

May 2017

## Enhancement of social legislation in road transport I (Driving time)

*This briefing is one in a series of 'implementation appraisals' on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. Implementation appraisals aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness of an EU law to date – drawing on input from EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.*

### Summary

Regulation 561/2006 lays down rules applicable to driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road. Various resources show that presently there are several challenges linked with the implementation of the regulation. These include diverging enforcement practice applied across the different EU Member States, clarity of the text of the regulation, broad discretion of the Member States and various exemptions allowed by the regulation. These challenges influence harmonisation of road transport, as well as legal certainty, and they limit the fulfilment of the regulation's goal. The European Parliament has called on the European Commission to update Regulation 561/2006 to respond to these challenges. Similarly, the European Economic and Social Committee has recommended that the existing legislation is updated. Furthermore, representatives of various stakeholder groups have voiced requests to update this piece of EU legislation. Finally, the European Commission itself has expressed willingness to revise the regulation as part of the enhancement of the social legislation in road transport. It is expected that the European Commission will submit this proposal in the second quarter of 2017.

**EP committee responsible at time of adoption of the EU legislation:** Committee on transport and tourism<sup>1</sup>

**Date of adoption of original legislation in plenary:** [2 February 2006](#)

**Entry into force of original legislation:** 11 April 2007 (Article 29, [Regulation \(EC\) No 561/2006](#))<sup>2</sup>

**Planned date for review of legislation:** The European Commission is obliged to report on application of Regulation 561/2006 to Parliament and the Council at two-year intervals (Article 17, Regulation 561/2006). By 4 December 2012, the Commission was required to draft a report assessing the consequences of the derogation of Article 8 (6) of the regulation in respect of road safety, as well as, social aspects (Article 8 (6a), Regulation 561/2006).<sup>3</sup>

**Timeline for new amending legislation:** The revision of the regulation is envisaged in [Annex 2](#) of the [Commission work programme 2017](#) in order 'to ensure a genuine level playing field for the road transport industry and adequate working conditions'. The Commission intends to submit its proposal in the second quarter of 2017.

<sup>1</sup> In addition to the TRAN Committee, the procedural file ([2001/0241\(COD\)](#)) was originally covered by the Committee on Regional Policy, Transport and Tourism (RETT), and as this piece of legislation was adopted in third reading, also by the EP Delegation to the Conciliation Committee (CODE).

<sup>2</sup> Articles 10(5), 26(3) and (4) and 27 entered into force on 1 May 2006 (Article 29 Regulation (EC) No 561/2006).

<sup>3</sup> With regard to these reports, see point 2.

## 1. Background

Road transport is an important part of common transport policy. In 2014, road transport accounted for 49 % of total goods transport activities in the EU-28. In the same year, transport by buses and coaches accounted for 8 % of total passenger transport activities in the EU-28.<sup>4</sup> The impact of road transport on the European economy and GDP growth cannot therefore be underestimated. According to the European Commission's web portal [road transport strategy for Europe](#), road transport directly contributes to the [Commission's priorities](#), namely Priority 1: jobs and growth, Priority 2: the digital single market and Priority 3: energy union and climate.

The European Commission's 2011 [white paper](#): Roadmap to a single European transport area expresses the Commission's intentions to integrate European transport. In order to do so, the Commission intends to adopt various initiatives of a fiscal, technical, administrative and social nature. The white paper, among other things, intends to review social and safety legislation and its transposition and enforcement in the Member States.<sup>5</sup>

In 2013, approximately five million people worked in the road transport sector.<sup>6</sup> Good working conditions for these workers contribute to increased transport safety and to fair competition between transport providers. Furthermore, better working conditions might attract more young people into road transport professions.

**Table 1 – Workers, enterprises and turnover in road transport for 2013**

	Road freight transport	Road passenger transport
Workers in road transport	2 938 000	1 991 400
Number of enterprises in road transport	563 598	344 141
Turnover in road transport (in million EUR)	311 181	124 766

Source: *EU Transport in figures Statistical pocketbook, 2016*

The social legislation in the road transport field has three complementary goals: (1) to enhance road safety, (2) to prevent the competition distortion, and (3) to improve drivers' working conditions.<sup>7</sup> Presently, legislation covers different issues linked to road transport, both road freight transport and road passenger transport, including:

- (1) driving time, breaks and rest periods – Regulation 561/2006;
- (2) working time – Directive 2002/15 EC;
- (3) enforcement – Directive 2006/22/EC; and
- (4) tachographs – Regulation 165/2014.

This briefing covers Regulation 561/2006 and the issues included therein: driving time; breaks; and rest periods. Directive 2002/15 EC and Directive 2006/22/EC, including working time and enforcement, are included in a parallel briefing on enhancement of the social legislation in road transport.<sup>8</sup> Because of the link between these legal acts, these briefings are complementary and should be read in tandem.

<sup>4</sup> [EU Transport in figures. Statistical Pocketbook](#), 2016, p. 19.

