



2017/0123(COD)

13.12.2017

DRAFT OPINION

of the Committee on Employment and Social Affairs

for the Committee on Transport and Tourism

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector

(COM(2017)0281 - C8-0169/2017 – 2017/0123(COD))

Rapporteur: Verónica Lope Fontagné

SHORT JUSTIFICATION

Introduction

On 31 May 2017, the Commission presented a proposal for a regulation amending Regulation (EC) No 1071/2009 concerning the conditions to be complied with to pursue the occupation of road transport operator, and Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market.

With this proposal, the Commission is aiming to ensure that the single market for road transport functions properly and is efficient and competitive since, according to the ex-post evaluation carried out in 2014-15, this objective has only been partially met. The main difficulties pinpointed by the evaluation were linked to shortcomings in the rules and their enforcement.

The rapporteur's position

The rapporteur agrees with the basic objectives of the Commission's proposal, yet believes that approving some of the measures proposed would impede its practical implementation in the road transport sector, since it may result in excessive administrative barriers for undertakings, especially for SMEs, which, ultimately, would hinder the smooth functioning of the internal market.

Additionally, it is worth pointing out that the Commission presented this proposal together with the proposal for a directive on posting drivers in the road transport sector, as well as the proposal for a directive on driving times, and hence the understanding is that these proposals must be analysed jointly.

The rapporteur is of the opinion that these proposals should be used to strike a balance between the smooth functioning of the internal market and ensuring that appropriate working conditions and rules are maintained.

In order to achieve this, the first course of action must be to combat illegal work in the transport sector, especially so-called letterbox companies and false self-employment.

It is vital that the freedom of establishment and the freedom to provide services are respected, freedoms that are fundamental principles of Union law and which are enshrined in Articles 49 and 56 respectively of the TFEU. Nevertheless, just as the Commission states, it is necessary to ensure that road haulage operators established in a Member State have a real and continuous presence in that Member State and conduct their business from there.

Controls need to be tighter, and there must be effective, proportionate and dissuasive penalties for those undertakings that deliberately infringe national and Community regulations. Such behaviour, even though it represents a minority and does not reflect the rest of the sector, results in unfair competition, hinders the smooth functioning of the internal market and does not guarantee workers fair working conditions.

The road haulage sector in the EU provides 5 million direct jobs and accounts for around 2 % of the Community's GDP. However, the EU is faced with a lack of professional drivers. In light of this, and given the fact that a transport standstill would paralyse the economy, the EU must

adopt measures which can attract young people into the sector and also keep existing professional drivers in the sector.

The rapporteur is in favour of having clear requirements for complying with Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, as well as ensuring that they are fit for the type of activity and the size of the undertaking, and that they do not end up being an excessive administrative barrier.

As such, and, given that the partial implementation of Regulation (EC) No 1071/2009 would mean a rise in operating costs of between 4 and 10 % for LCV despite the fact that these vehicles account for barely 0.11 % of international traffic in terms of tonnes-kilometres, the proposal to completely get rid of the existing exemption provided for by Article 1(4)(a) is viewed as a disproportionate move, in the absence of data to justify the need.

Given the mobile nature of haulage as well as the real difficulties involved in anticipating the time needed to deliver international services, the rapporteur expresses doubts over the actual administrative implications of including the posting of workers as a criterion for evaluating good repute.

With regard to cabotage operations, the rapporteur agrees that flexibility is crucial, and also agrees on the need for clear and simple rules that are easy to enforce. However, the possibility of incorporating these activities within the scope of the Directive on posting drivers in the road transport sector from the outset will not only make it difficult to apply the rules, but will also increase the cost of exports. This, in turn, will reduce the profitability of international transport and have a negative impact on both the internal market and the labour market.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) So far, and unless otherwise provided for in national law, the rules on access to the occupation of road transport operator do not apply to undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles not exceeding that limit. **The** number of such undertakings which are

Amendment

(2) So far, and unless otherwise provided for in national law, the rules on access to the occupation of road transport operator do not apply to undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or combinations of vehicles not exceeding that limit. **Even though the** number of such undertakings

active in both national and international transport operations has been increasing. As a result, several Member States have decided to apply the rules on access to the occupation of road transport operator, provided for in Regulation (EC) No 1071/2009, to those undertakings. To ensure a minimum level of professionalisation of the sector using vehicles with a permissible laden mass not exceeding 3.5 tonnes by way of common rules, and thus to approximate competitive conditions between all operators, this provision should be deleted, whereas the requirements regarding effective and stable establishment and appropriate financial standing should be rendered mandatory.

