

COMMITTEE ON TRANSPORT AND TOURISM
THE CHAIRWOMAN

TRAN/D/2020/2127

H.E. Ambassador Goran Štefanić
Deputy Permanent Representative
Council of the European Union
Rue de la Loi 175
1048 BRUSSELS

D 300833 23.01.2020

Subject: Council's first reading position on the proposals for Regulation on Posting of drivers in the road transport sector (2017/0121(COD)), on Minimum requirements on maximum daily and weekly driving times, rest periods and tachographs (2017/0122(COD)) and on Pursuing the occupation of road transport operator and access to the international road haulage market (cabotage) (2017/0123(COD))

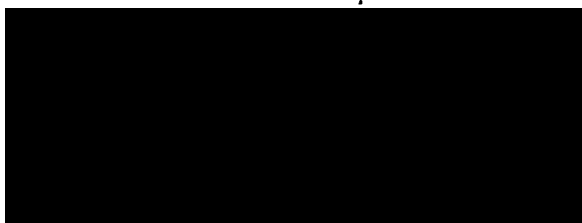
Dear Ambassador Štefanić,

Following the positive outcome of the confirmation votes on the Mobility Package I that took place during the meeting of the Committee on Transport and Tourism on 21 January 2020, I would like to inform you that the TRAN Committee considered positively the acceptance of the texts set out in the respective Annexes, which reflect the outcome of the negotiations between the three Institutions.

Thus, I would like to inform you that, if these texts were to be transmitted formally to the European Parliament as the Council's First Reading Position for these legislative proposals, I will recommend to the Members of the Committee on Transport and Tourism and subsequently to the Plenary that the Council's First Reading Position be accepted without amendments in Parliament's second reading, subject to verification by the lawyer linguists of both Institutions.

I would like to thank you and the previous Council Presidencies for the good cooperation on these files.

Yours sincerely,



Karima DELLI

Annexes: texts agreed

Proposal for a
Directive of the European Parliament and of the Council
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 Directive 2006/22/EC as regards enforcement
requirements and 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 Committee¹,

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

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.

¹ OJ C , , p. .

² OJ C , , p. .

Given the high mobility of workforce in the road transport sector, sector-specific rules are needed to ensure the balance between the freedom to provide cross-border services for operators, the free movement of goods, adequate working conditions and the social protection of drivers.

- (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, most of which are small SMEs, are not faced with disproportionate administrative barriers or discriminatory controls unduly restricting their freedom to provide cross-border services.
- (3) For the same reason, any national rules applied to road transport must be proportionate as well as justified, taking account of the need to ensure adequate social and working conditions for drivers and to facilitate the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators.
- (4) 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.
- (5) 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, such as with regard to the use of letterbox companies. Furthermore a number of discrepancies exist between Member States in interpretation, application and implementation of the rules, creating a heavy administrative burden for drivers and operators. This creates legal uncertainty, which is detrimental to the working and social conditions and conditions for competition in the sector.

- (6) In order to ensure that Directives 96/71/EC³ and 2014/67/EU⁴ of the European Parliament and of the Council are correctly applied, controls and cooperation at Union level to tackle fraud relating to the posting of drivers should be strengthened.
- (7) Adequate, effective and consistent enforcement of the working time and rest time provisions is crucial for improving road safety, for protecting the working conditions of drivers and for 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 of the European Parliament and of the Council⁵ to controlling compliance with the working time provisions set out in Directive 2002/15/EU of the European Parliament and of the Council⁶.
- (8) In view of the data series necessary to carry out controls of the compliance with rules on working time set out in Directive 2002/15/EC, the extent of roadside checks depends on the development and introduction of enabling technology covering sufficient periods of time. The control at the roadside should be limited to aspects which can already be checked using the tachograph and related equipment on board, while comprehensive checks are confined to the premises.
- (9) Roadside checks should be executed efficiently and quickly, with a view to completing the checks in the shortest time possible and with the least delay for the driver, and a clear distinction should be made between obligations of the transport operators and obligations of drivers.

³ 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).

⁴ 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).

⁵ 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).

⁶ 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).

(10) Cooperation between Member State enforcement authorities should be further promoted through concerted checks, which Member States should endeavour to extend to checks at the premises. The European Labour Authority, whose scope of activities, as set out in Article 1(4) of Regulation (EU) 2019/1149 of the European Parliament and of the Council⁷, covers Directive 2006/22/EC, could play an important role in assisting Member States carrying out concerted checks.

The European Labour Authority could likewise support education and training efforts.

(11) 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.

(12) With a view to fostering effective administrative cooperation and an effective exchange of information, Article 16(5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council⁸ requires Member States to interconnect their national electronic registers (NER) through the European Register of Road Transport Undertakings (ERRU) system. The scope of information accessible from the roadside checks should be enlarged within that system.

⁷ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).

⁸ 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).

- (13) To facilitate and improve communication between Member States, ensure a more uniform application of social rules in the transport sector, and to facilitate road transport operators' compliance with administrative requirements when posting drivers, the Commission should develop one or more new modules for the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council⁹. It is important that IMI allows for validity checks on posting declarations during roadside checks.
- (14) The exchange of information in the context of effective administrative cooperation and mutual assistance between Member States should comply with the rules on personal data protection laid down in Regulations (EU) 2016/679¹⁰ and (EU) 2018/1725¹¹ of the European Parliament and of the Council. The exchange of information through the Internal Market Information System (IMI) should also comply with Regulation (EU) No 1024/2012.
- (15) To facilitate control of compliance with the posting rules set out in this Directive, road transport operators should submit a posting declaration to the competent authorities of the Member States where they post drivers.
- (16) In order to reduce the administrative burden on transport operators it is necessary to simplify the process of sending and updating posting declarations. Therefore, the Commission should develop a multilingual public interface, to which transport operators have access and via which they submit and update posting information and submit other relevant documents to IMI, if necessary.

⁹ 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).

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (17) 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.
- (18) In order to ensure fair competition and a level playing field for workers and business, there is a need to make progress towards smart enforcement and to provide all possible support for the full introduction and use of risk-rating systems.
- (19) 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 182/2011 of the European Parliament and of the Council¹².
- (20) Difficulties have also been experienced in applying the rules on posting of workers specified in Directive 96/71/EC and the rules on the administrative requirements laid down in Directive 2014/67/EU 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 legal uncertainty and 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 and the competitiveness of transport companies. Administrative requirements and control measures need to be harmonised to prevent carriers from suffering unnecessary delays.

¹² 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).

- (21) Transport undertakings are the addressees of certain special rules on posting 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 clear and foreseeable rules on sanctions on consigners, shippers, freight forwarders, contractors and sub-contractors in case they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they commission involve infringements of special rules on posting.
- (22) The Commission, in its proposal of 8 March 2016¹³ 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.
- (23) 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. Provisions on the posting of workers, in Directive 96/71/EC, and on the enforcement of those provisions, in Directive 2014/67/EU, apply to the road transport sector and should be made subject to the specific rules laid down in this Directive.
- (24) Given the mobile nature of the transport sector, drivers are not generally posted to another Member State under service contracts for long periods of time as is sometimes the case in other sectors. It should therefore be explicitly clarified in which circumstances the rules on long-term posting in Directive 96/71/EC do not apply to such drivers.
- (25) 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.