<sup>5</sup> White paper (COM(2011) 144 final), p. 16.

<sup>6</sup> According to [EU Transport in figures. Statistical Pocketbook](#) (2016), in 2013 approximately 3 million people worked in road freight transport and approximately 2 million people in road passenger transport (including urban and suburban land transport modes). The [website](#) of the European Commission, DG Mobility and Transport claims that 10.6 million people work in road transport (May 2017). See also, Dinu A., Schrefler L., [Access to the occupation of road transport operator and to the international road haulage market](#), EPRS, 2016.

<sup>7</sup> See, for example, European Commission, [Evaluation and fitness check \(FC\) roadmap](#): Evaluation of social legislation in road transport (2015).

<sup>8</sup> See, M. Remáč, M. Méndez Juez, [Enhancement of social legislation in road transport II \(Working time and enforcement of Regulation 561/2006\)](#), EPRS, May 2017.

## [Regulation \(EC\) No 561/2006](#) of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport

The regulation lays down the rules 'applicable to driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road' (Article 1).<sup>9</sup> It intends to; (1) harmonise the conditions of competition between different modes of inland transport, (2) improve working conditions of drivers and (3) improve road safety. The regulation applies to (1) carriage by road of goods by vehicles with a total mass exceeding 3,5 tonnes and to (2) carriage by road of passengers by vehicles that are adapted to carry more than nine people including the driver (Article 2 (1)).

### **Driving times**

The regulation's Article 6 limits the **daily driving time to a maximum of 9 hours**. This driving time can be increased to at most 10 hours not more than twice during a week. At the same time, the weekly driving time cannot exceed 56 hours. In addition, the total accumulated driving time during two consecutive weeks shall not exceed 90 hours. These driving hours include driving times on EU territory and in third countries.

### **Breaks and rest periods**

The regulation sets breaks and rest periods in driving. A driver has to take an **obligatory uninterrupted break of at least 45 minutes** after driving four and half hours (Article 7). Drivers are also obliged to take daily and weekly rest periods. **A minimum daily rest period is a rest of at least 11 hours**. The daily rest period can be reduced to at least 9 hours, but no more than 3 times a week. After no more than 6 daily driving periods, a driver must take a weekly rest period. A regular weekly rest period is a period of rest of at least 45 hours. This can be shortened to a minimum of 24 consecutive hours (Article 8).

Furthermore, the regulation sets a minimum age for conductors and drivers' mates at 18 years. In the latter case, this minimum age can be decreased to 16 years by the Member States (Article 5).<sup>10</sup> The regulation highlights the liability of transport undertakings for infringements of the regulation by its drivers (Article 10). The regulation also establishes various exceptions that can be granted by the Member States from the application of the regulation (Articles 11-15). These exceptions include, for instance, vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity; specialised vehicles transporting circus and funfair equipment, or vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals.

Member States are also obliged to adopt measures as may be necessary for the implementation of the regulation, including penalties applicable to its infringement. Pursuant to Article 22, the Commission is obliged to support dialogue between Member States concerning national implementation and application of the regulation. In this context, the Commission's Enforcement working group drafted various [guidance and clarification notes on implementation and enforcement](#) aimed at improving efficiency, effectiveness and consistency in the enforcement of these rules across the EU. A simplified explanation of Regulation 561/2006 within the context of roadside checks as specified by Directive 2006/22 is provided in the [TRACE study](#): An explanation of Regulation (EC) No. 561/2006 to assist the harmonised enforcement at roadside checks. This study provides article-by-article explanation of the influence of the regulation on the roadside enforcement checks.

Regulation 561/2006 is closely linked to [Regulation \(EU\) No 165/2014](#) on tachographs in road transport. Regulation 165/2014 sets out the requirements for the construction, installation, use, testing and control of tachographs used in road transport in the EU (Article 1). These tools have to be installed in all vehicles of over 3.5 tonnes transporting goods by road, and in vehicles that can carry more than 9 people, and they record various data including distance, speed, driver activity etc. (Article 5).

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<sup>9</sup> Member States can adopt more favourable rules relating to safety and health of drivers, see Article 11.

<sup>10</sup> The minimum age of drivers are laid down in [Directive 2003/59/EC](#) of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers. In this context, see Remáč M., [Training of professional drivers](#), EPRS, November 2016.

## 2. EU-level reports, evaluations and studies

### European Commission's implementation reports

The European Commission reports to Parliament on the implementation of Regulation 561/2006 and Directive 2002/15, in its biennial reports. These reports are mainly based on the Member States' reports, and provide an overview of how the Member States have implemented the legislative acts. They are usually complemented by staff working documents. As the review period of these two pieces of legislation is the same, the Commission submits only one report on their implementation.

