

THE MOBILITY PACKAGE

SO FAR

A brief guide to the council of Ministers' and the European Parliament's positions

Information for trade unions and professional drivers



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THE MOBILITY PACKAGE IS NOT YET ADOPTED OR AGREED

However, the Ministers of Transport of the 28 Member States (the "Council of Ministers") and the European Parliament have each reached their own positions on it. In autumn 2019 they will get together to start negotiating the final deal.

The purpose of this brochure is to inform trade unions and professional drivers about the positives and negatives of the respective positions of the two Institutions, to point out risks we face during the future negotiation process and to inform you about the actions ETF is ready to take to eliminate these risks.

DRIVING AND REST TIME (Regulation 561/2006)

Big wins for drivers

According to both positions:

- Drivers must regularly return home, at least **once per month**.
- They **cannot** be required to take weekly rest of 45 hours or more **in the vehicle**.



Big wins for society

- **Less fatigue** for bus, coach and truck drivers = **safer roads, safer passengers**

Risks and uncertainties

Two driving and rest time regimes?

- **The European Parliament** says the current rules, unchanged, should apply to **all**.
- **The Council of Ministers**, however, says the current regime should only apply to **drivers working within their own country**. As soon as they cross a border (international transport), their employer will be free to postpone the 45-hour rest by one additional week. In other words, international drivers can be made to drive three full weeks with only two days off in between.

Example of how the Council proposal would work in practice: a French driver engaged only in domestic transport would benefit from the current rules. But if he does 10 days of domestic transport and crosses a border on day 11, for a pick-up or delivery outside of France, his 45-hour rest may be postponed till the week after.

Apart from eroding drivers' wellbeing ...

- A dual driving time regime, as proposed by the Council, with different rules according to whether borders have been crossed, will **harm enforcement**. The driving and rest time regulation is among the most strictly enforced in road transport, across Europe. A dual driving time regime will mark **the end of effective controls** on driving, working and rest hours for bus, coach and truck drivers, and will strip the digital tachograph of most of its enforcement capacities.
- A dual driving time regime will **reduce road safety**. Tens of thousands of bus and truck drivers engaged in international transport will have to drive and work three weeks before being able to take a two-day rest. So much for the EU commitment for citizens' wellbeing and for road safety!



How often will drivers actually be able to go home?

- Both the Council of Ministers and the European Parliament say **every 4 weeks**.
- According to both positions, the **employer** will be responsible for the costs of the driver's repatriation. However, it only needs the driver to declare in writing that he or she spends the weekend in another location for the employer to be freed from any obligation to repatriate the driver and cover costs.

What is the definition of "home"?

- **The Council of Ministers** says it's either the driver's country of residence, or a country in which the company has an operational centre.
- **The European Parliament** says "home" can only be the driver's country of residence.

Example of how the Council proposal would work in practice: a Romanian driver is employed by a company with an operational centre in the Slovak Republic. If the Council position is adopted, the Employer would be able to satisfy the law simply by sending the Romanian driver to the Slovak Republic once a month – which would entail less trouble and expense for the employer than sending the driver to Romania, his or her country of residence. Even better for the company, the driver would also bring the vehicle back to the base.

TO CONCLUDE: the driving and rest time regime, and the definition of "home" remain to be negotiated by the Council and the European Parliament.

ETF'S NEXT ACTIONS

- An ETF campaign "Home is home", to obtain a clear definition of a driver's home as his or her place of residence
- An ETF public campaign on driver fatigue, to stop any adverse changes to driving and rest time regimes for bus, coach and truck drivers

SMART TACHOGRAPH (Regulation 165/2014)

Big wins for drivers

- Both the Council of Ministers and the European Parliament agree that the SMART tachograph will be fitted on all vehicles engaged in international transport (buses, coaches and trucks) at least **10 years sooner** than envisaged by the current rules.
- This will make it much **easier to control cabotage and posting of workers**, as control authorities will be able to determine the exact period of time vehicles (buses, coaches and trucks) and drivers spend respectively outside their country of registration, and country of residence.
- Consequently, drivers will be paid **higher wages when working abroad**, and companies will no longer be able to pay them country-of-origin salaries when carrying out international transport or cabotage. Drivers' benefits such as pensions will also increase, as they will be linked to higher wage levels.