- (26) 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 no significant link between the driver's activities and the Member State transited. The qualification of the presence of the driver in a Member States as transit is therefore not affected by stops relating, for example, to hygienic reasons.
- (27) 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.
- (28) 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. This sufficient link exists in case of cabotage operations as defined by Regulations (EC) No 1072/2009¹⁴ and (EC) No 1073/2009¹⁵ of the European Parliament and of the Council since the entire transport operation is taking place in a host Member State and the service is thus closely linked to the territory of the host Member State. 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 making the posting 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 administrative requirements and control measures.

¹⁴ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

¹⁵ Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88).

- (29) 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.
- (30) Transport undertakings need legal certainty about the rules and requirements with which they have to comply. Those rules and requirements should be clear, understandable and easily accessible to transport undertakings, and should enable effective checks. It is important that new rules do not introduce unnecessary administrative burden and that they duly take into account the interests of SMEs.
- (31) Member States should ensure that, in line with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC, which are laid down in national law, regulation or administrative provisions, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of that Directive, including where relevant by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. The relevant information should, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments. In line with that Directive the involvement of the social partners is to be sought.
- (32) EU transport operators face growing competition from operators based in non-EU States. It is therefore of utmost importance to ensure that Union undertakings are not discriminated against. According to Article 1(4) of Directive 96/71/EC, undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State. That principle should also apply with regard to the specific rules on posting provided for in this Directive. It should, notably, apply when third country undertakings perform transport operations under bilateral or multilateral agreements granting access to the Union market.

- (33) The ECMT multilateral quota system is one of the main instruments regulating access to the EU market by non-EU operators and access to non-EU markets by EU operators. The number of permits allocated to each ECMT member country is decided on a yearly basis. In order to ensure that Union undertakings are not discriminated against, the Member States' obligation in this regard needs to be observed also when agreeing conditions for access to the EU market within ECMT.
- (34) In addition, the power to negotiate and conclude the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) lies with the Union as part of its exclusive external competences. The Union should, in accordance with Article 2(3) of Regulation (EC) No 561/2006 of the European Parliament and of the Council¹⁶, align the control mechanisms that can be used to control the respect of national and Union social rules by third country operators with those that apply to Union operators.
- (35) 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, 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, and at the same time reduce the complexity of this task, 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.
- (36) The administrative burden and document management tasks incumbent on drivers should be reasonable. Therefore, while certain documents should be available in the vehicle for roadside inspection, other documents should be made available via the IMI public interface by the road operators and, where necessary, by the competent authorities of the Member State where the operator is established. The competent authorities should use the framework of mutual assistance between Member States set out in Directive 2014/67/EU.

¹⁶ 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).

- (37) Given that in some Member States social partners play a crucial role in enforcing social legislation in the road transport sector, Member States should be allowed to provide national social partners with the relevant information shared via IMI with the sole purpose of checking compliance with posting rules while respecting Regulation (EU) 2016/679. The relevant information should be provided to social partners outside of IMI.
- (38) 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-Making¹⁷. 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.
- (39) The Commission should evaluate the impact of the application and of the enforcement of the rules for the posting of workers on the road transport industry and submit a report on the results of that evaluation to the Parliament and the Council, together, where appropriate, with a legislative proposal.
- (40) This Directive should apply from ... [18 months following the date of entry into force]. That will be the date from which Directive 2018/957 is to apply to the road transport sector, in accordance with its Article 3(3).
- (41) Directive 2006/22/EC should therefore be amended accordingly,

¹⁷ OJ L 123, 12.5.2016, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Specific rules on the posting of drivers

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.
2. 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) of Directive 96/71/EC.
3. A posting shall, for the purpose of Article 3(1a) of Directive 96/71/EC, be considered as ending when the driver leaves the host Member State in the performance of an international carriage of goods or passengers, and that posting period shall not be cumulated with previous posting periods in the context of such international operations of the same driver or another driver he replaces.
4. 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 a third country to the Member State of establishment.

5. From the date on which drivers shall record border crossing data manually, as required in Article 34(7) of Regulation (EU) No 165/2014 of the European Parliament and of the Council¹⁸, Member States shall also apply the exemption set out in paragraph 4 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 unload 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.

This exemption shall apply only until the date on which the 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 shall be fitted in the vehicles registered in a Member States for the first time, as specified in Article 8(1) subparagraph 2 of that Regulation. From that date the exemption referred to in this paragraph shall apply solely to drivers using vehicles fitted with a smart tachograph as provided in Articles 8, 9 and 10 of that Regulation.

6. For the purpose of this Directive, a bilateral transport operation in international occasional or regular carriage of passengers, as defined in Regulation (EC) No 1073/2009, is when a driver:
- picks up passengers in the Member State of establishment and sets them down in another Member State or a third country; or
 - picks up passengers in a Member State or a third country and sets them down in the Member State of establishment; or

¹⁸ 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).

- picks up and sets down passengers in the Member State of establishment for the purpose of carrying-out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009.

7. From the date on which drivers shall record border crossing data manually, as required in Article 34(7) of Regulation (EU) No 165/2014, Member States shall also apply the exemption set out in paragraph 6 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.

This exemption shall apply only until the date on which the 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 shall be fitted in the vehicles registered in a Member States for the first time, as specified in Article 8(1) subparagraph 2 of that Regulation. From that date the exemption referred to in this paragraph shall apply solely to drivers using vehicles fitted with a smart tachograph as provided in Articles 8, 9 and 10 of that Regulation.

8. A driver performing cabotage as defined by Regulations (EC) No 1072/2009 and (EC) No 1073/2009 shall be considered to be posted under Directive 96/71/EC.
9. 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.

10. In case where the driver is performing the initial or final road leg of a combined transport operation as defined in Council Directive 92/106/EEC¹⁹, 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 4.
11. Member States shall ensure that, in line with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC, which are laid down in national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of that Directive, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. The relevant information shall, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments, including, where relevant, by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned.
12. Transport undertakings established in a non-member State shall not be given more favourable treatment than undertakings established in a Member State, including when performing transport operations under bilateral or multilateral agreements granting access to the Union market or parts thereof.
13. 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:

¹⁹ 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).

- (a) an obligation for the road transport operator established in another Member State to submit a posting declaration to the national competent authorities of a Member State to which the driver is posted 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 posting declaration shall consist of the following information:
- (i) the identity of the road transport operator, at least, where available, in the form of the number of the Community licence;
 - (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 following information about the posted driver: the identity of the driver, the address of the driver's place of residence and the number of the driving licence;
 - (iv) the starting date of the employment contract of the driver, and the law applicable to it;
 - (v) the envisaged beginning and end date of the posting;
 - (vi) the number plates of the motor vehicles;
 - (vii) the type of transport services, that is to say carriage of goods, carriage of passengers, international carriage, cabotage operation;
- (b) an obligation for the road transport operator to ensure that the driver has at his/her disposal, and for the driver to keep and make available, when requested at the roadside, in paper or electronic form:
- (i) a copy of the posting declaration submitted via IMI;

- (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 send via the IMI public interface, after the period of posting, on the direct request of the competent authorities of the Member States where the posting took place, copies of documents referred to in point (b) (ii) and (iii) as well as documentation of the remuneration of the posted driver which relate to the period of posting, the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC²⁰, time-sheets relating to the driver's work, and proof of payments.

