

### ***3F Transport Position Paper "Fair Mobility"***

Transport workers in the EU have for a long time called for action to improve the situation for millions of transport workers in the Single Market.

I would like to commend the Commission for acknowledging the problems my members are facing. I also welcome the Commission initiatives both in the road sector and regarding the European labour market. These are important steps in the right direction. But there is still room for improvement and a need to make the rules work in practice, in order to secure a fair and coherent Single Market for transport.

However, before we can solve the problems facing us everyone involved must acknowledge the problem. The problems of social dumping are dire and with real consequences – not only for transport workers but also for the cohesion of the EU. In many countries, social dumping is one of the main arguments used by euro-sceptic movements or political parties to underline the disadvantages of the EU.

A significant number of the 11 million people working in the transport sector works under deplorable conditions. That is the case for the truck-driver spending months away from his home and family, living, eating and sleeping in his truck – and being paid 650 euro per month.

The opening up of the internal transport market hasn't been complemented by adequate social rights and working conditions. Today's Single Market for transport suffers both from inadequate EU regulation and lack of national enforcement of the existing legislation.

This has led to social dumping practices with far-reaching consequences to the detriment of both workers and law-abiding companies. Liberalisation must now be complemented by measures that take into account and remedy the differences in labour and social market structures around Europe.

I wish to underline that this is not a fight between western European transport workers and their colleagues in Eastern Europe as some politicians like to think. We work together – not against – each other. Why should any European transport worker accept these conditions? We call for fair competition for all law abiding companies and for equal working conditions for all transport workers in Europe.

We call on the European Parliament and the Council to work closely with us and other involved partners to ensure fair working conditions for millions of transport workers and to ensure clear and enforceable rules. I hope our proposals will contribute to a constructive dialogue – and in the end to secure fair and improved working conditions for the many transport workers around Europe. Only a fair market is a free market.

**Jan Villadsen, President of 3F Transport**

## 3F Transport's positions on social issues in the Mobility Package

### *3F Transport key messages*

1. The Posting of Workers Directive should cover all types of road operations, including cabotage, international transport and combined transport. This serves to clear up a lot of misunderstandings and illegal practices regarding the interpretation of cabotage rules and the rules of international transport.
2. The relation between international transport and the posting rules should be defined as to exempt simple export-import operations from the Posting of Workers Directive and at the same time minimizing the possibility of abuse of rules.
3. The application of the Posting of Workers Directive should apply for cabotage operations and combined transport operations from day 1. This is an important step towards ensuring fair competition and same pay for the same work at the same place.
4. There should be no changes made to the current 2-week reference period for the calculation of driving and rest times. This is essentially a question of ensuring road safety and ensure a better balance between work and private life for drivers.
5. A general weakness of the proposals in the Mobility Package covered by this paper, is directly related to the lack of proposed measures and requirements that can ensure that the rules are complied with and enforced by Member States.
6. The most important enforcement tool for ensuring any improvement in the conditions for *all* drivers is the advance in the date of entry into force of the mandatory digital tachograph to two years from the entry into force of the legislation.
7. Any attempt to eradicate letterbox companies and undeclared work, is important and strongly connected to the creation of a European Labour Authority, as proposed by President Juncker in his State of the Union speech on 13 September 2017.
8. European solutions for registration measures, control and enforcement should mirror best practices in Member States who have already implemented national rules and dedicated authorities to monitor and control drivers' salaries and working conditions.

## **3F Transport detailed comments to the Commission's proposals**

### **Posting of Drivers**

*(Commission proposal COM(2017) 277 for a Directive amending amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector)*

The aim of 3F Transport is to provide clarification of the rules and ensure that measures for proper control and enforcement are in place to ensure "same pay for the same work in the same place".

- As the Commission proposals on the relation between the rules for posting of workers and transport serve to clarify the state of the law, they are initially welcomed.
- The proposal of applying the rules of the Posting of Workers Directive from day 1 to all cabotage operations is warmly welcomed, and would serve to clarify uncertainties in the current legislation that give rise to misunderstandings and unfair competition practices based on labour cost differentials. This is an important step to eliminating the basis for the unfair practice of letterbox companies.
- With regard to international transport, the rules should be defined so as to exempt simple export-import operations from the Posting of Workers Directive and at the same time minimize the possibility of abuse of rules. The solution is to reverse the condition, thus defining the period in which international transport is exempt from posting rules as a function of the number days of driving in any other country than the country of establishment.
- Eg. the Commission proposes that Member States shall not apply posting to international transport when the period of posting to their territory is shorter than 3 days in any given calendar month. 3F Transport considers that this would still allow for unfair practices and speculation for road operators in order to avoid compliance with the posting conditions. Instead 3F proposes that the condition is reversed, and that posting conditions should be applied when the period of posting exceeds 3 days *outside* the country of establishment and according to the conditions in the country of layover.
- Any positive impact of on the revised rules governing the posting of drivers is dependent on the introduction of various measures to ensure an adequate level of control, sanctions and enforcement introduced by member states (se chapter on control, sanctions and enforcement below).

***Definition of cabotage and International transport and access to occupation***

*(Commission proposal COM(2017) 281 amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009)*

The aim of 3F Transport is to clarify the rules and the definition of cabotage and international transport, with the purpose to underline the temporary of character of cabotage.