The latest, [28th report](#) on the implementation of these pieces of legislation (March 2017),<sup>11</sup> covers the years 2013 and 2014. With regard to Regulation 561/2006, the report notes that during this period the total number of working days checked in the EU (at the roadside or at the premises) decreased by 4.8%.<sup>12</sup> Although, more than 6.6 million vehicles and 7.4 million drivers were controlled during the roadside checks, this amount decreased by 24 % and 15 % in comparison with the previous reporting period. In the majority of the Member States, more national vehicles and national drivers were checked. Only in six Member States<sup>13</sup> were more non-national vehicles subjected to a control. This is explained by the size or a geographical position of these Member States.<sup>14</sup> The report shows a slight increase of 1 % in checks at premises during this period, with almost 150 000 undertakings checked across the EU.<sup>15</sup> The report also mentions a downward trend in the number of offences, with a 15 % decrease compared to the last review period.

**Table 1 – Proportions between categories of infringements of provisions of Regulation 561/2006**

Infringements with regard to:	Breaks	Rest periods	Driving time	Driving time records	Recording equipment	Lack of records for other work
2013-2014	23 %	25 %	16 %	17 %	10 %	8 %
2011-2012	26 %	24 %	19 %	17 %	8 %	6 %
2009-2010	29 %	23 %	18 %	15 %	5 %	8 %

Source: European Commission reports on implementation of Regulation 561/2006 and Directive 2002/15<sup>16</sup>

The report notes that in 2013-2014, 'the average rate of offences detected [...] equalled to 2.17 offences per 100 working days checked'.<sup>17</sup> In this context, it claims that the checks at premises are more effective than roadside controls as their detection rate is two times higher.<sup>18</sup> However, the report notes big disparities in offence detection rates between the Member States, ranging from 0.01 in Bulgaria to 22.38 in Germany. The report concludes that these discrepancies prove that the EU 'is far from establishing a harmonised enforcement area because of diverging enforcement resources and practices in controlling compliance with road transport legislation'.<sup>19</sup> Furthermore, the report states that although the majority of Member States complied with the minimum threshold of working days checked (as required by Directive 2006/22), four Member States did not meet this threshold.<sup>20</sup>

<sup>11</sup> COM(2017) 117 final. See, Commission's Staff working document accompanying the report ([SWD \(2017\) 100 final](#)).

<sup>12</sup> *ibid.*, p. 4.

<sup>13</sup> Austria, Belgium, France, Luxembourg, Malta and Slovenia.

<sup>14</sup> *ibid.*, p. 6.

<sup>15</sup> *ibid.*

<sup>16</sup> See also, the [27th report](#) (COM(2014)709 final) and the [26th report](#) (SWD(2012)270 final).

<sup>17</sup> COM(2017) 117 final, p. 7.

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*, p. 8.

<sup>20</sup> Croatia, Greece, Lithuania, and the Netherlands, p. 4.

**Table 2 – Number of detected offences**

	Number of detected roadside offences	Offences detected on national vehicles	Rate of national vehicles checked	Number of offences detected at premises
<b>2013-2014</b>	2.05 million	66 %	66 %	1.2 million
<b>2011-2012</b>	2.2 million	64 %	69 %	1.6 million
<b>2009-2010</b>	2.3 million	70 %	n.a.	2.2 million

Source: European Commission reports on implementation of Regulation 561/2006 and Directive 2002/15

The report concludes that 'there is a need to improve and align the enforcement of transport-related social legislation across the EU'.<sup>21</sup> In this regard, the Commission intends to bring the Member States into compliance with the minimum requirements of the social legislation in road transport and to envisage measures aiming at strengthening the enforcement of this legislation.

#### European Commission [inception impact assessment](#): Enhancement of the social legislation in road transport (September 2016)

The inception impact assessment<sup>22</sup> notes that this particular initiative intends to contribute to two priorities of the Juncker Commission's political guidelines – a deeper and fairer internal market and jobs growth and investment. It also underlines three main problems linked with the implementation of the social legislation in road transport:

- 1) distortions of competition between transport operators,
- 2) inadequate working conditions for drivers and
- 3) high regulatory burdens for Member States and stakeholders.<sup>23</sup>

The main reasons behind these problems include, firstly, the quality of European rules, which according to the Commission are 'ambiguous, unfit or unenforceable' and lead to differences in their application by the Member States,<sup>24</sup> creating legal uncertainty. This, for example, includes the provisions on regular weekly rest, breaks and rest times or co-liability for infringements. The second reason behind these problems is the quality of cross-border enforcement, which is described as 'inconsistent and ineffective'.<sup>25</sup> The Commission highlights the fact that some of these problems are directly linked to the EU law in force. In order to deal with these challenges, the inception impact assessment identifies three sets of measures which should be taken on board: (1) simplification and amendment of existing rules; (2) adoption of measures leading to improvement of enforcement; and (3) addressing factors not included in the existing rules, such as more detailed minimum requirements concerning the organisation of drivers' work.

