

Position Paper

UEAPME¹ - Position on 'Europe on the Move' Package *

Brussels, 20.02.2018

Background:

The European Commission is taking action to modernise European mobility and transport. The aim is to help the sector to remain competitive in a socially fair transition towards clean energy and digitalisation. 'Europe on the Move' is a wide-ranging set of initiatives that will make traffic safer; encourage fairer road charging; reduce CO2 emissions, air pollution and congestion; cut red-tape for businesses; fight illicit employment and ensure proper conditions and rest times for workers. The long-term benefits of these measures will extend far beyond the transport sector by promoting jobs, growth and investment, strengthening social fairness, widening consumers' choices and firmly putting Europe on the path towards low emissions.

UEAPME Transport Forum Position:

The UEAPME Transport Forum welcomes the Commission's aim to promote clean, competitive and connected mobility and to achieve a more harmonised framework for road transport operators. Some proposals are already a step in the right direction, but there is still need for improvement, as some proposed changes do not correspond to the needs of daily practice of our member companies.

We put forward the following principles that reflect the needs of transport businesses and shall be respected in the course of the discussions:

- Clear, precise, transparent and comprehensible EU rules respecting the principle of Better Regulation
- Uniform transposition of EU-law throughout the European Union
- Effective and uniform enforcement of current legislation
- No administrative burden for businesses
- Minimize additional costs for businesses
- Fair competition and a level playing field throughout the Union
- Raising the attractiveness of the road transport sector in general and the professions of bus/coach and truck driver in particular
- Ensure fair competition throughout the Union

* https://ec.europa.eu/transport/modes/road/news/2017-05-31-europe-on-the-move_en

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transport/modes/road/news/2017-05-31-europe-on-the-move_en).

1. Revision of Regulation 1071/2009 on access to the occupation of road transport operator and Regulation 1072/2009 on access to the international road haulage market.

Regulation No 1071/2009, which sets the provisions that undertakings must comply with in order to access the occupation of road transport operator, has not led to EU wide harmonized market conditions, yet. The same is true for Regulation 1072/2009. Thus, we welcome the Commission proposal and put forward the following proposals:

Access to the occupation of road transport operator

We put forward the following principles that reflect the needs of transport businesses and shall be respected in the course of the discussions:

- EU rules should lead to real harmonisation and level playing field. Thus, we consider clear and binding rules very important to avoid distortion of competition. Rules have to be applied in all Member States in a uniform way.
- It is of utmost importance to establish rehabilitation measures as foreseen by Regulation 1071/2009. A harmonised catalogue of rehabilitation measures should be provided at EU level in order to enable EU entrepreneurs to re-establish good repute in a homogenous manner.
- TF calls for the creation of a “Comparison table” for infringements and sanctions among national laws, in order to ensure a minimum level of harmonization of approach for sanctions.

Scope (Art 1)

We support the extension of the access to profession provisions to light commercial vehicles, in particular of all the four requirements. Requirements regarding effective and stable establishment and appropriate financial standing as well as good repute and professional competence should be mandatory and applied in a uniform manner by all Member States. Additionally, no distinction should be made between hauliers operating on a national or international basis. This is the only way to ensure quality in transport. A restriction to LCV operating at the international level only would make the proposal redundant and lead to a distortion of competition.

Member States should be allowed to introduce additional requirements but only on the national market and for new national operators (as it happens already in certain MS in order to address purely national issues eg. market saturation).

Moreover, EU requirements on access (starting from good repute) should be applied to Transport Intermediaries also, to ensure professionalization and quality in the transport sector as a whole.

Requirement of establishment (Art 5)

We welcome the introduction of stricter rules to fight letterbox companies, because they are increasingly being used as a tool to get around paying workers' wages and social security contributions. Letterbox companies are a common tool for fraudulent companies to abuse the principles of the Internal Market. They also go against the fundamental principle of companies competing fairly on a level playing field.

Good repute (Art 6)

The Regulation should establish a **harmonised catalogue of rehabilitation measures** at EU level in order to enable EU entrepreneurs to re-establish good repute in a homogenous manner. For small businesses or individual entrepreneurs, the loss of good repute may lead to the closure of the company and even to the loss of jobs. Furthermore, infringements where compliance lies within the driver's sphere can have influence on good repute of the companies, although there is no possibility for the entrepreneur to prevent them.