The operator shall send the documentation via the IMI public interface no later than 8 weeks from the date of the request. If the operator fails to submit the requested documentation within the set deadline, the competent authorities of the Member State where the posting took place may request, via IMI, the assistance of the competent authorities of the Member State of establishment, in accordance with Articles 6 and 7 of Directive 2014/67/EU. When such request of mutual assistance is made, the competent authorities of the Member States of the establishment of the operator shall have access to the posting declaration and other relevant information submitted by the operator via the IMI public interface.

²⁰ 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).

The competent authorities of the Member States of establishment of the operator shall ensure that the documents requested by the competent authorities of the Member States where the posting took place are provided via IMI within 25 working days from the day of request.

In order to ascertain that drivers, in accordance with paragraphs 4 to 7, 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).

14. For the purposes of control, the transport operator shall keep the posting declarations referred to in point (a) of paragraph 13 up to date in the IMI public interface.
15. The information from the declarations shall be saved in the repository of IMI for the purpose of checks for a period of 24 months.

The Member State may allow the competent authority to provide national social partners outside of IMI with the relevant information available in IMI to the extent necessary for the purpose of checking compliance with posting rules and in accordance with national law and practices, provided that the information:

- relates to a posting to the territory of the Member State concerned;
 - is used exclusively for the purpose of enforcing the rules on posting; and
 - data processing is in line with Regulation (EU) 2016/679.
16. 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 IMI public interface. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 4 (2).

17. Member States shall avoid unnecessary delays in the implementation of the control measures that may affect the duration and dates of the posting.
18. The competent authorities in the Member States shall cooperate closely and shall provide each other with mutual assistance and all relevant information, within the conditions laid down in Directive 2014/67/EU and in Regulation (EC) No 1071/2009.

Article 2

Amendment to Directive 2006/22/EC

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:

"Article 1

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

* 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. Roadside checks on the implementation of Directive 2002/15/EC shall be limited to rules that may be efficiently controlled using the tachograph and related recording equipment. A comprehensive check on the implementation of Directive 2002/15/EC may only be carried out at the premises.";

(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. 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 which is found missing on board; this is without prejudice to the driver's obligations to ensure the proper use of tachograph equipment.";

(c) 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 9 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.";

(d) 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) Article 5 is replaced by the following:

"Article 5

Member States shall, at least six times per year, undertake concerted roadside checks on drivers and vehicles falling within the scope of Regulation (EC) No 561/2006 or (EU) No 165/2014. Member States shall in addition endeavour to organise concerted checks at premises.

Such Checks shall be undertaken at the same time by the enforcement authorities of two or more Member States, each operating in its own territory.";

(5) 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.";

(6) in Article 7(1), point (b) is replaced by the following:

“(b) to forward the biennial statistical returns to the Commission under Article 17 of Regulation (EC) No 561/2006;”

(7) in Article 7(1), the following point 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.";

(8) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Information made available bilaterally under Article 22(3) of Regulation (EC) No 561/2006 shall also be exchanged between the designated bodies notified to the Commission in accordance with Article 7:

(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 is inserted:

"1a. Member State shall submit the information requested by other Member States pursuant to paragraph 1(b) of this Article within 25 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 requested Member State shall inform the requesting Member State accordingly within 10 working days and provide reasons to duly justify the difficulty or impossibility of providing the relevant information. The Member States concerned shall discuss with each other with a view to finding a solution for any difficulty raised.

In the event of persistent delays in the provision of information to the Member State to whose territory the worker is posted, the Commission shall be informed and shall take appropriate measures.";

(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 of the European Parliament and of the Council* excluding information which Member States exchange through direct consultation of national electronic registers referred to in Article 16(5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council**.

* 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).

** 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).";

(9) 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.

By... [OJ: insert date 10 months after entry into force of this amending Directive] 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;

(c) 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.

With a view to establishing or updating the weighting of infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014, the Commission is empowered to adopt delegated acts in accordance with Article 15a of this Directive amending Annex III, taking 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 creates a serious risk of death or serious personal injury.";

(d) the following paragraphs 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 directly accessible through interoperable national electronic registers as referred to in Article 16 of Regulation (EC) No. 1071/2009 to competent authorities of other Member States in accordance with Article 16(2) of that Regulation.";

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

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

(11) Article 12 is replaced by the following:

"Article 12

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 42(1) of Regulation (EU) 165/2014. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.

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.

* 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).";

- (12) in Article 13, point (b) is replaced by the following:

“(b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EC) No 561/2006 between enforcement authorities;”

- (13) Article 14 is replaced by the following:

“Article 14

Negotiations with third countries

Once this Directive has entered into force, the Union shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive.

Pending the conclusion of these negotiations, Member States shall include data on checks carried out on vehicles from third countries in their returns to the Commission as set out in Article 17 of Regulation (EC) No 561/2006.”;

(14) Article 15 is replaced by the following:

"Article 15
Updating of the 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.";

(15) 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.";

(16) Annex I is amended as follows:

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

"(1) daily and weekly driving times, breaks and daily and weekly rest periods; also the preceding days' record sheets which have to be carried on board the vehicle in accordance with Article 36 (1) and (2) of Regulation (EU) No 165/2014 and/or the data stored for the same period on the driver card and/or in the memory of the recording equipment in accordance with Annex II to this Directive and/or on printouts;"

(b) in Part A, point (2) is replaced by the following:

"(2) for the period referred to in Article 36 paragraphs (1) and (2) of Regulation (EU) No 165/2014, any cases where the vehicle's authorised speed is exceeded, to be defined as being any periods of more than one minute during which the vehicle's speed exceeds 90 km/h for category N 3 vehicles or 105 km/h for category M 3 vehicles (categories N 3 and M 3 as defined in Directive 2007/46/EC of the European Parliament and of the Council*;

* Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).";

(c) in Part A, point (4) is replaced by the following:

"(4) the correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets) or, where appropriate, presence of the documents referred to in Article 16(2) of Regulation (EC) No 561/2006;"

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

"(6) extended maximum weekly working times of 60 hours as set out in Article 4 point (a) of Directive 2002/15/EC; other weekly working times as set out in Articles 4 and 5 of Directive 2002/15/EC only where technology enables effective checks to be carried out.";

(e) in Part B, paragraph 2 is replaced by the following:

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

(f) 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 (EC) No 561/2006."