#### European Commission [ex-post evaluation](#) of social legislation in road transport and its enforcement (June 2016)

This evaluation<sup>26</sup> concentrates on three pieces of road transport social legislation namely, Regulation 561/2006 and Directives 2002/15 and 2006/22.<sup>27</sup> According to the evaluation, the legislation in question remains a relevant tool, addressing (1) competition in the transport market; (2) working conditions for drivers; and (3) road safety. However, the evaluation also shows that there are various issues linked with the implementation of these legislative acts, making compliance with driving and working time rules difficult. In this context, the assessment points to a need for more flexible rules, as well as a distinction between service needs in freight transport and passenger transport. With regard to the legislation's effectiveness, the evaluation notes that the existing legislation only affects some factors

<sup>21</sup> *ibid.*, p. 12.

<sup>22</sup> The [Better Regulation Guidelines](#) (SWD (2015) 111 final) describe an 'inception impact assessment' as a roadmap for initiatives subject to an impact assessment. It sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option.

<sup>23</sup> Inception impact assessment, p. 1.

<sup>24</sup> *ibid.*, p. 2.

<sup>25</sup> *ibid.*

<sup>26</sup> The evaluation was outsourced by the European Commission and carried out by Ricardo, TRT Trasporti e Territorio Srl and Milieu in 2016.

<sup>27</sup> The directives are covered by See, M. Remáč, M. Méndez Juez, [Enhancement of social legislation in road transport II \(Working time and enforcement of Regulation 561/2006\)](#), EPRS, May 2017.

(namely stress and fatigue) that have an impact on drivers' working conditions. Nevertheless, it argues that this legislation has only a limited impact on fatigue in terms of working or driving times. With regard to road safety, the evaluation argues that it is almost impossible to assess the impact of this legislation on road safety as, in spite of the improvements, numerous other road safety measures have been implemented. It also argues that because of intended inflexibilities included in the legislation, and differing implementation among the Member States, a level playing field has not been achieved.

With regard to efficiency, the evaluation points to the limited availability of data, while making several estimates. With regard to costs for enforcement authorities, the evaluation estimates that the largest share of the enforcement costs is represented by ongoing staff costs related to maintaining enforcement capacity. Furthermore, the evaluation estimates ongoing cost increases for transport operators at 1-3 % of their annual transport-related turnover. Another estimation suggests that the cost for reporting and monitoring is €7–8 million per year and administrative costs for reporting activities for digital tachographs are estimated at €61 million per year.

The analysis shows that there is coherence between Regulation 561/2006 and Directive 2002/15. However, the evaluation identifies several inconsistencies with regard to definitions across different pieces of road transport legislation (e.g. the terms: 'vehicle', 'competent authority', or 'cabotage operations'), or a lack of such definitions (e.g. the term 'undertaking'). The evaluation concludes that social legislation on road transport 'broadly fits in the EU social and transport policies', although it does not include some of the key objectives of EU policy, such as environmental and sustainability objectives or adequate infrastructure and employment.

Furthermore, the evaluation generally confirms that this legislation has EU added value and points in this regard to the added value of EU legislation compared to national rules and the progress made in the development of a European single transport area. Nonetheless, it points to various derogations to the European rules applied by the Member States that decrease this value.<sup>28</sup>

The evaluation makes several recommendations for measures that would improve several parts of the existing system of social road transport legislation. The evaluation underlines the fact that the application of these rules is not uniform, which influences the fulfilment of the legislation objectives. The evaluation calls for further harmonisation through the improvement of the enforcement system and through the improvement of the co-liability principle.<sup>29</sup> Furthermore, several measures are recommended to improve the clarity of the legislation, especially by mitigating the existing uncertainties and simplifying legal provisions. Furthermore, the evaluation recommended measures addressing the risks and needs of the sector and measures with regard to the informing and monitoring information.<sup>30</sup>

#### **European Commission [report](#) on the application of the derogation provided in Article 8(6a) of Regulation (EC) N° 561/2006 of the European Parliament and of the Council (12-day rule) (June 2014)**

Article 8 of Regulation 561/2006, as mentioned above, deals with breaks and rest periods in driving. Article 8 (6a) enables drivers, who are engaged in single occasional service of international carriage of passengers, to postpone the weekly rest for up to 12 consecutive 24-hour periods (12 days rule) following the previous regular weekly rest. The report notes that there was not enough factual data, although it draws some conclusions.<sup>31</sup> According to the report, employers do not find any concrete indication of a real negative effect of the 12 days rule on road safety, while employees point to disproportionate driver fatigue.<sup>32</sup> The Commission has not found any evidence that the use of this rule had an impact on road safety. With regard to tourism, environment or undistorted competition, the Commission indicates a predominance of positive effects. However, it notes negative consequences on the drivers' quality of life.

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<sup>28</sup> *ibid.*, pp. 183-190.

<sup>29</sup> Regulation 561/2006, Article 19 (2) allows the co-liability of a transport undertaking and a driver for infringements of the regulation. In this context, the Member States can enable their competent authorities to impose a penalty on the undertaking and/or a driver.

<sup>30</sup> *ibid.*, pp. 204-209.

