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*ETF Road Transport*

## European Commission's Road Initiative:

### Not our kind of social Europe!

Briefing document for the press

Two years ago the European Commission engaged in an exercise aiming to **clarify, simplify** and **improve enforceability** of the EU legislation in road transport. The declared aims: to tackle social dumping and reinstate the climate of fair competition in the sector.

The legal aspects at stake were:

- Clarify the weekly rest conditions
- Eliminate the payment per kilometre driven
- Clarify the definition of cabotage
- Tightening the conditions for access to occupation so that to address the phenomenon of letter-box companies

All these were to be addressed in a **3-pillar road initiative** to include:

- **Market aspects**
- **Social aspects**
- **Infrastructure charging**

The **provisional date for the launch** of the initiative is **31 May 2017**. After two years of consultation of various stakeholders the European Commission will now start to draft the text of the initiative.

At present, the ETF had the first concrete proof of the European Commission's actual future intentions.

Below, an overview of the intended measures.

They go much beyond simplification, clarification and they bring no added value from the enforcement perspective. They have the potential to deepen the precariousness of the driver's profession, the safety of passengers and other road users.



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# CHANGES TO DRIVING AND REST TIME RULES (REGULATION (EC) No 561/2006) / passenger and freight

## PRELIMINARY CONSIDERATIONS

- The policy objectives of the driving and rest time rules are: a) to harmonise competition conditions between modes of inland transport; b) to improve drivers' working conditions; c) to improve road safety (Art. 1, Regulation (EC) No 561/2006)
- In 2015 – 2016 DG MOVE evaluated the effectiveness of this regulation and concluded that rules function well in their current form, are well known by drivers and the industry, and pose no implementation problems to both
- Over the past two years of assiduous ex-post evaluations and assessment procedures, the European Commission have collected no evidence on driver fatigue, on the evolution of the working conditions in the sector, on the impact of the two on road safety and fair competition
- On 24<sup>th</sup> of January 2017, in a meeting with a delegation of 20 ETF representatives, Commissioner Bulc gave guarantees that there will be no modifications to the driving and rest time rules, nor will there be further derogations for bus and coach passenger transport!

## WHAT IS ENVISAGED - NEW MEASURES TO AFFECT BUS, COACH AND TRUCK DRIVERS

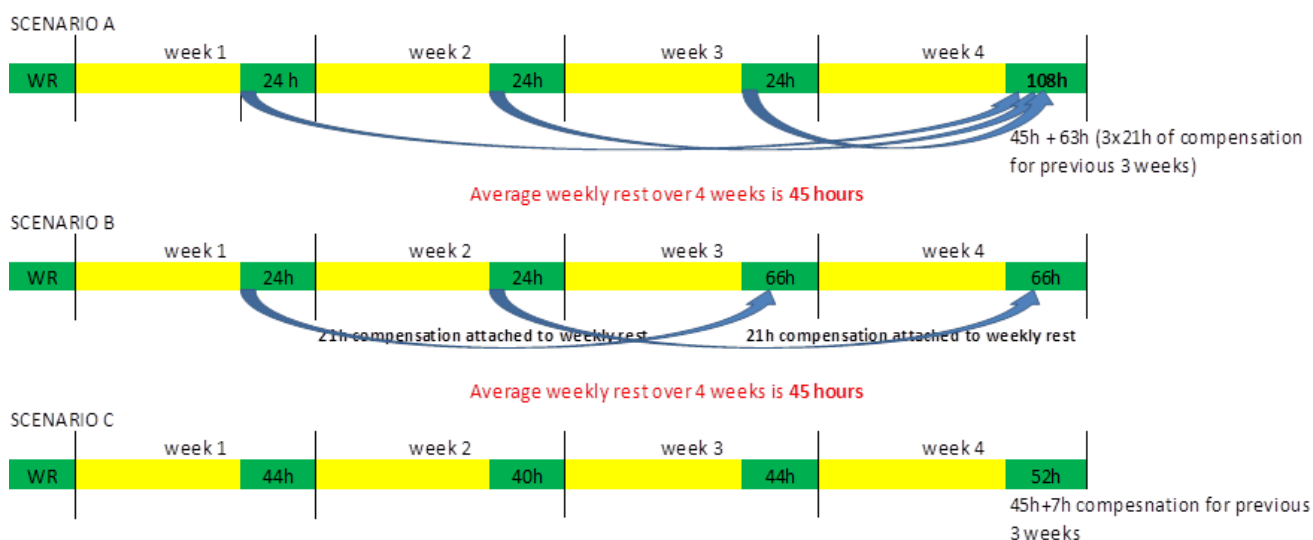
Shorter weekly rest and longer driving hours over a period of 3 or 4 consecutive weeks

