in accordance with the time limits set out in Article 8.";

(8) in Article 11, paragraph 3 is replaced by the following:

"3. The Commission shall establish a common approach to recording and controlling periods of other work, as defined in point (e) of Article 4 of Regulation (EC) No 561/2006, and periods of at least one week during which a driver is away from the vehicle, by implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).";

(8a) Article 12 is replaced by the following:

"Article 12
Committee procedure

1. The Commission shall be assisted by the Committee set up by Article 42(1) of Regulation (EU) 165/2014.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.";

(8b) Article 15 is replaced by the following:

"Article 15
Updating of Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 15a amending Annexes I and II to introduce necessary adaptations to developments in best practice.";

(8c) The following article is inserted:

"Article 15a
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9(3) and Article 15 shall be conferred on the Commission for a period of 5 years from [date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 9(3) and Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 9(3) and Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.";

* OJ L 123, 12.5.2016, p. 1.

- (9) Annex I is amended as follows:

- (a) in Part A, the following point (6) is added:

"(6) extended maximum weekly working times of 60 hours as set out in Articles 4 point (a) of Directive 2002/15/EC.";

- (b) in Part B, the following points are added:

"(4) maximum average weekly working times, breaks and night work requirements set out in Articles 4, 5 and 7 of Directive 2002/15/EC.

(5) observance of the obligations of undertakings as regards the payment for drivers' accommodation and the organisation of the work of drivers, in accordance with Article 8(8) and (8a) of Regulation 561/2006."

Article 2

1. This Article establishes specific rules as regards certain aspects of Directive 96/71/EC relating to the posting of drivers in the road transport sector and of Directive 2014/67/EU of the European Parliament and of the Council relating to administrative requirements and control measures for the posting of those drivers.

- 1a. These specific rules shall apply to drivers employed by undertakings established in a Member State which take one of the transnational measures referred to in Article 1(3) (a) and (b) of Directive 96/71/EC.
2. [...] A driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations.

For the purpose of this Directive, a bilateral transport operation in respect of goods is the movement of goods, based on a transport contract, from the Member State of establishment, as defined in Article 2(8) of Regulation (EC) No 1071/2009 to another Member State or a third country, or from another Member State or third country to the Member State of establishment.

- 2a. For vehicles equipped with a smart tachograph complying with the recording of border crossing and additional activities referred to in Article 8(1) subparagraph 1 of Regulation (EU) 165/2014, Member States shall also apply the exemption set out in paragraph 2 in respect of goods transport 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, under the conditions set out above."

- 2b. For the purpose of international occasional or regular carriage of passengers, as defined in Regulation (EC) No 1073/2009, a bilateral transport operation is the picking up of passengers in the Member State of establishment and setting them down in another Member State or a third country, or again in the Member State of establishment (international closed door tours).

2c. For vehicles equipped with a smart tachograph complying with the recording of border crossing and additional activities referred to in Article 8(1) subparagraph 1 of Regulation (EU) 165/2014, Member States shall also apply the exemption set out in paragraph 2 in respect of passenger transport when the driver performing a bilateral transport operation in addition thereto:

- picks up passengers once; and/or
- sets down passengers once

in Member States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same shall apply to the return journey.

2d. A driver performing cabotage as defined by Regulations (EC) No 1072/2009 and 1073/2009 shall be considered to be posted under Directive 96/71/EC.

2e. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted to the territory of a Member State that the driver transits through without loading or unloading freight and without picking up or setting down passengers.

2f. 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 as defined in paragraph 2.

[...]

4. By way of derogation from Article 9 paragraphs 1 and 2 of Directive 2014/67/EU, Member States may only impose the following administrative requirements and control measures with respect to the posting of drivers:

- (a) an obligation for the road transport operator established in another Member State to send a posting declaration to the national competent authorities at the latest at the commencement of the posting, [...] using a multilingual standard form of the public interface connected to the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012. The standard form of the posting declaration shall consist of the following information:
- (i) the identity of the road transport operator;
 - (ii) the contact details of a transport manager or other contact person(s) in the Member State of establishment to liaise with the competent authorities of the host Member State, in which the services are provided and to send out and receive documents or notices;
 - (iii) the anticipated number and the identities of posted drivers;
 - (iiia) the starting date of the employment contract of each driver;
 - (iv) the [...] envisaged beginning and anticipated duration of the posting;
 - (v) the number plates of the motor vehicles [...];
 - (vi) the type of transport services, that is to say carriage of goods, carriage of passengers, international carriage, cabotage operation;
- (b) an obligation for the driver to keep and make available, where requested at the roadside control, in paper or electronic form:
- (i) a copy of the posting declaration;
 - (ii) evidence of the transport carriage(s) taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8 of Regulation (EC) No 1072/2009;

- (iii) the tachograph records, and in particular the country codes of Member States where the driver has been present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006 and (EU) No 165/2014; [...]
- (c) an obligation for the road transport operator to deliver, after the period of posting, in paper or electronic form, copies of documents referred to in point (b) [...] 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/EEC²³, time-sheets relating to the driver's work and proof of payments. In accordance with Articles 6 and 7 of Directive 2014/67/EU the competent authority of the host Member State shall make the corresponding request to the competent authority of the Member State of establishment, which latter shall request that information from the operator.

However, as regards the documentation of the remuneration and proof of payments relating to posted drivers, the Member State may also impose an obligation for the road transport operator to upload documentation to the IMI public interface without undue delay upon request communicated via IMI by the competent authority of the host Member State.

In order to ascertain that drivers, in accordance with paragraphs 2 to 2c, are not to be considered posted, Member States may only impose as control measure an obligation for the driver to keep and make available, where requested at the roadside control, in paper or electronic form, the evidence of the relevant international carriage(s) such as an electronic consignment note (e-CMR) or evidence referred to in Article 8 of Regulation (EC) No 1072/2009, and tachograph records referred to in point b) (iii).

5. For the purposes of [...] control, the transport operator shall keep the posting declaration referred to in point (a) of paragraph 4 up to date.

²³ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

6. By [OJ: 6 months after the entry into force of this amending Directive], the Commission shall specify, by way of implementing act, the functionalities of the posting declaration in the IMI and how the information referred to in paragraph 4 point (a) (i) to (vi) above is to be presented in the posting declaration. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 2a (2).

Article 2a

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 3

1. The Commission shall evaluate the implementation of this Directive, in particular the impact of Article 2, by [3 years after the date for transposition of this Directive] and report to the European Parliament and the Council on the application of this Directive. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.
2. Following the report referred to in paragraph 1, the Commission shall regularly evaluate this Directive and submit the evaluation results to the European Parliament and the Council.
3. Where appropriate, the reports referred to in paragraphs 1 and 2 shall be accompanied by relevant proposals.

Article 3a

The Annex to Regulation (EU) No 1024/2012 is amended as follows:

1. the following point is inserted:

"6a. Directive xxx/xxx/EU laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting of drivers in road transport: Article 2(4).";

2. the following point is added:

"7b. Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC of the European Parliament and of the Council as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC: Article 8."

Article 4

1. Member States shall adopt and publish, by 30 July 2020 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [*OJ*: insert same date as in previous paragraph].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President