
The impact of the 1st mobility package on European Road Freight Transport, with special focus on peripheral countries

Report for:

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1 Introduction

After a period of proposals, amendments and impact assessments, texts for the so-called “1st Mobility Package” are prepared for the trilogue negotiations between the European Parliament, Council and Commission. This document covers some of those aspects related to road freight transport.

However, the current proposed texts, as a result of the amendments, have not necessarily been subject to a proper impact assessment, as indeed modifications have been made that were not covered by the impact assessments made on the original proposals by the Commission. As a result, transport operators, especially those based in peripheral countries, stand to feel the consequences of the new legislations disproportionately compared to core countries, which would not only impact those Member States, but the European economy as a whole. The purpose of this document is to provide a critical review of certain aspects of the new policy measures being discussed and the process that has been followed to come to the current positions of the Commission, Parliament and Council.

2 Evolution of policy process

The process for the 1st (and 2nd and 3rd) mobility package was initiated by the European Commission in its 2017 Work Programme “Europe on the Move”. It consisted of:

- a Communication outlining a long-term plan to deliver clean, socially fair, competitive mobility to all Europeans;

- 8 legislative initiatives with focus on road transport and aim at improving the functioning of the road haulage market; enhancing the employment and social conditions of workers; and promoting smart road-charging in Europe;
- a number of non-legislative accompanying documents, presenting EU policy support measures designed to accelerate the shift to a sustainable, digital and integrated mobility system (such as investment financing for infrastructure, research and innovation and collaborative platforms).

The 2nd and 3rd mobility packages focussed more on clean, safe and connected mobility.

Following the proposals of the Commission, the other legislative bodies of the EU, the Parliament and the Council, were able to proceed with their investigation of the Commission's proposals and prepare their own amendments to prepare for a trilogue negotiation between the three. This preparation phase has taken place between 2017 and the summer of 2019, with starting positions of all three now established.

3 The importance of road freight transport for the economy of peripheral Member States

First of all, it should be established that the importance of the road freight sector is not identical in all member states.

Country	GDP%	Population%	Freight tkm%	Land transport workers%	Active population in land transport%
EU28	100.0%	100.0%	100.0%	100.0%	1.8%
Belgium	2.9%	2.2%	1.7%	2.1%	1.8%
Bulgaria	0.3%	1.4%	1.9%	2.4%	<u>3.2%</u>
Czechia	1.2%	2.1%	2.6%	3.4%	<u>3.0%</u>
Denmark	1.9%	1.1%	0.8%	1.0%	1.7%
Germany	21.3%	16.3%	16.7%	8.8%	1.0%
Estonia	0.2%	0.3%	0.3%	0.4%	<u>3.0%</u>
Ireland	1.9%	1.0%	0.5%	0.8%	1.5%
Greece	1.2%	2.1%	1.5%	1.5%	1.3%
Spain	7.6%	9.3%	11.4%	9.6%	1.9%
France	14.9%	12.6%	8.8%	13.3%	2.0%
Croatia	0.3%	0.8%	0.7%	0.8%	1.9%
Italy	11.2%	11.7%	5.9%	9.1%	1.4%
Cyprus	0.1%	0.2%	0.0%	0.1%	1.1%
Latvia	0.2%	0.4%	0.8%	0.7%	<u>3.3%</u>
Lithuania	0.3%	0.6%	2.3%	1.1%	<u>3.8%</u>
Luxembourg	0.4%	0.1%	0.4%	0.1%	1.8%
Hungary	0.8%	2.0%	2.0%	2.9%	<u>2.7%</u>
Malta	0.1%	0.1%	0.0%	0.0%	0.7%
Netherlands	4.8%	3.4%	3.6%	3.1%	1.7%
Austria	2.4%	1.8%	1.4%	1.6%	1.6%
Poland	3.0%	7.7%	16.6%	11.2%	<u>2.7%</u>
Portugal	1.3%	2.0%	1.7%	1.8%	1.6%
Romania	1.2%	3.9%	3.1%	6.9%	<u>3.2%</u>
Slovenia	0.3%	0.4%	1.2%	0.6%	<u>2.6%</u>
Slovakia	0.6%	1.1%	1.9%	1.9%	<u>3.0%</u>
Finland	1.5%	1.0%	1.5%	1.1%	2.0%
Sweden	3.1%	1.9%	2.2%	2.0%	2.0%
United Kingdom	15.2%	12.8%	8.4%	11.6%	1.7%

Table 1 Proportions of EU countries in population, economic activity, transport and employment (source: Eurostat)

Table 1 shows that peripheral, mostly East-European countries have a much larger than average share of workers in land transport, making them disproportionately vulnerable to policy changes affecting land transport workers.

