



24 November 2017

Comments on internal market pillar and social elements

2017 Mobility Package

General remarks

1. The "[Mobility Package](#)" that the European Commission presented on 31 May 2017 contains important proposals on road charging, access to the road haulage market, enforcement and ways to trigger investment in smart infrastructure. Barriers to road transport in the single market have a direct and lasting negative impact on the European economy and hamper mobility. **BusinessEurope therefore supports concrete actions to tackle internal market fragmentation.**
2. Targeted revisions of existing legislation, for example on access to the road haulage market, should make it simpler and easier to enforce the rules. This package is timely and important to support road transport in Europe. We need to **create a level-playing field** and ensure that truck operators and drivers work under fair circumstances. BusinessEurope continues to fight against internal market fragmentation and to counter disproportionate or unjustified national measures that unduly hamper free movement in the single market. A free-flowing single market will create jobs, growth and offer new opportunities for citizens, workers and businesses.
3. When revising existing legislation or proposing new regulation, it is crucial to have the administrative burden on businesses, truck operators and drivers constantly in mind. We need to **reduce red tape** and make it easy to enforce the rules. The Commission's better regulation principles and guidelines should be leading to ensure at all times that stakeholders' views are well taken into account and that we indeed see a reduction of administrative burden in practice.
4. Better and clear European rules will not only make it easier to enforce the legislation on the ground and create a fair level-playing field, it will also be less of a burden on companies and will support free movement, business opportunities and therefore growth and jobs in Europe. It is estimated that transport and logistics (including storage) account for approximately 10-15% of the cost of a finished product. Less pressure on this crucial sector, more fair competition and a lowering of cost-drivers will benefit Europe's competitiveness and therefore our economy as a whole, making us **more competitive vis-a-vis the rest of the world.**
5. **Enforcement** of agreed rules is essential for the well-functioning of the single market, for ensuring a level-playing field throughout Europe and improving and **upholding social legislation and conditions** while supporting the efficiency of transport. BusinessEurope fully supports the Commission's emphasis on ensuring stronger enforcement throughout the package to make a real difference on the ground.



Access to the profession for road freight transport

6. BusinessEurope has been strongly calling on Member States to work better together to ensure more uniform control and stronger enforcement of existing rules to counter **letterbox companies**. In this regard, we are pleased to see mandatory cooperation between Member States concerning enforcement. We also support the strengthening of the rules of establishment to make it harder for letterbox companies to operate and abuse the single market. On the other hand, the proposed wording that transport companies need to hold assets and employ staff proportionate to the activity of the establishment requires further reflection and has to be clarified. Currently, it is unclear what it precisely entails and this may lead to differences in interpretation at national level, potentially restricting legitimate companies. It is fundamental that companies are subject to a proportional and overall assessment and control taking into account many interlinked elements to determine whether a company is following the rules or systematically violating them.

Access to the market and cabotage

7. It is of fundamental importance to see the proposals on the revision of the Regulations on access to road haulage market and to the occupation of road transport undertaking (1071 and 1072/2009) and accompanying measures in the Mobility Package as a whole. Taking all proposed elements into account, it is crucial that the right balance is struck looking at the package in its entirety. It has to be ensured that the number of empty runs is kept to a minimum, while ensuring a fair level-playing field and agreeing on rules that can be properly enforced in practice.
8. BusinessEurope welcomes the proposed amendments to simplify the existing (3 drop-offs in 7 days) cabotage rules¹. We welcome the Commission's proposal that the limitation on the number of cabotage operations subsequent to an international carriage should be abolished, while the number of days available for such operations should be reduced, namely from 7 to 5 days. By abolishing the number of drop-offs - and thus moving from a trip-based to time-based cabotage - it will be much easier to enforce the rules, and to control cabotage more effectively through registering border crossings in tachographs and through the e-CMR and other e-documents that can help to determine when the goods are unloaded.
9. We support the Commission's proposal for the definition of the start of the cabotage period, namely after the last unloading in the host Member State in the course of the incoming international carriage. This will support effective enforcement.
10. BusinessEurope welcomes that regarding the proof and information that the documents for cabotage should contain, the Commission does not focus on the specific information, but instead on clear evidence of the international trip. We note that so far, the listed conditions in Article 8, paragraph 3 (points a to g) have resulted in high fines for administrative errors in the documents. In this context, we stress the

¹ Cabotage means national carriage for hire or reward carried out on a temporary basis in a host Member State, involving the carriage from the picking up of the goods at one or several loading points until their delivery at one or several delivery points, as specified in the consignment note.



need for a focus on penalising offenses where the vehicle has performed cabotage beyond the permissible rather than purely formal errors that as such violate rules.