In this regard, we consider it important to be able to establish good repute **within less than one year** from the date of loss.

We welcome the inclusion of infringements against cabotage provisions in the list of serious infringements.

Financial standing (Art 7)

There should be more flexibility for businesses to prove financial standing, e.g. by taking reserves into account or by a professional liability insurance. In addition, the amount for LCVs of € 1800 for the first and € 900 for each additional vehicle used should be reduced to € 1500 and € 500 respectively.

Access to the international road haulage market

Cabotage (Art 8)

The proposal to remove the maximum number of cabotage operations, while reducing the maximum period for cabotage operations (5 days) would lead to a complete liberalisation of cabotage operations, which cannot be accepted as long as social and economic framework conditions differ throughout the EU. Even a cooling-off period of e.g. 7 days is not sufficient.

We prefer to keep the existing system of 7 days and 3 operations. Systematic, continuous cabotage must be prevented and an effective and uniform enforcement of the current set of rules has to be established. That includes a clear definition of the term cabotage and the promotion of the use of the digital tachograph equipped with Global Navigation Satellite System (GNSS) capability. This helps to identify start, end and periods of cabotage operations to target cabotage checks.

Cabotage – Controls and sanctions for infringements, checking systems (Art 10a)

From our experience, currently the main problem is the lack of efficient enforcement of existing cabotage rules. As regards the level of controls exercised in practice by Member States we observe very significant variance between Member States. The same can be said about the interpretation of the term "posting of workers". That leads to a competitive disadvantage of hauliers from some Member States. Effective inspections and controls have to be put in place. We welcome the establishment of a minimum number of controls per year.

- Documents that prove that a legal cabotage operation is carried out should be kept in each of the haulier's vehicles and must be presented at the request of any authorised inspecting officer.
- We propose to introduce a compulsory cabotage control form (consecutively numbered) issued by the competent authority (Community model to be adopted). This obligation has to be explicitly introduced in Regulation (EC) No 1072/2009.
- It is important to ensure coherent and consistent enforcement of the existing rules in Member States and to ensure coherent application of the rules in Member States. Cooperation between Member States in order to allow more effective cross-border enforcement is necessary.
- A transport company has to be able to provide clear proof of prior international transport. The evidence may also be transmitted or submitted electronically during the duration of road check, e.g. expressing e-CMR.
- TF supports digitalization in road transport and the deployment of the use of the e-CMR.
- The provisions on cabotage have to be applied in the context of combined transport as well.

- The co-liability principle (for both knowingly commissioning transport services that involve infringements of the regulation) must be included for a true and effective compliance culture. This is key to ensure a truly fair EU Transport market.

2. Social Rules in Road Transport - Revision of Regulation 561/2006 on driving time and rest periods and of Regulation 165/2014 on tachographs

The current legal situation resulting from historic development does not correspond to the needs of daily practice of transport businesses. The Commission proposal is a step in the right direction but not sufficient to actually improve the situation for businesses.

We put forward the following principles that reflect the needs of transport businesses and shall be respected in the course of the discussions:

- These rules have to be transparent, clear and comprehensible in order to prevent different interpretations by Member States.
- The leeway for Member States to introduce deviating national rules shall be reduced to a minimum.
- We need more flexibility. EU wide harmonised rules on tolerances for minor infringements have to be introduced. This could include cases where the driver exceeds the maximum driving time or reduces the minimum rest period or break only by a few minutes.

Definitions (Art 4)

- The EC proposes a clarification regarding the exception for non-commercial transport. While the current provisions on driving times and rest periods do not apply to carriage by road by vehicles with a maximum permissible mass not exceeding 7,5 tonnes for the non-commercial carriage of goods, the revised proposal excludes all vehicles tout court. Moreover, a new definition of non-commercial vehicles is introduced (“non-commercial carriage”: any carriage by road, other than carriage for hire of reward or for own account, for which no remuneration is received and which does not generate any income”). Especially when looking at new forms of mobility, this is not clear enough. It should be clarified that remuneration even means a (partial) reimbursement of transport costs from third parties. This will ensure fair competition and road safety aspects, especially for – de facto paid - private transport.