<sup>31</sup> COM(2014) 337 final.

<sup>32</sup> *ibid.*, p. 8.

Nonetheless, the Commission does not consider it appropriate to propose any amendments to the relevant legislation. The Commission argues that it intends to enhance the enforcement of the existing rules and their proper application. Lastly, it invites the Member States and stakeholders to monitor the implementation and the impacts of this provision on road safety and social aspects.<sup>33</sup>

#### **European Commission [report](#) on the State of the Union Road Transport Market (April 2014)**

In this document, the European Commission reports on the state of the Union road transport market while paying closer attention to road haulage.<sup>34</sup> The report also discusses the social dimension of the road haulage sector.<sup>35</sup> In this regard, the Commission notes that continuous efforts are made to improve the enforcement of social legislation in road transport, including non-binding guidance and clarification notes and the TRACE project.<sup>36</sup> Furthermore, the report mentions the low attractiveness of the road haulage sector and points to several social issues, as identified by stakeholders requiring legislative action. These include: (1) illegal/unfair employment schemes creating social dumping; (2) lack of enforcement and controls; (3) social harmonisation across the Member States is not yet achieved; (4) illegal cabotage operations; (5) quality of rest and dedicated facilities; and (6) driving time and rest periods.<sup>37</sup> With regard to this latter point, the report noted that 'the compliance with the relevant legislation is improving, while differences in enforcement practices of Member States continue to exist'.<sup>38</sup> The Commission also highlights that 'clearer rules would provide the basis for an enhanced culture of compliance and limit the possibilities for fraud (both in the fiscal or social sphere)'.<sup>39</sup>

#### **European Parliament Policy Department, study: [Social and working conditions of road transport hauliers](#) (April 2013)**

The study provides an analysis of the social and working conditions of professional drivers engaged in road transport, paying particular attention to road freight transport. It shows that, despite the existing legislation, 'the differences in terms of labour and social market structures amongst the EU countries remain particularly wide'.<sup>40</sup> It notes that the gaps between individual Member States can encourage disloyal competition and social dumping practices. The study mentions various abuses and irregularities in several Member States (e.g. purportedly self-employed drivers or performance-based contracts). The study claims that 'the road freight transport sector has, for several years, been experiencing a considerable deterioration of its working environment'.<sup>41</sup> It points to various negative aspects, for example, discriminatory employment schemes, decreasing income levels or greater difficulties in balancing professional life with personal needs. Furthermore, the study notes a low level of application and harmonisation, lack of effective control mechanisms and limited enforcement of social rights. In this regard, the study makes several recommendations, such as strengthening enforcement mechanisms in the Member States or introducing enforcement impact assessments.<sup>42</sup>

#### **European Commission [white paper](#): Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system (March 2011)**

The Commission's white paper 'takes a global look at developments in the transport sector, at its future challenges and at the policy initiatives that need to be considered'.<sup>43</sup> The white paper presents 10 goals for a competitive and resource efficient transport system<sup>44</sup> that require certain actions, including 'a higher

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<sup>33</sup> *ibid.*, p. 9.

<sup>34</sup> COM(2014)222.

<sup>35</sup> *ibid.*, pp. 18-21.

<sup>36</sup> Transport Regulators Align Control Enforcement (TRACE) is an EU co-financed project aiming at developing a harmonised European training format for enforcers controlling the respect and application of rules.

<sup>37</sup> *ibid.*, p. 20.

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*, p. 27.

<sup>40</sup> Study, p. 65.

<sup>41</sup> *ibid.*, p. 66.

<sup>42</sup> *ibid.*, p. 67.

<sup>43</sup> COM(2011)144, p. 5.

<sup>44</sup> *ibid.*, pp. 9 -10.

degree of convergence and enforcement of social, safety, security and environmental rules'.<sup>45</sup> Annex I of the white paper includes a list of initiatives, which the Commission intends to adopt. With regard to the subject of this briefing, the Commission intends to review the market situation of road freight transport including social and safety legislation, transposition and enforcement of legislation in the Member States and to review rules on tachographs, to give police and enforcement officers access to the EU register on road transport undertakings when carrying out roadside checks, and harmonise sanctions for infringements.<sup>46</sup> The Commission also intends to encourage dialogue between social partners in order to adopt a social code for mobile road transport workers.

### 3. European Parliament position/MEPs' questions

#### 3.1 Resolutions of the European Parliament

##### European Parliament [resolution](#) of 9 September 2015 on the implementation of the 2011 White Paper on Transport: taking stock and the way forward towards sustainable mobility

This Parliament resolution<sup>47</sup> reacts to the implementation and the intended mid-term review of the 2011 Commission [white paper on transport](#). Although Parliament welcomes the mid-term review of the paper, it calls on the Commission to address the quality of work in all transport modes including working conditions. It also stresses the need to make working in the transport sector more attractive to new generations (point 40). Furthermore, it emphasises the importance of good terms and working conditions and a safe working environment for workers. Parliament calls upon the Commission to present measures that would address social aspects in the various transport modes that would inter alia ensure 'undistorted competition between transport operators'. In this context, it urges the Commission to monitor the application and enforcement of the EU social legislation in all transport modes (point 41). With regard to road transport, Parliament calls for 'the adoption of a social code for mobile road transport workers' and for 'measures to ensure legal clarity and better implementation of rules concerning working conditions, social and welfare rights, wages and social responsibility' (point 64). It also calls on the Commission to take measures 'against illegal practices that lead to unfair competition and encourage social dumping' (point 64).