11. BusinessEurope strongly supports the cabotage definition set out by the Commission as follows: “...*national carriage for hire or reward carried out on a temporary basis in a host Member State, involving a carriage from the picking up of goods at one or several loading points until their delivery at one or several delivery points, as specified in the consignment note*”. This would allow hauliers to avoid sanctions due to different interpretations of the cabotage definition among the EU Member States, especially in cases when loading/delivery at several points is treated as separate cabotage operations.
12. We do see a need to clarify the concept of cabotage in the case of bordering countries. We believe that an international transport operation to a neighbouring country as such should not be considered as cabotage. The proposals need to be improved to ensure this clarity. Moreover, greater clarity is needed regarding the carrying out of cabotage operations in multiple Member States (one or more operations, one or more countries, etc.).
13. The introduction of proof in electronic format for road checks, including e-CMR is a step in the right direction. Less paperwork and more digital files make operations easier not only for companies but also for public authorities / road agencies. At the same time, we regret that no single document can be used as proof for enforcers. This should be changed in the Commission’s proposal to maximise the opportunity to reduce the time for checks.²
14. Member States must conduct checks on 2% of cabotage operations (3% from January 2022) and other checks continue to be conducted. It is positive that through the proposed changes enforcement will focus on companies with a higher risk profile. However, BusinessEurope does not support the introduction of shared liability penalties for all transport chain actors ordering road transport services. The proposal shifts the duty to enforce law from public authorities to companies, which are equipped with neither detailed knowledge nor the authority to perform this task. At the same time, it would impose substantial costs on businesses – in particular SMEs – by generating layers of complex red tape. BusinessEurope does not support the introduction of shared liability penalties for all transport chain actors ordering road transport services. However, we do support the elements in the new article 14a that determine that consignors and freight forwarders will be subject to sanctions if they are indeed aware that particular operations will constitute an infringement of EU legislation, i.e. in the case of deliberate violations. **We oppose a general shared liability**, which will likely negatively impact trade and risk penalising companies that act in good faith. The principles of proportionality, non-discrimination as well as equal treatment must be respected when assessing a particular situation for possible infringement.

² More info on digital solutions for transport and logistics in BusinessEurope’s recent [position paper](#): “*ICT and digital solutions for transport and logistics*” of 2 November 2017.



Applying Posting of Workers rules to road transport

15. The Mobility Package introduces sector-specific rules for the road transport sector with the introduction of a threshold of days before a driver is considered a posted worker and the Posting of Workers Directive (PWD) 96/71/EC applies. In particular, posting of workers rules would apply to cabotage from day 1 and to international transport operations from the third day, de facto 18 hours, within a month.
16. **BusinessEurope strongly believes that posting rules should not apply to international transport operations** (i.e. transit, bilateral transport and cross-trade). The Commission's proposal to subject international transport operations after 3 days, de facto 18 hours, per calendar month in any given Member State to the posting of workers rules goes against the principles of free movement and does not take into account the sector's highly mobile workforce and its transnational character. First of all, it would be extremely difficult to enforce if almost all international transport operations would be covered by the posting rules and it would be a very complex administrative challenge taking into account national differences for instance in terms of different remuneration systems, different compositions of minimum wage, different social entitlements, differences in minimum paid holidays, and the list goes on. But more importantly, it would impose excessive burden on hauliers to comply with. Such considerable increased administrative burden will disproportionately restrict the activities of companies of all sizes, but in particular of small and medium-sized enterprises. Smaller companies have less flexibility, resources and time to deal with such heavy requirements. If introduced, this will likely largely reduce cross-border operations and can thereby severely damage businesses and the EU economy at large. Moreover, the application of the PWD to international transport will likely result in unfair and even tougher competition in the market due to the increase of self-employed drivers that do not need to comply with the posting of workers rules. Any requirement to apply PWD to international transport will have adverse effects.
17. In the above context, BusinessEurope strongly urges the co-legislators to explicitly exclude international transport operations and the application of the PWD to such operations from the scope of the current proposals.
18. On the other hand, it could be considered to apply some elements of the posting of workers rules to cabotage. But if decision makers decide to do so, the administrative burden on companies must be minimised and the rules clear and easy to enforce. This could be achieved by a targeted revision clarifying the application of posting rules in the existing regulation on cabotage.
19. BusinessEurope is critical of the fact that choice of law and social legislation will be included in the assessment of compliance and good repute, as Regulations 1071/2009 and 1072/2009 and the Rome I Regulation or PWD pursue different objectives. Practically, this means that repetitive calculative mistakes on minimum wages might entail the loss of good repute.