Country	Total tkm	International tkm	%
EU28	1 899 290	673 288	35.4%
Belgium	32 685	12 092	37.0%
Bulgaria	35 150	19 216	<u>54.7%</u>
Czechia	50 315	17 530	34.8%
Denmark	14 992	2 923	19.5%
Germany	316 772	40 621	12.8%
Estonia	5 775	4 089	<u>70.8%</u>

Ireland	9 215	2 115	23.0%
Greece	29 279	4 741	16.2%
Spain	216 997	80 518	37.1%
France	167 691	11 405	6.8%
Croatia	12 635	8 400	66.5%
Italy	112 637	13 174	11.7%
Cyprus	892	26	2.9%
Latvia	14 972	11 538	77.1%
Lithuania	43 590	39 948	91.6%
Luxembourg	7 858	7 051	89.7%
Hungary	37 948	24 969	65.8%
Netherlands	68 559	34 746	50.7%
Austria	25 763	8 849	34.3%
Poland	315 874	201 182	63.7%
Portugal	32 963	22 433	68.1%
Romania	58 762	44 404	75.6%
Slovenia	22 225	19 969	89.8%
Slovakia	35 586	29 109	81.8%
Finland	28 345	2 260	8.0%
Sweden	42 673	2 816	6.6%
United Kingdom	159 137	7 164	4.5%

Table 2 Share of international freight transport in total transport

Table 2 shows that in most of the same countries with a high share of the labour market in land transport, the share of international road transport is much higher than average – up to 92%.

This shows that any legislative proposal with regard to employees of the road freight sectors should strongly consider the differences between EU15 and EU13 countries.

4 Measures

4.1 Obligatory return of trucks and drivers every 4 weeks

This issue arises from the proposed amendment of 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. The European Commission proposed to include the following article into the regulation:

*8b. A transport undertaking shall organise the work of drivers in such a way that the drivers are able to spend at least one regular weekly rest period or a weekly rest of more than 45 hours taken in compensation for reduced weekly rest **at home** within each period of **three consecutive weeks**.*

The European Parliament followed this aspect of the Commission's proposal, though in its initial proposal, the TRAN Committee rapporteur on the file did suggest to allow for a return home every 4 weeks, and to also leave the driver the option of taking the extended rest period at a location of his choosing (not necessarily at home).

8b. A transport undertaking shall organise the work of drivers in such a way that the drivers are able to spend at least one regular weekly rest period or a weekly rest of more than 45 hours taken in compensation for reduced weekly rest at home or another location of the driver's choosing before the end of each period of four consecutive weeks. The driver shall inform the transport undertaking in writing no later than two weeks before such rest period, if it will be taken in a place other than the driver's home. When a driver chooses to take this rest at home, the transport undertaking shall provide the driver with the necessary means to return home. The undertaking shall document how it fulfils this obligation and shall keep the documentation at its premises in order to present it on request of control authorities.

However, the Parliament's proposal also contains this important stipulation, referring to vehicles used for road freight transport:

'(aa) the vehicles referred to in point (b) shall perform, in the framework of a transport contract, at least one loading or one unloading of goods every four weeks in the Member State of establishment;';

The European Council followed the Parliament's more lenient position on the return of the driver, allowing for the return to be every 4 weeks, unless the required extended weekly rest comes after two consecutive reduced weekly rests – in this case the return home should also take place the third week. The Council also leaves open the option of the driver not returning to his own home, but to the location of his employer. However, the Council did not retain the Parliament's stipulation regarding the requirement to perform a loading or unloading action in the Member State of establishment every 4 weeks.

8a. A transport undertaking shall organise the work of drivers in such a way that the drivers are able to [...] return to one of the operational centres in the Member State of the employer's establishment or to the drivers' place of residence within each period of four consecutive weeks, in order to spend at least one regular weekly rest period or a weekly rest of more than 45 hours taken in compensation for reduced weekly rest. However, in case that a driver has taken two reduced weekly rest periods consecutively without return, the transport undertaking shall organise the work of the driver in such a way that the driver is able to return already at the end of the third week

Assuming the return home is done with the vehicle used for the freight transport operations (instead of e.g. by airplane), the return trip to the place of residence of the driver is not performed with the primary intent of moving cargo, and is thus highly likely to be performed with suboptimal cargo level, or even empty.

The Commission's proposal is based on an impact assessment, published on 31/05/2017¹.