which are active in both national and international haulage operations has been increasing, ***they currently account for only 0.11 % of international traffic within the EU in terms of tonnes-kilometres.*** As a result, several Member States have decided to apply the rules on access to the occupation of road transport operator, provided for in Regulation (EC) No 1071/2009, to those undertakings. To ensure a minimum level of professionalisation of the sector using vehicles with a permissible laden mass not exceeding 3.5 tonnes by way of common rules, and thus to approximate competitive conditions between all operators, this provision should be deleted, whereas the requirements regarding effective and stable establishment and appropriate financial standing should be rendered mandatory ***for those undertakings conducting international haulage operations.***

Or. es

Amendment 2

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) The impact assessment conducted by the Commission acknowledges that applying Regulation (EC) No 1071/2009 to LCVs would increase the compliance operating costs by between 4 % and 10 %.

Or. es

Amendment 3

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Currently, Member States are entitled to make access to the occupation of road transport operator subject to requirements additional to those specified in Regulation (EC) No 1071/2009. ***This possibility has not proven to be necessary in order to respond to imperative needs and has led to divergences in respect of such access. It should therefore be abolished.***

Amendment

(3) Currently, Member States are entitled to make access to the occupation of road transport operator subject to requirements additional to those specified in Regulation (EC) No 1071/2009.

Or. es

Amendment 4

Proposal for a regulation

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Even though road transport activity in the EU provides 5 million direct jobs and contributes almost 2 % of the Community's GDP, the EU is faced with a shortage of professional drivers. In order to make it easier for young people to access the profession, and, likewise, to retain people currently working in the sector (especially in the case of SMEs), existing administrative procedures must be made more flexible so as to avoid a disproportionate burden, especially in the case of international transport, by adapting legislative requirements to the nature of the activity and the size of the undertaking.

Or. es

Amendment 5

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) It is necessary to ensure that road transport operators established in a Member State have a real and continuous presence in that Member State and conduct their business from there. Therefore, and in light of experience, it is necessary to clarify the provisions regarding the existence of an effective and stable establishment.

Amendment

(4) It is necessary to ensure that road transport operators established in a Member State have a real and continuous presence in that Member State and conduct their business from there. Therefore, and in light of experience, it is necessary to clarify the provisions regarding the existence of an effective and stable establishment, ***and so put an end to so-called letterbox companies.***

Or. es

Amendment 6

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The existence of letterbox companies and false self-employment within the transport sector is hampering the smooth functioning of the internal market and thus leading to a deterioration in working conditions for its workers. It is essential to combat these illegal practices which, even though they represent a minority, degrade the sector's image, since they reduce labour costs illegally and fail to ensure that working standards are maintained. It is nevertheless acknowledged that wage competition resulting from differences in national legislation in no way represents an infringement of the law, unfair competition, market distortion or social dumping.

Or. es

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) *In view of their potential to considerably affect the road haulage market, as well as the social protection of workers, serious infringements of Union rules on the posting of workers and the law applicable to contractual obligations should be added to the items relevant to the assessment of good repute.*

Amendment

deleted

Or. es

Amendment 8

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or with combinations of vehicles not exceeding that limit should have a minimum level of financial standing, to ensure that they have the means to carry out operations on a stable and long-lasting basis. However, since the operations concerned are generally of a limited size, the corresponding requirements should be less demanding than those applicable to operators using vehicles or combinations of vehicles above that limit.

Amendment

(10) Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3.5 tonnes or with combinations of vehicles not exceeding that limit should have a minimum level of financial standing, to ensure that they have the means to carry out operations on a stable and long-lasting basis. However, since the operations concerned are generally of a limited size, the corresponding requirements should be less demanding than those applicable to operators using vehicles or combinations of vehicles above that limit ***and they should not represent an excessive burden for smaller undertakings or self-employed workers.***

Or. es

Amendment 9

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) The rules on national transport performed on a temporary basis by non-resident hauliers in a host Member State ('cabotage') should be clear, simple and easy to enforce, while broadly maintaining the level of liberalisation achieved so far.

