



EUROPEAN COMMISSION

*Brussels, 7.11.2017  
C(2017) 7208 final*

*Dear Chair,*

*The Commission would like to thank the Tweede Kamer for its Opinion on the Mobility Package adopted by the Commission on 31 May 2017.*

*The Commission is pleased that several parliamentary groups of the Tweede Kamer acknowledge that in view of the cross-border character of the package, the European Union level is the most appropriate level and that it is at this level that good agreements should be made with regard to improved enforcement, a level playing field and improvement in the protection of drivers.*

*In response to the comments and questions raised by parliamentary groups on various aspects of the package, the Commission would like to refer to the annex. The clarifications provided are based on the initial proposals presented by the Commission, which are currently in the legislative process involving both the European Parliament and the Council.*

*The Commission hopes that these clarifications address the issues raised by the Tweede Kamer and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Violeta Bulc  
Member of the Commission*

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## ANNEX

*The Commission has carefully considered each of the issues raised by the Tweede Kamer in its Opinion and is pleased to offer the following clarifications:*

### **Social and posting:**

*The ex-post evaluation of the social legislation<sup>1</sup> concluded that the terms of the provisions in the legislation led to divergent applications of the rules across the European Union. It was therefore appropriate to clarify the legislation in question so as to improve consistency across the Union.*

*Hence, the Commission's proposal<sup>2</sup> aims at clarifying certain provisions (e.g. place where the regular weekly rest can be taken) and at better defining certain terms. It is now up to the Council and the European Parliament to assess the text, and to decide whether detail will need to be added to certain points, for example whether the expression "suitable accommodation" would need to be further defined at European Union level.*

*The Commission would like to emphasise that enforcement is and remains the responsibility of the Member States. The Commission's proposal in this regard is merely seeking to make enforcement more efficient. Firstly, the amendments proposed are intended to make cooperation between national authorities more effective by introducing fixed deadlines for exchanging information. Secondly, harmonising national risk rating systems of undertakings and granting control officers access to the systems would allow more targeted checks of undertakings. The Commission has had extensive contacts with national enforcement authorities to test the enforceability of the proposed measures.*

*On the issue of sanctions, the Commission would like to point out that Regulation (EC) No 561/2006 already requires that penalties adopted by Member States be "effective, proportionate, dissuasive and non-discriminatory". The proposal merely suggests that the common list established in Annex III to Directive 2006/22/EC, which categorises infringements according to their gravity, be taken into account by Member States. The proposed provision does not create new competences for the Commission but aims to ensure legal certainty and fairer competition between undertakings. In addition it provides a common basis for the risk rating system of undertakings mentioned above.*

*As regards the rules on posting, the general Posting of Workers Directive<sup>3</sup> is applicable to international transport operations, with the exception of transit. Certain Member States such as Germany, France and Austria are currently applying national requirements with regard to minimum pay from the first day onward to non-resident operators. This is done in a way that entails disproportionate documentary requirements, creating significant administrative burden on road transport undertakings, thus restricting the freedom to provide services. In its*

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<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0184&from=EN>.

<sup>2</sup> COM(2017) 277 final.

<sup>3</sup> Directive 96/71/EC.

*proposal<sup>4</sup>, the Commission is taking account of the mobile nature of international transport operations by introducing sector-specific rules for the road transport sector. The proposed time threshold of three days per calendar month, below which the provisions of the Posting of Workers Directive relating to pay and annual holiday<sup>5</sup> would not apply to drivers performing international carriage operations, aims to balance drivers' rights to receive adequate remuneration with the costs for operators. Moreover, the Commission proposes lighter administrative and control requirements, which are expected to bring a 58% reduction in administrative costs for operators (from €1,352 million to €567 million) without in any way compromising drivers' working conditions.*

*As far as cabotage is concerned, the Commission's proposal<sup>6</sup> will make current rules, and consequently enforcement, simpler. Contrary to the present situation, only the transport document related to the international carriage is needed to prove that the haulier has the right to perform cabotage operations. This document can be provided electronically. Under current rules, cabotage can be performed in the Member State of destination of the international carriage and in any other Member State (provided that it is limited to one operation per Member State within a period of three days). The proposal is intended to be neutral as regards the degree of market opening, i.e. neither to increase nor to diminish it. Instead, the intention is to make it easier for cabotage rules to be applied. It envisages an increase in flexibility in terms of the maximum number of cabotage operations allowed, but at the same time restricts cabotage to a shorter time period, and limits it to the Member State of destination of the international carriage and Member States adjacent thereto.*

*The impact assessment<sup>7</sup> carried out in preparation of the proposal does not conclude that the new rules would lead to an increase in cabotage activity, including "systematic cabotage". The impact assessment also does not identify any particular or disproportionate impacts in specific Member States. The Commission remains at the disposal of the co-legislators to discuss these issues.*