In that impact assessment on the EC's proposal, it can be noticed that the exact formulations of the respective proposals are not necessarily among the options that were studied. Instead, the closest option is part of policy package 2, measures 1 and 2, which state:

- (1) Calculating the required regular weekly rest period of 45 hours as a minimum average resting time over a reference period of rolling 4 weeks.*
- (2) The weekly rest of 45 hours and more must not be taken in the vehicle. It should be taken either at the suitable accommodation provided/paid by the employer, or at the home base or at another private place of rest. A definition of 'adequate accommodation' would also be introduced.*

¹ https://eur-lex.europa.eu/resource.html?uri=cellar:f81a95b9-4627-11e7-aca8-01aa75cd71a1.0001.02/DOC_1&format=PDF

Following relevant points are found in the impact assessment:

- TRT (2013) found, based on a survey of 24 drivers that **EU-13 drivers in particular stayed away for two to four consecutive weeks before returning to their homes, while EU-15 drivers do not generally stay away from home for more than one to two weeks.** The roadside survey carried out in Germany among 1,800 drivers suggests that EU-13 drivers spend at least two weeks away from home. While 72% of all drivers interviewed spend their daily rest periods in/by their vehicle, 43% of EU-13 compared with 11% of EU-15 drivers also spends their weekly rest period in/by their vehicle (Broughton et al, 2015). The ETF survey on non-resident drivers reported that 95% (out of 1000 interviewed drivers) of non-resident drivers spend their rest time on board their vehicles (ETF, 2012). (Box 10)
- The studies² show that **long periods away from home contribute to driver stress and fatigue**, in particular when combined with inadequate accommodation for rest periods and lack of access to sanitary facilities. Long periods away from home also have adverse effects on drivers' health because of inadequate access to proper nutrition, which is frequently the case for drivers away from their home base, as well as poor quality sleep and work-related sleeping disorders.
- Figure 1 below shows the probability of drivers from the EU-13 and EU-15 spending 10 or more days in a host country. It shows that EU-13 drivers are more likely to spend longer periods away from home in all 10 countries³ for which data are available (12% of EU-13 drivers spend 10 or more days per month in a host country, compared to 7% of EU-15 drivers).

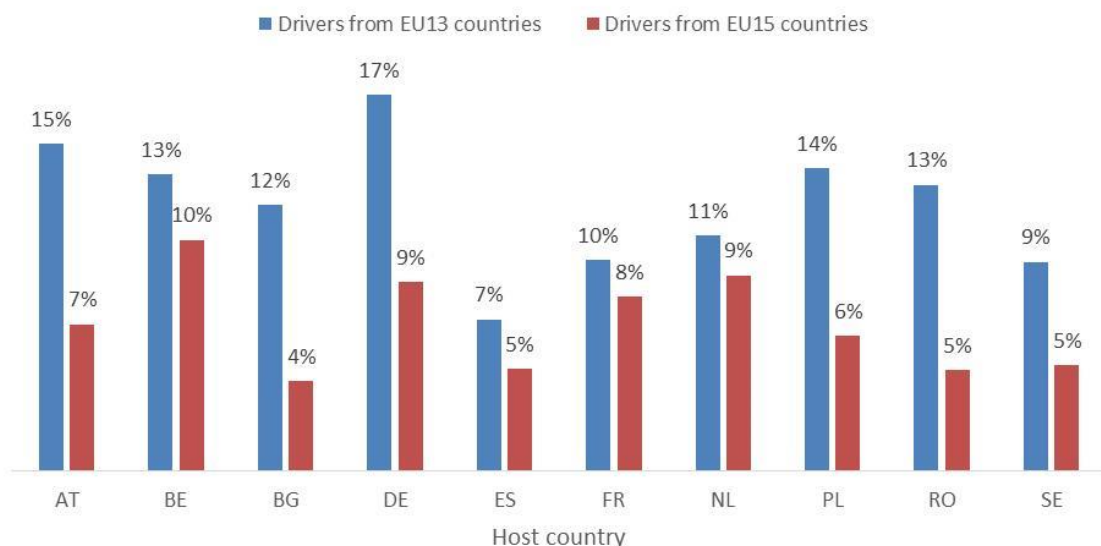


Figure 1 Average probability of a driver spending 10 or more days in a given month in a selection of host countries in 2014/15 (Source: EC impact assessment)

- Some industry representatives (AT, DE) indicated that **proving that weekly rest was spent at home or another private place of choice can be difficult while others pointed out that the extra costs for operators from such a measure can be particularly difficult to meet and create an incentive for non-compliance.**
- Measure 2 will also lead to a small reduction in the length and frequency of periods away from home/operational base. It is expected that **additional costs of providing accommodation may encourage employers to arrange for drivers to return home more often.** Measure 2, combined with measure 1 ensuring average minimum 45 hours of weekly rest in any four weeks and allowing for flexible arrangements of weekly rest periods to enable reaching home/base, would **increase**

² EU-OSHA, 2010. A review of accidents and injuries to road transport drivers, s.l.: European Agency for Safety and Health at Work

³ DTU study collected relevant data for 10 host countries: AT, BE, BG, DE, ES, FR, NL, PL, RO, SE

the regularity of drivers' returns to home/operational base and improve quality of rest and working conditions, in general.