Breaks (Art 7)

- We welcome the clarification that drivers engaged in multi-manning can take a break of 45 minutes in a vehicle driven by another driver. This should also be allowed if the driver splits his break in 15/30 minutes.
- In addition, it should be clarified that also the daily rest period can be consumed in the running vehicle in case of multi-manning (e.g. on comfortable tour coaches.)
- **We call for flexibility on the breaks.** All drivers should be allowed to split the break of minimum 45 minutes into **maximum 3 periods of at least 15 minutes each**
- In addition, we suggest **exempting local multi-stop multi-drop deliveries and other specific types of transport operations**, such as construction site traffic and winter road maintenance. Operators would benefit from the increased flexibility and road safety would not be jeopardized.

Rest periods (Art 8)

- The current calculation system for **regular weekly** rest is not flexible enough. The proposed model with a reference period of 4 rolling weeks offers more flexibility and make calculation easier. In addition, the maximum driving time should be increased from 90 hours within 2 weeks (current regime) to 180 hours within 4 weeks. The possibility to attach the compensation to the daily rest period should be maintained.

The driver should be allowed to **spend the regular weekly rest in the vehicle, provided that adequate (in terms of number and quality), secure and certified facilities/rest and parking areas are provided in Europe. The EU must address effectively the issue of the shortage of appropriate parking areas.** This is the simplest, clearest and most convenient solution for operators and drivers. In many Member States there is a lack of adequate accommodation as well as of secure truck parking that allows the driver to leave the loaded vehicle unattended.

The proposal on the table is hard for businesses to comply with and difficult for authorities to control (definition of “adequate” accommodation, proof where the rest period was spent in case of private accommodation, etc.).

With regards to the **weekly rest period** “a transport undertaking shall organise the work of drivers in such a way that the drivers are able 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 at home within each period of three consecutive weeks.” UEAPME is convinced that the obligation is an impediment for reasonable planning of international road transport operations. We suggest to delete the obligation and call for more flexibility as follows:

- In order to allow **more flexibility in seasonal peaks** rules specifically designed for bus and **coach services** are necessary. They should provide for longer reference periods for weekly rest. There is still a need to adapt the **12-day derogation** for occasional passenger transport:
 - Abolish the obligation of taking two regular weekly rest periods after the use of a 12-day derogation or one regular and one reduced weekly rest, with a compensation. Instead introduce the obligation to take one regular and one reduced weekly rest to be taken en bloc, (minimum 69 hours), without any compensation for the reduced rest (abolish compensation for reduced rest after 12-day derogation);
 - Extend the current 12-day derogation to domestic occasional transport of passengers by coach.
- We welcome the possibility for the driver to depart from the rules on rest periods to be able to **reach a suitable location** to take a daily or weekly rest there. However, a minor exceeding of the daily or weekly driving time or shortening of the daily or weekly rest periods must be allowed to entail an actual benefit.

National exemptions (Art 13)

- The list of possible national exemptions already includes businesses in agriculture, horticultural and forestry, because transport is not their primary line of business. The same line of argumentation should also be applied to the construction sector, because it is adversely affected by the legislation. Construction enterprises typically only transport material, equipment and workers for a specific construction site within a geographically limited area. Given that no exemption for construction companies exists at the moment, especially construction SMEs are negatively affected, given the proportionately higher burden they face compared to large construction companies.

Country code – tachograph*

- We welcome the clarification that the driver needs to enter the country code in the digital tachograph at the first planned stop i.e. while taking a rest, a break or starting other work (e.g. loading/unloading). There should be no obligation to insert the country code in case of transit.
- Data collected through the tachograph should be used for the purposes of **controlling compliance with rules on cabotage** and the posting of drivers while respecting rules on data protection.

- The Introduction of the smart tachograph for new vehicles is scheduled for 2019, the retrofit for 2034 respectively. We do not oppose an advanced retrofit but a transition period of at least 10 years is necessary, taking into account the investments already done by small business and the impact that such measures have on the second hand market.
- We propose to increase the specific exemption for SME & Crafts companies to a radius of 150km, as well as the removal of the weight limit of 7.5 tons in the exemption. Extending the scope of the regulation would vastly increase the number of concerned SMEs not involved in the transport sector, as a substantial proportion of their vehicles fall within this weight range. A large proportion of the companies- in particular in rural areas, whilst primarily working in the surrounding areas- will have occasional trips of more than 100 km during the course of a typical year, be it to visit a trade fair or to complete a major order.