The European Commission, in its [follow-up](#) to the Parliament's resolution, notes that it envisages measures to address the quality of work in all transport modes.<sup>48</sup> It informs that there was an evaluation of road transport social legislation, including Regulation 561/2006, Directive 2002/15/EC and Directive 2006/22/EC that looked for appropriate measures. Furthermore, the Commission informs that in 2015 it launched a [social dialogue on working conditions](#) in road transport.

##### European Parliament [resolution](#) of 15 December 2011 on the Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system

Although the resolution welcomes the 2011 Commission's white paper on transport, Parliament notes that several of the [2001 white paper](#) goals were achieved only partially.<sup>49</sup> In this context, it calls on the Commission to put forward, by 2013, a proposal on social and working conditions facilitating the creation of a genuinely integrated European transport market and enhancing the attractiveness of the sector for workers. This proposal should be based on 'an in-depth analysis of the current situation with regard to social and working conditions in all transport modes' (point 2). Furthermore, Parliament calls on the Commission to 'ensure that proposals on the opening-up of services in all transport markets do not lead to social dumping, poorer-quality services, monopolies or oligopolies' (point 6). With regard to road transport, Parliament calls for another review by 2013 'of the regulatory framework governing driving and rest periods in passenger and goods transport and its implementation, and to harmonise interpretation of the

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<sup>45</sup> *ibid.*, p. 10.

<sup>46</sup> *ibid.*, p. 19.

<sup>47</sup> P8\_TA(2015)0310.

<sup>48</sup> SP(2015)748.

<sup>49</sup> P7\_TA(2011)0584.

implementation and enforcement' (point 29). By 2013, the Commission was also supposed to report on the state of EU road transport, including social and safety legislation (point 29).

In its [follow-up](#),<sup>50</sup> the Commission informs that it intends to launch an appraisal of the quality of work in all transport modes with possible policy measures. The Commission notes that the rules on driving time must be enforced in a harmonised way. It also suggests that the adoption of a [proposal](#) on the digital tachograph will encourage more harmonised enforcement.<sup>51</sup> In 2013, the Commission did not envisage modifications to Regulation 561/2006 in the short term. Nevertheless, the Commission expresses its willingness to examine measures for the harmonisation of sanctions.

### **European Parliament [resolution](#) of 18 May 2010 on penalties for serious infringements against the social rules in road transport**

Parliament welcomes the Commission's [report](#) analysing the penalties for serious infringements against the social rules in transport, but expresses its regret that the report included incomplete data from some Member States (point 1).<sup>52</sup> Parliament calls upon the Commission to submit an updated and complete report before the end of 2010 (point 3).<sup>53</sup> The Commission and the Member States are called upon to fulfil the objectives of Article 17 of Regulation 561/2006 (point 4). Parliament points to the fact that the social legislation in road transport (Regulation 561/2006, Regulation 3821/85<sup>54</sup> and Directive 2006/22) provide broad discretion to the Member States, which can lead to different interpretations of their provisions. In this regard, Parliament notes that to achieve better harmonisation a 'uniform and binding interpretation of these Regulations and the Directive' is needed (point 9). The Commission is also called upon 'to come up with a uniform and binding interpretation' of Regulation 561/2006 (point 12). Furthermore, Parliament calls on the Commission to 'draw up recommendations and European minimum standards for the training of inspection bodies' (point 22) and to 'ensure that the Member States respect the amount of checks' according to Directive 2006/22 (point 23).

It appears that the Commission's follow up document with regard to this resolution has not been published.

## **3.2 MEPs' written questions**

### **[Written question by Deirdre Clune \(EPP, Ireland\), 29 September 2016](#)**

The Member asked whether the Commission could indicate the possible extent to which it intended to review social legislation in transport.

### **[Answer given by Violeta Bulc on behalf of the Commission, 24 November 2016](#)**

The Commissioner replied that the review of social rules in road transport focused on 'issues such as the place of taking the regular weekly rest, the impact on drivers of long periods away from home/base, the application of the provisions on the posting of workers to the international road transport operations.' The review intended to assess whether enforcement measures need to be improved, while limiting disproportionate administrative burden on businesses. According to the Commissioner the overarching goal of this review was to find a solution that would ensure 'a balance between the objectives of social protection rights of workers and fair competition [...], and the freedom to provide services [...], in order to ensure the smooth functioning of the EU Internal Market.'

