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To: Delegations

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs
[9670/17 TRANS 214 SOC 440 CODEC 925 + ADD 1 - 5 - COM(2017) 277 final]

Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector
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– Opinion of the European Economic and Social Committee

Delegations will find attached a copy of the above-mentioned opinion.

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5687/18

DGE 2A

DGE 2A

EN



European Economic and Social Committee

TEN/637

**Driving and rest time periods, working time
and posting of workers**

OPINION

European Economic and Social Committee

Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs

[COM(2017) 278 final – 2017/0121 (COD)]

[COM(2017) 277 final – 2017/0122 (COD)]

Rapporteur: **Tanja BUZEK** (DE-II)

Consultation	European Parliament, 15/06/2017 Council of the European Union, 20/06/2017
Legal basis	Article 91 of the TFEU
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	04/01/2018
Adopted at plenary	18/01/2018
Plenary session No	531
Outcome of vote (for/against/abstentions)	171/91/17

1. Conclusions and recommendations

- 1.1 The EESC recognises the important role of transport as a driver of the EU economy and supports the European Commission in its ambitions to ensure that the EU remains in a leading position in clean, competitive and connected mobility in the future. The EESC underlines that the essential tool to reach this end remains a well-functioning fully implemented single market in the transport sector, which is socially sustainable and minimises administrative burden.
- 1.2 For the further development of road transport in particular, however, the EESC stresses that there are also limits resulting from the shortage of space for the construction of roads and parking lots, from the ecologically motivated lack of social acceptance in many regions of Europe, from the unresolved road safety issue as well as from the importance of work-life balance of the drivers. These limits should be taken into account in all legislative and non-legislative initiatives of the EU in this area. Moreover, the future economic models may reduce road transport seeking more sustainable ways of organising production and distribution.
- 1.3 The EESC welcomes the fact that the EC is taking the initiative to clarify the regulatory framework on road transport and to ensure better enforcement and closer cooperation between Member States, while fighting social dumping, defined as all forms of unacceptable and illegal practices which endeavour to circumvent or are in breach of social or market access regulations (letterbox companies) in order to gain competitive advantages in its exploratory opinion TEN/575, and in line with the adopted enforcement directive 2014/67/EU, thus ensuring a well-functioning and fair internal market and fully respecting workers' rights in the sector.
- 1.4 However, the EESC is of the opinion that the proposed changes to legislation on driving times and rest periods and on the posting of drivers fail to effectively address the identified problems in road transport in several aspects, including not making the rules simpler, clearer and more enforceable. The EESC is of the opinion that the shortcomings of the proposals are due to insufficient problem analyses and considers that the proposals on social legislation fall short of meeting the EC's own policy objectives while legal uncertainty prevails. The EESC takes note that the initiative has generated different points of views among Member States, social partners and operators themselves.
- 1.5 The EESC points out that the only way to achieve the EC agenda for a socially fair transition towards clean, competitive and connected mobility for all is to safeguard social rights, to ensure both enforcement and enforceability of rules and to guarantee fair competition while reducing burdensome procedures. The internal market has to work for all stakeholders and in all Member States, both old and new.
- 1.6 With regard to the extension of the reference period for the distribution of rest periods from two to four weeks, the EESC takes note of the EC's efforts to address industry and transport operators demands for greater flexibility in road transport operations, but points out that this could have an impact on the fine balance between fair competition, driver health and safety and road safety as well as on a common harmonised interpretation of the rules while making their enforcement and control more difficult .

