

ORDINARY LEGISLATIVE PROCEDURE – First reading

Follow up to the European Parliament legislative resolution on the proposal¹ for a regulation of the European Parliament and of the Council amending Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009 with a view to adapting them to developments in the sector

(Pursuing the occupation of road transport operator and access to the international road haulage market)

1. **Rapporteur:** Ismail ERTUG (S&D / DE)
2. **Reference numbers:** 2017/0123 (COD) / A8-0204/2018 / P8_TA-PROV(2019)0341
3. **Date of adoption of the resolution:** 4 April 2019
4. **Legal basis:** Article 91(1) of the Treaty on the Functioning of the European Union
5. **Competent Parliamentary Committee:** Committee on Transport and Tourism (TRAN) and Employment and Social Affairs (EMPL)
6. **Commission's position:**

The Commission can accept certain amendments, whereas others should be rejected or modified to be acceptable. The Commission keeps a reserve on all points not addressed here.

Extension of the scope of Regulation 1071/2009 and Regulation 1072/2009 to vehicles above 2.4t involved in international transport (amendments 110, 114, 124, 126, and 166)

The Commission proposed to extend Regulation 1071/2009 to all light commercial vehicles (LCV) (with no minimum weight limit), but only some conditions on access to the profession would apply. Similarly to the General Approach of the Council the European Parliament proposes to extend all conditions on access to the profession and to the market to light commercial vehicles, but only to those involved in international transport and having weight above 2.4 tonnes.

The Commission can support these amendments: they maintain the objective of setting a minimum regulatory framework for light commercial vehicles where these could impact the level playing field, i.e. in international transport. Licencing of carriers operating nationally, which might have substantial impact on very small undertakings operating locally, will continue to be dealt with by the Member States. On top of that certain conditions have been adapted to take account of the specificities of LCV's compared to heavy goods vehicles (HGV's) (e.g. lower financial standing for LCV's).

Additional requirements for a stable and effective establishment (amendments 112 and 127 to 133)

The European Parliament proposes to add certain requirements for a stable and effective establishment, notably: a requirement for the trucks to carry out at least 1 loading or unloading

¹ COM(2017) 281

operation in the Member States of establishment every 4 weeks; a requirement of a “clear link between the transport operations carried out and the Member State of establishment” and a requirement for the operator to have parking places at the premises; a requirement that the establishment is the place from which workers habitually carry out their work; a requirement for operators to recruit and employ drivers under the law applicable to labour contracts in the Member State of establishment (Rome I).

The Commission can in general accept provisions which help the fight against letterbox companies, since this is a major objective of its proposal. However, a number of requirements proposed by the European Parliament raise concerns.

The requirements for parking places and for the return of the truck raise issues of necessity, proportionality and impact on the efficiency of operations. They need to be carefully considered.

The proposed requirements regarding applicable law (amendments 132 and 133) needs some rewording. On the one hand personnel which is proportionate to the size of the undertaking is an important factor to determine whether this undertaking has an establishment in a Member State. On the other hand undertakings must not lose their license simply because they also employ staff in Member States other than of the (stable and effective) “establishment” required by Regulation (EC) No 1071/2009.

Likewise the requirement of a “clear link between the transport operations carried out and the Member State of establishment” (amendment 131) needs some redrafting. As worded, this amendment would oppose so-called cross-trade, i.e. a type of operation clearly allowed to license holders under Article 3 in combination with Article 2(2)(a) of Regulation (EC) No 1072/2009.

Strengthening of enforcement (amendments 115, 119, 122, 141 to 155 and 173 to 180)

The European Parliament proposes several measures intended to strengthen enforcement, notably by: extending the information available to enforcers in the national electronic registers of operators to the labour contracts of international drivers of the past 6 months; granting real-time access to the European Register of Road Transport Operators (ERRU) to enforcers from all the Member States; introducing the Internal Market Information system (IMI) as the main tool for administrative cooperation between the Member States; imposing stricter deadlines for administrative cooperation regarding establishment criteria/ letterbox companies.

The Commission in general welcomes measures aimed at improving enforcement of road transport rules. In particular, the use of IMI is very welcome. However, certain proposals go quite far and need to be carefully assessed. For example, real-time access to ERRU by all enforcers raises issues of technical feasibility, development costs and data privacy. On top of that many aspects of EU legislation can be best checked at premises of the road transport undertakings rather than at roadside checks.