### **[Written question by Sander Loones \(ECR, Belgium\), 21 April 2016](#)**

The Member asked about the steps the Commission needed to take to create a 'level playing field for transport firms from the Member States with regard to the application of Regulation No 561/2006.' In his question, the Member was referring to France's interpretation and enforcement of Regulation 561/2006 in the case that trucks or buses are equipped by two-person crews.

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<sup>50</sup> SP(2012)162.

<sup>51</sup> The proposal was adopted in 2014 as Regulation (EU) No 165/2014 on tachographs in road transport.

<sup>52</sup> P7\_TA(2010)0175.

<sup>53</sup> No such report was submitted by the European Commission by 2010.

<sup>54</sup> This regulation was repealed and replaced by Regulation (EU) No 165/2014 on tachographs in road transport.

#### [Answer given by Violeta Bulc on behalf of the Commission, 3 June 2016](#)

The Commissioner replied that these issues are addressed in [Guidance note 2](#), which note was also maintained in the [TRACE explanatory text for enforcement](#). The Commission also noted that it was aware of the changes in France's enforcement practices and had contacted the French authorities in this regard.

#### [Written question by Lucy Anderson \(S&D, United Kingdom\) and Jude Kirton-Darling \(S&D, United Kingdom\), 25 February 2016](#)

The Commission was asked to clarify whether the definition of a single 'regular service' as drawn by [Regulation \(EEC\) No 684/92](#)<sup>55</sup> and used by Regulation 561/2006 also covers consecutive services. In this context, the Members asked whether running consecutive services may constitute a potential breach of Regulation (EC) No 561/2006.

#### [Answer given by Violeta Bulc on behalf of the Commission, 28 April 2016](#)<sup>56</sup>

The Commissioner answered that although neither Regulation 561/2006 nor Regulation 1073/2009 provide for a clear delimitation of the scope of regular services by bus 'it [was] implicit that drivers engaged in consecutive bus services covering different routes, which in total go beyond the 50 km threshold, should be subject to the EU rules on driving times, breaks and rest periods.' The Commissioner also explained that during the review of the road transport legislation these issues may be addressed in order to provide legal clarity and prevent abusive practices.

## 4. Court of Justice of the European Union

On several occasions, the Court of Justice of the European Union (the Court) has reacted to preliminary questions from national judiciaries and provided interpretation for several principles included in Regulation 561/2006.<sup>57</sup> For example, in Case C-287/14 *Eurospeed*, the Court explained that Regulation 561/2006 'must be interpreted as not precluding national legislation which, [...] holds the driver liable for infringements of that regulation which he has himself committed'.<sup>58</sup> In Case C-210/10 *Urbán*, the Court ruled that the requirement of proportionality of penalties as required by the regulation must be interpreted as not precluding a system of national penalties fixing the amount of fines for breaches of certain provisions concerning the transport by road of goods and persons. According to the Court, this requirement must be interpreted as precluding 'the severity of the penalty provided for by that system'.<sup>59</sup>

## 5. European Economic and Social Committee

In its 2015 [exploratory opinion](#) on the internal market for international road freight: social dumping and cabotage, the European Economic and Social Committee (EESC) paid attention to the issue of social dumping within the EU. The EESC pointed to a need for European action in this regard so that 'the risk of fragmentation of the internal market in road transport' is avoided (point 1.6). In this context, the EESC called on the Commission and the Member States to ensure 'full cooperation between labour and road transport surveillance authorities in the EU Member States' and an enforcement of the mandatory minima in the road transport sector (point 1.7). The EESC also called the Commission and the Member States 'to foster the exchange of information and best practice on effective enforcement to combat abuse and social dumping' (point 1.10). The social aspects of EU transport policy were also included in another EESC [exploratory opinion](#) on how EU policies have impacted on transport workers' job opportunities, training needs and working conditions. Here, the EESC recommended introduction of 'EU legislation for the regular

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<sup>55</sup> This regulation was repealed by [Regulation \(EC\) No 1073/2009](#) of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services.

<sup>56</sup> Apart from the abovementioned questions, the Members also asked various questions with regard to the regulation (for example, [E-015354-15](#), [E-013805-15](#), [P-013745-15](#), [E-013574-15](#)) or tachographs (for example, [E-006007-16](#), [E-003804-16](#), [P-001938-16](#), [E-007429-15](#)).

<sup>57</sup> See also, [Case C-245/15 Casa Noastră](#), [Case C-317/12 Lundberg](#), or the European Commission document providing an [overview of the Court cases linked to Regulation 561/2006](#) (March 2014).

<sup>58</sup> [Case C-287/14 Eurospeed](#), paragraph 41.

<sup>59</sup> [Case C-210/10 Urbán](#), paragraph 59.

checking of working and rest time for mobile railway workers engaged in cross-border transport services' (point 1.13). Furthermore, the EESC recommended paying attention to the factors promoting 'a better work-life balance for mobile workers in the transport industry'. In this context, the EESC called for an improvement in social legislation in transport with regard to working time (point 1.14). In its [opinion](#) on recording equipment in road transport, the EESC noted that the tachograph system helps to improve road safety and drivers' working conditions and that it helps to create 'fair competition between road transport companies' (points 2.3-2.5).