- 1.7 The EESC asks the legislator also to consider allowing compensation for a reduced weekly rest period in connection with daily rest periods, as provided for in the current regulation. With respect to breaks, the EESC suggests considering an impact assessment on the possibility of leaving a more flexible distribution of the 45 minutes of break over 6 hours to the discretion of the driver. This impact assessment should focus on the driver's ability to use the break to rest and refresh in-between nine hours, respectively ten hours, of driving.
- 1.8 The EESC regrets the fact that, particularly when it comes to bus and coach passenger transport, the proposed changes come without any thorough assessment of passenger, driver or road safety. The EESC would therefore welcome an EU-wide general study on driver fatigue and regrets that the EC has not offered solutions for how to address this problem.
- 1.9 Against the critical backdrop of pricing in the transport sector, the EESC points out that it is of key importance to come up with rules which can effectively guarantee a level playing field for all road transport operators, irrespective of their size, and for all mobile workers, without creating new barriers to the internal market or cutting back on social legislation.
- 1.10 The EESC endorses the EC statement that efficient enforcement of the rules is essential and highlights the importance of close cooperation between Member States and the efficient exchange of information. Therefore, the EESC is of the opinion that it is necessary to ensure better enforcement of existing rest time rules before considering creating more flexible ones without a satisfactory evidence base.
- 1.11 Furthermore, the EESC calls for the EC to make progress towards smart enforcement, and to provide all possible support for the full introduction and use of risk-rating systems; it also calls for the EC and Member States to give enforcement authorities real-time access to national electronic registers, making maximum use of the European Register of Road Transport Undertakings (ERRU) to this end.
- 1.12 The EESC recommends that the EC adopt clear enforcement measures to eliminate the risk of manipulation of digital tachographs by a) bringing forward the deadline for the introduction of the "smart" tachograph on all commercial vehicles engaged in cabotage and international transport; and b) deploying all necessary innovative technological means to ensure that manual entries of tachograph data are accurate by, for example, connecting a weight sensor to the tachograph as a more effective means of checking loading and unloading activities, which are actually part of drivers' working time.
- 1.13 The Committee also advises the EC and Member States to address the problem of secured parking areas, including the current limited availability of spaces with appropriate facilities for drivers, without which the mobility package risks making an obligation to rest outside the cabin a dead letter. The EESC appeals the EC to provide a thorough verification of existing parking network in the Member States particularly in geographically peripheral roads and transport corridors, as well as to develop a road map for decommissioning white spots in that area, what will be crucial for efficient implementation of the mobility package.

- 1.14 The EESC calls on the European institutions and the Member States to ensure that the weekly rest and compensatory weekly rest periods have to be spent in adequate accommodation conditions, with access to individual sanitary facilities and food, while, on the other hand, ensuring investment in and the construction of high-quality road infrastructure. In this context the EESC particularly welcomes the recent ruling of the European Court of Justice (ECJ) of 20 December 2017, confirming that the weekly rest period has to be spent outside the vehicle. It also calls on the EC to clarify the financial responsibility for the driver's repatriation to his/her home, as this should not be at the expense of the driver.
- 1.15 The EESC considers the EU-wide application of rules on posting in road transport to be of key importance in retaining a level playing field for workers and businesses alike. The EESC is equally in favour of simple, effective and non-discriminatory measures for enforcing these rules while administrative burdens must be avoided at all costs.
- 1.16 The EESC recognises the highly mobile nature of road transport, but is of the opinion that, as it currently stands, the EC proposal on the posting of workers in international road transport will not altogether adequately address the problems. Clear and simple rules are needed both for transport operators and drivers. With regard to pure transit operations, the EESC calls on the legislator to clarify that the rules on posting do not apply. The EESC also requests clarification on the application of rules on posting to transport operators established in a third (non-EU) country.
- 1.17 The EESC fully agrees that, for cabotage, the Posting of Workers Directive should continue to be applicable from day one. However, it questions whether the new lighter administrative rules should apply to cabotage.
- 1.18 The EESC welcomes the adjustment of enforcement requirements to the specificities of the sector and considers that the administrative burden will be alleviated if a one-stop shop for notifications is introduced EU-wide.

However, the EESC must equally acknowledge that the temporary deployment of a driver from a low-income Member State in a Member State with a higher pay level when the conditions of posting are met, must, as far as pay is concerned, comply at least with the minimum pay levels of the host country, as set by law or practice.

- 1.19 The EESC recommends introducing EU-wide enforcement measures that are simple, clear, non-discriminatory and effective, without imposing administrative burden, including:
- moving from paper-based evidence towards smart digital technologies where enforcement is concerned;
 - bringing forward the mandatory introduction of the "smart" tachograph on all commercial vehicles concerned that are engaged in international transport, as the only means of effectively determining the duration and temporary nature of drivers' activity on the territory of any given Member State;
 - introducing a European electronic posting declaration for each individual posted driver and an EU-wide one-stop shop notification system to which inspectorates will have real time access, as the only means of avoiding administrative burdens while ensuring that controls effective.