**UNDER THE CURRENT RULES** a driver must take 45 hours of uninterrupted rest at the end of each week of driving. However, to give business more flexibility in organising transport journeys, once within a fortnight the driver can be given a 24 hour reduced weekly rest as long as the remaining 21 hours are compensated no later than the end of the 3<sup>rd</sup> week. This results in the following distribution of weekly rest periods over the length of a month:

**24 hrs + 45 hrs + 66 hrs + 24/45 hrs**

**THE NEW RULES** will permit companies to keep the weekly rest down to 3 x 24 hours for three or four consecutive weeks of driving.

The diagram below shows the scenarios currently being considered by the European Commission:



**UNDER THE CURRENT RULES** a driver cannot drive more than 90 hours within any given two weeks, with a maximum limit of 56 hours during *Week 1*, and of 34 hrs during *Week 2*.

**UNDER THE NEW RULES** (see Scenarios A and B), on a reduced weekly rest at the end of *Week 2*, a *Week 2* of 34 driving hours no longer makes sense as this would result in one day and a half of driver inactivity. Scenarios A and B will thus come with an extension of the driving time i.e. to 56 hours for two, then three, weeks consecutively.

### Making it legal to sleep in the vehicle for longer periods of time – mostly concerning freight transport

**UNDER THE CURRENT RULES**, provided the drivers agree to it, they are permitted only to take **daily rest** and **reduced weekly rest** in the cab. Thus, in the light of its declared objectives i.e. improvement of drivers' working conditions, road safety, etc., the current law makes sure that drivers cannot sleep in the cab on more than 12 consecutive days. After 12 days they are entitled to 45 hours away from the truck. The current rules give drivers the possibility to spend maximum 7 nights away from the truck over a month.

**UNDER THE NEW RULES**, if the definition of **weekly rest** is maintained to an uninterrupted period of 45 hours, the 3 above scenarios will result in making it legal for companies to force their drivers sleep in the truck cab for 3 to 4 weeks.

### The 45-minute daily break will be taken in three slots of 15 minutes each

**UNDER THE CURRENT RULES**, the 45-minute break can be taken in one block or, to give business more flexibility in planning the journey, in two slots respectively of 15 and 30 minutes.

**THE NEW RULES** will enable road transport operators to split the break into three slots of 15 minutes each. This will mean pulling off the road into a parking area and having only 15 minutes to 'refresh', grab a bite and de-stress before going back into the traffic.

### And special 'something' for bus and coach drivers only... more consecutive days of driving before taking a day off, and 21 hours less rest per month

**UNDER THE CURRENT RULES**, after six consecutive days of driving a bus or coach driver must take at least a reduced weekly rest of 24 hrs. The only exception: the international coach tours, where companies can organise the drivers' work in such a way that the day of rest can be postponed after 12 days of consecutive driving (the 12-day derogation).

**UNDER THE CURRENT RULES**, no matter in which circumstances, thus including driving under the 12-day derogation, bus and coach drivers have three weeks in which to compensate the 21 hours of rest missed when taking a reduced weekly rest.

**UNDER THE NEW RULES**, there will be no possibility to compensate the 21 hours of rest. Bus and coach drivers will simply rest 21 hours less per month.



**UNDER THE NEW RULES**, the 12-day derogation will be extended to domestic coach tours too. And drivers working in domestic occasional passenger coach transport, under the new rules, will be driving for eight days in a row, instead of six, without any day of rest.

