



Simplification in road transport

The ETF road transport section

This is in our view what is needed, for effective simplification without impacting on social standards. The debate on simplification should also take into consideration the perspective of the upcoming revision of the ELA mandate, where more is expected in terms of strengthening its mandate in road as well. We expect a better grip on abuses on posting and unpaid wages - notably wage claims in case of bankruptcy, as well as a better dissemination of best practice from some member states with regards to harmonisation of rules to equally cover all drivers and types of vehicles

- **The European Commission must maintain all current requirements laid down in the EU legal framework for road transport**

These requirements generate a minimum administrative burden with a maximum benefit in terms of enforcement (please see justification below); it is worth mentioning that road transport is a cross-border sector, so effective enforcement and controls are based on three key elements: a) cross-checking and comparison of data and documents; b) a combination of three types of checks each of them with their own well-determined function i.e. roadside checks, back-office checks, company checks (please see justification below); it is also a sector where enforcement capacities are extremely scarce, and a sector where social dumping and unfair competition between law-compliant and non-compliant operators is extremely acute

- **The European Commission to introduce a clear requirement for the use - by road operators - of digital documents, particularly those documents which are key to enforcement of EU social and market rules (i.e. digital CMR, etc.)**

This may complement (via an additional EU act, etc.) the EC initiative for a paperless road freight transport started in 2020 with the adoption of the Regulation 2020/1056 (see here for details); the fully digitalised documents would be uploaded on EU centralised interoperable portals such as ERRU or IMI; this would allow exchange of information amongst the enforcement authorities and facilitate cross-border enforcement and control

- **The European Commission to digitalise the journey form required for occasional passenger transport**

This would ensure that the driving and rest time derogations pertaining to occasional bus services are used only for this type of passenger transport (bus and coach tours) and only for one group of tourists at a time, and not misused for other types of operations; it is worth drawing attention to the fact that these derogations represent a more flexible driving and rest time regime - for example the driver having to drive 12 consecutive days without a day off - which adds to the critical levels of driver fatigue registered in the sector (see justification and more details on the so called 12-day derogation, below)

- **Timesheets**

In practice, timesheets are important because they provide a clear, complete record of all working time, helping to verify tachograph data, and reduce the risk of missing or incorrectly recorded activities. The background data on the timesheets needs to be traceable for drivers (the employers are sceptical to keep timesheets).



- **Ban cash wage payments**

Cash wage payments to posted workers and third-country nationals should be prohibited. Employers established in the EU must pay wages into the employee's bank account. This would improve transparency and compliance with labour laws, without affecting national competence over wage-setting in domestic transport.

- **Remote Tachograph Monitoring (RTM)**

RTM checks allow enforcement authorities to remotely screen vehicles via the tachograph and identify possible risks without stopping every truck, helping target controls more effectively (supported by IRU). While RTMs can support enforcement by identifying potential risks, trade unions are concerned about an overreliance on risk-based targeting. The road transport sector is largely composed of SMEs, and companies can be easily created or restructured. This creates a risk that operators with a history of infringements may evade detection by reappearing under new entities, thereby appearing "low-risk." RTM should therefore complement but not replace systematic and random roadside checks.

- **A sector-specific remuneration tool for road**

The pilot project launched by ELA on a remuneration tool for posted drivers in the EU, proposed by the social partners, should be developed into a permanent, sector-specific tool for the road transport sector in the EU. Such a tool must be easily accessible and user-friendly.

It is worth mentioning that according to the EC estimates, large scale digitalisation of documentation in transport would bring savings to the industry of "EUR 20-27 billion over 2018-2040, compared to a scenario where no policy intervention at EU level is made (the baseline), thanks to reduction in administrative costs (i.e. costs related to the management and exchange of transport information and documentation). This is equivalent to 75-102 million hours saved yearly (or 36-49 thousand full-time employees equivalent). Road transport operators, 99% of which are SMEs, are expected to benefit of about 60% of all industry administrative costs savings."¹

¹ Brussels, 17.5.2018 COM(2018) 279 final 2018/0140 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on electronic freight transport information



EXPLANATORY NOTE

General considerations

First and foremost it is worth clarifying that administrative work incurred by the application of social and market rules in road transport (tachograph rules, posting, driving and rest time, cabotage, access to occupation) is usually strictly linked to the enforcement of the EU rules, or to serve multiple purposes, including national fiscal obligations, etc.

Enforcement and controls in road transport

- cover a **complex bundle of social, labour and market aspects all of which are closely intertwined**
- combine roadside checks, back-office verification, company checks involving a large number of national authorities engaged daily in cross-border communication, exchange of information etc., for enforcement purposes; each of these three types of controls has its unique function: roadside checks work as an early infringement detection mechanism, back-office verifications function in many cases as a follow-up to roadside checks and their added value is primarily to foster cross-border communication between national authorities, company checks are the more in-depth part of enforcement and controls
- involves thus **cross-checking** a fair number of documents and tachograph records, **essential in detecting data conflicts**. Conflicting data is key in detecting infringements.