Big wins for enforcement

- **Compliance** with cabotage and posting of workers rules will **increase** substantially.

Big wins for society

- **Stricter enforcement** and **better controls** on driving and rest periods will make roads **much safer**.

When will the SMART Tachograph become mandatory?

- **The Council says** that **4 years** from the adoption of the Mobility Package all vehicles (buses, coaches and trucks) engaged in international transport must be fitted with a SMART Tachograph.
- **The European Parliament** sets this deadline at **5 years**.

TO CONCLUDE: The Council and the European Parliament have yet to negotiate on the length of time before the SMART Tachograph becomes mandatory.

ETF'S NEXT ACTIONS

- Ensure that the SMART Tachograph is implemented as soon as possible!
- Campaign and work together with the EU control authorities to ensure that the SMART Tachograph cannot be manipulated

POSTING OF WORKERS

Big wins for drivers

- With the early introduction of the SMART tachograph, control authorities will be **better equipped** to determine **the exact period of time** drivers operate in another country.
- Consequently, when working abroad, carrying out cabotage and international transport operations, drivers will be paid **higher wages** and companies will no longer be able to pay them country-of-origin salaries.
- When **in transit**, **posting rules will not apply** and drivers will be paid the wages of the country where the company is established. However, in compensation, **the European Parliament** proposes that the company “establishment” must be the place in which, or from which, drivers **habitually carry out their work** (see example below for more details).
- Once the Mobility Package is adopted, drivers will no longer be entitled to only the minimum pay of the country in which they pick up or deliver, but to their **full remuneration**, which includes many elements apart from just the minimum wage: for example, annual holiday bonuses.



Minuses and pluses

There are exemptions

- In **cabotage**, posting rules will **always apply**. In respect of **international transport**, the positions of both the Council of Ministers and the European Parliament **exempt** drivers from the posting rules when they are engaged in **simple export and import operations**. Once the “SMART” tachograph is installed on all vehicles, the driver can be required to perform, in addition to a bilateral transport operation, one loading and / or unloading activity in the countries that the driver crosses, provided that the pick-up and delivery are not made within the borders of the same country. **These two operations will also be exempt** from the posting of workers rules, so the wages of the countries in which the driver loads and unloads will not apply. See the example below for more clarity.

Drivers in transit will not be paid the wage of the country they transit

- The Council of Ministers and the European Parliament take the same position on this, on the grounds that **no service is rendered in a transited country**.
- In transit, drivers will be paid **the rates of the country where the company employing them is established**.

However, the good thing is:

- **The European Parliament** says that the “establishment” (the company’s home country) must be the place in which, or from which, **drivers habitually carry out their work**, which indirectly solves out the problem of transit, while at the same time – and even more importantly – combating one of the main contributory factors in social dumping.

Example: a driver who starts his journey in Hungary with a load to be delivered in Sweden, and then returns to Hungary, will be paid the Hungarian wage for this entire trip (regardless of his or her nationality).

If, having delivered to Sweden, the driver deviates from this bilateral trip and makes other journeys (pickups and deliveries) in other EU countries before returning to Hungary, then for each of these journeys the driver will be paid the wages of the countries in which the pickups or deliveries are made.

The transit time will be covered by Hungarian wages.

Once the SMART tachograph becomes mandatory for all vehicles engaged in international transport (date to be negotiated), the driver in the example above can be required to make two more trips under Hungarian pay and conditions, as follows: if the driver starts from Hungary with a load for Sweden, he or she can be required to make one pickup and one delivery on the way to Sweden. The same for the final trip back to Hungary, once goods to be delivered to Hungary have been picked up.

According to the European Parliament proposal, however, with bus and coach transport, only the purely bilateral trips will be paid Hungarian wages.

Also, according to the European Parliament definition of “establishment”, companies will no longer be able to recruit drivers from, say, Poland and make them drive from and within, say, Germany on Polish wages and conditions. Any company recruiting drivers outside Germany to drive within and from Germany will have to be “established” in Germany. German wages will then apply to these drivers in transit and for all journeys starting and ending in Germany.

What documents are needed for checks?