- 1.20 Furthermore, the EESC recommends making maximum use of national electronic registers (NERs) and ERRU for road transport undertakings by 1) including in NERs data about drivers employed by undertakings; 2) giving road enforcement authorities real-time access to the data recorded in NERs and ERRU, including to the electronic posting declaration; and 3) extending the period of time allowed to be checked on the driver card from 28 days to several months, so as to enable the control authorities to determine easily the periods of temporary work undertaken by drivers in various Member States.
- 1.21 Finally, in order to ensure better cross-border enforcement of the EU rules applicable to road transport, the EESC calls for the EC to set up a European Road Transport Agency whose main competence would be improving the compliance culture in road transport and providing support for policy making in the sector at both EU and national level. However pending that, the EESC recommends that Member States should be active in existing European transport inspection services (EUROCONTROLE Route etc.), and invest in the training of national inspection authorities.

2. Background

- 2.1 At the start of their mandate, the EC committed to launching a legislative process to make EU rules applicable to road transport simpler, clearer and easier to enforce. This was prompted by numerous calls from Member States and from the European social partners in the road transport and logistics sector, the ETF and the IRU, sharing the view that current EU legislation is unclear on a number of points and poorly enforced.
- 2.2 In 2013, the ETF and IRU jointly proposed initiatives involving no further market openings on cabotage, more efficient enforcement, and a binding roadmap for fiscal, road safety and social harmonisation (see [ETF-IRU joint policy opinion document](#)).
- 2.3 Diverging conditions of competition, including different cost structures in different Member States have highlighted issues relating to market liberalisation, minimum wages, conditions relating to the posting of workers and their applicability to mobile labour. This, in conjunction with an unclear regulatory framework, has given rise to social dumping through the circumvention of regulations, including atypical employment arrangements and letterbox companies.
- 2.4 Emerging national regulations or practices have given rise to a number of infringement procedures and highlighted the need for appropriate measures at EU level to resolve the problems and ensure legal certainty for both market actors and employees.
- 2.5 In this context, the Juncker Commission taking office in 2015 openly declared its commitment to a fairer single market by fighting social dumping, as stated by EC President Jean-Claude Juncker in his first address to the EP. Ever since, the EC has systematically reiterated this commitment throughout the preparation of the mobility package while underscoring the importance of preserving the coherence of the internal market.

- 2.6 Furthermore, in September 2015, the EESC adopted exploratory opinion TEN/575 on the "Internal market of international road freight: social dumping and cabotage". In September 2016 the EP adopted an own initiative opinion on "Social Dumping in the European Union". Both opinions set out a number of valid proposals notably in the area of enforcement with a view to ensuring a fair and well-functioning internal market. In May 2017, the EP adopted a resolution on road transport in the EU in the same spirit.
- 2.7 As a result, on 31 May 2017, the EC presented a mobility package comprising an initial set of eight legislative initiatives focused on commercial freight and passenger road transport, a sector employing five million people in the EU. The aim of the package is to improve the functioning of the road haulage market and help improve workers' social and employment conditions. According to the Commission, this will be done by stepping up enforcement, fighting illicit employment practices, cutting the administrative burden for companies and bringing more clarity to existing rules, for instance concerning the application of national minimum wage laws.
- 2.8 The four pillars of the package include 1) internal market, 2) fair competition and workers' rights, 3) decarbonisation and 4) digital technologies. This opinion is part of the fair competition and workers' rights pillar and covers proposed changes to the social legislation.
- 2.9 In order to address the above problems and to further improve road safety, the EC mobility package proposes changes to the driving and rest time rules (Regulation (EC) No 561/2006), the posting of workers (Directive 96/71/EC) and its enforcing legal act (Directive 2014/67/EU).
- 2.10 With regard to road transport working time (Directive 2002/15/EC), the mobility package comes with no proposal but rather, in line with the legal requirements set by Article 154 of the Treaty on the Functioning of the European Union, consults the social partners on the possible revision of the directive.
- 2.11 Ahead of the launch of the Mobility Package in April 2017, 27 trade union organisations from 20 European countries including Bulgaria, Czech Republic, Denmark, Hungary, Lithuania, Netherlands, Poland, Romania, Spain and the United Kingdom adopted the Warsaw Declaration calling for the European Commission to include concrete proposals in the Mobility Package, at whose core stay the full application of posting of workers to the road transport sector.

In reaction to the EC' Mobility package proposal in October 2017 a mutual declaration against the application of the Posting of workers directive to the international transport operations was published, signed by the transport & logistics associations and chambers of commerce from Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Greece, Hungary, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain and United Kingdom.

