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ETF Road Transport

How to make the Mobility Package work as a whole ETF concrete solutions

All proposals made by the European Commission under the social and market pillars of the Mobility Package are interconnected. Effective measures on how to apply and enforce posting of workers in road transport will have a positive impact on cabotage, while changes in cabotage rules could have a positive impact on the access to occupation and so on.

This document aims to highlight a few most important ETF concrete solutions to make driving and rest time, cabotage, access to occupation and posting of workers work together and answer social and competitions issues the road transport sector currently confronts with.

ETF SOLUTIONS PER INDIVIDUAL DOSSIER

ETF solutions on driving and rest time rules (Regulation (EC) No 561/2006):

Distribution and levels of driving hours and rest periods

- A single regulation on driving and rest time for freight and passenger commercial road transport ;
- No derogations for the bus and coach sector;
- The reference period for the calculation of driving and rest time remains of 2 weeks (as supposed to the 4 weeks proposed by the European Commission);
- A total ban on spending any type of weekly rest in the vehicle, ban to also include the reduced rest of 24 hours;
- The following reduction in driving hours, paralleled by an increase in breaks' duration:
 - a) Maximum 8hrs of driving per day, but by way of exception 9 hours per day is allowed twice per week (current rules require maximum 9hrs of driving, with an exception of 10hrs twice per week);
 - b) Breaks of 60 minutes every 4 hours of driving time. By way of exception, the 60 minutes can be taken in two slots of 30 minutes each (the current rules require a 45 minute break every 4 1/2 hours of drive);
 - c) Maximum 48 hours of driving per week, and no more than 80 hours of driving per period of 2 weeks.

This will prevent: 1) drivers being subject to increased levels of fatigue; 2) any further negative impacts on road safety and passengers safety - the ETF considers that much more should be done in order to improve the safety record of a sector where accidents involving commercial vehicles are unfortunately common place; 3) any negative impact on drivers' rights and benefits - notably benefits relating to week-end work – as laid down in their collective agreements or the national law of their respective countries.



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1

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Conditions for the weekly rest:

- a) In accommodation provided and covered financially by the employer, accommodation including own sanitary facilities and access to hot meals;
- b) Or to the driver's home, provided that the travel expenses are covered by the employer.

The return home:

- a) Definition of home as the driver's country of residence;
- b) If the driver wants to spend the weekly rest in a location different than his/her home, the driver must inform the company one month in advance. The company will cover the driver travel expenses. No matter where the driver spends his/her rest, the employer must cover the costs (at least the equivalent to the cost of repatriation to the country of residence).

The ETF above mentioned solutions come in the following context:

- In 2006, when the driving and rest time rules were adopted, the traffic conditions, the drivers' workload, etc. were far less intense than today. Thus, logically, in order to maintain the balance between the policy objectives of Regulation (EC) No 561/2006 (i.e. improvement of working conditions for drivers, road safety and fair competition in the sector) one needs to adjust the driving and rest times to the current, more critical, situation. Hence, the ETF above approach in terms of the revision of the core driving and rest time rules.
- Accidents involving heavy goods vehicles, buses and coaches, affecting other road users and drivers alike, have regrettably been all too common over the past years while the EU has been struggling with continuing the general reduction in road fatalities. The road safety progress that has been made EU-wide has stagnated over the past few years, and even went into reverse.
- The current driving and rest time rules give enough flexibility to companies to arrange the driver's shifts and rest time. A couple of examples: 1) the compensatory rest of 21 hours can be taken back-to-back with any other type of rest (daily, reduced and normal weekly rest); 2) the 24 hour weekly rest can be spent in the vehicle, with the driver consent. Any further flexibility of the existing rules will come in the detriment of drivers' health and safety, of passenger and road safety;
- There are enough parking areas in Europe to serve the purpose they were made for, notably to provide professional drivers, car users and passengers with taking a break from the heavy traffic, having a bite and refresh. Parking areas have not been planned to accommodate truck drivers forced to spend their week-ends in their vehicle for months. While the ETF totally agrees that there is an urgent need to improve safety, security and facilities in parking areas across Europe, we consider it ludicrous to urge Member States to invest in more parking areas just to cope with the increasing number of drivers being refused adequate accommodation for the weekly rest;
- The driving and rest time regulation defines the driver's rest as a period taken *en block* where the driver disposes freely of his/ her own time. Keeping the driver in the cabin over the week-end to guard the freight and vehicle is not rest. This is working time, and must be remunerated. This practice deprives drivers of their much needed adequate rest, and increases their weekly working time to more than 90 hours.
- Under the current rules, with his/her consent, a driver can spend 12 consecutive days in the cabin. Prolonged periods of rest / living in the truck cabin are specific to drivers from low-income countries working on a permanent basis outside their country of residence (the so called non-resident drivers). Non-resident drivers come with two key advantages for the industry: 1) low salaries and thus low levels of social contributions; 2) they are kept on the trucks for the entire period of their service abroad, guarding safety of vehicles and freight during week-ends. The