According to both positions, companies will have to:

- send a **posting declaration** to the authorities of the country where the driver carries out transport activities covered by posting rules (cabotage, etc.)
- provide the driver with this declaration, as well as with the **service contract** for each transport operation (the **CMR Waybill**)
- send, once the period of the driver's posting ends, to the country where the driver worked as a posted worker, the **posting declaration**, the **CMR Waybills** of all journeys carried out by the driver during his or her posting period, the **labour agreements** and **proof of driver's working time and payment**.

TO CONCLUDE: Exemptions from the posting of workers rules and enforcement measures remain to be negotiated by the Council and the European Parliament.



ETF'S NEXT ACTIONS

- Campaigning to ensure that the two “additional” international trips covered by the bilateral transport clause are only permitted once the SMART Tachograph becomes mandatory
- Campaigning for a secure platform, accessible in real time only by law enforcement agencies, which makes it mandatory for all road transport companies to upload electronic versions of all documents needed for checking compliance
- Campaigning at EU level for an e-Salary slip

CABOTAGE (Regulation 1072/2009)

Big wins for drivers

- **Stricter rules for cabotage** are now on the table, together with **stronger enforcement tools**, such as the SMART tachograph. According to these rules, for example, it will no longer be possible to require Portuguese drivers to work indefinitely in France for Portuguese wages.
- With the early introduction of the SMART tachograph, control authorities will be able to determine more accurately **the exact period of time** vehicles and drivers operate in a single country.
- Consequently, it will be **easier** to ensure that drivers are paid **the right wages** when carrying out cabotage operations.
- It will be **easier** for drivers and for trade unions to collect **evidence of abuses**, and to report to authorities.

Will there be new cabotage rules?

- **The Council of Ministers** wants to keep the rules as they are, so a truck belonging to a company registered in country A can only do a maximum of **3 domestic transport trips** in country B, within a period of **7 consecutive days**.
- **The European Parliament's proposal** says that a truck belonging to a company registered in country A can only be operating in country B for **3 days**, but may conduct an **unlimited number of operations within that time** (without exceeding the maximum driving time allowed by the EU rules, of 9 to 10 hours per day).

Will companies easily be able to circumvent these rules and engage in successive cabotage periods?

- No, because both the Council of Ministers and the European Parliament agree on introducing a **"cooling off" period**, during which a vehicle, having reached its maximum number of operations and days on a country's territory, must stay away from that country.
- **The Council of Ministers** proposes that the cooling-off period should be **5 days**.
- **The European Parliament** proposes that the cooling-off period should be **60 hours**, but also that the truck must spend this time **in the home country** of the company.

TO CONCLUDE: the rules quantifying cabotage periods and operations, and the duration of the cooling off period have yet to be negotiated by the Council and the European Parliament.

ETF'S NEXT ACTIONS

- Lobbying to ensure that cabotage rules are stricter and easier to control
- Lobbying to ensure that cabotage rules do not lead to distortions of the labour markets of EU countries

ACCESS TO OCCUPATION (Regulation 1071/2009 also known as the LETTER BOX COMPANIES REGULATION)

Big wins for drivers

- Companies failing to comply with cabotage and posting of workers rules will risk **losing their licenses to operate in the EU**.
- Owing to the tighter requirements imposed on road transport companies (see details below), drivers will face **less risk of being employed via letter-box companies**, so they will have **more control** over their own employment situation, and over their rights and benefits such as social security, medical insurance, family allowances, etc.

What criteria will a company have to fulfill to be considered a genuine company – as opposed to a letter-box company?

- **The Council** says that, in order to fulfill the above condition, a company should have **enough parking areas** in the country of establishment.
- **The European Parliament** goes much further, saying that a company must conduct **at least one loading or unloading operation every four weeks** in its country of establishment. It also makes it mandatory for the companies to have parking areas in the country of establishment.



TO CONCLUDE: The Council and the European Parliament still have to reach a common position on the criteria defining genuine companies.

ETF'S NEXT ACTIONS

- Campaigning for the principle that the substantial part of the transport activity of a road transport company must take place in its country of establishment.



The European Transport Workers' Federation represents more than 5 million transport workers from more than 230 transport unions and 41 European countries, in 8 sectors, including road and logistics

Head Office:

Galerie Agora, Rue du Marché aux Herbes 105, Boîte 11,
B-1000 Brussels
Belgium

www.etf-europe.org

road@etf-europe.org