## THE PROBLEM WITH THE EUROPEAN COMMISSION MEASURES

Scenarios A and B will lead to drivers resting respectively 42 and 63 hours less over a period of 3 or 4 weeks of work. This will more than likely be accompanied by an increase in driving time by up to 22 hours of driving per week for Weeks 2 and 3 in Scenario 1, and by 22 hours of driving for Week 2 in Scenario B. In the current conditions – traffic, work intensity, high demand for on-time deliveries, interacting with passengers during bus or coach trips – postponing compensatory rest for 3 to 4 weeks period will fail to address the fatigue cumulated by the driver over the month.

This bundle of measures gives full flexibility to road transport operators to exploit driver productivity, and it fully fits into the current patterns used by a large part of industry working with non-resident drivers (drivers working abroad): keeping drivers 3 or 4 weeks on the truck and send them back home at the end of the month.

Reduction of rest time will come with cuts in rights and benefits - i.e. time off and pay compensation - for those drivers who are on a regular employment situation, and with more days spent consecutively in the truck, legally, for drivers victims of dumping practices.

### These measures will lead to:

- Increased and cumulated driver fatigue
- Worsening working conditions for drivers
- Sector to become even less attractive for new entrants
- Legalising dumping practices, in as much as forcing drivers to take their weekly rest in the lorry is an economic case feeding into social dumping
- Negative impact on road safety

Furthermore, opening the driving and rest time rules to revision will lead to disrupting a set of clear, well-functioning and well known rules by drivers and companies alike, a set of rules which had succeeded to strike a balance between business flexibility and driver health and safety.

## ETF PROPOSALS

The European Commission to keep its initial promise to only clarify a few aspects of the regulation and make them more enforceable

The European Commission to clarify only two aspects of Regulation (EC) No 561/2006

- The clear interdiction of performance-based pay i.e. pay per km driven or per delivery
- Clarification over the conditions in which the driver has to take the weekly rest, notably away from the vehicle, hotel / motel single room with own sanitary equipment and access to hot meals

The European Commission to carry out an assessment on levels of fatigue in road passenger transport and its impact on driver and passenger safety.

The European Commission to step up enforcement of driving and rest time rules by:



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- Making it mandatory to replace all tachograph devices with the latest digital tachograph generation, paired with the motion sensor
- Bringing forward the deadline for the mandatory mass-introduction of the smart tachograph on all vehicles engaged in international transport

In what the driving and rest time rules are concerned, no changes are needed. The rules are clear, function well, are well known to drivers and companies alike, a set of rules which had succeeded to strike a balance between business flexibility and driver health and safety.



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# CHANGES TO THE APPLICATION OF POSTING OF WORKERS IN ROAD TRANSPORT

## PRELIMINARY CONSIDERATIONS

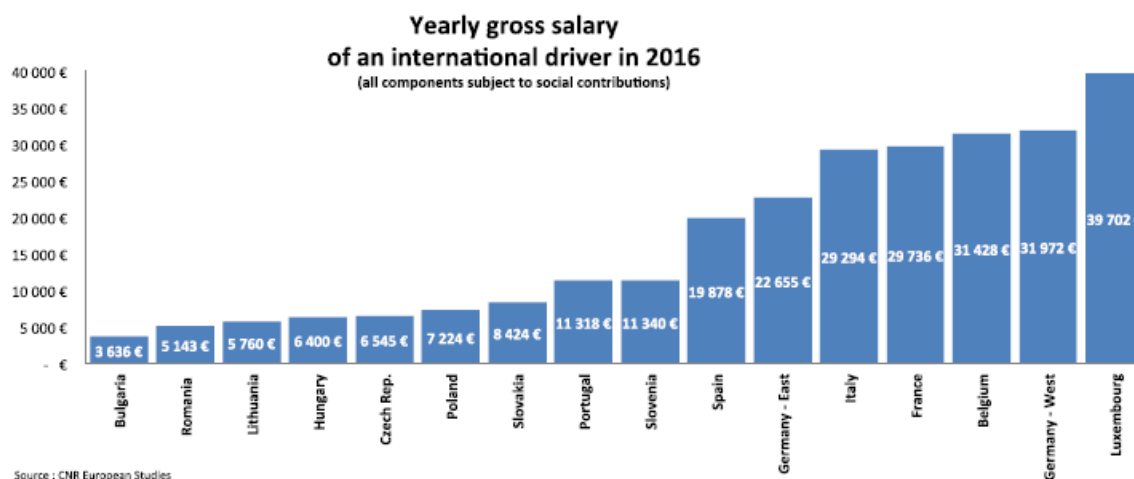
EU legal provisions such as

- Article 45 of the Treaty of Functioning of the European Union
- Posting of workers directive
- Article 8 of the Rome I Regulation
- Regulation (EC) No 1071/2009 on access to occupation (letter box companies)

aim to provide a level playing field for all operators engaged in road transport activities on the territory of any given Member State, no matter their country of establishment, no matter the country they recruit their drivers.