drivers end up sleeping, working and living in 4m² of cabin space which includes: the vehicle dashboard, the steering wheel, the driver's seat and a maximum 80cm bunkbed usually provided with a dent in the middle to allow the driver to adjust her/his seat.

ETF solutions for the tachograph rules (Regulation EU (No) 165/2014)

- Mandatory introduction - within one or maximum two years from their entering into the market, in 2020 or 2021 - of the smart tachograph to all vehicles engaged in international transport (cabotage included);
- The increase of the period for which companies must present tachograph records at the roadside checks, from 28 to 56 days;

ETF solutions on posting of workers (Directive 96/71/EC and Directive 2014/67/EU)

- Posting of workers applies to cabotage and combined transport from day 1;
- Posting of workers applies to international transport from Day 1 only if the posting conditions are met (Art. 1.3, Directive 96/71/EC). To this end however, according to the current law and practice, a distinction has to be made between **simple** 'export-import' operations and 'third-country' operations. The first case consists in a simple export operation from Member State A to Member State B, with no pick-up or delivery in between. The export operation as described above can then be followed by a simple import operation following the same principle: no additional pick-up or delivery between Member State B and Member State A. Such transport operation should be carried out at least according to the employment conditions of the home country of the transport company employing the driver. The second case consists in an international journey including successive pick-up and delivery points in various Member States. In this case, the Posting of Workers Directive shall apply, and the driver will be covered by the terms and conditions – pay included - of the 'next destination' (country). The distinction between the two types of international transport operations is based on the fact that posting conditions intervene in the case where there is a risk for wage-based competition, notably in the second case. Taking the example of a journey starting from Spain and including pick-ups and deliveries in France and Belgium: the part of the journey Spain - France will be commonly done by a driver employed in Spain while the part of the journey France – Belgium can be also done by a driver employed in France. The French terms and conditions being better, these need to apply via the posting of workers rules, to eliminate possible distortions based on wage differentials. For more details see the document "Fair mobility, Clear and balanced rules for international transport", uploaded on the ETF Road Section blog <http://www.etfroadsectionblog.eu/>
- Posting of workers will be enforced via: 1) the smart tachograph, whose data will indicate the location of drivers over the span of a 56-day period; 2) the electronic CMRs: to this end, all Member States will have to introduce electronic CMRs by the same deadline as the one required for the 'smart' tachograph; 3) an EU pre-notification in electronic form, submitted to an EU database for each driver posted – a general posting notification covering groups of drivers and a period of time has no added value for the enforcement, while an individual, one-stop, EU-wide notification for each individual posting situation will help enforcers compare data and more easily detect possible infringements; 4) consolidation of the minimum data to be entered in national electronic registers (NERs), with information about the driver i.e. country of residence, country of payment of social contributions, country where the labour contract is based;
- Checks (roadside and company checks) and control agencies will be articulated in the following manner, in order to maximise their value and improve effectiveness of cross-border enforcement of posting of workers: 1) at roadside checks, the following documents and data will be subject to control: tachograph data for the current day and for the past 56 days; the electronic CMRs for the current day and the past 56 days; the posting notification; 2) if any conflict of data detected,



roadside inspectors will send the data to the competent control authorities of the Member State hosting the control; 3) the latter will make a thorough evaluation and, if further information or investigation are needed, will make the necessary requirements to the Member States where the road transport undertaking is established (company checks). In order to have an effective cross-border coordination between checks and competent control authorities, the latter will be given access in real time to the EU pre-notification database and to the national electronic registers.