- Respondents to the drivers' survey expect an increase in their ability to spend weekly rests at home (19%). Although the sample size is rather small for EU-13 responses, the available inputs suggest that they expect a relatively larger impact in terms of being able to spend weekly rest at home (43%) compared to EU-15 respondents (16%). At the same time, the hauliers' survey shows that the hauliers would prefer to pay for accommodation, rather than returning driver to home/operational base, suggesting that this measure might not have a significant effect on periods away from home. (Box 31)

With regard to the cost implications of measure 2, the impact assessment states:

Small additional costs per trip (in the range of €50- 160 per week) for important share of operators (mainly in EU13) that allow or actively promote drivers to spend their regular weekly in vehicles. No impact for those that already cover accommodation costs. Possible additional costs from the necessary planning needed to ensure that drivers will have access to the necessary facilities at the time of the regular weekly rest.

While it is clear that the impact assessment sees extended rest periods at home as a plus in terms of driver health, road safety (through a reduction of fatigue, but this applies to all extended periods of rest) and social life, the report does not specifically assess the value of a return every three or four weeks, nor does it account for the impact this has on the logistic planning process, apart from stating that there is expected to be an increase in costs for an important share of mainly EU13 operators. It should be noted that the Commission proposal also removes the flexibility for drivers to take compensatory rest at the end of a daily resting period, leaving only extended weekly rest as an option. This was also not considered in the IA.

Also clear is that the impact of the amended regulation would differ significantly between central members states and those on the periphery of the EU – as is also acknowledged in the impact assessment. As most of the economic activity is concentrated in the central countries, but most of the transport companies are situated in peripheral countries, those operators face the additional burden of having to schedule return trips every three (or four) weeks, regardless of whether there is cargo available to take on that trip. In this regard, the additional stipulation in the Parliament's proposal requiring 1 loading or unloading action in the Member State of establishment complicates matters even further, effectively forcing operators to find a shipment that is not necessarily available on the market or does not fit in their normal business practice. Particularly in peripheral Member States (with many drivers but relatively little cargo), this could lead to either extreme price competition for the cargo of local shippers, or to loading or unloading operations “for show”, made only to fulfil this condition but that nonetheless require time and effort from the operator – in addition to the consequences of the trip to return home whether or not cargo is available.

Another one of the consequences of this proposed amendment would be the environmental impact of vehicles running at suboptimal loads, which leads to increased vehicle emissions. In an open letter to European policy maker dated 26/10/2018, the IRU estimates that the mandatory return home every three or four weeks could increase heavy goods vehicles mileage by 45-75%, with up to 100 000 tonnes CO₂ additionally emitted. This is based on the assumption that trucks currently only return home once or twice per year, but there are likely big differences between EU15 and EU13 countries, with the latter spending the most time away from their base. While this assumption is not necessarily in line with the findings of the impact assessment (see above), it merits closer investigation, particularly since the impact assessment explicitly states (in section 6) that no environmental impacts have been identified.

We conclude that the effects of a mandatory return home at more or less fixed times have not been studied in detail as such with reference to the specific situation of international drivers from countries on the borders of the EU, but the impact assessment mentions that EU13 countries are more likely to incur negative effects from the proposed amended regulation. A more lenient provision, providing flexibility to the driver and his employer in determining where the longer regular weekly rest is taken, so long as it is in suitable conditions for the driver to rest and recover, would be more in line with the impact assessment. Given that EU13 countries depend on the road freight sector (much) more than average, it would be advisable to perform further research on how far the consequences of this amendment would reach in these countries, should the mandatory return home be included in the final regulation.

4.2 Regular weekly rest ban in vehicles

This amendment is part of the same framework of regulations regarding driving and resting times as that of the mandatory return home.

The exact change proposed by the Commission states:

*8a. The regular weekly rest periods and any weekly rest of more than 45 hours taken in compensation for previous reduced weekly rest **shall not be taken in a vehicle**. They shall be taken in **a suitable accommodation, with adequate sleeping and sanitary facilities**;*

Similar to the previous measure, the Parliament initially tabled amendments that would allow regular weekly rest in the cabin, but only in certified safe, clean and adequately equipped parking areas. This amendment was however not retained in the Parliament's final position. As for the Council, their proposal is in line with that of Commission, with no derogations. The Council does however propose to include a mandate for the Commission to *"assess the availability of safe and secure parking places allowing for a comfortable rest while the vehicle is stationary."*

The application of the ban on weekly rest in the cabin has two main implications for the international road freight transport sector.