3. Rules in road transport (posting)

The transport sector needs specific rules that consider the regular mobility of workers and do not impede daily business by adding additional administrative burden on companies. This is why we welcome the Commission laying down rules specifically designed for the transport sector.

Scope

In order to meet the requirements of our member companies, provisions on posting of workers should be applied to cabotage and international transport operations, with certain exceptions.

Certain transport services should be excluded from the scope such as:

- Transit operations
- Touristic passenger transport with closed groups of travellers (e.g. by coach and ship, services for skiing tourists), with the exception of cabotage operations.

Calculation of the periods of posting in the host Member State:

- The proposed 3 days-period (excluding transit) during one calendar month could be an acceptable compromise,
- but the basis for the calculation of a “full day” must be increased to at least 12 hours because only a longer stay in a Member States causes higher living expenses.
- In order to ensure an effective system, it is of paramount importance to ensure proper enforcement
- More clarity must be provided on the various components of “minimum wage”.

We ask for **harmonised and simple notification obligations** for businesses laid down by EU law that remedies the current situation that each Member State requires companies to meet different formal obligations:

- Simple documentation requirements
- Member States shall NOT be allowed to introduce deviating national rules
- **Documentation** is available at the operator’s place of establishment in the sending Member State upon request from the competent authority

Enforcement

- No or minimal obligation (e.g. in digital form) for the driver to carry documentation in the vehicle. More specifically, the obligation to keep documents on board should be relaxed, for example by setting up a European electronic registry that allows for better cooperation of national authorities by using already available technology. Administrative burden for companies as well as for enforcement authorities will be reduced.
- **One notification every six months ahead of time** for all potential drivers.

4. Revision of Eurovignette Directive

An EU-wide harmonised framework for tolls is important. Clear and binding rules are necessary to avoid distortion of competition. Rules have to be applied in all Member States in a uniform way. Disadvantages for commercial transport in certain regions and actual competitive disadvantages for European companies must not be increased further in the course of a possible revision of the Eurovignette Directive.

Therefore, we propose:

- to maintain maximum thresholds for charges (infrastructure and external costs)
- to delete possibilities for mark-ups or multiplication factors for mountainous areas
- strict earmarking of revenues for the road transport sector
- transparent calculation of road user charging (“open book”).
- We are strictly against any additional internalisation of external costs, as it would lead to double taxation. Additional costs would seriously damage the sector.
- Further one-sided burdens for a mode of transport are just as ineffective as unilateral burdens within a mode of transport.

Level playing field

We need uniform and binding rules that have to be transposed in a uniform way into national law by all Member States. It is very essential to maintain maximum thresholds for charges (infrastructure and external costs). In principle TF welcomes the approach to include all users (and not just commercial vehicles) in the scope of the Directive.

Congestion charging (Art 2)

Congestion is a problem to be dealt with by Member States or local authorities. However, it is important to note that congestion charges cannot be considered external costs. Companies are intrinsically motivated to avoid traffic jams by rescheduling their timetables according to their experience with typical traffic patterns as these traffic jams result in additional costs including loss of time, consumption of gasoline, and penalties for not delivering goods on time. In this regard, dynamic road pricing (differentiation of charges according to time of day/week/year) is not suitable to prevent commercial traffic. It only increases the costs of transport. Whenever companies deliver during times with high traffic volume, it is because there is no viable alternative to the respective time and route. Therefore, it would be highly unfair to punish commercial traffic by introducing congestion charges.

Tolling system for light vehicles (Art 7)

We reject the proposed phasing out of vignettes. It should be left to Member States to decide on the appropriate system. Especially in rural areas passenger cars and light commercial vehicles are essential for the provision of mobility services and shall not be burdened disproportionately.