Including labour contracts in ERRU also raises issues of technical feasibility and administrative burden. Therefore amendments 143 (include labour contracts in ERRU), 146 (make ERRU data available to consignors, freight forwarders, contractors and subcontractors) and 147 (information of ERRU directly accessible) cannot be accepted in their current wording.

As far as the stricter deadlines for administrative cooperation, while the amendments 152 and 153 can be accepted (shorter deadline for the Member State to refuse a request for information sent by another Member State), a substantially shorter deadline to provide the information (15 days) is not acceptable considering that the Member State concerned shall dispose of sufficient time to carry out the necessary investigations.

Some recitals (amendments 119 and 122) are unrelated to the enacting terms and therefore create confusion rather than enhancing clarity. In part, they undermine the Commission's approach in other files [amendment 119, which bears a link to the Commission's proposal on electronic freight transport information, COM(2018) 279 final].

Access to international road haulage market and cabotage (amendments 116 to 118, 120, 164, and 168 to 172)

The European Parliament proposes several measures to regulate access to the international road haulage market, including cabotage: a requirement for the Community licence to be issued only to operators carrying out international operations with vehicles equipped with smart tachographs; an unlimited number of cabotage operations in the host Member State during 3 days; a 60-hour "cooling-off" period starting from the return of the truck to the Member State of establishment; a requirement for operators to carry in the truck the pay slips of drivers in order to carry out cabotage; cabotage restrictions imposed on the road legs of combined transport operations.

Any restriction to cabotage needs a strong justification, in particular the cooling-off period which is also part of the General Approach of the Council, having regard to the Court's jurisprudence (Case 13/83), but also the length of the period during which cabotage can be performed following an international operation and the number of cabotage operations allowed during this period (this last criteria of Regulation 1072/2009 is removed in the amendment voted by the European Parliament). As highlighted in Regulation 1072/2009 (recital 6) this should also "take into account the effectiveness of controls and the evolution of employment conditions in the profession, the harmonisation of the rules in the fields of, inter alia, enforcement and road user charges, and social and safety legislation". As far as the additional requirement imposed by the European Parliament, according to which a new cabotage operation can be carried out in the same Member State with the same vehicle only after return of the vehicle to the haulier's Member State establishment and after performance of a new international carriage from that Member State, it is not clear how such requirement could be justified, in particular in light of the new set of criteria in Regulation 1071/2009 intended to ensure that the necessary establishment be "effective and stable".

The impact of the requirement for the Community licence to be issued only to operators carrying out international operations with vehicles equipped with smart tachographs is not acceptable. The requirements related to the use of the tachograph shall be set out in Regulation 561/2006 and not in Regulation 1072/2009 to avoid conflictual requirements in different pieces of legislation (in particular in terms of date of implementation). On the other hand non-compliance with the tachograph requirements as set out in Regulation 561/2006 may already lead to the loss of good repute of the haulier, as provided for in Regulation 1071/2009. Therefore it is neither necessary nor appropriate to have additional requirements related to the tachograph in Regulation 1072/2009.

The obligation for the driver to carry payslips to be able to carry out cabotage (amendment 172) does not appear appropriate or necessary. The Commission assumes that this obligation aims at controlling whether the driver has been paid the minimum wage of the host Member States where transport operations were carried out. While this objective is legitimate, the corresponding obligations on road transport undertakings should be included in the appropriate legal text, i.e. the rules on the posting of workers. One of the amendments voted by the European Parliament on the *lex specialis* on the posting of workers precisely includes an obligation on road transport operators to send via the IMI public interface documentation of the remuneration of posted drivers (e.g. payslips). Such requirement in Regulation 1072/2009 therefore appears redundant. On top of that, Commission does not consider that a detailed

control of the conditions of remuneration – which will require analysis of various documents like payslips, timesheets relating to the driver's work and proof of payment - can be done in an efficient way along the road. Such controls should take place at the premises of the road transport undertaking.

Finally, imposing restrictions on the road legs of combined transport operations should be dealt with in the relevant Commission proposal, not in Regulation 1072/2009.