Article 3

Amendment to Regulation (EU) No 1024/2012

In the Annex to Regulation (EU) No 1024/2012 the following points are added:

- “13. 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].
14. Directive (EU) .../... of the European Parliament and of the Council of 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 Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘IMI Regulation’): Article [1(14)].”

Article 4

Committee procedure

1. The Commission shall be assisted by a committee established by Article 42(1) of Regulation (EU) No 165/2014. 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 5

Rules and sanctions

1. Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and subcontractors for non-compliance with Article 1 of this Directive, where they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they have commissioned involve infringements of that Article.

2. Member States shall lay down rules on penalties applicable to infringements of the provisions of Article 1 of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate, dissuasive and non-discriminatory.

Article 6

Smart enforcement

Without prejudice to Directive 2014/67/EU and in order to further enforce the obligations stipulated under Article 1 of this Directive, Member States shall ensure that a coherent national enforcement strategy is applied on their territory. That strategy shall focus on undertakings with a high-risk rating, referred to in Article 9 of Directive 2006/22/EC of the European Parliament and of the Council.

Article 7

Evaluation

1. The Commission shall evaluate the implementation of this Directive, in particular the impact of Article 1, by [31 December 2025] 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. The report shall be made public.
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 8

Training

Member States shall cooperate in the provision of education and training to enforcement authorities, building on existing enforcement schemes.

Employers shall be responsible for ensuring that their drivers acquire knowledge about their rights and obligations related to this Directive.

Article 9

1. Member States shall adopt and publish, by ... [OJ: insert date of 18 months after the entry into force of this Directive], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures 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 10

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

Article 11

This Directive is addressed to the Member States.

Done at [...],

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 Committee¹,

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

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 socially accountable road transport sector in order to ensure non-discrimination and attract qualified workers. To facilitate that process it is essential that the Union social rules in road transport are clear, proportionate, fit for purpose, easy to apply and to enforce and implemented in an effective and consistent manner throughout the Union.*

¹ OJ C , , p. .

² 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 Council³, certain deficiencies were identified in the implementation of the legal framework. Unclear 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. On the other hand, the maximum driving periods per day and per week are effective in improving the social conditions of drivers and road safety in general; unremitting efforts are necessary to ensure compliance.
- (3) To promote road safety, it is important to encourage transport undertakings to adopt a safety culture which is adhered to at all levels . In particular, in order to avoid infringements of driving and rest rules, or endangering road safety, it should not be permitted to link performance-based pay with the time needed for the transportation of passengers to their destination or for the delivery of goods.
- (4) 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, to inefficient and unequal use of the control tools and insufficient administrative cooperation between the Member States.
- (5) 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.
- (6) Clear, suitable, proportionate and evenly enforced rules are also crucial for achieving the policy objectives of improving working conditions for drivers, and in particular ensuring undistorted and fair competition between operators and contributing to road safety for all road users.

³ 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).

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- (7) 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.
 - (8) Drivers engaged in long-distance international transport of goods 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 international 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. Given the differences between goods and passenger transport, this possibility should not apply to drivers when engaged in passenger transport.
 - (9) Any flexibility in the scheduling of the rest periods of drivers should be transparent and predictable for the driver and in no way jeopardize road safety, by increasing the level of fatigue of drivers, or deteriorate the working conditions. This flexibility should therefore not alter the current working time of the driver or the maximum fortnightly driving time and should be subject to stricter rules on the compensation for reduced rests.
 - (10) Controlling this flexibility is essential, in addition to clearly defining the scope of the provision, to make sure the provision can not be abused. The scope should be therefore limited to those drivers that spend the reduced weekly rests during the reference period outside of the Member States. This can be checked by consulting the tachograph records at the roadside and at the premises, as they contain the location of the beginning and the end of the rest and information relating to individual drivers.
 - (11) In order to guarantee effective enforcement, it is essential that the competent authorities, when carrying out roadside checks, should be able to ascertain that driving times and rest periods have been properly observed on the day of the check and over the preceding 56 days.

- (12) Rapid technological progress is resulting in the gradual automation of driving systems requiring less or no direct input from a driver . To address those changes, current legislation, including rules on driving and resting times, may need to be adapted in order to guarantee road safety, a level playing field and improve working conditions, whilst enabling the Union to pioneer new innovative technologies and practices . Therefore, the Commission should submit an evaluation report on the use of autonomous driving systems in the Member States, including on the benefits of autonomous driving technologies. That report should be accompanied, if appropriate, by a legislative proposal.
- (13) 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. In order to ensure good working conditions and the safety of drivers, it is appropriate to clarify the requirement that drivers are provided with quality and gender friendly accommodation for their regular weekly rest periods if they are taken away from home.
- (14) It is also necessary to provide that operators organise the work of drivers in such a way that 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, and the drivers are free to choose where to spend their rest period. In order to demonstrate that the operator fulfils its obligations regarding the organisation of the regular return, the operator should be able to use tachograph records, duty rosters of the drivers or other documentation. Such evidence should be available at its premises to be presented if requested by control authorities.

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- (15) While regular weekly rest and longer rest periods cannot be taken in the vehicle or in a parking area, but only in a suitable accommodation, which may be adjacent to a parking area, it is of utmost importance to enable drivers to locate safe and secure parking areas that provide appropriate levels of security and appropriate facilities. The Commission has already studied how to encourage the development of high-quality parking areas, including the necessary minimum requirements. The Commission should therefore develop standards for safe and secure parking areas. Those standards should contribute to promoting high-quality parking areas. The standards may be revised in order to cater for better access to alternative fuels, in line with policies developing that infrastructure. It is also important that parking areas are being kept free from ice and snow.
- (16) Safe and Secure parking areas should be subject to auditing procedures to be certified in accordance with EU standards which also ensure that they continue to meet these standards. The Commission should thus be tasked with preparing a certification procedure for development of safe and secure parking areas in the Union.
- (17) It is in the interests of road safety and enforcement that all drivers should be fully aware of the rules on driving and rest times and the dangers of fatigue. Easily accessible information on available rest facilities is of importance in this regard. Therefore, the Commission should provide information on safe and secure parking areas through a user-friendly website. That information should be kept up to date .

- (18) In order to ensure the continued safety and security of parking areas, 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 establishing standards for the level of service in safe and secure parking areas and procedures to certify the safety and security of parking areas. 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.
- (19) The revised TEN-T guidelines established in Regulation (EU) No 1315/2013 of the European Parliament and of the Council⁴ envisage the development of parking areas on motorways approximately every 100 km to provide commercial road users with parking space that has an appropriate level of safety and security. In order to accelerate and promote the construction of adequate parking infrastructure, it is important that sufficient opportunities for co-funding by the Union are available in accordance with current and future Union legal acts establishing the conditions for that financial support.
- (20) Many road transport operations within the Union involve transport by ferry or by rail for part of the journey. Clear, appropriate provisions regarding rest periods and breaks should therefore be laid down for such operations.

* OJ L 123, 12.5.2016, p. 1.

