



Infrastrukturminister Anna Johansson
Transportminister Ole Birk Olesen
Samferdselsminister Ketil Solvik-Olsen
Transportminister Anne Berner

Bruxelles June 7, 2017

Dear Ministers

At the upcoming meeting in the Transport Council the mobility package presented by the European Commission on May 31, 2017 will be subject for a presentation by the Commission. However, we understand that interventions from several delegations are expected. Likewise, we understand that at least some of you will have contacts with some of your colleagues in the context of the meeting to discuss the package.

Despite the short time, we have had the many proposals from the Commission we would like to make a few preliminary comments, which we hope you will take into account in your discussions this week.

- Cabotage and posting of workers: We appreciate that the Commission is proposing a consistent scheme for when to apply the posting of workers directive on drivers. However, we are still struggling to understand the full implication of 5 days of cabotage for the vehicles (in a member state and contiguous member states), but posting of workers applications from day 1 for the driver, but only from day 3 if the driver is in international transport. Will it still be possible to be absent from home country for months, in different member states, combining cabotage, international transport – and even combined transport – and thus escape these proposed new rules? We fear it will. We will not accept that such a situation can continue. We maintain that keeping the present restrictions of 7 days and 3 operations, combined with application of the posting of workers directive could be the simplest solution.
- We find it highly problematic that combined transport is not included in this package. We understand a revision of the existing combined transport directive will be presented later. However, the inclusion of combined transport operations in the posting of workers directive should be stated clearly already now.
- We welcome the proposal as regards vehicles below 3.5 tons, though it can only be seen as a first step.
- The steps taken against letter box companies are important. In order to ensure effective enforcement you will however still depend on a harmonized understanding between the Member States of what constitutes a letterbox company.
- Control and enforcement is clearly enhanced in the proposal of the Commission. However, it still relies on the close and willing cooperation between the Member States. Whether the new rules are adopted or not, this is extremely important even for today's rules in cabotage. Such steps should be taken immediately through voluntary cooperation and binding commitments.
- As concerns changes to the legislation on road charging we are opposed to abolishing the Eurovignette, as proposed. We are not convinced it will be an improvement. Particularly not in a situation, where the Commission is basing the future km-based charging system on CO2 emission, for which data is still lacking. We welcome the ambition for seamless interoperability between the many electronic systems. An ambition that has been tried for years without success so far.
- CO2 and HGVs vehicles is a relevant and important discussion. But the Commission is rushing things and has a limited field of vision. The system the Commission is proposing is relying on the

VECTO, which has only just been developed and adopted, but hardly tested – and so far only covers very few vehicle types and driving situations. On this weak basis the Commission is already jumping ahead assuming that standards will be adopted within 1-2 years. We are still calling for a serious discussion on how to ensure that these kind of systems will reflect the reduced CO2 emissions from a longer and heavier vehicle as well as when using biofuels. VECTO will not cover these types of situations!

Recognising that these comments are to a large extent concerns, we do want to recognise that the Commission is trying to give an honest answer to a complicated situation. We note, that a lot of the initiatives are basically based on the concerns and criticism we have expressed through the years and we appreciate this. However, a change to the existing rules need to provide real benefits and advantages, rather than new loopholes and special national rules. The key to fair competition remains introduction of committed enforcement. A step that could be taken even today. That will be our focus in the coming negotiations and we hope you share this priority.

For further information, we attach a joint discussion document developed by 10 organisations representing nearly 47.000 transport companies and more than 425.000 trucks in the EU. The document expresses our shared concerns about todays market and where we seek improvements.

We rest at your disposal for further information should you so require

Best regards



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ANNEX

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Joint paper from the road and logistics associations DTL (DK), NLA (Nordic), NLF (Norway), SÅ (Sweden), TLN (NL), FEBETRA (B), FNTR (F), SKAL (FIN), FTA (UK), ANITA (I)

On behalf of the around 46.700 companies and the around 425.000 trucks they operate daily in the EU we would like to make the following points for further discussion.

The associations believe that, given the enormous challenges faced by the European road transport sector nowadays the following goals should be prioritised as part of the Mobility Package:

1. To create sound and fair competition between operators in the EU
2. To better enforce present legislation, instead of creating new legislation
3. Not to increase the administrative burdens as a consequence of new laws and regulation
4. To create a better working, health and safety environment for truck drivers, self-employed and operators, in order to increase the attractiveness of the sector.

To reach these goals, we need:

- clear, uniform and unambiguous rules and interpretation of EU legislation
- effective, proportionate, uniform, cooperative and harmonized enforcement
- a better work environment with good infrastructure of high quality for drivers, secured parking places with decent sanitation services, terminals, loading stations.

We need effective and efficient controls

The purpose of European enforcement policy must be to ensure road safety and fair competition between all road transport undertakings. To achieve this, we need the necessary resources for controls in Member States and the efficient and effective use of these resources, including use of new technology.