***Example:** One of the best examples in the way market (cabotage) and social (posting) rules are strictly interconnected in road transport is the road cabotage and posting. Drivers performing cabotage operations are automatically considered posted and will be entitled for the pay, terms and conditions of the member state hosting the cabotage operation. At roadside checks, road inspectors will check the tachograph records, the CMR, the posting declaration. By comparing the information, they are able to detect whether if the driver is engaged in cabotage and whether cabotage operations comply in number (3 maximum) and duration (7 days) with the EU rules. They can also detect at a glance whether the posting declaration covers the whole duration of cabotage.*

Basically, according to the Mobility Package, road operators have to meet the following mandatory requirements that imply administrative tasks

- **fill in a posting declaration every 6 months (see below details)** / this is a standard EU-wide form playing a key role in enforcement and the operator must ensure the driver has a copy on board of vehicle for control purposes
- **have a CMR per transport operation** / these are consignment notes that basically stand for contracts for transport operations, and are mandatory not only for checks on market and social legislation but also fiscal and tax rules, etc. / this is also an enforcement document and the operator must ensure the driver has a copy on board of vehicle for control purposes
- **record driving time, rest time, breaks and other work periods on a tachograph & keep tachograph records** (only driving time is recorded automatically, because it is linked to the



- motion of vehicle; the rest, breaks and other work have to be manually input into the tachograph); drivers also have to input manually the moment when they **cross the border** into another member state (important for cabotage enforcement), the **location of loading and unloading** (important for both enforcement of cabotage & enforcement of working time) / in a number of occasions, operators complained on behalf of drivers (!) that manual entries are too cumbersome; but this is a Trojan Horse: without these manual entries, drivers have no evidence of their actual working time and risk to be paid only for driving hours, a practice that is well spread in road transport / **tachograph data is also an enforcement tool and the driver has to allow access to this data during the roadside checks – 56 days of tachograph records, while the operator has to keep this data at the company HQ for minimum 1 year / no time-consuming admin task**
- **fulfil the requirements for establishment set in the EU regulation on access to occupation of road transport operators (1071/2009)** / register data about the company, manager, etc. in the National Register for Road Transport Undertaking), but this is a multi-purpose obligation linked to national fiscal obligations, etc.; it is true, all NRUs are interconnected at the EU level via the ERRU whose main function is to facilitates enforcement & exchange of information, cross-border / **NRU & ERRU are enforcement tools but serve multiple purposes starting with national levels, and up to the EU level via the ERRU; these obligations cannot be thus circumvented, or simplified**

CONCLUSION / Mindful of the above, any potential cutbacks in terms of existing legal requirements on documenting law compliance allegedly for the purpose of reducing red-tape (posting declaration, tachograph records covering 56 days to include driving, rest time and working time records as well as country border-crossings, CMRs would have a clear negative impact on effectiveness of controls and enforcement, in a sector facing huge lack of enforcement capacities and at the same time struggling with a bad compliance record.



Focus on IMI posting declaration & journey form for occasional bus tours

On the IMI and the posting declaration / the main complaint of the employers is that there are by now millions of posting declarations uploaded in the IMI system, which serve to nothing, but which create enormous admin burden for the employers.

This is far from being the case, for the following reasons

- The EC already took into account the potential administrative burden and addressed it carefully when adopting the Lex Specialis²; thus, operators do not need to fill in a posting declaration for each and every transport operation, but rather one single declaration that may cover a period of time, *en block*, of up to 6 months; the large majority of operators operate with only a few drivers
- In addition, DG MOVE & GROW have put a lot of resources to make the respective IMI portal extremely user friendly; this has been demonstrated in ELA workshops dedicated specifically to the IMI portal and posting declarations; it basically takes less than a few minutes to fill in the standard declaration, so this administrative task is minimal (click-bates), and most of its fields can be filled in automatically
- ELA on the other hand, ran a number of training and information sessions to ensure that the user-friendly interface is properly understood and used
- For the reasons explained above, the posting declaration plays a key role in detecting fraud; it also provides the possibility for national authorities to detect infringements after roadside checks, to exchange information about operators, and to build an effective company compliance record which is very important for future target controls, and for the ERRU records

On the mandatory journey form for occasional passenger transport

- Occasional bus services are basically bus tours, so-called close-door tours, in the sense that the tour is performed with one single group, of tourists. There is no pick-up and drop-off, of passengers. It is like going for an 8-day tour of Scandinavia (occasional), against taking a Flixbus from Vienna airport to Bratislava (regular bus service)
- For occasional bus services, by way of derogation from driving and rest time rules, the driver can skip his/her week-end rest and driver for maximum 12 consecutive days without a min 24 hour rest. But this derogation applies only for those cases where the driver carries the same group of tourists. The journey form is the only document that can prove that this condition is fulfilled, because it contains information about the group of passengers, the expected duration of the tour, etc.

² Directive 1057/2020 Recital 23 “In order to reduce the administrative burden on operators it is necessary to simplify the process of sending and updating posting declarations. Therefore, the Commission should develop a multilingual public interface, to which operators have access and via which they can submit and update posting information and submit other relevant documents to IMI, as necessary.”



- At the moment, this journey form is paper-based, and easy to falsify. Thus, the driver can be asked to do a tour of 5 days with a group of tourists, followed immediately by another tour of 7 days with another group, without taking any days of rest. This leads to exacerbated fatigue amongst drivers, and to considerable health and safety risks, and passenger safety (ETF studies and reports show the current magnitude of driver fatigue in road passenger and freight transport³). The ETF position is that it has to be digitalised. This not only would make it easier to enforce and control that the derogation does not become 'the rule', but would also make it simpler for the operators to fill in the form (on the benefits of document digitalisation, see the EC quote in footnote, above)

³ <https://www.etf-europe.org/activity/bus-and-coach-road/>