*The Commission fully supports a more intensive use of the smart tachograph, also to control cabotage. It is currently conducting a study on possible ways to provide additional incentives for an earlier introduction of the smart tachograph.*

*The new rules should lead to fairer competitive conditions, less administrative burden for hauliers and easier and more efficient enforcement. The promotion of electronic transport documents alone is expected to save hauliers €6-€9 billion over the period 2020-2035.*

*As regards light commercial vehicles (LCV), the Commission considers that a minimum level of regulation is required for these operators to ensure professionalisation in the sector. Under the proposed rules all operators will be subject to an obligatory licencing procedure, which is currently not the case. Member States will be obliged to apply at least two criteria on access to the profession to LCV operators, namely the criteria pertaining to financial standing (lighter requirements than for operators using heavy goods vehicles) and to stable*

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<sup>4</sup> COM(2017) 278 final.

<sup>5</sup> Points (b) and (c) of the first subparagraph of Article 3 of Directive 96/71/EC.

<sup>6</sup> COM(2017) 281 final.

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017SC0194>.

*and effective establishment. This should eliminate any unfair competitive advantages for these operators, who are currently not subject to any European Union rules on access to the profession<sup>8</sup>, vis-à-vis hauliers using heavy goods vehicles, who are currently subject to the full application of the European Union rules on access to the profession. These amendments would diminish differences between the situations prevailing in the various Member States, on account of requirements applied to LCV operators on an optional basis.*

*The proposal also includes an obligation for Member States to closely and regularly monitor developments in the national market concerning LCVs. Several Member States already closely follow trends in the use of LCVs on their territory, so these new requirements should not necessitate new activities in all Member States. The availability of this information would allow the Commission to report to the Council and the European Parliament by the end of 2024 as a basis for an assessment whether tighter regulation for LCVs would be necessary.*

*In order to fight letterbox companies, the Commission proposes to adjust the relevant requirements. In particular, in respect of the requirement pertaining to a stable and effective establishment, it is proposed to specify that assets and staff of the haulier must be proportionate to its activities in the Member State of establishment. The Commission considers that more specific quantitative thresholds may fail to do justice to individual situations and risk running counter to the principle of freedom of establishment. The proposed new criteria for stable and effective establishment were carefully analysed in the impact assessment, and were generally supported by Member States and stakeholders in the public consultation.*

### **Road pricing:**

- *Eurovignette:*

*The Commission would like to emphasise that one of the key objectives of its proposal is to stimulate more convergence in road pricing practices which is expected to contribute to levelling the playing field among operators. One important objective is also to reduce emissions, in line with the commitment to the overall emission reduction targets of the European Union. Previous revisions of the Directive have gradually reinforced this objective, which can only be realistically achieved through a better harmonised approach due to the highly international nature of road freight transport.*

*The proposal to revise the Eurovignette Directive does not limit the Member States' margin of manoeuvre in the area of taxation. As a matter of fact, the proposal amending the provisions on vehicle taxation applicable to heavy goods vehicles above 12t provides Member States with additional freedom in the area. It is proposed to gradually diminish the tax minima set out in the Eurovignette Directive, down to zero. After a certain time, therefore, Member States would be able to choose whether or not to apply a vehicle tax, a choice which currently is not available. Nor is it proposed that the Commission exercises this choice,*

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<sup>8</sup> Regulation (EC) No 1071/2009.

*rather it stays with the Member States. Moreover, the latter also decide upon the use of the ensuing revenue.*

*The impact of the proposal on specific Member States will depend on the implementation choices made by them. The same applies to specifically local impacts, which are to be assessed separately. The intention of the Dutch government to carry out its own impact assessment on specifically national consequences is certainly pertinent in this respect.*

*Whether road charges are levied at all will continue to be decided by Member States and the same applies also to the level of any such charges, within the limits set by the Union legislator. As is presently the case, new infrastructure charging schemes shall be notified to the Commission. For external cost charging, however, the Commission has proposed a lighter regime whereby only some basic information has to be provided to the Commission. A notification of the calculation of the external cost charges is not required anymore, nor is a Decision from the Commission, as long as the reference values are respected.*

*The impact assessment carried out by the Commission and supported by an external study found only limited increases in overall transport costs, suggesting only negligible impacts on accessibility.*

*The potential for road charges to reduce environmental pollution from transport is generally well documented. The impact assessment accompanying the proposal studied environmental impacts in detail. Experience with existing differentiated distance-based charging schemes have shown positive effects on the efficiency of transport operations, an acceleration in fleet renewal, and a reduction in CO<sub>2</sub> as well as pollutant emissions. This is confirmed by studies carried out in Austria and Germany.*

