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Federación Europea de los Trabajadores del Transporte

*ETF Road Transport*

*Brussels, 20 November 2018*

## **The Austrian Presidency proposals on Mobility Package not social enough**

### **They fall short to improve the living and working conditions of professional drivers and to guarantee equal pay for equal work on the territory of EU Member States**

While appreciating the active role the Austrian Presidency has played so far in attempting to have an agreement on Mobility Package 1, we consider that the Austrian Presidency proposals - most particularly on posting and on driving and rest time - will impact all drivers covered by strong national legal provisions and collective agreements in the Road Alliance countries (i.e. the 4-week reference period on the distribution of rest time) while failing to offer the much expected improvement in working and living conditions for the so-called nomadic drivers (i.e. the return home). The proposals regrettably favour the business in particular, allowing bus, coach and haulage companies more flexibility in organising drivers' schedules and allowing them to recruit and work with unprotected workforce from low-income Member States on conditions that make road transport a notoriously bleak sector.

To this end, the ETF expectation was completely different. We had expected a Package that improves job quality in an effective manner, thus rendering the sector more attractive, a Package that take road transport into the era of 'smart' and effective enforcement, while restoring a climate of fair competition and law compliance.

To this end, and mindful of the fact that the Council of Ministers of Transport is likely to sign off an agreement at its next meeting on 3 December, we urge you to refuse support to any Council general approach until such time:

- the 4-week reference period for distribution of rest time is removed from the Council draft text and replaced with the current 2-week reference period
- the weekly rest spent in the cabin is removed from the Council draft text
- the proposed measures for the driver's return home offer a solution to the problem rather than come against current practices in the sector
- all exemptions from posting other than the one concerning simple bilateral transport are removed from the Council draft text
- it contains a solid and well-articulated enforcement proposal to accompany the application of posting in road transport: effective, simple and with no administrative burden

Please see below a brief justification of our demands, and some concrete recommendations on how to improve the Council text.



**President** Frank Moreels

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**Vice Presidents** Alexander Kirchner  
Ekaterina Yordanova

**General Secretary** Eduardo Chagas



## **DRIVING AND REST TIME**

The Austrian Presidency **proposes a reference period for the distribution of weekly rest of 4 weeks**, compared to the reference period of 2 weeks laid down in the current rules. The impact of this proposal on drivers from the Road Alliance Member States will be disastrous: a total change in work schedules; more fatigue, since the 45-hour weekly rest will be postponed by 6 more days; loss in compensation and bonuses relating to week-end work, as Saturdays risk to become normal work days; less week-ends spent with their families.

**In effect, for our drivers, this proposal will translate into 3 weeks of drive with 2 days of rest, instead of the current 2 weeks of drive with 3 days of rest.**

Some argue that the 90-hour driving time limit per every 2 weeks will prevent drivers from working and driving 3 consecutive weeks with only two days of rest. In other words, some say that a *Week 2* with only 24-hours rest at the end of it will not lead to work / drive on Saturdays, since the driver would run out of the 90-hour driving time limit permitted by the current regulation. But this is not the case with the drivers from the Road Alliance Member States. The nationals of Member States work mainly in domestic distribution of goods and short-haul international transport, where tasks such as loading and unloading of goods prevail in their schedule. Thus, they can easily work and drive for a period of 12 days without exhausting the 90-hour limit. This is equally the case of bus and coach drivers (except for those working in international, long-haul services). Their waiting periods and other tasks such as picking up and setting off passengers (working time) account for an important part of their time spent on the job. So working 6 days per week for 3 weeks consecutively – as resulting from the Austrian Presidency proposal – will be absolutely possible without exhausting the weekly driving time limits.

**IMPORTANT NOTE:** *Please see for more details the graphic in annex, representing the distribution of rest per month under the current rules, and under the Austrian Presidency proposal.*

The Austrian Presidency proposals on the rest in the cabin and on driver's return home fall short too, to ensure an improvement of drivers' working conditions.

A second proposal currently examined by the COREPER and risking to be part of a Council General Approach is **the weekly rest spent in the cabin**, allowed if the cabin meets certain requirements. In reality: a) a cabin will never be larger than 4m<sup>2</sup> meters with 80% of space being taken by dash board, driver seat, berth; b) a berth will never be wider than 80 cms; c) most of these berths have a dent to allow the drivers to adjust their seat when driving; d) a cabin will never have sanitary facilities. Regulation 561/2006 already makes it possible for the driver to spend 12 full days in a cabin. Furthermore, this proposal can be hardly enforceable. As for allowing drivers to sleep in safe and secure parking areas – there is such an acute shortage of such parking areas that this derogation is absolutely unfounded.

**WE DRAW YOUR ATTENTION ON THE FACT THAT:** *this proposal comes against the definition of rest laid down in Regulation Art. 4(f), 561/2006, notably: "rest" means any uninterrupted period during which a driver may freely dispose of his time'. If the driver is not able to fulfil this condition, any weekly rest spent in the cabin will be considered working time and must be deducted from the drivers' weekly work schedules. We thus call for a Council decision which is coherent with the current driving and rest time rules and leaves no room to future court cases.*

A third proposal currently examined by the COREPER as part of a future General Approach is **the driver's return home**.



The Austrian Presidency proposes the return of the driver to one of the operational centres of the Member State of company establishment. This will not solve, but will rather aggravate the current situation of thousands of drivers recruited from - say - Romania or Bulgaria and working for operators registered in Slovak Republic, Czech Republic, etc. We would like to point out that at the moment, in practice, all these drivers are sent by their companies back to their countries of residence.