- By not allowing drivers to take their rest periods in the cabin, additional costs will be incurred to pay for the lodging of drivers. The impact assessment of the regulation estimates these costs at 50-160€/week.
- However, a more important restriction will be the shortage in suitable parking spaces in Europe. Drivers taking their rest outside of their vehicle are not able to closely monitor their vehicle, putting them at risk of theft, vandalism or other criminal activities. Apart from security, parking spaces (used for daily rest and weekly rest) also need to provide facilities and services to cater for the social well-being of the drivers.

Safe and secure truck parking (SSTP) was the subject of a detailed study by Panteia et al. (2018)⁴. With regard to the supply and demand of truck parking areas, which are essential for compliance with the amended regulation, they conclude:

- Around 395 000 trucks per day require overnight parking during long distance trips, mostly along the TEN-T core network axes.
- Around 85 000 of them carry medium to high value cargo, requiring the parking area to be secured. 26 000 of those carry high value cargo.

⁴ Available at <https://sstpa.eu-study.eu/>

- Around 5 000 sites offering truck parking were identified, which are estimated to provide around 300 000 individual parking spots. This represents a shortage of 25%, and does not yet account for the security level of the parking areas.
- Certification of the security levels of truck parking areas is not consistently applied throughout Europe. The study only found 57 certified parking areas (concentrated in just 4-5 countries), offering 7 000 parking spots at most. Considering only those trucks carrying high value goods, this meets only around 25% of demand. When including areas that offer secure parking but are not certified, supply increases to 47 000, which still only meets just over half of demand. The geographical spread of these areas is however much more distributed along the TEN-T network.
- To park their vehicle securely, the limited supply of secure parking areas requires drivers to take suboptimal routes to reach these.

It should be noted that the amendment as currently proposed only applies to the regular weekly rest, and not standard overnight rest, which reduces the demand for SSTP to a theoretical 1/7 (a regular weekly rest represents 2 nights of parking need, taken twice per month as reduced weekly rest can still be taken in the cabin; i.e. 4/28 nights) of total demand for overnight parking, or around 56 000 spots (12 000 with medium to high value goods). This would suggest that the shortage is lower than the numbers indicate.

However, with several large European countries (including France and Germany) restricting HGV traffic on Sundays, it can be expected that many regular weekly rest periods for long distance trips include Sundays, increasing the peak demand on that day to a much higher level – and the shortage increasing with it. On other weekdays, the shortage should then be lower as a result.

Furthermore, the lack of a good geographical distribution of the certified secure parking areas suggests that local shortages could be higher – though this may just be an issue of certification rather than an actual situation.

Further exacerbating the problem is that availability of safe and secure parking for the truck is only the first step, and that the driver also needs to have access to a nearby hotel where he is able to spend the required time outside of the cabin. In light of the current legislative proposals, parking areas should therefore additionally be assessed on the availability of accommodation nearby (walking distance). This has not been studied in the Panteia report but will certainly further limit the amount of parking areas that can be used to fulfil the obligations in the proposals.

The amended regulation to require that drivers take their extended rest, which is intended to improve the quality of life of drivers, goes hand in hand with the availability of safe and secure truck parking areas, with accommodation nearby. While the amendment only pertains to regular weekly rest, it can be assumed that HGV driving restrictions during the weekends in large European regions lead to a concentration of HGV taking their rest periods over the weekend. As such, these files are intrinsically linked. The availability of sufficient SSTP with nearby accommodation is a precondition for a successful implementation of the amended regulation. If this is not provided, unintentional non-compliance levels are likely to be high.

4.3 Application of new posting rules to drivers in international transport

Posting of workers legislation is an important part of Europe's social policy, guaranteeing that workers performing the same job in the same country can do so under the same circumstances. However, its application in a sector with "mobile" work such as road transport has always been somewhat problematic in terms of the suitable interpretation. The European Commission's Impact Assessment (SWD(2017) 186 final) states:

Typically, international operations are carried out in several countries (5-6 in one month) often for a very short duration on the territory of one Member State. According to estimations provided by road industry, international transport operation involving several transport services of short individual durations performed on the territory of several countries over a period of around 2 weeks constitute around 40 % of all international freight transport activities.

In the existing situation, workers in the transport sector are considered to be posted when they spend a certain amount of time driving in a host member state which is different from their home member state, yet many of the important parameters are left to the discretion of individual member states.