Sector-specific rules for coaches and busses (Art 7)

We ask for specially designed rules for busses concerning road charging which take into account their positive impact on the environment and safety. A single coach replaces about 30 private cars and their environmental impact and damage to the infrastructure. Coaches should not be treated as lorries as concerns infrastructure charges. In addition, the proposed charges for external costs do not take their eco-friendliness into account.

* **Please note the position of ZDH (Zentralverband des deutschen Handwerks) regarding the Eurovignette:** At present, Germany applies the existing derogation option, not subjecting vehicles weighing between 3.5 and 7.5 tonnes to distance-based road pricing. Under the proposal, this derogation option would be rescinded as of 2020. In the view of the skilled craft sector, any extension of distance-based road pricing to light and medium commercial vehicles is not justified, in contrast to heavy goods vehicles which cause disproportionate wear and tear to the road infrastructure. Through energy and road taxes, lighter vehicles used by companies already pay a (more than) proportionate contribution to maintaining the road infrastructure.

External cost charging (Art 7c and 7d)

In our view, noise pollution costs should not be considered external costs because they are covered by infrastructure charges, which are used to build noise protection walls. The directive should set fixed maximum values for external costs charges for air and noise pollution instead of reference values to avoid further distortion of competition. We criticise that the positive external effects are not taken into account. The obligation to levy external-cost charging under certain conditions from 2021 may increase harmonisation in the Internal Market as currently only Austria and Germany levy these charges.

Transparency

Transparent calculation of infrastructure costs („open book“) and mandatory publication and presentation of national road cost calculation by Member States should be regulated at EU level. The calculation has to be made public. On the one hand, it would have an impact on the quality of the roads and on the other hand, it would help make the system more transparent and prevent over-charging.

Mark-ups (Art 7f)

The provision for mark-ups in mountainous regions should be removed completely instead of extended. It causes distortion of competition and is in contradiction of the aim of the Directive, which is to harmonise transport costs.

Variation of infrastructure charges (Art 7g)

The Commission proposes that Member States shall vary the infrastructure charges taking into account the reference CO2 emission values and the relevant vehicle categorisation. We reject this idea because it completely contradicts the current emission system based on Euro Emission classes (NOX). Companies made their investment decisions based on this system. In the light of the current development stage concerning CO2 emissions, it is too early for modifications in the short-term. In addition, the topic of CO2 emissions is already addressed by fuel taxation. In any way, we welcome the clarification that these variations shall not be designed to generate additional toll revenue.

Earmarking of revenues for the road transport sector (Art 9)

The Directive must should contain the obligation to implement strict earmarking. Revenues from road charging should flow back to road transport projects. They should not be used to cross-subsidise other modes of transport. This is the only realistic scenario in which the expected increase of goods and passenger traffic could also go hand in hand with a decline in congestion over the next 20 years. Thus, we reject the new provision that advises Member States to use revenues generated from congestion charges to e.g. support collective transport infrastructure.

Reference values in the Annex of the proposal

As explained above, the Directive should set maximum instead of reference values to avoid further distortion of competition. Charges for air and noise pollution should be listed separately like in the current Directive. Coaches should not be charged for external-costs without taking into account their positive effect. Furthermore, the vehicle classes for coaches do not correspond to the actual use. An additional class with a lower limit than 18t is necessary for further differentiation, for example 4t for coaches with 16 seats. Instead of 18t the second limit should be 19.5t because this is the maximum permissible gross laden weight for 2 axles coaches. We reject the possibility to multiply the values by a factor of up to 2 in mountain areas and around agglomerations.

Congestion charge – Annexes

As explained above, we oppose additional charges for congestion. The equivalence factors are not plausible, especially because they put coaches, which help reduce congestion, at a disadvantage. In addition, the maximum values are simply too high.

5. Regulation for access to the international market for coach and bus services

The first orientation on the “amending Regulation (EC) No 1073/2009” from the side of the secretariat sums up following point of view:

Positive could be seen

- Access to terminals (Art 1 in connection with Art. 5a)
- Regulatory body (Art 3a)
- Control documents (Art 12) – elimination of unnecessary administrative burden.

Negative could be seen

- Authorised cabotage operations (Art 15)
- Regular services subject to Authorisation (Art 8 – 8d)

We share the view of the European Commission that the key objective of Regulation 1073/2009 – to provide a sustainable alternative to the use of private cars as means of transport – has only been partially achieved. In some member states the existing concessions based system imposes significant administrative and economic barriers that largely prevent new companies from entering the national bus transport market and that thereby also impact negatively on the development of interurban transport.