20. Third countries: It is unclear how the *lex specialis* will apply to transport companies established in a 3rd country (non-EU country) and how the obligations will be enforced (i.e. how the Commission and Member States would oblige the governments and control authorities from the 3rd countries to comply with enforcement requirements, such as roadside checks, checks at the premises, registration to risk rating system, etc.). EU-based operators might be put in a disadvantageous position.

Driving and rest time

21. In June 2014, France and Belgium adopted national regulation that forbids truck drivers to take their weekly rest in the cabin of their vehicles. This is another example of complementing national measures, which de facto restrict free movement.

22. BusinessEurope has been calling for a clarification regarding Regulation 561/2006/EC to come to a true set of common EU rules for maximum daily and fortnightly driving times, as well as daily and weekly minimum rest periods for all drivers of road haulage and passenger transport vehicles, subject of course to specified exceptions and national derogations.

23. In this context, BusinessEurope largely welcomes the proposals for the redistribution of rest periods. However, the obligation to take the regular weekly rest outside of the cabin of the truck can only be upheld if the infrastructure allows for it. The proposals must be adapted to include preconditions for this ban linked to the availability of secured parking places and adequate accommodation facilities / possibilities for drivers. We strongly recommend the Commission to launch a comprehensive study on the availability of secured parking spaces, adequate rest facilities for the drivers, as well as actions that could be undertaken at the European and national level. The need for employers to financially cover costs also requires further analysis.

24. Moreover, for double-crewed vehicles, the new rules clarify where the second driver can rest. Breaks can be taken in the vehicle if the driver is not driving. BusinessEurope welcomes this clarification and pragmatic approach.

25. Moreover, in terms of the driving and rest time, we also welcome the reach home clause as proposed by the Commission to ensure a better work life balance and improve home life for employees while ensuring the needed flexibility. The definition of the home clause should, however, be clarified as being the place of employment and not the employee's place of residence. Such a clarification would ensure consistency with application of the posting rules in other sectors and it would ensure that the driver's residence would not be an obstacle to the driver when applying for a job. It is also crucial to keep flexibility for operators when dealing with the reference period of the total accumulated driving time. All operators should enjoy the same possibilities and flexibility no matter their geographical location in EU. Especially for peripheral countries, it is essential that sufficient flexibility exists for the number of days between weekly rest and longer resting breaks.



26. To support stronger enforcement, it is positive that there is an obligation to add the requirement that a country code is entered when crossing an international border. However, with the current generation of tachographs such a crossing needs to be inserted into the system manually. This can pose safety risks, create much congestion near the borders, and could affect driving times. Therefore, it is essential that it is clarified that such information is entered manually at the first planned stop across the border, e.g. at the first 45-minute long break or the first unload/load.

Hired vehicles

27. BusinessEurope supports the overall objective for more uniform rules for the use of hired vehicles and a more flexible access to the use of such vehicles. The use of hired vehicles may be necessary in connection with seasonal fluctuations, additional tasks or in the event of defects or accidents. At the same time, it is essential to ensure any hired vehicle meets the European and the national technical and safety standards of the host Member State. We also underline that it is crucial to avoid any loopholes or misuse of rules when hiring vehicles, for example to cabotage operations i.e. staying more than 5 days in the host Member State or other areas where the hiring of a vehicle would lead to new business opportunities – or make it harder for control authorities to enforce the given rules. Moreover, clarification is needed regarding the possibility of the use of hired vehicles for a period of at least 4 months, for instance if it is practically possible to hire vehicles for consecutive periods of 4 months on different vehicles assigned to the same transport company.

Enforcement

28. BusinessEurope welcomes the focus on enforcement of agreed rules throughout the Mobility Package. Member States are forced to cooperate more closely, for instance through obligations concerning information requests as part of ongoing investigations, namely that mandatory responses are required within 25 days or within 3 days if urgent.

29. Also, the sharing of information on illegal practices and non-compliant companies and risky businesses is very welcome and will make it easier to protect legitimate companies and the overall (image of) the industry.

30. BusinessEurope stresses that increased cooperation between Member States is needed to counter illegal practices, not least in the application of social legislation. More efforts should be dedicated to making sure that all Member States actively participate in enforcement networks such as Euro Contrôle Route, an organisation of European Transport Inspection Services. Moreover, investment in better training of national enforcement authorities will lead to more consistency in identifying alleged beaches of legislation across the EU.



Shortage of drivers

31. Companies indicate the current and greater looming shortage of qualified drivers, which is putting further pressure on the road transport sector. This has to be fully taken into account when discussing the Mobility Package proposals and we call on the EU institutions and Member States to design policies that will not put further pressure on the profession of haulier and the cost of road transport as such.
32. Concretely, we call on the Commission to draft an impact assessment identifying and outlining the consequences of a shortage of drivers for the years to come, which should help as a basis to draft future policy initiatives to counter this worrying trend.

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