The definition of good repute needs to be streamlined in a way which guarantees a level playing field between operators

There is too much disparity in the application of the definition of good repute at national level. Removal of good repute has to be proportionate, and there needs to be a level playing field between European operators. While greater harmonisation will ensure that all operators are treated in a fair and equal way, the competent authorities in each Member State must remain free to make assessments of proportionality in their decisions on good repute.

Any EU intervention must be balanced and must consider the diverging Member States' legislation to avoid situations such as:

- The different weighing of infringements committed at home as compared to those committed abroad and the impact this has on the potential withdrawal of an operating license.
- The different procedures leading to such a withdrawal and relating to a potential reinstatement.

We need to ensure that effective establishment is respected to fight letterbox companies

The situation today has an impact on the level playing field between companies, on compliance costs and on administrative costs. This creates a great risk of a forum shopping, where companies choose to establish themselves in countries with the least restrictive criteria or the lowest costs, but offering their services in other Member States with different criteria and costs.

If you can establish yourself only with a letterbox, which is illegal, what is the point of all the requirements in EU legislation for establishment for road transport operators? We need to concentrate on the definition of 'Operating Centres' or the 'transport office', as the location from which transport operations are carried out, as opposed to company headquarters, as they need not be the same location. By demanding a link between the Operating Centre and the company fleet, and to drivers through established employment laws, it will quickly become evident to the authorities which companies are real and which need further investigation. We need to require documents present or accessible at the premises (taking into account technological progress), signs of proper and substantial transport activity, people hired and working at the premises, proof of registration at national authorities for tax, vat, social issues, trucks registered at the establishment, a reasonable relationship between number of staff and number of trucks at the premises, facilities for staff, clear procedure for health and safety at the workplace etc

Cabotage: keep today's restrictions – add new definitions – create clarity

Legislators should return to the original guiding principle in any revision to the Regulation and continue to permit legitimate cabotage operations, which make it possible to make a more efficient use of the fleet and avoid empty runs. Abuses of this principle, such as systematic, continuous cabotage, when it leads to avoiding establishment in the host Member State, must be prevented. We support the current legislation and want to keep the existing system of 7 days and 3 operations – except FNTR which supports 1 operation/3 days – but feel that the Commission should clarify this definition to make it more enforceable across the EU. We need an improved definition of a cabotage operation, investigation of a quarantine or waiting period after the 7-day period, rules and controls to ensure that you cannot carry out continuous, permanent cabotage without being established or subject to host country rules such as application of the social conditions of the host country from the time of entry, definition of load, definition of when cabotage starts, definition on how to count number of trips when more loading or unloading places, clarify definition of continuing journey if vehicle decouples trailer and tractor. Much of this can be achieved by intelligent use of today's technology, such as the digital tachograph, GPS systems etc.

Cross trade transport – multinational transport with no transport to or from home country

While free movement needs to be respected, the EU internal market for road transport can only operate in a fair and equal way if all are facing the same rules, regulations and controls. If a vehicle from country A is mainly doing operations between B and C and never home in country A, the vehicle/operator should establish in B or C. If a so-called nomadic driver is never home, he/she must be linked to the main host country rather than original country as a posted worker or fall within the ROME 1 rules.

Combined transport

Likewise the rules in Directive 92/106 on Combined Transport must be amended to bring them into line with Regulation 1072/09 by at least removing the exemption to cabotage rules for the road leg of a combined transport operation.

The question of where liability lies

The regulatory obligations and responsibilities of company, transport manager, driver, freight forwarder or shipper differ from country to country. We encourage further study of the issue at European level to ensure fair competition between Member States and between links in the transport chain, taking into account that the haulier has responsibility to decline any transport operation that would obviously mean that the rules are broken for it to be completed, as also stated in the CMR rules.

Fair competition without red tape

Differences in wage levels, social security systems etc creates the possibility to take advantage of differences in wages for business purposes. When this is done permanently, continuously, without strong links to the home country, it generates situations where companies do not take their social responsibility seriously and unfair competition is created.

While social rules should ensure that all operators can compete on a level playing field, they should be proportional and not result in unnecessary and disproportionate administrative requirements. How to apply the rules on posting of workers to road transport is not specified today. We need clear rules which are fair, sector specific and do not place unnecessary burdens on operators. Our members pride themselves on remaining compliant in all territories in which they operate and agree with the need to ensure that drivers are paid a fair wage for the work they perform. However, we face today a growing patchwork of national minimum wage regulations in the EU, each with its own wage levels and system of report with accompanying administrative burdens, sometimes with need for advanced notification of journeys and supply of confidential salary documentation to third parties. The gap between undertakings that comply with the regulations and those that do not, is increasing to the disadvantage of the undertakings following the rules.

One thing that could help is if the Commission could put in place one central, harmonised, system for making these declarations and registrations to prevent different national systems being put in place that will seriously disrupt the single market for transport services – at least until the issue has been resolved at political level, through the road initiatives. Ultimately, we need one set of clear and fair rules at EU level, specific to the sector, and which do not place an unnecessary burden on operators.

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