⁴ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

- (21) 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. Therefore, such circumstances cannot be referred to in a systematic manner to avoid compliance with this Regulation. In order to ensure proper enforcement, the driver should document the exceptional circumstances resulting in departing from the rules. In addition, a safeguard should ensure that driving time is not excessive .
- (22) 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.
- (23) Member States should take all measures necessary to ensure that national rules on penalties applicable to infringements of Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014 are implemented in an effective, proportionate and dissuasive manner. It is important to ensure easy access by professionals to information on penalties applying in Member States. This could be facilitated by the European Labour Authority making the information available through the single Union-wide website acting as a single portal for accessing information sources and services at Union and national level in all official languages of the Union established by Regulation (EU) 2018/1724.
- (24) 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- 182/2011⁵.

⁵ 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).

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- (25) To enhance cost-effectiveness of enforcement of the social rules the current and smart tachograph systems should be fully exploited and the smart tachograph should be made mandatory also for light commercial vehicles above a certain weight which operate in international transport for hire and reward. There the functionalities of the tachograph should be improved to allow for more precise positioning.
- (26) The cost-effectiveness of enforcement of the social rules, the rapid development of new technologies, the digitalisation throughout the Union economy and the need for a level playing field among companies in international road transport make it necessary to shorten the transitional period for the installation of the smart tachograph in registered vehicles. The smart tachograph will contribute to simplified controls and thus facilitate the work of national authorities.
- (27) 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.
- (28) 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 possible stopping place at or after the border.
- (29) The recording of activities on the tachograph is an important part of drivers' work. Therefore, it is crucial that drivers are provided with the appropriate training on how to use new features of tachographs which are being introduced to the market. Employers should bear the costs related to this training.

- (30) Control officers checking compliance with relevant Union law in the road transport sector face challenges due to the variety of tachograph devices in use and the fast evolving sophisticated manipulation techniques. This is particularly the case when those checks are carried out at the roadside. Therefore, it is crucial that control officers receive appropriate training to ensure that they are up-to-date with the latest technological developments and manipulation techniques.
- (31) 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.
- (32) Taking into account the continuous technological developments, the Commission is studying the possibility of developing new technical solutions that offer the same benefits and security as those offered by the smart tachograph, at the same or lower associated costs.
- (33) 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.
- (34) Transporting goods is different from transporting people. Therefore, the Commission should evaluate if more adequate rules for passenger transport should be proposed, especially for occasional services as defined in point 4 of Article 2 of Regulation (EC) No 1073/2009 of the European Parliament and the Council of 21 October 2009 on common rules for access to the international market for coach and bus services.
- (35) Regulations (EC) No 561/2006 and (EU) 165/2014 of the European Parliament and of the Council⁶ should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

⁶ 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).

Article 1

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

(-1) In Article 2(1), the following point is inserted:

"(-aa) From 1 July 2026, to the carriage by road of goods in international transport operations or in cabotage operations, where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 2,5 tonnes; or"

(-1a) In Article 3, point (aa) is replaced by the following:

"(aa) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying materials, equipment or machinery for the driver's use in the course of his work, or delivering goods produced on a craft basis where the transport is not carried out for hire or reward and which are delivered only within a 100 km radius from the base of the undertaking and on the condition that driving the vehicle does not constitute the driver's main activity;"

(-1aa) In Article 3, the following point is inserted:

"(ha) vehicles with a maximum permissible mass, including any trailer, or semi-trailer of between 2,5 and 3,5 tonnes that are used for the transport of goods, where the transport is not effected for hire or reward, but on the own account of the company or the driver, and where driving does not constitute the main activity of the person driving the vehicle.";

(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;"

(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 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 two consecutive weeks a driver shall 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.

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.

By way of derogation from the first subparagraph, a driver engaged in international transport of goods may, outside the Member State of establishment, take two consecutive reduced weekly rest periods provided that the driver in any four consecutive weeks takes at least four weekly rest periods, of which at least two shall be regular weekly rest periods.

For the purpose of this paragraph, a driver shall be considered to be engaged in international transport provided that the driver starts the two consecutive reduced weekly rest periods outside the Member State of the employer's establishment and country of the drivers' place of residence.";

(b) the following paragraph is inserted:

"6b. Any reduction in weekly rest shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.

Where two reduced weekly rest periods have been taken consecutively in accordance with the third subparagraph of paragraph 6, the weekly rest period following thereafter shall be preceded by a rest period taken as compensation for those two reduced weekly rest periods.";

(c) paragraph 8 is replaced by the following:

"The 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. They shall be taken in a suitable and gender-friendly accommodation with adequate sleeping and sanitary facilities.

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

(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 the employer's operational centre where the driver is normally based and where the driver's weekly rest begins, in the Member State of the employer's establishment, or to return 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, where the driver has taken two consecutive reduced weekly rest periods in accordance with Article 8(6), the transport undertaking shall organise the work of the driver in such a way that the driver is able to return already before the start of the regular weekly rest period of more than 45 hours taken in compensation. 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."

(da) the following paragraph is added:

"9a. The Commission shall no later than ... [two years after entry into force of this amending Regulation] evaluate and report to Parliament and Council if more adequate rules for drivers engaged in occasional services of carriage of passengers can be adopted, as defined in Article 2 paragraph 1 number 4 of Regulation (EC) No 1073/2009 of the European Parliament and the Council of 21 October 2009 on common rules for access to the international market for coach and bus services.";

(5) The following Article is inserted:

Article 8a
Parking areas

1. The Commission shall ensure that information about safe and secure parking areas is easily accessible to drivers engaged in carriage of goods and passengers by road. To that end the Commission shall publish a list of all parking areas that have been certified, in order to provide drivers with adequate:
 - Intrusion detection and prevention
 - Lighting and visibility
 - Emergency contact point and procedures
 - Gender-friendly sanitary facilities
 - Food and beverage purchase options
 - Connections enabling communication
 - Power supply.

The list of such parking areas shall be made available on a single official website that is regularly updated.

2. The Commission shall adopt delegated acts in accordance with Article 23a to establish standards providing further detail concerning the level of service and security with regard to the areas listed in paragraph 1 and concerning the procedures for the certification of parking areas.
3. All parking areas that have been certified may indicate that they are certified according to Union standards and procedures.

In accordance with point (c) of Article 39(2) of the Regulation (EU) No 1315/2013 Member States are to encourage the creation of parking space for commercial road users.

4. By 31 December 2024, the Commission shall present a report to the European Parliament and to the Council on the availability of suitable rest facilities for drivers and of secured parking facilities, as well as on the development of safe and secure parking areas certified in accordance with the delegated acts. That report may list measures to increase the number and quality of safe and secure parking areas.

(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 reduced 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 reduced weekly rest period the driver shall have access to a sleeper cabin, bunk or couchette at their disposal.

