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## UEAPME Transport Forum

### Position on the enhancement of the social legislation in road transport

**UEAPME Transport Forum** is a co-operation platform set up by UEAPME (The European Association of Craft, Small and Medium-sized Enterprises) and bringing together representatives of European branch confederations, SMEs from road transport, manufacturing and repair of road vehicles. It aims to gather different stakeholders and develop joint positions on all road transport-related issues such as sustainable transport, organisation of the supply chain, road safety, and infrastructure efficiency.

#### Background:

In September 2016, the European Commission launched a public consultation on the enhancement of the social legislation in road transport.

The EU framework of the road social rules is established in the following legislative acts:

- Regulation No 561/2006 sets out minimum requirements on driving times, breaks and rest periods.
- Directive 2002/15/EC stipulates the organisation of the mobile workers' working time and thus complements the Regulation's provisions.
- Directive 2006/22/EC imposes minimum enforcement requirements for Member States to control compliance by drivers and operators with the Regulation's provisions.

The EU provisions on posting of workers affect directly the functioning of the international road transport sector raising legal issues that should be addressed through sector-specific legislation. Therefore, Directive 96/71/EC (and enforcement Directive 2014/67/EU) will be assessed within the framework of the review of road transport social legislation.

#### Our position:

The current road transport social legislation sufficiently protects the social rights of road transport workers and enhances road safety, but it is not appropriate to eliminate unfair competition between operators, notably due to the lack of clarity of certain social provisions, such as the drivers' Working Time Directive.

The framework of EU social rules contains provisions that remain unclear or are subject to diverse national interpretations and enforcement practices.

UEAPME Transport Forum points out that a different and incomplete application of existing social rules, a weak and diverging enforceability between Member States, as well as a low compliance with the legislation by drivers and operators are the main causes for the challenges and obstacles in the international road transport sector.

**Interpretation of rules:** The Directive 2002/15/EC on drivers' working time establishes minimum and too general criteria for the respect of workers' rights, bringing different interpretations of the provision among the Member States. Lacking in a common EU legislation on working time, it is not possible to find a homogeneous implementation of the Regulation (EC) No 561/2006 by the Member States. The non-coordination of the national measures inevitably leads to a distortion of competition between operators, based on a different tolerance on driving time and/or differences in

labour costs. With the persistence of the current conditions, the risk of the adoption of protectionist measures by the national governments, aimed at hampering the development of systematic illegal cabotage, and the consequent threat to the freedom of movement of goods, services and workers are rather realistic. UEAPME Transport Forum advocates for a more effective harmonisation of the legislations based on clearly defined criteria and for the integration of the EC guidelines published on the *Europa* website into the EU legislation.

**Implementation of rules:** The implementation of the Directive 2002/15/EC regulating the organisation of the working time of persons performing mobile road transport activity results unsuitable for the needs of the transport workers, who have to conciliate the market requests with external factors such as the growing congestions on the roads or the planned traffic bans, in order to preserve their competitiveness within the single market.

The issue becomes particularly sensitive in the moment of dealing with the dispositions on the regular weekly rest, as the current legislation appears unclear and incomplete and generates issues at different levels. On one hand, for the workers willing to return to their base, the strict regulation of driving time may constitute an obstacle. On the other hand, those preferring to spend the weekly rest in the vehicles do not have guaranteed acceptable living conditions, due to the lack of adequate infrastructures such as dedicated park and rest areas. UEAPME Transport Forum calls for a more concrete and flexible legislation based on the balance between social protection of the workers and the freedom to provide cross-border services.

**Flexibility of transport operations:** The implementation of the EU legislation affects also the daily planning of the work of transport workers. More in detail, the current disposition set in the Regulation (EC) No 561/2006 on resting time obliges the drivers to take a break of at least 45 minutes every 4:30 hrs, with a unique option of splitting it into a first break of at least 15 minutes and a second one of at least 30 minutes. Being in favour of the freedom of workers of managing their working, driving and resting time, UEAPME Transport Forum asks for the re-adoption of the Article 7(2) of the ECC Regulation 3820/85 on split breaks<sup>1</sup> and, in its framework, for the recognition of availability periods as break one.

**Posting of workers:** The Directive 96/71 and 2014/67/EU on posting of workers has been transposed into the Member States' legislations. The current situation leads to control and coordination issues between Member States in international operations and high administrative burdens, which may negatively impact on the freedom to provide (transport) services. Cabotage is the only transportation form that justifies the full application of the posting of workers directive. All other forms (transit, destination-/origin transportation) last for few hours only and do not create unfair competition. UEAPME Transport Forum calls for the exemption of transportation from the POW-directive and the creation of a posting directive that is especially adapted to the needs of transportation (*lex specialis*).

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<sup>1</sup> 1. After four-and-a-half hours' driving, the driver shall observe a break of at least 45 minutes, unless he begins a rest period.  
 2. This break may be replaced by breaks of at least 15 minutes each distributed over the driving period or immediately after this period in such a way as to comply with the provisions of paragraph 1.  
 3. By way of exception from paragraph 1, in the case of national carriage of passengers on regular services Member States may fix the minimum break at not less than 30 minutes after a driving period not exceeding four hours. Such exceptions may be granted only in cases where breaks in driving of over 30 minutes could hamper the flow of urban traffic and where it is not possible for drivers to take a 15-minute break within four-and-a-half hours of driving prior to a 30-minute break.  
 4. During these breaks, the driver may not carry out any other work. For the purposes of this Article, the waiting time and time not devoted to driving spent in a vehicle in motion, a ferry, or a train shall not be regarded as 'other work'.  
 5. The breaks observed under this Article may not be regarded as daily rest periods.

**Cross-border control cooperation and information sharing:** The Directive 2014/67/EU provides with general guidelines concerning access to information, mutual assistance, administrative cooperation, inspections and fines. However, the room for the adaptation of the dispositions to the national models is still wide, as the transposition into the national legislation is subordinated to the principle of cost efficiency. As result, the Member States are continuing to use different registration and control tools for detecting infringements, hampering as a consequence the principles of cross-border control cooperation and information sharing as foreseen by the Directive. In order to reach more efficient harmonisation within the EU, UEAPME Transport Forum advocates for the institution of a European Road Transport Agency aimed at coordinating cross-border controls and national legislations, based on objective parameters in line with the Directive 2014/67/EU. Moreover, we draw the attention on the need to undertake measures that do not affect the working activity of the drivers, such as the registration at the borders.

**Co-liability in the transport operation chain:** The Regulation (EC) No 561/2006 establishes the liability of transport undertakings towards the infringements committed by their employees. The legislation makes reference to the exclusion of liability of undertakings in case of evidence that the mentioned actors cannot reasonably be held responsible for the infringements committed. However, the roles and the responsibilities for infringements among actors in transports chains are not clear and can generate issues of interpretation. UEAPME Transport Forum asks for a clarification of the terms of co-liability in the transport operation chain.

**Our proposal:**

In order to better face these important issues in the European transport scheme, we propose the following policy actions:

- 1. Effective harmonisation of the legislations based on clearly defined criteria**
- 2. The integration of the EC guidelines into the EU legislation**
- 3. A sector specific directive on posting of transportation workers**
- 4. Re-adoption of the Article 7(2) of the ECC Regulation 3820/85 on split breaks**
- 5. Institution of a European Road Transport Agency aimed at coordinating cross-border controls and national legislations**
- 6. Clarification of the terms of co-liability in the transport operation chain**