- 2.12 The EESC takes note of the recent position of the EPSCO Council, which is that the existing rules on posting of workers will continue to apply to road transport until the introduction of any new sector-specific rules. The EESC likewise takes note of the highly conflictual character of the issue of the applicability of the rules on posting of workers in the road transport sector which has provoked diverging positions both at political level and from stakeholders.

3. General comments

- 3.1 The EESC supports the objective of ensuring that the EU retains a leading position in clean, competitive and connected mobility, which is a driver of the EU economy, in the future. The essential tool to reach this end remains a well-functioning fully implemented single market in the transport sector, which is socially sustainable and minimises administrative burden.
- 3.2 The EESC welcomes the overarching goal of the initiative taken by the EC and notes that the initiative has generated different points of views among Member States, social partners, drivers and operators themselves. The EESC in its role as representative of civil society underscores the importance of the legislative process arriving at results that are acceptable to those concerned and that answer legitimate concerns. This is particularly the case with respect to the proposal concerning the application of the rules on posting of works to road transport, which has provoked serious and conflicting concerns among stakeholders. The EESC therefore underlines the importance of a balanced, clear and functional legislation that does not interfere with the good functioning of the internal market nor with the improvement of social standards in the industry.
- 3.3 The EESC agrees with the EC impact assessment that unfair competition between road transport operators and social dumping are intrinsically connected (Driving change for business and people), having in view its definition in the EESC exploratory opinion TEN/575¹. The EESC notes that the impact assessment is partly based on qualitative and limited quantitative evidence.
- 3.4 The EESC equally shares the EC's argument that distortions of competition occur when non-compliant operators circumvent the law to gain competitive advantages. Loopholes in the EU's rules and diverging interpretation in different Member States may – in the EC's view – lead to the same effect. Furthermore, the EESC would add that low compliance-monitoring capacities feed into this situation. The EESC therefore shares the view set out in the EC's impact assessment that this is yet another reason for aiming at a clear-cut and easily enforceable regulatory framework.
- 3.5 The EESC further agrees with the EC's observation that exacerbated competition in road transport has left markets distorted by various developments that are unrelated to the social rules.
- 3.6 Against the critical backdrop of pricing in road transport, the EESC points out that it is of key importance for the mobility package to come up with clear and easily enforceable rules which can effectively guarantee a level playing field for all road transport operators, irrespective of their size, and for all mobile workers, without creating new barriers to the internal market or cutting back on social legislation. The internal market has to work for all stakeholders and in all Member States, both old and new.
- 3.7 A downward trend in pricing may render road transport socially, economically and environmentally unsustainable and may significantly limit the fair participation of other modes of transport in freight and passenger movements across the EU. Consequently, the EC risks undermining other political goals such as lowering emission targets and encouraging multimodality. To achieve the EC's agenda

¹ [OJ C 13, 15.1.2016, p. 176](#)

for a socially fair transition towards clean, competitive and connected mobility for all, the only option is to safeguard social rights, ensure both enforcement and enforceability of rules and guarantee fair competition while reducing burdensome procedures.