- The Commission proposes an alteration of the cabotage rules, so that it would be possible to make to make an unlimited number of cabotage trips within a period of 5 days (as opposed to the current 3 trips within 7 days).
- The Commission proposes to expand the scope of the article defining international transport, to clarify, that international transport of pallets and empty containers can only be considered as carriage of goods for hire whenever it is subject to a transport contract.
- In the case where cabotage will not be covered by posting from day 1, this change will not be sufficient to eliminate the so-called 'chain cabotage' – a phenomenon where a short international trip can allow for another cabotage period by exploiting loopholes in existing rules, thus undermining the temporary character of cabotage.
- 3F Transport would like to introduce a real waiting period of minimum one week before a new cabotage period is started on the same territory.
- The fact that Combined Transport is exempted from the scope of the cabotage rules, creates so-called 'free cabotage zones'. The Commission does not touch upon this problem in the first Mobility Package, and the proposals presented in the second Mobility Package (8. November 2017) is a step in the wrong direction. The solution is to include combined transport under the same rules as cabotage, so as to be covered by posting from day 1 and with a 5-day limitation period.
- The Commission proposes that light vehicles under 3500kg are exempted certain rules, e.g. the mandatory use of tachographs and tachograph driver's cards. This can pose a problem, as it has been exemplified that light vehicles are used to undercut larger vehicles. 3F Transport suggests that light vehicles are not exempted any rules.

### ***Driving and rest time and weekly rest conditions***

*(Commission proposal for a regulation amending Regulation (EC) No 561/2006 Regulation (EU) 165/2014*

The aim of 3F Transport is to ensure acceptable living conditions for drivers, when they are away from home, increase road safety by reducing driver's fatigue, and to ensure a better balance between work and private life for drivers.

- The European Commission proposes new rules to the driving and rest times, i.a. to extend the reference period for the calculation of driving and rest time from 2 to 4 weeks. According to the proposed new rules, in over one month, drivers must take two rest periods of 24 hours and two rest periods of 45 hours. This can practically result in a concentration of driving time in the first 3 weeks of the month, and of the weekly rest at the end of it. In so far these proposed new rules are used to their fullest potential, the driver risks be in a situation, where it will be possible to have to sleep over in the vehicle for up to 20 days. This must be seen in context with the current rules where the driver can maximal sleep over in the vehicle for up to 12 days.
- A prolongation of the driving time, as proposed by the Commission, will have clear negative impact on drivers' fatigue and road safety, and will make it even more difficult than today for drivers to obtain a balance between work and private life.
- The solution is to maintain status quo under the current rules and rather improve enforcement.
- The Commission proposes two new rules to improve the weekly rest conditions of the driver: 1) a driver is not allowed to take a weekly rest of 45 hours or more in a vehicle, and that the employer is obliged to provide the driver with suitable accommodation if drivers are not home, and 2) obliging the transport undertaking to organise the drivers' work in a way that would allow them to return home for a weekly rest at least once in three consecutive weeks.
- 3F welcomes the prohibition to sleep in the vehicle and the obligation for the road haulier to provide 'suitable accommodation'. However, a quantification of a 'suitable accommodation' is needed, to avoid situations where drivers are provided with unsatisfying, unhygienic accommodation conditions, not respecting the right to privacy.
- 3F interprets a quantification of 'suitable accommodation' to as a minimum, include that the driver has access to a single room in a hotel or motel, with private bathroom and shower, with the possibility to lock, that in cold periods this room should be heated, that the driver has access to kitchen facilities where the driver can prepare and have a hot meal, or food vouchers for restaurants.

### **General enforcement**

Much of the inadequacy of the first Mobility package is directly related to the lack of proposed measures and requirements to ensure that the rules are complied with and enforced.

The aim of 3F Transport is to increase the enforceability of the rules, as many current problems arise not from wrong legislation, but lack of or insufficient enforcement.

- The most important enforcement-tool for ensuring any improvement in the conditions for drivers (posting, cabotage, driving and rest times, etc.) is the advance in the date of entry into force of the mandatory digital tachograph for all vehicles (Regulation (EU) No 165/2014) from the current goal of introducing 'smart tachographs' in 2030.
- 3F Transport sees the simple solution to be that the date for mandatory use of digital tachographs by road hauliers is brought forward to two years from the entry into force of the legislation. An average price example from Denmark shows that the replacement of an old tachograph with a digital one costs equivalent to 800eur excl. VAT (offer from [www.TB-fartskriverservice.dk](http://www.TB-fartskriverservice.dk)).
- The single most important suggestion to fight unfair cabotage and eradicate letterbox companies was introduced by President Juncker in the State of the Union speech on 13 September 2017. The proposal is for the creation of a European Labour Authority to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations, as well as further initiatives in support of fair mobility, such as a European Social Security Card.
- 3F Transport underlines the importance that such an authority is granted the competence to monitor undeclared work, strengthen cooperation between labour market authorities and identify and eradicate letterbox companies. Moreover, a European Labour Authority must have an office in each Member State to secure cross-border coordination, documentation and enforcement at the same level.
- To the end of eradicating letterbox companies, the sanctions imposed for breach of infringement rules should be increased. Under current rules, in case of breach of cabotage rules, operators do not risk losing their 'good repute' status, which is a criteria for obtaining/maintaining the community license to operate within the single market. The Mobility package does not propose changes to this as it stands.
- The solution is to introduce cabotage in the classification of serious infringements leading to the loss of good repute, and thereby the right to operate on the single market
- To increase the effectiveness of controls, a posting declaration in electronic form should be introduced. This electronic form should be linked to the data declared by operators in the national register and should be mandatory for each driver, and not a group of drivers as proposed by the Commission.
- In order to allow for proper and uniform control in Member States, it must be clarified that the documentation requirements of the Posting of Workers Directive also apply to cabotage and combined transport.