With regard to regular weekly rest periods, that derogation shall only apply to ferry or train journeys if: (a) the journey is scheduled for 8 hours or more; and (b) the driver has access to a sleeper cabin in the ferry or on the train.";

(5a) The following Article is inserted:

"Article 9a

By 31 December 2025, the Commission shall draw up and submit to the European Parliament and to the Council a report evaluating the use of autonomous driving systems in the Member States, focusing in particular on their potential impact on rules on driving and rest times. That report shall be accompanied, if appropriate, by a legislative proposal to amend this Regulation.";

(5b) in Article 10, paragraph 1 is replaced by the following:

"1. A transport undertaking shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled, the speed of delivery and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation.";

(6) in Article 12, the following paragraph is added:

"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 or the driver's place of residence for taking a weekly rest.

Under the same conditions, the driver may exceed the daily and weekly driving time by up to two hours, provided that an uninterrupted break of 30 minutes was taken immediately prior to the additional driving in order to reach the employer's operational centre or the driver's place of residence for taking a regular 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.

Any period of extension shall be compensated by an equivalent period of rest taken en bloc with any rest period, by the end of the third week following the week in question.";

(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 vehicle, and which do not border another Member State. ";

(b) the following point is inserted:

"(pa) vehicles or combinations of vehicles carrying construction machinery for a construction undertaking up to a 100 km radius from the base of the undertaking and on condition that driving the vehicles does not constitute the driver's main activity;"

(c) 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. The Commission shall immediately publish this information on a public website.";

(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 and proportionate to the gravity of the infringements, as indicated in Annex III to Directive 2006/22/EC of the European Parliament and of the Council⁷, dissuasive and non-discriminatory. No infringement of this Regulation and of Regulation (EU) No 165/2014 shall be subject to more than one penalty or procedure. The Member States shall , by the date specified in the second subparagraph of Article 29, notify the Commission of those rules and measures, along with the method and criteria chosen at national level for assessing their proportionality. The Member States shall notify without delay any subsequent amendment affecting them. The Commission shall inform Member States of those rules and measures, and of any amendments thereto. The Commission shall ensure that this information is published on a dedicated public website in all official languages of the EU, containing detailed information on such penalties applicable in EU Member States.";

(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.";

⁷ 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).

(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) The following Article is inserted :

Article 23a

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 8a shall be conferred on the Commission for a period of five years from ... [date of entry into force of this amending Regulation].
The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-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 8a 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 8a 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";

(11b) 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. 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, Regulation (EC) No 1071/2009, Regulation (EC) No 1072/2009, Regulation (EC) No 1073/2009, Directive 96/71 and Directive 2002/15/EC of the European Parliament and of the Council⁸, Directive 2014/67/EU as far as posting of workers in road transport is concerned, . the Directive laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in road transport, Council Directive 92/6/EEC⁹ and Council Directive 92/106/EEC¹⁰.";

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

"4. No later than three 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 laying down specifications for the recording of border-crossing and additional activities, the following vehicles operating in a Member State other than their Member State of registration shall be fitted with a smart tachograph as provided in Articles 8, 9 and 10 of this Regulation:

(a) vehicles fitted with an analogue tachograph;

⁸ 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).

⁹ 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).

¹⁰ 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.

- (b) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Council Regulation (EEC) No 3821/85 applicable until 30 September 2011;
- (c) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Council Regulation (EEC) No 3821/85 applicable from 1 October 2011; and
- (d) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Council Regulation (EEC) No 3821/85 applicable from 1 October 2012.

4a. No later than four years after the entry into force of detailed provisions referred to in the second sentence of the first paragraph of Article 11 laying down specifications for the recording of border-crossing and additional activities, vehicles which are fitted with a smart tachograph complying with Annex IC to Commission Implementing Regulation (EU) 2016/799 operating in a Member State other than their Member State of registration shall be fitted with a smart tachograph as provided in Articles 8, 9 and 10 of this Regulation.";

(-1b) In Article 4(2), the following indent is inserted:

“- have enough memory capacity to store all of the data required under this Regulation;”;

(-1c) 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, Regulation (EC) No 1071/2009, Regulation (EC) No 1072/2009, Regulation (EC) No 1073/2009, Directive 96/71 and Directive 2002/15/EC of the European Parliament and of the Council, Directive 2014/67/EU as far as posting of workers in road transport is concerned, . the Directive laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in road transport, Council Directive 92/6/EEC and Council Directive 92/106/EEC.”

2. Member States shall, in particular, ensure that personal data are protected against uses other than those strictly linked to the Union 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 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 apply to vehicles registered in a Member State 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).";

- (-1a) the following subparagraph is inserted:

"In order to facilitate the verification of compliance by control authorities, the smart tachograph shall also record, if the vehicle has been employed for the carriage of goods or passengers, as required by Regulation (EC) No 561/2006.";

- (1a) Article 9 is amended as follows:

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

"Three years after the entry into force of detailed provisions referred to in the second sentence of paragraph 1 of Article 11 laying down 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.";

- (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 the Union 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 laying down 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.";

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

"By ... [12 months after the entry into force of this amending Regulation], the Commission shall adopt implementing acts laying down detailed rules for the uniform application of the obligation to record and store data relating to any border crossing of the vehicle and activities referred to in the second and third indent of the first subparagraph of Article 8(1) and in the third subparagraph of Article 8(1).

By... [18 months after entry into force of this amending Regulation], the Commission shall adopt implementing acts laying down detailed rules necessary for the uniform application of rules on data requirements and functions, including Articles 8 to 10, and the installation of, tachographs for vehicles referred to in the second subparagraph of Article 2(1) of Regulation 561/2006.";

(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 possible 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.";

(1f) in Article 34(5), point b, point iv is replaced by the following:

"(iv) under the sign  : breaks, rest, annual leave or sick leave,

under the sign "ferry/train": In addition to the sign  : the rest period spending on a ferry or train as required by Article 9 of Regulation (EC) 561/2006.";

(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 .

By [18 months after the entry into force of the Directive laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in road transport,] 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 possible 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.

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.

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

Done at ,

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 1071/2009, Regulation (EC) No 1072/2009 and Regulation (EU) No
1024/2012 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. In order to avoid possible loopholes and to ensure a minimum level of professionalisation of the sector using motor 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.
- (3) 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).

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- (4) 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.
 - (5) 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.
 - (6) In order to combat the phenomenon of so-called "letterbox companies" and guarantee fair competition and a level playing field in the internal market, 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 transport business from there. Therefore, and in light of experience, it is necessary to clarify and strengthen the provisions regarding the existence of an effective and stable establishment while avoiding a disproportionate administrative burden.
 - (7) 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.

- (8) Regulation 1071/2009 requires undertakings to conduct effectively and continuously their operations with the appropriate technical equipment and facilities at an operating centre situated in the Member State of establishment and it allows for additional requirements at the national level, the most common being to have parking spaces available in the Member State of establishment. However, those, unevenly applied, requirements have not been sufficient to ensure a genuine link with that Member State in order to efficiently fight letter-box companies and reduces the risk of systematic cabotage and nomadic drivers organised from an undertaking to which the vehicles do not return. Considering that for the proper functioning of the internal market in the area of transport specific rules on the right of establishment and provision of services may be necessary, it is appropriate to further harmonize the establishment requirements and to strengthen the requirements linked to the presence of the vehicles used by the transport operator in the Member State of establishment. Defining a clear minimum interval for when the vehicle has to return also contributes to ensuring that those vehicles can be correctly maintained with the technical equipment situated in the Member State of establishment and facilitates controls. The cycle for such returns should be synchronized with the obligation on the transport undertaking in Regulation 561/2006 to organize its operations in a manner that enables the driver to return home at least every four weeks so that both obligations can be fulfilled through the return of the driver together with the vehicle at least every second four week cycle. This synchronisation strengthens the right of the driver to return and reduces the risk that the vehicle has to return only to fulfil this new establishment requirement. The requirement to return to the Member State of establishment should, however, not require a certain number of operations to be conducted in the Member State of establishment or otherwise limit the operators possibility to provide services throughout the internal market.
- (9) 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.