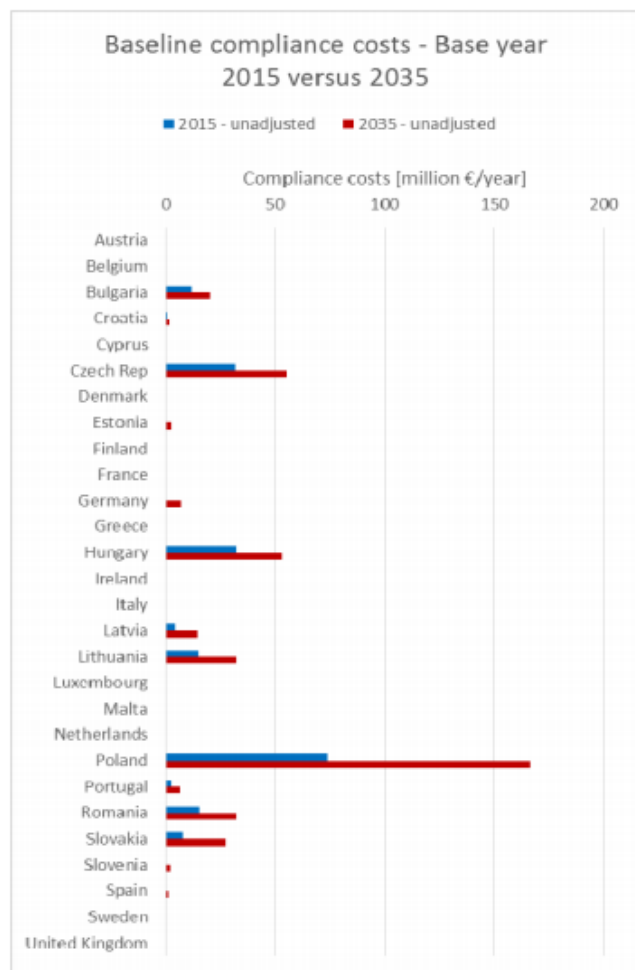
The Commission's proposal is to apply posting rules to all international transport, but to exempt those operations whose duration does not exceed 3 accumulated days per calendar month, per host Member State. The Parliament proposed to only apply posting rules to cross-trade (with minor exemptions), but not bilateral transport. Cabotage would always fall under posting rules. The Council's proposal is generally in line with the Parliament's.

Under the existing rules, the posting of workers has not hindered the level playing field between hauliers from different member states. However, wage differences between countries have led to an overrepresentation of drivers from lower wage countries, which in turn created concerns of loss of competitiveness of drivers in higher wage countries. In response, countries like Germany, France and Austria adopted legislation on minimum wages in road transport in 2015-2016, which were set to apply to all road freight transport operations regardless of the contract of the drivers, with several other countries preparing similar legislation.

Suspecting a violation of the principles of freedom to provide services and the free movement of goods, the European Commission initiated infringement procedures against these member states, but set its sights towards the establishment of European level legislation on this matter to ensure uniform legal standards.

Continuing the current situation of allowing divergent national standards (in addition to Germany, France and Austria, Belgium, Denmark and Sweden also have some specific social regulation for road transport) would also entail significant compliance costs for drivers from other countries, stemming from additional administration and overhead. Mainly Eastern European countries, those with the highest shares of employment in road freight, would face the highest costs according to the impact assessment. A resolution is thus needed.

Figure 6: Annual compliance costs by posting country summed up across all host countries (AT, DE, FR, BE, DK, SE)



Source: Ricardo calculations based on DTU (2017) data and (CNR, 2016), (TLP, 2016)

The Commission’s proposal on new posting rules would introduce a set maximum amount of days a driver can spend in another member state performing international transport operations during a calendar month (3), and an counting system for the time spent (less than 6 hours is a half day, 6 hours or more is a full day). Upon surpassing the threshold, local labour legislative provisions would be applied for the time spent in that member state. Cabotage operations would always be subject to posting rules. This would benefit mainly drivers from low-wage countries working in higher-wage countries. This is a very typical situation given how transport sector labour and activity is distributed among member states (see *Table 1* and *Table 2*).

The Parliament’s position differs significantly. Instead of applying a time based threshold, it proposes to introduce additional splits based on the nature of the transport operation. While cabotage remains a posting situation under all circumstances (including when it is performed as the road leg of a combined transport operation), bilateral transport operations (between the home state and a third country) and transit would be exempt from posting. Cross-trade transport would be subject to posting, but up to 2 cross-trade operations would be allowed on a single journey before that applies.

The Council’s position is largely in line with that of the Parliament.

As for the Commission's proposal, the main issues are:

- The 6 hour time limit could create unrealistic situations, where one real day count's as up to 3 days for the accounting of posting regulation.
- 3 days as a threshold per month was not included as an option in the support study for the impact assessment, which only refers to 5, 7 or 9 days.
- The impact assessment itself finds that of the 4 options, only a 3 day threshold would bring a net increase in compliance costs for businesses.

The position of the Parliament and Council is mainly relevant with regard to the proposed change in the treatment of cross-trade operations.