ETF solutions on cabotage (Regulation (EC) No 1072/2009)

- The cabotage limits will be set to one day, one cabotage operation;
- The one-day period will be followed by a cooling-off period of one week, within which the vehicle used for the cabotage will stay away from the Member State subject to cabotage. This will fulfil the legal requirement laid in the cabotage rules, according to which cabotage must remain a temporary activity. This particular ETF solution does not impose any restrictions to the free movement of goods and services as a road transport undertaking – no matter its size - will have the possibility, while one of its vehicles under the cooling-off period, to use the latter in order to perform cabotage in other Member States, or if it chooses to further engage in cabotage in the former Member States, to use another of its vehicles for this purpose. The period of “one day of cabotage, seven days of cooling-off period” gives plenty of scope to road transport undertakings to integrate any type of weekly rest period within the 8-day span, ensuring that the driver and vehicle will not be stuck in the Member State subject to cabotage after the end of the cabotage day;
- Every other cooling-off period, the vehicle will return to the country of establishment of the road transport operator and when leaving it again, it will be laden and thus engaged in an international journey;
- Cabotage will be enforced via: 1) the smart tachograph, whose data will indicate the position of the vehicle over the span of a 56-day period; 2) the electronic CMRs – to this end, all Member States will have to introduce electronic CMRs simultaneously to the introduction of the ‘smart’ tachograph. Furthermore, in order to be able to adequately control the type of transport the vehicle is engaged in, as well as the compliance with the cooling-off period, all CMRs covering a period of 56 days will be available for road side checks; 3) an EU pre-notification in the electronic form, for each cabotage operation;
- Checks (roadside and company checks) and control agencies will be articulated in the same manner as the checks for posting of workers: 1) at roadside checks, the following documents and data will be subject to control: tachograph data for the current day and for the past 56 days; the electronic CMRs for the current day and for the past 56 days; the cabotage notification; 2) if any conflict of data detected, roadside inspectors will send the data to the competent control authorities of the Member State hosting the control; 3) the competent control authorities will make a thorough evaluation and, if further information or investigation are needed, will make the necessary requirements to the Member States where the road transport undertaking is established (company checks). In order to have an effective cross-border coordination between checks and competent control authorities, the latter will be given access in real time to the EU pre-notification database and to the national electronic registers.

ETF solutions on access to occupation (Regulation (EC) No 1071/2009, to supplement the European Commission proposal)

- Full inclusion of the Light Goods Vehicles in the scope of this regulation;
- A substantial part of the vehicle activity will be carried out in the country of establishment of the road transport operator;
- Illegal cabotage will be part of the List of infringements leading to the loss of good repute of road transport operators;



- National electronic registers (NERs) will be consolidated with the following minimum data, for each road transport operator: 1) a complete compliance record of the company, a so-called “integrated operator compliance record”, to include the operator’s risk rating, the number of clear checks (checks resulting in no infringement found), the infringements committed – this approach will stay at the core of the smart, targeted enforcement, according to which checks will target companies with a poor compliance record; 2) a complete company dossier, so called an “integrated operator file”, to include information on drivers employed and vehicles in use;
- Access in real time by authorities in charge with road and company inspections, to the data registered in the NERs and any other relevant registers.