- 3.8 The EESC reiterates that there are a number of illegal practices whose victims are the companies that act legally and ultimately professional drivers in haulage transport.
- 3.9 The EESC regrets the fact that the mobility package, particularly when it comes to bus and coach passenger transport, brings more flexibility in organising rest times without any thorough assessment of passenger, driver or road safety. Hence, the EESC would welcome an EU-wide general study on driver fatigue to investigate its causes, including a mixture of driving and passenger assistance activities, the fact that drivers have to prepare their journeys, their vehicles, etc. during their daily rest period, and that working schedules include substantial waiting periods between journeys, in most cases spent in the vehicle and often in inappropriate conditions though the investment undertaken by transport operators to improve and modernise vehicle cabin features is acknowledged. The EESC stresses that any new provision should address and avoid this practice.
- 3.10 In terms of road safety, the EESC takes note of the fact that in 2010, the EU renewed its commitment to improving road safety and set a target of reducing road deaths by 50% by 2020, compared to 2010 levels. However, since 2014, progress has virtually ground to a halt. 2016 was the third consecutive poor year for road safety, as shown by the European Transport Safety Council (ETSC). In 2015 alone around 4 000 people died in collisions involving lorries (Traffic Safety Basic Facts 2016 – HGVs and Buses, European Road Safety Observatory) without necessarily implying that the fault lies with those. Referring to accidents involving heavy goods vehicles, the ETSC stresses that "because of their size and weight, crashes can be catastrophic with a much higher risk of death or serious injury", and recommends an exhaustive evaluation of the possible result of the same. Thus, the EESC takes note of the effort of the EC to address demands of the sector, but once again reiterates its doubts about new rules on flexibility without a thorough assessment.
- 3.11 The EESC is also strongly disappointed that the shortage of secured parking areas has not been dealt with, including a need to tackle issues such as cargo crime and drivers' conditions in parking areas. Member States should take tangible measures to meet the requirements arising from Regulation (EU) No 1315/2013 as an effective means to improve safety in road transport, tackle the risk of cargo theft, prevent access to dangerous goods and guarantee appropriate facilities for drivers to park vehicles in a network of secure parking spaces EU-wide and according to Article 39(2)(c) take appropriate measures to develop, on the core TEN-T network, rest areas on motorways approximately every 100 km in order to provide appropriate parking space for commercial road users with an appropriate level of safety and security. The EESC appeals the EC to provide a thorough verification of existing parking network in the Member States particularly in geographically peripheral roads and transport corridors, as well as to develop a road map for decommissioning white spots in that area, what will be crucial for efficient implementation of the mobility package. It is not excluded that new elaboration of the TEN funding rules and a new approach to related road infrastructure will be needed. The current limited availability of secure parking spaces with appropriate facilities for drivers, including accommodation, risk making an obligation to rest outside the cabin a dead letter.

- 3.12 As well as acknowledging the concern that parking infrastructure often fails to match demand, the EESC stresses the main purpose of parking areas, namely to provide professional drivers, car users and passengers with breaks from driving and with the opportunity to refresh themselves. Parking areas have not been planned, nor are they equipped, to accommodate truck drivers having to spend weekly rests in their truck on a regular and even permanent basis.
- 3.13 The EESC thus notes the EC's analysis of the state of play in the sector, but points out that the proposals on social legislation fall short of meeting the EC's policy objectives and of effectively addressing the problems in road transport.

4. **Driving times and rest periods**

- 4.1 Regulation (EC) No 561/2006 was adopted 11 years ago and its objective was threefold: a) to safeguard fair competition in the road transport; b) to improve working conditions in the sector; and c) to improve road safety.
- 4.2 In the past decade, however, conditions in road transport have substantially changed, particularly in terms of tighter delivery schedules and time pressure to meet these deadlines in the context of increased traffic congestion on European roads.
- 4.3 The ex-post evaluation study carried out by the EC on the driving and rest time regulation links these new circumstances to higher occupation health risks in road transport such as fatigue, stress and illness (Ex-post evaluation of social legislation in road transport and its enforcement). Guaranteeing road safety and occupational health and safety under these new circumstances is proving a much more difficult task for policy and decision makers, but the EESC is of the opinion that they must be given priority when considering the introduction of more flexible rules.
- 4.4 Fatigue caused by tiredness of the driver (including when the driver does not take sufficient breaks) is one of the major causes of accidents involving heavy road freight vehicles. Even momentary lapses of concentration can have catastrophic consequences. Road transport drivers are also prone to suffer health problems associated with long periods of driving with insufficient breaks, such as cardiovascular conditions (typically heart attacks, strokes etc.); musculoskeletal conditions (back and neck spinal injuries); nervous complaints (stress and anxiety, depression etc.) and stomach/digestive disorders. Strictly enforced driving and working time limits and adequate rest periods are essential in order to minimise these effects (OSH in figures: Occupational safety and health in the transport sector — an overview).
- 4.5 The EC, via the mobility package, proposes a redistribution of the rest time periods across an increased reference period of four weeks (instead of two weeks). Under this scenario, the monthly permitted driving time can be accumulated in the first three weeks of a month, while the last week can be rest, which may result in as many as 18 consecutive days of working with only two days of rest in between.
- 4.6 The proposed extension of the reference period means drivers may be required to delay their regular weekly rest of 45 hours by a further two weeks. Although this delayed weekly rest must be lengthened by the cumulative compensated rest periods, the consequence is that the driver may have no weekly

rest of longer than 24 hours for up to three weeks, during which time he/she would not be truly free to leave the vehicle but would have to take responsibility for it. The EESC is of the opinion that this proposal should be evaluated, bearing in mind the reduced ability for the driver to leave the vehicle and the potential effects on fatigue.