## 6. European Commission public consultation

Between September and December 2016, the European Commission carried out a [public consultation](#) on the enhancement of the social legislation in road transport. The public consultation included two questionnaires: one specialised, targeting the EU and national authorities, NGOs, and trade unions; and one general and non-specialised, targeting drivers, transport companies and individuals. The general questionnaire received 1 209 responses, while the specialised version received 168 responses. The [summary](#) of the public consultation notes that there were several coordinated responses.

The summary of the general questionnaire showed that, among the main challenges in the road transport, figure fierce competition, illegal employment practices and poor infrastructure, rest and sanitation facilities.<sup>60</sup> Among the main legislative challenges, the respondents included different application of the social rules by the Member States, different enforcement practices, and lack of flexibility in applying these rules.<sup>61</sup> These issues made it rather difficult to understand and comply with road transport social provisions. The respondents also noted that the implementation of transport social rules had various costs, including administrative costs and staff costs, which were mostly not justified by their benefits.<sup>62</sup> The vast majority of respondents called for clarification and simplification of existing rules and for uniform application and enforcement of the social rules.<sup>63</sup> The summary of the special questionnaire showed that, among the most important challenges in road transport, competition based on costs, shortage of drivers, and illegal employment practices figure largely.<sup>64</sup> Heterogeneous application of social rules in Member States, their differing enforcement and their complexity were described as the main legislative challenges.<sup>65</sup> The main difficulty to understanding, complying with and enforcing these rules was linked with recording driver's periods away from their vehicle and with working time for self-employed drivers.<sup>66</sup> The biggest obstacles to the effectiveness of the social legislation were diverging enforcement practices, diverging national interpretations, and insufficient flexibility of the EU rules.<sup>67</sup>

## 7. Questions from citizens and citizens' petitions

Several petitions were submitted to the European Parliament dealing with improvements to the social situation in road transport. In the case of petitions [1268/2015](#) and [1257/2015](#), for example, citizens complained about the failure of German authorities to correctly implement Regulation 561/2006, which led to serious social injustice. In petition [1512/2014](#), the petitioner pointed to alleged disproportionately high fines ordered by Danish authorities against a lorry for a violation of Regulation 561/2006 and Regulation 165/2014. In petition [903/2014](#), the petitioner called for the reduction of daily working hours for drivers and a standardisation of daily allowances within the EU. Similarly, European citizens have asked Parliament several questions with regard to professional drivers' working time and working conditions.

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<sup>60</sup> Summary, p. 4.

<sup>61</sup> *ibid.*, p. 5.

<sup>62</sup> *ibid.*, p. 12.

<sup>63</sup> *ibid.*, p. 19.

<sup>64</sup> *ibid.*, p. 30.

<sup>65</sup> *ibid.*, p. 32.

<sup>66</sup> *ibid.*, p. 35.

<sup>67</sup> *ibid.*, p. 39.

## 8. Stakeholders

The 2017 European Association of Craft, Small and Medium-sized Enterprises (UEAPME) Transport Forum [position paper](#) noted that, although the current road transport social legislation sufficiently protects drivers' rights, 'it is not appropriate to eliminate unfair competition between operators'. It also emphasised that the EU social rules are often unclear or they are 'subject to diverse national interpretations and enforcement practices', and as such lead to incomplete application of existing rules and diverging enforceability. The paper called for an effective harmonisation of social legislation. Similarly, the European Association for Forwarding, Transport, Logistics and Customs Services (CLECAT), in its [position paper on social legislation in road freight transport](#) (2016), supported the need 'to clarify and simplify existing regulation with the ultimate aim to have a better functioning internal market'. It also called for better enforcement of social legislation in road transport and stronger mutual cooperation between Member States. In its 2015 [proposal on enforcement solutions](#), the European Transport Workers' Federation (EFT) also pointed to a lack of uniform implementation of enforcement instruments in road transport. According to EFT, the Commission should try to 'restore fair competition and improve the social record within the EU road haulage market'. Diverse national interpretations of Regulation 561/2006 and weak enforcement was also noted by the representative of national business federations, BUSSINESSEUROPE, in its 2016 [position paper on road transport in the single market](#) (2016). BUSSINESSEUROPE argued that these issues, together with differing sanctions between the Member States and a lack of practical guidance, diminish legal certainty. In this context, BUSSINESSEUROPE called for simplification and revision of the regulation.

## 9. Other sources of reference

[Road transport: harmonisation of legislation](#), European Parliament, October 2016.

[International and Cabotage Road Transport](#), European Parliament, October 2016.

[Common transport policy: overview](#), European Parliament, October 2016.

[Social and working conditions of road transport hauliers](#), European Parliament, April 2013.

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