- (10) 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.
- (11) 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 in road transport, cabotage and the law applicable to contractual obligations should be added to the items relevant to the assessment of good repute.
- (12) 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.
- (13) 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.
- (14) 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.

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- (15) 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.
 - (16) 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.
 - (17) The information about transport operators contained in the national electronic registers should be as complete and up-to-date 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.
 - (18) The Commission is empowered to adopt inter alia the technical procedures for electronic consultation of the national electronic registers of the other Member States. That may entail procedures necessary to ensure that it is possible for the competent authorities to access the harmonized risk rating of an undertaking under Article 9 of Directive 2006/22/EC during roadside checks.
 - (19) 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 Council. 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.

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- (20) 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.
- (21) 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.
- (22) While the further liberalisation contained in Article 4 of Directive 92/106/EEC compared to cabotage in Regulation (EU) No 1072/2009 has been beneficial in promoting combined transport and should, in principle, be retained, it is necessary to ensure that it is not misused. Experience shows that, in certain parts of the Union, that provision has been used in a systematic manner to circumvent the temporary nature of cabotage and as the basis for the continuous presence of vehicles in a Member State other than that of the establishment of the undertaking. Such unfair practices risk leading to social dumping and jeopardize respect of the legal framework relating to cabotage. It should therefore be possible for a Member State to derogate from Article 4 of Directive 92/106/EEC and apply the provisions relating to cabotage in Regulation 1072/2009 to address such problems, by introducing a proportionate limit to the continuous presence of vehicles within their territory.

- (23) Effective and efficient enforcement of the rules is a prerequisite for fair competition in the internal market. Further digitalisation of enforcement tools is essential in order to free up enforcement capacity, reduce unnecessary administrative burden on international transport operators and in particular SMEs, better target high-risk transport operators and detect fraudulent practices. 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.
- (24) 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 clear and foreseeable rules on sanctions on consigners, shippers, freight forwarders, contractors and sub-contractors in case they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they commission involve infringements of this Regulation.
- (25) The European Labour Authority, whose scope of activities, as set out in Article 1(4) of Regulation (EU) 2019/1149, covers Regulation (EC) No 1071/2009, will play an important role in assisting Member States to adequately enforce the rules of this Regulation. This role will in particular concern concerted checks, facilitation of cooperation and exchange of information between Member States, promotion and sharing of best practices, supporting capacity building, training and awareness raising campaigns.

- (26) 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.
- (27) 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 2016⁵. 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.
- (28) Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 should therefore be amended accordingly,

⁵ OJ L 123, 12.5.2016, p. 1.

HAVE ADOPTED THIS REGULATION:

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, 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 activity, is to be considered as carriage exclusively for non-commercial purposes;'

- (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

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, at which it is able to access the originals of its core business documents, whether in electronic or any other form 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 and posting of drivers, documents containing data relating to cabotage, 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;
- (b) organise its vehicle fleet's activity in such a way as to ensure that vehicles at the disposal of the undertaking and used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it;
- (c) be registered in the register of commercial companies of that Member State or in a similar register whenever required under national law;
- (d) be subject to tax on revenues and, whenever required under national law, have assigned a VAT registration number;

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- (e) 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;
 - (f) effectively and continuously conduct its administrative and commercial activities with the appropriate equipment and facilities at premises as referred to in point (a) situated in that Member State and manage effectively and continuously its transport operations using the vehicles referred to in point (g) with the appropriate technical equipment situated in that Member State;
 - (g) on an ongoing basis have at its regular disposal a number of vehicles complying with the conditions laid down in point (e) and drivers normally based at an operational centre in that Member State, proportionate to the volume of transport operations carried out by the undertaking.
- i) 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(f) 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), (xii) and (xiii) are added:

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

(xii) the law applicable to contractual obligations;

(xiii) cabotage.';

(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(3).';

(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 when only one motor vehicle is used, EUR 5 000 for each additional motor vehicle or combination of vehicles that has a permissible laden mass exceeding 3.5 tonnes used and EUR 900 for each additional motor vehicle or combination of vehicles that has a permissible laden mass, exceeding 2.5 tonnes but not 3.5 tonnes;
- Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles that have a permissible laden mass exceeding 2.5 tonnes but not 3.5 tonnes shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, they have at their disposal capital and reserves totalling at least EUR 1 800 when only one vehicle is used and EUR 900 for each 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.';

(b) 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.';

(c) paragraph 2 is replaced by the following:

- '2. By way of derogation from paragraph 1, the competent authority may agree or 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.';

(5a) in Article 8, paragraph 5 is replaced by the following:

- '5. Member States may promote periodic training on the subjects listed in Annex I at three year intervals to ensure that the person or persons referred to in paragraph 1 are sufficiently aware of developments in the sector.'

(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 [**OJ: 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, paragraph (1) is replaced by the following:

- '1. Competent authorities shall regularly monitor whether undertakings which they have authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3. To that end, Member States shall carry out checks, including where appropriate on-site inspections at the premises of the undertaking concerned, targeting those undertakings which are classed as posing an increased risk. For that purpose, Member States shall extend the risk classification system established by them pursuant to Article 9 of 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 to cover all infringements specified in Article 6 of this Regulation.'

(8a) in Article 12, the second subparagraph of paragraph (2) 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 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 and before the transport manager has demonstrated to have followed appropriate training for a period of at least 3 months or an exam on the subjects listed in part I of Annex I of this Regulation.';

(10a) Article 14(2) is replaced by the following:

2. 'Unless and until a rehabilitation measure is taken in accordance with the relevant provisions of national law and paragraph 1 of this Article, the certificate of professional competence, referred to in Article 8(8), of the transport manager declared to be unfit shall no longer be valid in any Member State.'

(11) Article 16 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) point (c) is replaced by the following

'(c) the names of the transport managers designated to meet the requirements laid down in Article 3 relating to good repute and professional competence or, as appropriate, the name of a legal representative;'

(ii) the following points are added:

'(g) the registration numbers of the vehicles at the disposal of the undertaking pursuant to Article 5(1)(g);

(h) the number of people employed in the undertaking on 31 December the previous year, which shall be updated to the national register by 31 March each year;

(i) the risk rating of the undertaking pursuant to Article 9 of Directive 2006/22/EC.'

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

'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.