- 4.7 The EESC equally points out that the proposed flexibility of rest periods could actually lead to inconsistencies with the existing regime of maximum driving and working hours. In this respect, however, the EESC stresses that no proposal must lead in effect to longer driving hours, or to a reduction of the working time limitation, whose primary objective is guaranteeing occupational health and safety.
- 4.8 The EESC understands the EC's efforts to propose measures reflecting the reality of road transport and the needs of operators and drivers but expresses its concerns regarding possible implications on the fine balance between fair competition, driver health and safety and road safety.
- 4.9 The EESC asks the legislator also to consider allowing compensation for a reduced weekly rest period in connection with daily rest periods, as provided for in the current regulation. With respect to breaks, the EESC suggests considering an impact assessment on the possibility of leaving a more flexible distribution of the 45 minutes of break over 6 hours to the discretion of the driver. The impact assessment should focus on the driver's ability to use the break to rest and refresh in-between nine hours, respectively ten hours, of driving.
- 4.10 Indeed, guaranteeing the safety of road users and of passengers remains an issue even in the context of the current, much stricter, rules. Severe collisions in recent years involving trucks and buses or coaches and resulting in a serious number of casualties (Traffic Safety Basic Facts 2016 – HGVs and Buses, ERSO) must be an alarm signal that Europe needs simple, enforceable and clear rules to create a fair climate for users, drivers and business, with safety at its core. It is necessary to ensure a better enforcement of such rules before thinking about creating more flexible ones.
- 4.11 From the viewpoint of enforcement, the EESC would question some aspects of the EC's proposal. Firstly, the extension of the reference period for the distribution of rest periods must not have a negative impact on a harmonised interpretation of the rules, not giving room for each Member State to come up with individual scenarios and calculations. In a cross-border activity such as road transport, individual interpretations of rules have an impact on the fluidity of an entire road journey or operation, and even on the activity as a whole.
- 4.12 In this respect the EESC points out that it took the EC and the Member States several years to finally agree on a common guide for the interpretation of driving times and rest periods as set by the current Regulation (EC) No 561/2006 (see the TRACE publication "Transport Regulators Align Control Enforcement", 2012). The EESC therefore underlines the importance of establishing a network to support the implementation work of Member States and to reduce the risk of diverging interpretations.
- 4.13 Secondly, the EESC considers that the proposed changes to the driving and rest time regulation must not hinder their enforcement. It equally considers that the proposed changes will incur new costs for the Member States, e.g. in terms of replacing software used in road side and company checks, in terms

of training of inspectors, etc. The EESC underlines the importance of making adequate resources available to ensure efficient compliance monitoring.

- 4.14 To conclude on enforcement, the EESC stresses the point that more effort must be made by the legislator with regard to smart and non-discriminatory enforcement methods. In this respect, the EESC salutes the EC's proposals relating to a better use of the risk rating systems. However, the EESC stresses the need for inspectors to access data in real-time and for facilities to be provided for a better exchange of information between Member States. In this context, Member States must make better use of national (NER) and European (ERRU) electronic registers required under Regulation 1071/2009 on access to the occupation.
- 4.15 With regard to the conditions of weekly rest for drivers, the EESC welcomes the EC's intention to address the issue. However, the proposal leaves some uncertainties.
- 4.16 In concrete cases, "nomadic" drivers who spend long periods away from home – and are thus directly affected by the new proposal – are recruited by road transport undertakings that operate in high-wage Member States, but are seeking to benefit from the lower labour costs or taxes in place in other Member States. It is of key importance that the practical issues related to long absence from home such as accommodation needs or repatriation costs are adequately addressed and solved, as this should not be at the expense of the driver.
- 4.17 Bearing in mind the high level of mobility of the drivers, the EESC supports the EC's intention to facilitate their return home and points out that the proposed changes in the driving- and rest-time rules should not lead to a reduced ability to spend time with the family at weekends and to have a decent social life. However, the potential scenario of three weeks of intense work with only two days of rest in between could have a negative impact on drivers' work-life balance.
- 4.18 As well as acknowledging the improvement and modernisation of vehicle cabin features in general, limitations remain concerning the availability of space and facilities in the cabin. Therefore, the EESC welcomes the EC's important clarification, confirmed by the recent ruling of the European Court of Justice (ECJ) of 20 December 2017, that weekly rest periods of 45 hours and more must be taken away from the vehicle, either in accommodation paid for by the employer, at home or in a place of the driver's own free choosing. The EESC, however, raises the issue that spending the regular weekly rest in private accommodation or the driver's home could create difficulties in documentation. Nonetheless, in order to satisfy the requirement that the driver must be able to "freely dispose of his/her time" during a weekly rest, it is imperative that the driver is free to leave the vehicle and to have an uninterrupted period of time when he/she does not have to take responsibility for its safe keeping and security. The EESC equally points out that availability of safe parking and other facilities ensuring the sound application of the proposed measures is on the other hand needed.