With a view to the outlined situation we welcome the Commission Proposal for amendment of Regulation 1073/2009, in fact we believe that in the area of road passenger transport, duly applying the principles of subsidiarity and proportionality, the creation of a level European playing field may only be achieved by a European Regulation creating harmonized and unified common rules.

We also fully share the objectives sought by the Commission Proposal as we regard these objectives as fundamental for achieving a less restrictive, more equal, less discriminatory, more transparent, more competitive and more efficient access to the bus transport market for new bus companies. In our opinion a truly competitive bus transport market can only be achieved through a common a set of mandatory European rules as proposed by the Commission under the presented Proposal for amendment of Regulation 1073/2009.

The non-compliance of some national legislation with the objectives of European legislation is in fact confirmed by independent regulatory authority. There is a need to amend a series of existing (national) rules in order to align them with the changes required by EU Law.

It is utmost important to avoid unjustified discriminatory restrictions that prevent new bus companies from entering the national passenger transport market like e.g. unnecessary and disproportionate access charges.

With concrete proposals UEAPME Transport Forum believes will help to SMEs incorporating the following issues

- a. a SINGLE REQUEST MODEL for the setting up of a regular transport service or a specialized regular transport service.

- b. an UNIFIED RECORD UPDATED. This record we propose be electronic and public format with all authorized services of the national and international European regular services.
- c. We request an express reference in new art 8d to PUBLIC ZONAL CONTRACTS. We are concerned that zonal contracts can be used in countries as a barrier to the positive effects and aims of this new Regulation.

6. Proposal for a Directive on Vehicle Taxation

We support the proposal that makes provisions for the gradual decrease of the minimum rates over five years. We welcome the flexibility this gives to Member States even though they are not obliged to reduce the rates. We suggest introducing a comprehensive European strategy on vehicle taxation to support fair competition and harmonised approaches by the Member States.

7. Revision of Directive on the Use of Hired Goods Vehicles

The proposal provides for a minimum level of market opening for the use of hired goods vehicles in the EU. It intends to remove the possibility to restrict the use of hired vehicles for own account operations to vehicles below 6 tons.

We oppose the extension of the current provisions because it may lead to a loss of jobs in the Member State of establishment, a loss of income from vehicle taxes and it will impede the cross-border pursuit of traffic offences. Moreover, the proposal as it is would grow this kind of transport responsible of more than half of empty return trucks in particular at the urban level, with a negative impact on environment and congestion. Further increase of vehicles would make the situation even worse.

Instead, we would welcome the harmonisation of time limits after which vehicles have to be registered in Member States. No renewal should be allowed, in order to prevent abuses - otherwise, the tenant should be required to adjust his financial capacity in the case of a lease of more than 6 months.

The rule should also cover national rental companies.

However, the proposed limit of 4 months is too long. It would render rules on taxation, vehicle registration and cabotage useless because compliance would be even more difficult to check.

8. Proposal for a Directive on the interoperability of electronic road toll systems

We welcome the plan to establish a European Electronic Toll Service. A single on-board unit that can be used throughout the EU would be a significant simplification and would save time and reduce bureaucracy. Nevertheless, it is important to guarantee the free choice of your contractual partner and the availability of competent staff in case of technical problems. Furthermore, a successful and economically feasible implementation depends on the demand and interest of potential future users. They will build the market. Advantages from the system will be generated mainly by internationally operating companies (provided that costs are attractive) with big fleets. For companies, which mainly operate on the national markets or mainly on a bilateral basis, the system will not prove attractive. In any case, the introduction of such a system must not lead to increased costs for businesses that only operate on a national level.

In addition, we would welcome a harmonisation of the terms and conditions of the contracts for road charging because they differ a lot from operator to operator throughout the EU. Making oneself familiar with different rules e.g. on returning the on-board units, payment details, expiry of credits, etc. causes a lot of administrative burden for transport companies.

For further information on this position paper, please contact:

Grohmann Dieter
Director Communication | Media
d.grohmann@ueapme.com