SYNERGIES BETWEEN DOSSIERS AND WAYS IN WHICH THE ETF PROPOSALS CLOSE LEAGL LOOPS

- **Cabotage - posting** / The ETF cabotage proposal of “one-day one-operation” will ensure that haulage and labour markets of Member States exposed to cabotage are not further distorted. To be more explicit, even if cabotage is fully covered by posting, one key element will be extremely hard to control in ‘real time’, notably that the driver is actually paid the rate of the country where s/he performed cabotage. There is thus a risk that, a while from the adoption of the new rules, road transport operators will carry out cabotage operations while paying the drivers the minimum wage of their country of origin. In this context, the stricter the cabotage limits the less risk for market distortions in the Member States hosting cabotage activities. However, it goes without saying that an articulated set of enforcement measures (see the ETF proposals above), will have a strong dissuasive character for all those considering breaching both the cabotage and the posting rules;
- **Cabotage - access to occupation** / The ETF proposes that each vehicle performing cabotage returns regularly to the country of establishment of the road transport operator, during every other cooling-off period, and when leaving it again, it will be laden and engaged an international journey. This will represent an added value for the ‘access to occupation’ regulation, in as much as will ensure that a substantial part of the vehicle activity takes place in the country of establishment of the road transport operator. However, this will only solve the issue of the vehicle, and not of the driver. In other words, while being compelled to repatriate its vehicles, an undertaking will be able to keep its drivers in the Member States where it wishes to perform cabotage for longer periods of time. To this end, the ETF points out that the repatriation of the driver will be ensured via the requirements of the driving and rest time rules, notably the ones relating to the weekly rest spend away from the vehicle and the regular return home;
- **Access to occupation - posting and the applicable labour law** / The ETF proposes that national electronic registers - which so far cost the Member States more than € 22 million to set up and interconnect - are used at their full capacity. They thus will be consolidated with further information about the drivers employed by a road transport operator, notably the driver’s country of residence, the country of the labour agreement registration, the country hosting the driver’s social security contributions. This data will be available only to enforcement authorities, in real time. Based on this data and on the smart tachograph recordings, the enforcement authorities will be able to determine the labour law applicable to the driver, and whether the employer meets the obligations set by it;
- **Smart tachograph - cabotage - posting** / 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 driver and vehicle in a given Member State. Hence its possibility to indicate compliance with posting and cabotage rules;
- **Driving and rest time - the backbone of the Package** / The ETF proposal is to lower the driving time limits in order to respond to the increasingly tough driving environment over the past 12 years



since the adoption of the current driving and rest time rules. In parallel to this, in line with the ruling issued by the European Court of Justice clearly forbidding drivers to spend the weekly rest in the vehicle, the revised driving and rest time rules must clarify the conditions drivers must benefit from during their weekly rest, i.e. at least suitable accommodation conditions with individual sanitary facilities and access to hot meals. With these elements - the interdiction to spend the weekly rest in the cabin and the clarification regarding the rest conditions - the employer will have the choice: to accommodate the drivers during his/her weekly rest or to take responsibility for their return home during the period in question. As mentioned above, it is precisely the interdiction to spend the weekly rest periods in the vehicle and the requirement to regularly repatriate the driver which will ensure that the driver will not spend long periods of time in any given Member States, on terms and conditions much below the ones of the Member State in question. As explained above, weekly rest spent in the vehicle for long periods of time is a practice specific to those companies working with non-resident drivers, whose entire activity takes place abroad. They usually work for letter-box road transport companies, which have been the main cause for unfair competition in the sector putting for decades genuine autochthone business in a huge competitive disadvantage. There is a clear political will to eradicate letter-box companies in road transport. However, tightening the criteria on access to the occupation will not be enough to achieve this goal. Policy makers will also have to tackle the business model that stays at core of these companies. The weekly rest spent in the vehicle stays at the core of this business model. Breaking this practice will also lead to 1) the introduction of adequate patterns of work organisation, in full compliance with the definition of rest given by the EU driving and rest time rules; 2) a substantial improvement of working conditions – health and safety – for professional drivers and of road safety. Breaking this practice will ultimately facilitate the drivers’ return home every three weeks, if they wish to, without having to change the driving and rest time rules at its core.

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6

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