Amendment

(13) The rules on national transport performed on a temporary basis by non-resident hauliers in a host Member State ('cabotage') should be clear, simple and easy to enforce, while broadly maintaining the level of liberalisation achieved so far. ***In light of this, and in order to avoid exports becoming more costly, which would impact the profitability of undertakings and hence the internal market and the labour market, cabotage operations should be excluded from the scope of the directive on the posting of workers.***

Or. es

Amendment 10

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) To this end, and in order to facilitate checks and to eliminate uncertainty, 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.***

Amendment

(14) To this end, and in order to facilitate checks and to eliminate uncertainty, the limitation on the number of cabotage operations subsequent to an international carriage should be abolished.

Or. es

Amendment 11

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The environmental efficiency of road haulage is crucial to reaching the objectives of the 2020 Strategy. In 2012, nearly a quarter of haulage vehicles in the European Union involved an empty vehicle, and, in many cases, this was due to restrictions imposed on cabotage operations.

Or. es

Amendment 12

Proposal for a regulation Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Given the mobile nature of workers in the road haulage sector as well as the difficulties involved in anticipating the time needed to provide services, the administrative procedures these undertakings must comply with (if required) under the directive on the posting of workers should be made more flexible. The documentation should be presented once the services have been provided.

Or. es

Amendment 13

Proposal for a regulation Article 1 – paragraph 1 – point 1 – point a – point i Regulation (EC) No 1071/2009 Article 1 – paragraph 4 – point a

Text proposed by the Commission

Amendment

i) point (a) is **deleted**;

i) point (a) is **replaced by the following**:

'undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes and that do not engage in international transportation;'

Or. es

Amendment 14

Proposal for a regulation

Article 1 – paragraph 1 – point 2

Regulation (EC) No 1071/2009

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2) ***in Article 3, paragraph 2 is deleted***;

deleted

Or. es

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1 – point 3 – point d

Regulation (EC) No 1071/2009

Article 5 – point e

Text proposed by the Commission

Amendment

e) hold assets and employ staff ***proportionate to*** the activity of the establishment.';

e) hold assets and employ ***the*** staff ***required for*** the activity of the establishment.';

Or. es

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point a – point iii

Regulation (EC) No 1071/2009

Article 6 – paragraph 1 – third subparagraph – point b – point xi

Text proposed by the Commission

Amendment

xi) the posting of workers;

deleted

Or. es

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point c

Regulation (EC) No 1071/2009

Article 6 – paragraph 2 a – point b

Text proposed by the Commission

Amendment

b) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries and to distort competition in the road transport market, ***including by undermining the working conditions of transport workers;***

b) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries and to distort competition in the road transport market, ***as well as failure to comply with, or the poor application of, the relevant Union labour legislation;***

Or. es

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point a

Regulation (EC) No 1071/2009

Article 7 – paragraph 1 – first subparagraph

Text proposed by the Commission

Amendment

In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its

In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its

financial obligations in the course of the annual accounting year. The undertaking shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal equity capital totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle used. Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal equity capital totalling at least **EUR 1 800 when only one vehicle is used and** EUR 900 for each **additional** vehicle used.

financial obligations in the course of the annual accounting year. The undertaking shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal equity capital totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle used **that is over 3.5 tonnes, or EUR 1 000 for each additional vehicle with a permissible laden mass which does not exceed 3.5 tonnes**. Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal equity capital totalling at least EUR 900 for each vehicle used.

Or. es

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 5 – point b

Regulation (EC) No 1071/2009

Article 7 – paragraph 2

Text proposed by the Commission

2. By way of derogation from paragraph 1, ***in the absence of certified annual accounts*** the competent authority shall agree that an undertaking demonstrate its financial standing by means of a certificate, such as a bank guarantee, a document issued by a financial institution establishing access to credit in the name of the undertaking, or another binding document proving that the undertaking has at its disposal the amounts specified in the first subparagraph of paragraph 1.;

Amendment

2. By way of derogation from paragraph 1, the competent authority shall agree that an undertaking demonstrate its financial standing by means of a certificate, such as a bank guarantee, a document issued by a financial institution establishing access to credit in the name of the undertaking, or another binding document proving that the undertaking has at its disposal the amounts specified in the first subparagraph of paragraph 1.;

Amendment 20**Proposal for a regulation****Article 1 – paragraph 1 – point 12**

Regulation (EC) No 1071/2009

Article 18 – paragraph 5

Text proposed by the Commission

5. Where it is difficult or impossible to comply with a request for information or to carry out checks, inspections or investigations, the Member State in question shall inform the requesting Member State accordingly within ten working days, with reasons. The Member States concerned shall *discuss* with each other with a view to finding a solution for any difficulty raised.