If drivers work in and from a Member State temporarily, this is posting. If they work in and from a Member State on permanent basis, they fall under the provisions of the Rome I Regulation and thus they are entitled to the full pack of 'host' Member State conditions, including the health coverage and social security.

This is vital in the context where in road transport gaps between Member States in terms of pay and conditions are substantial, and they persist. Acknowledging this situation, in 2014 the European Commission gave up its intentions to fully liberalise the domestic freight markets. See below a graphic indicating the annual wage levels in freight road transport across the 28 EU Member States.



The choice of Member States in the examples below is based on the two extremes of the CNR graphic.



## WHAT IS ENVISAGED – APPLYING POSTING CONDITIONS AFTER 5, 7 OR 9 DAYS SPENT ON THE TERRITORY OF A MEMBER STATE

**UNDER THE CURRENT RULES**, when **drivers** work in an EU Member State other than their own on a temporary basis, they will be covered by the posting of workers directive if they perform cabotage. If they are engaged in international transport other than cabotage, they will be covered by posting only if the posting conditions apply. For the posting conditions please see Article 1 of Directive 96/71/EC. As posted workers, they **are entitled from Day 1 of work to the minimum pay and conditions of the Member State hosting their activity**. Thus, to take a simple example, a road transport operator performing cabotage in, say, Luxembourg, with drivers from Bulgaria will by law have to pay the drivers the Luxembourg pay rates starting with Day 1 of cabotage. In other words, to pay drivers Bulgarian wages when doing cabotage in Luxembourg is illegal.

**UNDER THE NEW RULES**, no matter what type of road transport operation they will be performing, drivers will only be entitled to the pay levels of the Member State hosting their activity after 5, 7 or 9 days of work on its territory. It will thus be perfectly legal for a road transport operator to perform domestic transport in Luxembourg, for 5 to 9 days, with Bulgarian drivers, paying them Bulgarian wages.

**THE NEW RULES** would also oblige the drivers to record manually, at every stop, the code of the country they are in. This, in the European Commission view, will step up enforcement.

### THE PROBLEM WITH THE EUROPEAN COMMISSION MEASURES

**They will legalise social dumping and will undermine the level playing field between road transport operators**, currently guaranteed by the above mentioned EU law frame.

**They will lead to further distortions on domestic markets**, both labour and transport, as road transport undertakings will use workforce from low-income Member States to operate within domestic markets of Member States with higher levels of pay and higher standards. The Member States with higher exposure to cabotage (Western and Northern Europe) will be particularly affected.

**They will not make rules simpler or clearer**, but just delay their application by a number of days.

**They will not be more enforceable!** The rules will remain the same. They will only be applied for a shorter period of time.

**They will reverse the burden of proof on the driver:** it will be for the driver to prove where he has worked and whether he was posted. The employer will put pressure on the driver not to record the country code at each stop and, in the event of a check, the driver will be held liable for not having done so.

### ETF PROPOSALS

The **European Commission to clarify the status of the professional driver in relation to his habitual workplace**. This would require an amendment to Regulation (EC) No 1071/2009 based on Articles 8.1 and 8.2 of Rome I Regulation (Regulation (EC) No 598/2008) and on the ECJ court ruling on the Koelzsch case, to stipulate that professional drivers are covered by the 'host country' conditions when habitually working in and from a Member State with better pay and conditions.



**The European Commission to keep posting of workers as it is for the road transport**, notably, reaffirming that posting applies from Day 1 to professional drivers performing cabotage and to those performing international transport as long as posting conditions are met (Article 1, Directive 96/71/EC).