Expanding posting rules to include more situations generally creates more administrative burden for operators, as they have to deal with more labour regulations. Especially for small operators, this additional burden can be prohibitive. In addition, it was already established earlier that EU13 drivers spend longer periods abroad than EU15 operators, suggesting that they more often perform situations that require posting (cabotage and cross-trade). While the impact assessment and its support study do not explicitly investigate the specific terms laid out in the proposals of the Parliament and Council, they do find that compliance costs for EU13 countries would increase up to 40x more than for EU15 countries (the ratio is about the same for all of the options considered in the IA). Furthermore, expanding the application of posting rules to cross-trade operations could lead to large differences in wages between drivers from the same country, solely depending on the route they are assigned.

4.4 Restrictions on cabotage

Cabotage, the performance of transport operations entirely on the territory of 1 member state by a vehicle registered in a different member state, is currently restricted to a maximum of 3 operations over a 7 day period.

The Commission's proposal would be to remove the restrictions on the amount of cabotage operations following an international transport operation, but to reduce the window for this from 7 to 5 days. The Parliament's position is to reduce the window even more, to 3 days; to introduce a cooling-off period of 60 hours after the return to the home state of the vehicle (during which no new cabotage operations can be undertaken in the same host country); and to oblige lorries to carry out a loading/unloading every four weeks in the home state (which is in line with the requirement regarding driver's return home every 4 weeks as discussed in section 4.1). The Council took a very different approach, maintaining the current rule allowing a maximum of three operations in a 7-day period with improved enforcement. To avoid systematic cabotage, it also introduced a 5-day 'cooling off' period before cabotage can be carried out in the same country and with the same vehicle.

The main benefit of cabotage is to allow for drivers in international transport to stay active while searching or waiting for a return load after their initial international trip, to reduce the amount of empty return trips and the associated carbon emissions. In 2018, a total of 42 521 million tonne-kilometres of cabotage were performed in the EU28. About the importance of cabotage, the Impact Assessment by the Commission⁵ states:

⁵ https://eur-lex.europa.eu/resource.html?uri=cellar:9d5c61bf-4629-11e7-aea8-01aa75cd71a1.0001.02/DOC_1&format=PDF

Cabotage accounted for 1.8% of national transport activity in 2014 (in terms of t-km). The share of cabotage has roughly doubled between 2004 and 2013, but this seems to be mainly due to the lifting of special transitional restrictions in 2009 and 2012 on hauliers from most countries that joined the EU in 2004 and 2007, respectively, rather than by the adoption of Regulation (EC) No 1072/2009. Cabotage grew by 80% between 2010 and 2014 alone. Germany, France, Italy, the UK and Sweden are the main Member States where cabotage operations take place, accounting for 82% of total cabotage in the EU. Two thirds of all EU28 cabotage (67%) is carried out in Germany and France. The share of cabotage carried out in EU-13 states is virtually zero. In 2014, around 29% of all cabotage activity was carried out by Polish operators.

The share of cabotage has slightly decreased since then, to 1.63% in 2018, but the findings regarding the distribution of cabotage activity have not changed. The proposed restrictions on cabotage are likely intended to mitigate the phenomenon of “letterbox companies”, which are established in mostly lower wage/lower tax countries to reduce costs (costs savings of over 30% are possibly according to the Impact Assessment), which could provide a significant competitive advantage compared to properly established operators and thus undermining the business of those operators. While the proposed amendments to the rules on posting of workers are certainly expected to reduce these distortions of competition as far as driver wages are concerned, there could still be benefits to the practice from the perspective of other costs and taxes.

The impact assessment considers 2 options to restrict the application of cabotage using the window and the maximum amount of operations as parameters: a removal of the maximum amount of operations, combined with either a reduced window (4 days) or the same window as is currently the case (7 days). The impact assessment states that “a shorter period was not considered, as this would likely make it difficult for hauliers to carry out cabotage operations, especially in large Member States” – and those large Member States are the ones with the most cabotage activity. Introducing a 4 day maximum window, even with no restrictions on the amount of operations, would lead to an increase of annual costs of 3.4 million € across the EU, in addition to a reduction of cabotage activity by up to 31% by 2035 (20% for a 5 day window as in the EC proposal), which lowers the level of competition on the domestic markets. The main benefit would lie in the reduction of costs for compliance checks and easier enforcement, but those savings (for member states) would be lower than the additional costs for hauliers.

The impact assessment concludes that the preferred option with regard to cabotage restrictions would be to remove the maximum amount of operations while keeping the window at 7 days. This conclusion is in contradiction with all three proposals of the Commission, Parliament and Council, which propose shorter windows. The introduction of a cooling-off period as in the Parliament’s and Council’s proposals is not supported by an impact assessment. It is thus not clear which effects this may have at the European level.