*The Commission wishes to emphasise that the allocation of the proceeds from road charging - as a general rule - remains to be decided by Member States. Only in the cases of mark-ups or congestion charges, it is proposed that the revenues shall be allocated in a way that addresses the problems for which the charges were collected. This is particularly important to increase acceptance of such charges by users. This logic has so far already been applied in the case of mark-ups.*

*The Commission has indeed proposed to expand the scope of the Eurovignette Directive to include buses and light passenger/commercial vehicles. This reflects the fact that the damage caused to the infrastructure by buses is equivalent to that caused by Heavy Goods Vehicles. It should also be born in mind that bus services compete with rail services that pay obligatory infrastructure access charges. Light passenger and commercial vehicles are major contributors to emissions from road transport and to congestion. In addition, the problem of discrimination of non-resident users arises in respect of these vehicle categories as well, and certain general rules should therefore also apply to those categories.*

*The proposed phasing out of existing vignette schemes is justified, not only to tackle possible discrimination, as referred to above, but also to ensure that road users pay according to the user and polluter pays principles, which are generally supported by the Dutch Parliamentary groups. As explained in the Impact Assessment prepared by the Commission, vignette*

*schemes do not comply with these principles and neither allow for charging in line with external costs. However, generally speaking, the Eurovignette Directive does not impose the levying of road charges upon Member States, and the Commission's proposal does not suggest that this should change. Hence, there is no obligation to introduce distance-based charging, either under the existing or under the proposed rules. Member States remain free as regards the financing mode, and they can opt for other solutions (e.g. taxation) if they find that more suitable. The impact on revenues will, as explained above, depend on how Member States choose to implement these proposed provisions.*

*Reporting requirements are proposed to increase transparency on revenues collected and the way in which they are used to better inform those who pay the charges. This reporting obligation is in fact comparatively lighter than existing obligations in the Regulation requiring Member States to report on road infrastructure spending<sup>9</sup>. Consequently, the latter Regulation may be up for repeal.*

*The proposal would contribute to solving cross-border problems and strengthening the internal market, and not least to addressing issues of climate change. Improved infrastructure quality and utilisation will also result in less congestion and thus more efficient road transport. This, together with more coherent and fair price signals provided to users, will benefit the Internal Market.*

- *European Electronic Tolling Service (EETS):*

*From a formal point of view, the legal basis for the proposed recast of the EETS Directive<sup>10</sup> is Article 91 (1) of the Treaty on the Functioning of the European Union, and not the Eurovignette Directive. That said, the proposed recast of the EETS Directive is intended to contribute to reducing the cost of electronic toll collection both for toll chargers and for road users. The rules proposed are conceived as a new tool to enhance the efficiency of the collection of tolls from owners or users of vehicles registered in another Member State. As a result, road charging is expected to become more effective and efficient, which is also one of the objectives of the amendments to the Eurovignette Directive proposed at the same time<sup>11</sup>. However, this does not imply any dependence of the former on the latter – the proposed amendments to the EETS Directive and to the Eurovignette Directive respectively can and should be considered on their individual merits.*

*Data from Automatic Number Plate Recognition (ANPR) cameras are commonly used for enforcement purposes in electronic tolling systems for which it is the primary (e.g. London Congestion Charge) or secondary (e.g. electronic tolling systems for trucks using satellite positioning or short range radio communications) technology. ANPR is a universal tool for identifying users of toll roads, and in particular for detecting offenders. The proposed recast of the EETS Directive takes into account this use of data collected through ANPR, and establishes a new tool to improve its effectiveness, by facilitating the identification of the*

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<sup>9</sup> Regulation (EEC) No 1108/70.

<sup>10</sup> COM (2017) 280 final.

<sup>11</sup> COM (2017) 275 final and COM (2017) 276 final.

*owners of vehicles with foreign licence plates. This does not expand or restrict the use of data, but just makes it more efficient.*

*As the Tweede Kamer rightly indicates, the exchange of information between Member States on toll offenders will require IT connections between national licence plate registers, just like those that exist for the Cross Border Enforcement Directive.<sup>12</sup> Actually, to minimise the costs, the Commission proposes to use exactly the same IT tools to exchange information on toll offenders as those used for this Directive.*

*The transposition of the recast of the EETS Directive will require Member States to amend existing national legislation or to adopt new laws. The Commission is not in a position to indicate to the Tweede Kamer which pieces of the Dutch legislation will be particularly affected. It is not entirely clear to the Commission what the Tweede Kamer refers to when it asks whether "it will be necessary to adjust tax directives". From the point of view of European Union law, road charges and taxes are different tools, and the EETS Directive only relates to road charges. It will therefore have no effect on any tax legislation.*

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<sup>12</sup> Directive (EU) 2015/413.