Member States may choose to keep the data referred to in points (e) to (i) of the first subparagraph in separate registers. In such a case, the data referred to in points (e) and (f) 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 (g) to (i) of the first subparagraph shall be available to the competent authorities during roadside checks by 12 months from the entry into force of the implementing act specifying the functionalities to allow for the data to be available to the competent authorities during roadside checks adopted pursuant to Article 16(6).

The data referred to in points (e) to (i) 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) the following subparagraph is added to Article 16(6):

'By 14 months after the adoption of an implementing act on a common formula for calculating the risk rating as referred to in Article 9(2) of Directive 2006/22/EC, the Commission shall specify, by way of an implementing act, the functionalities to allow for the data referred to in points (g) to (i) of paragraph 2 to be made available to the competent authorities during roadside checks.';

(d) paragraph 7 is deleted.

(12) Article 18 is replaced by the following:

'Article 18

Administrative cooperation between Member States

1. Member States shall designate a national contact point responsible for the exchange of information with the other Member States with regard to the application of this Regulation. Member States shall forward to the Commission the names and addresses of their national contact points by 4 December 2011. The Commission shall draw up a list of all contact points and forward it to the Member States.
2. The competent authorities of the Member States shall cooperate closely and swiftly provide one another with mutual assistance and any other relevant information in order to facilitate the implementation and enforcement of this Regulation.
3. 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.
4. Member States shall reply to requests for information from all competent authorities of other Member States and 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. Such requests for information may include access to documents required to prove that the conditions laid down in Article 5 are met. Requests for information by competent authorities of Member States shall be duly justified and 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 and documents which are being requested.
5. Member States shall submit the information requested by other Member States pursuant to paragraph 4 within thirty working days from the receipt of the request. A shorter time limit may be mutually agreed between the Member States.

6. 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 Member State.
7. 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. In the event of persistent delays in the provision of information to the requesting Member State, the Commission shall be informed and shall take appropriate measures.
8. The exchange of information referred to in paragraph 3 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 4 to 7 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.
9. 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.
10. Mutual administrative cooperation and assistance shall be provided free of charge.
11. 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: 21 months 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 14 months after 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 [**OJ: 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 2016⁶.
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.;

(15) Article 25 is amended as follows:

- (a) paragraph 3 is replaced by;

'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) the title is replaced by the following:

'Reporting and review'

⁶ OJ L 123, 12.5.2016, p. 1

(b) 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: 21 months after the entry into force of this amending Regulation**] 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;';

(c) the following paragraphs are added:

3. 'Every two years Member States shall report to the Commission on the requests made by them under Article 18(4) to (9), on the replies received from other Member States and on the actions that they have taken on the basis of the information provided;
4. On the basis of the information gathered by the Commission under paragraph 3 and of further evidence, the Commission shall, by [**OJ: insert 36 months after the entry into force of this amending Regulation**] at the latest, present a detailed report to the European Parliament and the Council on the extent of administrative cooperation between Member States, on any possible shortcomings in this respect and on possible ways to improve the cooperation. On the basis of this report, it shall assess whether it is necessary to propose additional measures.
5. The Commission shall evaluate the implementation of this Regulation by [**OJ: 3 years after the date of entry into force of this amending Regulation**] and report to the European Parliament and the Council on the application of this Regulation.

6. Following the report referred to in paragraph 5, the Commission shall regularly evaluate this Regulation and submit the evaluation results to the European Parliament and the Council.
7. Where appropriate, the reports referred to in paragraphs 5 and 6 shall be accompanied by relevant legislative proposals.;

(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 21 months 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*: **21 months 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;';

(2) Article 4 is amended as follows:

(a) in paragraph 2, the third subparagraph is deleted;

(b) paragraph 4 is replaced by the following:

'4. 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.';

(3) 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.';

(4) 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 4 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 4 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 presented or transmitted to the authorised inspecting officer of the host Member State on request and within the duration of 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 an electronic consignment note under the Convention on the Contract for the International Carriage of Goods by Road (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.';

(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.';

(5) 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 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.'

(6) in Article 10, the following paragraph is added:

'7. In addition to what is provided for in paragraph 1 to 6 and by derogation from Article 4 of Directive 92/106/EEC, Member States may, where necessary to avoid misuse of the latter provision through the provision of unlimited and continuous services consisting in initial or final road legs within a host Member State that form part of combined transport operations between Member States, provide that Article 8 of this Regulation apply to hauliers when they carry out such initial and/or final road haulage legs within that Member State. With regard to such road haulage legs Member States may provide for a longer period than the 7 day period provided for in Article 8(2) and may provide for a shorter period than the 4 day period provided for in Article 8(2a). The application of Article 8(4) to such transport operations shall be without prejudice to requirements following from Directive 92/106/EEC. Member States making use of the derogation foreseen in this paragraph shall notify the Commission thereof before applying the relevant national measures. They shall review those rules at least every 5 years and notify that review to the Commission. They shall make the rules, including the length of the respective periods, publically available in a transparent manner.';

(7) the following Article 10a is inserted:

'Article 10a

Checks

1. In order to further enforce the obligations stipulated under this Chapter, Member States shall ensure that a coherent national enforcement strategy is applied on their territory. That strategy shall focus on undertakings with a high risk rating, referred to in Article 9 of Directive 2006/22/EC.
2. Each Member State shall ensure that the checks provided for in Article 2 of Directive 2006/22/EC will include, where relevant, a check on cabotage operations.
3. 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 shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.'

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

'Article 14a

Liability

Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and subcontractors for non-compliance with Chapters II and III, where they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they have commissioned 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 [**OJ: 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 2016⁷.
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.;

⁷ OJ L 123, 12.5.2016, p. 1.

(9) Article 15 is deleted;

(10) Article 17 is replaced by the following:

'Article 17

Reporting and review

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 [**OJ: the day before 21 months after the entry into force of this amending Regulation**] 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 [**OJ: the day before 21 months after the entry into force of this amending Regulation**] 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 [**OJ: two years after the date of entry into force of this amending Regulation**], at the latest, Member States shall forward to the Commission their national enforcement strategy adopted pursuant to Article 10a. By 31 March of every year, at the latest, Member States shall inform the Commission on the enforcement operations performed in the previous calendar year pursuant to Article 10a, including, where appropriate, the number of checks performed. This information shall include 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 [**OJ: 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.
5. The Commission shall evaluate the implementation of this Regulation, in particular the impact of the amendments of Article 8 introduced by [**OJ:reference to this amending Regulation**], by [**OJ: 3 years after the date of entry into force of this amending Regulation**] and report to the European Parliament and the Council on the application of this Regulation.
6. Following the report referred to in paragraph 5, the Commission shall regularly evaluate this Regulation and submit the evaluation results to the European Parliament and the Council.
7. Where appropriate, the reports referred to in paragraphs 5 and 6 shall be accompanied by relevant legislative proposals.;

Article 3

Amending Regulation (EU) No 1024/2012

In the Annex to Regulation (EU) No 1024/2012 the following point is added:

'(xx) 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.;

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 of this amending Regulation**].

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