These being said, we consider that the Austrian Presidency proposal:

- is not a return home
- risks to jeopardise the current practices
- will basically ensure that drivers are sent back to a place which may be 1000 kms away from their actual home. Or, this is not the 'return to the home country' tens of thousands of nomadic professional drivers expect from the Mobility Package

## **WHAT DO WE PROPOSE INSTEAD**

No changes to the core rules on driving and rest time

Total ban of rest in the cabin for the normal and compensatory weekly rest

On the return home, the definition of home should be the driver's country of residence and the frequency of return home should be every 3 weeks

## **POSTING OF WORKERS**

The Austrian Presidency proposal **extends the posting exemptions from pure bilateral transport to two loadings and / or unloadings done in the countries transited during the bilateral transport**. **Risk:** This will result in two or four cross-trade transport operations being exempt from posting and therefore being executed on pay rates of the operator's country of establishment (the text is ambiguous in respect of the exact number of cross-trade operations permitted: two loadings and / or unloadings during the course of the export operation, and two more on the way back, or two in total, for the entire bilateral journey?). **Example** (the Presidency proposal in practice): A Hungarian-based operator loads 1 kg of cargo to be delivered in Sweden. On its way to Sweden the operator picks up 42 tons of goods in Austria and delivers in Germany, and 42 tons of goods in Belgium to deliver in Denmark. Similarly, on the way back from Sweden, with 1 kg of cargo on board, the operator will do a cross-trade operation between Denmark and Belgium, and one between Germany and Austria. The final delivery of 1 kg of Swedish goods will be done in Hungary. For all this work, the driver will be paid Hungarian wages. Not Austrian, not German, not Belgian, not Danish.

This will lead to a gradual transfer of jobs and market share away from France to Member States with lower conditions, less social protection and lower rates of pay.

Unfortunately, the **enforcement proposals made by the Austrian Presidency fall short of ensuring a tight control of all too many exemptions from the posting rules proposed by the Presidency**. The extended list of exemptions plus the feeble enforcement measures lead to the risk that posting will never be really applied in practice:

- the posting declaration is for a group of drivers, and not individual. This has no added value for controls simply because such declaration fails to establish a clear link between the type of service, the driver's status (posted or not) and the driver's pay relating to that particular service



- no obligation for electronic documents. All paper copies (posting declaration, service contract, etc.) can be - and have been so far - easily falsified. There are notorious cases in which truck drivers are driving around Europe with falsified documents they have to present during road checks in various Member States
- the obligation of the driver to present pay slips has been removed from the European Commission proposal
- the proposal does not allow Member States to impose any additional enforcement requirements than the ones listed in the proposal / closed list of requirements, while the current posting of workers directive applying to all other sectors gives the possibility to place further requirements on operators, in proving that they comply with the posting rules

## WHAT WOULD THE ETF LIKE TO SEE IN THE PROPOSAL

### Scope of application:

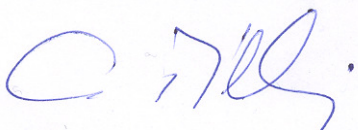
- No further derogations from posting in international transport, beyond the pure bilateral transport

### Enforcement:

- mandatory electronic documents to fully replacing paper-based ones, therefore reducing substantially the possibility for fraud in road transport:
  - a) an EU electronic posting declaration per driver, per posting
  - b) an electronic service contracts (e-CMRs)
  - c) an electronic salary slip
- a platform (could be IMI) to include the following documents: a), b), c) from above + the Community licence of the company + the labour contract of the driver
- access in real time of all competent authorities to the above documentation, for control purposes
- the possibility for Member States to ask for further evidence in documenting posting

We trust you will take our views expressed in this letter seriously, otherwise our government risks to embark on a deal, on 3 December, which is worse than the current situation. Better no deal, than a bad deal for our drivers.

Yours sincerely,



Cristina Tilling  
Political Secretary, ETF Road Transport Section



**President** Frank Moreels

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**Vice Presidents** Alexander Kirchner  
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**General Secretary** Eduardo Chagas



## Annex – distribution of rest periods under the current rules, and under the Austrian Presidency proposal

Current regulation 561/2006

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1	Work	Work	Work	Work	Work	Work	Reduced Rest W1
Week 2	Work	Work	Work	Work	Work	NWR RestW2	NWR Rest W2
Week 3	Work	Work	Work	Work	Work	Work	Reduced Rest W3
Week 4	Work	Work	Work	Work	Work	NWR Rest W4	NWE Rest W4
Week 5	Comp Rest W1	Work	Work	Work	Work	Work	Rest W5

Austrian Presidency proposal

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1	Work	Work	Work	Work	Work	Work	RWR Rest W1
Week 2	Work	Work	Work	Work	Work	Work	RWR Rest W2
Week 3	Work	Work	Work	Work	Work	Work	NWR Rest W3
Week 4	Rest W3	Compensatory rest W1	Work	Work	Work	Work	Rest W4
Week 5	Rest W4	Compensatory rest W2	Work	Work	Work	Work	Rest W5

Does the Austrian Presidency proposal make it possible for bus, coach and truck drivers to drive 3 weeks (20 days) with only 2 days of rest in between?

Yes, this is very well possible!

- Week 1 / 6 days + 24 hours rest at the end; the compensatory (remaining) rest hours – 21 in number – have to be taken before the end of the 3<sup>rd</sup> week following the week in question, meaning any time during week 4!
- Week 2 / 6 days + 24 hours rest at the end
- Week 3 / 6 days + a regular rest BUT only starting at the end of the week. Why so? This regular weekly rest can actually start “no later than the end of six 24-hours periods from the end of the previously weekly rest” (see Art. 8.6 para 2 of the current regulation, which has not been amended); this effectively means that the 45 hour rest can start on Week 3, on Saturday



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