The **European Commission to work on enforcement and not on the exclusion of drivers from rights and benefits**. This will entail issuing a set of **clear, harmonised and effective enforcement measures**, valid for all Member States, and fit to address the potential distortions on domestic labour and transport markets. The ETF has a set of concrete proposals in this direction:

- The **European Commission to bring forward the deadline for the introduction of the 'smart' tachograph to cover all vehicles engaged in international transport** (including of course cross-trade transport and cabotage). This can be done by means of a derogation to Regulation (EU) No 165/2014. How will this improve enforcement, in practice? One of the functions of the future 'smart' tachograph is the mandatory automatic recording of the exact position of vehicle and driver at the start and the end of the driver's working day, as well as at every three hours of cumulated driving time. Hence its capacity to record the period of time spent by the driver and vehicle in a given Member State. Hence its capacity to indicate the habitual and / or temporary workplace of the driver. Additional benefits of the early introduction of the 'smart' tachograph on all vehicles performing international transport will also consist of the following: a) it will be the only tool to control cabotage; b) 'smart' tachograph data will have to be kept for at least 1 year in the company records, hence company checks will be able to detect retroactively whether or not companies had complied with the cabotage rules and with posting of workers requirements.
- The **European Commission to introduce a mandatory electronic pre-notification for each posted driver**. This will consist in "a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision [...] containing the relevant information necessary in order to allow factual controls at the workplace" (Article 9 of Directive 2014/67/EU). The pre-notifications should be accessible in real time to all enforcement agencies responsible for road transport and must be kept on board vehicles for controls.

## FINAL REMARKS

In December 2014, at its first meeting with Commissioner Bulc, the ETF was asked to come up with concrete constructive solutions to fix the problems in the road transport sector i.e. the social dumping practices, the letter-box companies, etc. The **ETF has come up with two sets of concrete proposals** in this direction, on law enforcement in 2015 and on cabotage and eradication of letter box companies in 2016. **None of these proposals have been taken into account so far!**

In **July 2014**, in his opening speech to the European Parliament, **Jean-Claude Juncker** stated "**We have to fight social dumping and we will do it.**" Following his line, **Commissioner Bulc** has constantly **stated that the road initiative will address the social dumping practices in the sector. Today, we face a set of measures that are 100% pro-market and bring 'zero' contribution to the already precarious working and living conditions of professional drivers.** More so, these measures will push into precariousness even those groups of drivers who are currently in regular employment contracts. **These measures will have a clear negative impact on occupational health and safety, on passenger safety, on the safety of all road users!**

The only measures currently under consideration that the European Commission try to 'sell' as social are:





- **Shortening the reference period for working time in road transport from 4 months to 1 month**, meaning that the average maximum working time for a driver on any given month should remain 48 hours through a month
- **An attempt to clarify that the weekly rest must be taken away from the vehicle**
- **Forbidding performance related pay i.e. pay per kilometer driven**

The ETF considers these measures window-dressing.

With regards to the **working time**, the ETF points out that companies put constant pressure on driver to register on tachograph 'other work' as 'break' or rest. In a survey carried out by the ETF on a sample of 1000 drivers in 2008 – 2011, 60% of the interviewed drivers mentioned they were in this situation. Since 2011 the situation has worsen.

With regards to the **rest away from the vehicle**, the 3 above scenarios on a new distribution of weekly rest over the lengths of a month will lead to a reduction of nights spent away from the driver cab from 7, down to 2 or maximum 4 nights.

With regards to the **pay per kilometer driven**: currently pay per kilometre driven represents 70 – 80% of the total monthly income of drivers from Central and Eastern Europe. The ETF supports forbidding performance based pay. HOWEVER! Since early 2016 companies practising pay per kilometre risk to lose their Community licence. So road transport undertakings have simply changed the way they reflect the driver pay in the pay slip: in practice, the driver is still paid per km driven, but the pay slip shows the amount in number of daily allowances! In these circumstances it is difficult to grasp the added value of this interdiction. If the European Commission is indeed ready to address the pay issues in road transport, then they must clarify the host country principle as stipulated by Art. 8.2 of the Rome I Regulation and by the ECJ ruling on the Koelzsch case.

**“European Commission Road Initiative: time to respect drivers!”**

**That is the campaign title the ETF will run throughout the remaining months to precede the launch of the Initiative!**