5. Posting drivers in the road transport sector

- 5.1 In road transport, gaps between Member States in terms of driver pay remain substantial due to differing costs of living. A study by the Comité National Routier (CNR), also quoted by the EC in its impact assessment, points out that gross wage differentials can be as much as eleven times between Member States.

- 5.2 The EESC agrees with the EC that, with these wage differentials, rules need to be kept in place, in line with the EU values and principles defined by the Treaty on the Functioning of the European Union, with a view to:
- avoiding distortion of domestic markets, for both labour and transport;
 - ruling out discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, in the context of freedom of movement;
 - ensuring a fair competitive environment for business no matter where the latter are established, where they operate and where they recruit their workforce within the EU.
- 5.3 The Posting of Workers Directive (Directive [96/71/EC](#)) is part of the above-mentioned rules. In December 2016, the EESC adopted a specific opinion (SOC/541)², raising a number of concerns and proposals.
- 5.4 Under the current rules, when drivers work in an EU Member State other than their own on a temporary basis, they are covered by the Posting of Workers Directive if they perform cabotage. If they are engaged in international transport, they are posted only if the posting conditions defined by Article 1 of Directive [96/71/EC](#) apply.
- 5.5 The EC is proposing, via the mobility package, a lapse of time before the rules on minimum pay and paid holidays apply to a driver engaged in international transport in the context of posting. The EESC is of the opinion that this has to respond to the EU political agenda – set by EC President Juncker and reiterated by the EU Member States in the "Rome declaration" – to fight against social dumping and to respond to the goal set by the EC itself in the mobility package, namely to ensure a fair and competitive internal market for road transport. The proposal must make rules simpler, clearer or easier to enforce, avoiding the risks of fragmentation of EU legislation.
- 5.6 The EESC raises the unclear issue of how the proposal would apply to transport operators established in a third (non-EU) country and how the obligations will be enforced. It asks the EC for clarification.
- 5.7 The EESC takes note of the concerns related to the enforcement of posting of workers rules in international transport, in particular by SMEs, notably a complex administrative challenge taking into account national differences in minimum pay and that an unwieldy cumulation of very short-term pay and paid holiday rights could generate considerable difficulties and costs. Therefore, the EESC stresses the need for more transparency concerning the terms and conditions of employment, including minimum rates of pay, in each Member State.
- 5.8 The EESC acknowledges the specific character of the road sector and its highly mobile workers. However, it is of the opinion that, as it stands, the EC's sector-specific proposal on the posting of workers in international road transport does not altogether adequately address the problems raised as pointed out in this section.

² [OJ C 75, 10.3.2017, p. 81](#)