However, a study performed by ITLB⁶ suggests that for Belgium (the country with the highest national penetration of cabotage in Europe at 12.3% in 2016), each day of “cooling-off” could cost its operators up to 24 million €/year. The Member States most likely to benefit from restrictions to cabotage are big, central countries like France and Germany, whose national operators would have less competition when cabotage becomes more restricted. The cost is borne by operators from

⁶ See <https://trans.info/en/the-belgians-do-not-like-the-mobility-package-they-figured-that-its-provisions-would-bring-losses-to-their-companies-as-well-159824> (consulted 16/09/2019)

other countries and by the environment, as there will be more empty running when those operators are unable to secure a return load within the set window.

4.5 Issues with third countries

While road transport within the EU is harmonised and thus based on common EU rules, road transport between EU and non-EU countries (third countries) is still largely based on bilateral agreements between individual Member States and third countries. Under these agreements, Member States can negotiate with third countries about the exchange of trucking permits that would allow third country drivers to deliver cargo to and from the Member State in question, and vice versa.

As third countries can negotiate with any of the 28 EU Member States about the exchange of permits, and the permits to work in the third country are also valuable to the EU operator, this creates a position of market power for the third country, particularly if its market potential is large (like Russia or Ukraine). The third country can enter negotiations with several member states and conclude the most favourable agreement with the country most willing to accept the terms of the third country; in others words, EU Member States could be played off against each other, to the benefit of the third country, while the internal market would not improve.

To avoid this issue, it would be advisable for the EU (and not the individual Member States) to handle the negotiations with third countries, as this would both allow for a coordinated process with EU wide quota and improve the negotiation power of the EU countries as a block with regard to the terms of the agreement. An assessment of the legal aspects of the 1st mobility package proposals concludes that the current setup of bilateral agreements is not in line with several clauses of EU legislation regarding the allocation of competences between the EU and its Member States, including Article 2(2) and 3(2) of the TFEU, and Article 14 of Directive 2006/22/EC, which place the responsibility for negotiating agreements with third countries on this topic with the EU, not the Member States.

Introducing new regulations for the road freight sector in the EU that limit the free market for EU based operators, including provisions with regard to the application of EU Member State labour rules to drivers of other countries, could create a competitive advantage for drivers from countries that are not subject to these provisions - namely those in the *lex specialis* regarding the posting of workers – as they can still pay lower wages than EU based transport operators. This could create the problem that transport operators from peripheral countries move across the border outside of the EU to benefit from the same competitive advantage – leading to a loss of employment, a decrease of tax income, and likely worse social conditions for those drivers that choose to follow their employer across the border.

In 2016, a total of 575 000 companies were active in road freight transport, almost 12 000 of them in the Baltic states. They employ 104 000 people, create 1.7 billion € in added value for the European economy and contribute 790 million € annually to their national social security systems. If the new EU freight transport rules cause 10% of them to move outside of the EU, the damage would be proportional, yet given the high share of employment in the road transport sector in these countries (3 in Estonia, 3.3% in Latvia to 3.8% in Lithuania), the impact on the national economies in the Baltic states will be significant. EU action on agreements with 3rd countries regarding compliance with the provisions of the mobility package is thus necessary.

5 Recommendations

While the legislative process for the proposals in the 1st mobility package is well underway, it appears that a number of fundamental steps have been skipped.

While the Commission's proposals are mostly supported by Impact Assessments, the same cannot be said of the amendments suggested by the Parliament and Council. These amendments often do not have a link with the policy options studied in the Commission's impact assessments and their supporting studies, and therefore the question can be raised what the impact is of the amendments compared to those in the Commission's impact assessment – social, economic and environmental.

The impact of the aspects of the 1st mobility package reviewed in this document as described in the Commission's studies was often significantly more important in EU13 Member States, which should not be surprising given the large share of their labour force active in the road freight transport sector. While it is clear that the social situation and the health of drivers is paramount to the goals of the European Union to provide the best quality of life possible to its inhabitants, the impact of transport companies on the European economy, and specifically to that of the EU13 Member States – and therefore on the welfare of all citizens - should not be underestimated.

Proposals on the restrictions of cabotage or the expansion of the application of posting appear to benefit mainly the operators from higher-wage countries, who will be subject to less price competition. Any such measures thus need to be carefully considered in their effect on the single market for services, and policy makers need to find a balance with the rights of service providers all over the European Union to work under their own terms, so long as they comply with all national and supranational regulations. If any protection is warranted, it should be for EU operators against non-EU operators if these do not comply with all rules to which EU companies are subjected.

As such, for the sake of transparency it would be advisable that all current proposals, including those of the Parliament and Council, are investigated in a full impact assessment. These impact assessments should focus on the social and economic aspects, with specific attention to the regional differences within the EU and the economic and social structure of each Member State, given how the dependence on the road freight sector varies between countries. Furthermore, as the transport sector is among the largest emitters of CO₂ and other pollutants and the only sector still growing in this regard, any legislation that could have an impact on the amount of transport (such as the aspects of cabotage or the mandatory return home) should also be studied for its impact on the environment.