Amendment

5. Where it is difficult or impossible to comply with a request for information or to carry out checks, inspections or investigations, the Member State in question shall inform the requesting Member State accordingly within ten working days, with reasons. The Member States concerned shall *cooperate* with each other with a view to finding a solution for any difficulty raised.

Or. es

Amendment 21**Proposal for a regulation****Article 2 – paragraph 1 – point 1 a (new)**

Regulation (EC) No 1072/2009

Article 1 – paragraph 2

Present text

2. In the event of carriage from a Member State to a third country and vice versa, this Regulation shall apply to the part of the journey on the territory of any Member State crossed in transit. It shall not apply to that part of the journey on the territory of the Member State of loading or unloading, as long as the necessary agreement between the Community and the

Amendment

1a) Article 1(2) is replaced by the following:

2. In the event of carriage from a Member State to a third country and vice versa, this Regulation shall apply to the part of the journey on the territory of any Member State crossed in transit. ***However, this journey in transit shall be excluded from the application of the directive on posted workers.*** It shall not apply to that part of the journey on the territory of the

third country concerned has not been concluded.

Member State of loading or unloading, as long as the necessary agreement between the Community and the third country concerned has not been concluded.

Or. es

Amendment 22

Proposal for a regulation

Article 2 – paragraph 1 – point 5 – point a

Regulation (EC) No 1072/2009

Article 8 – paragraph 2

Text proposed by the Commission

2. Once the goods carried in the course of an incoming international carriage from another Member State or from a third country to a host Member State have been delivered, hauliers referred to in paragraph 1 shall be allowed to carry out, with the same vehicle or, in the case of a coupled combination, the motor vehicle of that same vehicle, cabotage operations in the host Member State or in contiguous Member States. The last unloading in the course of a cabotage operation shall take place within 5 days from the last unloading in the host Member State in the course of the incoming international carriage.

Amendment

2. Once the goods carried in the course of an incoming international carriage from another Member State or from a third country to a host Member State have been delivered, hauliers referred to in paragraph 1 shall be allowed to carry out, with the same vehicle or, in the case of a coupled combination, the motor vehicle of that same vehicle, cabotage operations in the host Member State or in contiguous Member States. The last unloading in the course of a cabotage operation shall take place within 7 days from the last unloading in the host Member State in the course of the incoming international carriage. ***Since they are covered by this Regulation, viable cabotage operations shall be excluded from the application of the Posting of Workers Directive.***

Or. es

Amendment 23

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EC) No 1072/2009

Article 10 a – paragraph 1

Text proposed by the Commission

1. Each Member State shall organise checks in such a way that, as from 1 January 2020, in every calendar year at least **2** % of all cabotage operations performed in their territory are checked. They shall increase the percentage to at least **3** % from 1 January 2022. The basis for the calculation of that percentage shall be the total cabotage activity in the Member State in terms of tonnes-kilometres in year t-2, as reported by Eurostat.

Amendment

1. Each Member State shall organise checks in such a way that, as from 1 January 2020, in every calendar year at least **4** % of all cabotage operations performed in their territory are checked. They shall increase the percentage to at least **6** % from 1 January 2022. The basis for the calculation of that percentage shall be the total cabotage activity in the Member State in terms of tonnes-kilometres in year t-2, as reported by Eurostat.

Or. es

Amendment 24

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EC) No 1072/2009

Article 10 a – paragraph 3

Text proposed by the Commission

3. Member States shall, at least **three** times per year, undertake concerted roadside checks on cabotage operations. Such checks shall be undertaken at the same time by the national authorities in charge of enforcing the rules in the field of road transport of two or more Member States, each operating in its own territory. The national contact points designated in accordance with Article 18(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council**** shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.

Amendment

3. Member States shall, at least **six** times per year, undertake concerted roadside checks on cabotage operations, **which may coincide with checks performed in accordance with Article 5 of Directive 2006/22/EC**. Such checks shall be undertaken at the same time by the national authorities in charge of enforcing the rules in the field of road transport of two or more Member States, each operating in its own territory. The national contact points designated in accordance with Article 18(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council**** shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.

Or. es