- 5.9 The EESC fully agrees that for cabotage the Posting of Workers Directive should continue to be applicable from day one. However, it questions the application of the new lighter administrative rules to cabotage. With regard to pure transit operations, in the absence of any legal certainty, the EESC calls on the EC to clarify that transit operations are exempted from the rules on posting.
- 5.10 The EESC notes the calls coming from the industry pointing out that the posting rules are not suitable for the mobile nature of road transport, as well as the concerns expressed by the business that the EC proposal will lead to considerable administrative burdens. Consequently, it welcomes the adjustment of enforcement requirements to the specificities of the sector such as lifting the obligation for road transport operators to designate a person in the host Member State to liaise with the authorities there. The EESC considers that the administrative burden could be alleviated if a one-stop shop for notifications were to be introduced EU-wide. Furthermore, it suggests that the driver should not be obliged to provide the salary slips of the last two months during road-side checks, unless they can be made available by electronic means. Control authorities should obtain them directly from the contact person and they should be made available by electronic means in the Member State of establishment.
- 5.11 However, the EESC must equally acknowledge that the temporary deployment of a driver from a low-income Member State in a Member State with a higher pay level, must as far as pay is concerned comply at least with the pay levels of the host country, as set by law or practice.
- 5.12 The EU-wide application of rules on posting in road transport is of key importance in retaining level playing field for workers and businesses alike. This would also help to prevent the wide-scale abuse and exploitation of low-income labour from other Member States that has become all too prevalent in international road transport and is a major cause of the downward spiral in wages and conditions for road transport drivers.
- 5.13 Along the same lines, the EESC considers it essential to make further progress on upward economic and social convergence between Member States with different economic performance and at the same time to have harmonised posting rules applying in a uniform manner across the EU. The EESC is equally in favour of simple, effective and non-discriminatory measures for enforcing these rules. Administrative burden must be avoided at all cost. The EESC welcomes the simplified posting declaration that is provided for in this proposal. However, it considers that the covering of a period of maximum 6 months and a group of drivers could reduce the effectiveness of enforcement and control of posting rules.
- 5.14 In particular with respect to the posting of drivers, the smart tachograph is indisputably a far more effective tool than the Commission proposal on manual entries. In particular the manual entry of country codes is exposed to possible manipulation.
- 5.15 Finally, in order to ensure better cross-border enforcement of the EU rules applicable to road transport, the EESC calls for the EC to set up a European Road Transport Agency whose main competence would be improving the compliance culture in road transport and providing support for policy making in the sector at both EU and national level. In this regard, the EESC stresses that road transport is the only sector which does not have such an agency, while being fully liberalised and thus heavily depending on close cooperation between Member States. Such an agency would be beneficial not only to better controls of posting and driving and rest time rules, but also to cabotage and access to the

occupation. An agency is also the only way of moving towards a harmonised interpretation of rules. Nonetheless, the EESC recommends that Member States be active in existing European transport inspection services and invest in the training of national inspection authorities.

Brussels, 18 January 2018.

Georges DASSIS
The President of the European Economic and Social Committee

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N.B.: Appendix overleaf.

APPENDIX to the opinion

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions:

Point 4.18

As well as acknowledging the improvement and modernisation of vehicle cabin features in general, limitations remain concerning the availability of space and facilities in the cabin. Therefore, the EESC welcomes the EC's important clarification that weekly rest periods of 45 hours and more must be taken away from the vehicle, either in accommodation paid for by the employer, at home or in a place of the driver's own free choosing. The EESC, however, raises the issue that spending the regular weekly rest in private accommodation or the driver's home could create difficulties in documentation. Nonetheless, in order to satisfy the requirement that the driver must be able to "freely dispose of his/her time" during a weekly rest, it is imperative that the driver is free to leave the vehicle and to have an uninterrupted period of time when he/she does not have to take responsibility for its safe keeping and security. The EESC equally points out that availability of safe parking and other facilities ensuring the sound application of the proposed measures is on the other hand needed. The lack of safe parking and other facilities will in reality mean that a legal obligation to take the weekly rest period outside the cabin will confront drivers and operators with an impossible dilemma of risking cargo and vehicle or comply with the law. Enforcement authorities must give due consideration to this dilemma.

Votes in favour: 105

Votes against: 152

Abstentions: 22

Point 5.13

According to the EC, the EU-wide application of rules on posting in road transport is of key importance in retaining level playing field for workers and businesses alike. The EC argues that this proposal would also help to prevent the wide-scale abuse and exploitation of low-income labour from other Member States that has become all too prevalent in international road transport and is a major cause of the downward spiral in wages and conditions for road transport drivers. be key to creating a fair, safe, environmentally and socially sustainable road transport sector. The EESC condones these objectives. However, the EESC also underlines the importance of adapting posting provisions to the realities of the transport sector to make them work, as proposed by the EC. Therefore the EESC finds it necessary to question the added value of applying posting rules to international transport considering the complexity of the administrative work involved and the problems of control and enforcement.

Votes in favour: 105

Votes against: 157

Abstentions: 11

Point 5.14

Along the same lines, the EESC considers it essential to make further progress on upward economic and social convergence between Member States with different economic performance and at the same time to have harmonised posting rules applying in a uniform manner across the EU. The EESC is equally in favour of simple, effective and non-discriminatory measures for enforcing these rules. Administrative burden must be avoided at all cost. The EESC welcomes the simplified posting declaration that is provided for in this proposal. ~~However, it considers that the covering of a period of maximum 6 months and a group of drivers could reduce the effectiveness of enforcement and control of posting rules.~~

Votes in favour: 102

Votes against: 160

Abstentions: 12
