



Unboxing the EU's Mobility Package I

by Hendrikje Herrmann*

Having been the subject of discussions since 2017, the European Parliament has finally adopted the Mobility Package I. In its final form it now comprises a Regulation governing access to the road haulage market and to the profession of a road haulage or road passenger transport operator. It also contains a Regulation on maximum work hours and minimum rest times for drivers and positioning by means of tachographs. Finally, it also lays down rules on posting of drivers and revises enforcement requirements.

Europe on the Move

The Mobility Package I is part of "Europe on the Move", a collection of three initiatives concerning governance of commercial road transport in the EU to be accomplished by 2025. These initiatives contain targeted legislation and supporting measures, including infrastructure investment, research and innovation. While the so-called Mobility Package I mainly covers road transport, the Mobility Package II will contain rules for access to the bus and coach market, provisions on combined transport but also a "Clean Vehicles Directive". The Mobility Package III will relate to safety aspects of vehicles and infrastructure, connected and automated mobility but also CO₂-standards for heavy duty vehicles. The overall aim of this initiative is to ensure that the best, clean, connected and automated mobility solutions, transport equipment and vehicles can be developed, offered and manufactured in Europe. The intended harmonization and simplification of commercial road transport shall finally result in the support of social fairness, making traffic, vehicles and infrastructure safer and a fair competition on the road haulage market. Also the fostering of innovation, f.e. the development of "green" technologies, smart road charging and digitalization of trade and transport (e-CMR, smart tachograph) play a major role as they are expected to lead to the improvement of the environmental performance of road transport operations and less CO₂ emissions, air pollution and congestion. The intended long-term benefits of Europe on the Move thus go far beyond the transport sector: it shall promote growth, create jobs, strengthen social equality, widen consumer's choices and put Europe on the path towards zero emissions.

The Mobility Package I

Although most of the areas subject to the Mobility Package I are already regulated by European legislative acts, loopholes exist and difficulties in enforcement have led to EU Member States implementing and enforcing them differently. Therefore, the future provisions shall provide a

clear and common framework for the road transport sector and ensure a balance between improved working and social conditions for drivers while taking into account the transport undertakings' freedom to provide cross-border services.

Driving and rest time rules

In order to ensure better rest conditions for drivers and that they can return to their homes regularly, companies will have to organise international freight transport more carefully.

It will become mandatory that the regular weekly rest cannot be taken in the truck or on a parking area. Instead, the trucking company will have to provide and pay for a suitable and safe accommodation (which may, however, be next to a parking space). Given the current wording of the provisions, the regular daily rest may still be taken in the truck's cabin and in parking areas. The same applies for the reduced weekly rest periods (in line with the decision of the European Court of Justice dd. 20.12.2017, case no. C-102/16 regarding weekly rest in the truck's cabin). While the new rules now provide a uniform standard within the EU, German domestic law already since 2017 prohibited spending the weekly rest in the truck – thus in this respect the Mobility Package I does not bring a great deal of change.

Another significant change will be the obligatory return of the driver to the Member State of the trucking company's establishment or to the driver's residence within generally a period of four consecutive weeks. However, it shall be up to the drivers to decide as to where they want to return for their rest periods. The trucking company will have to keep records in their premises on how they fulfilled the obligation of the return of the driver.

Further amendments concern the organisation and timing of the weekly rest periods. The new rules will also be applicable to cross-border transports or cabotage operations where the maximum permissible mass of the vehicle exceeds 2.5 tonnes (the current rules only apply to vehicles with a permissible mass exceeding 3.5 tonnes).

Posting of drivers

The Mobility Package I also addresses the posting of workers specifically with regard to the road transport sector. Unlike in other sectors, drivers are usually not posted to another Member State under long-term service contracts. Rather, the road transport sector is



characterised by a highly mobile workforce. Again, the existing rules are applied in an uncoordinated way by the Member States and not all of them have implemented posting rules for road transport.

According to the Mobility Package's posting rules, bilateral operations (transport from the trucking company's Member State of establishment to another country and vice-versa) shall not constitute posting of workers to another Member State. The same applies if one extra loading or unloading per direction is carried out during a bilateral operation. These (un-)loading operations can also be added up: f.e. none on the way out and two on the return leg. Also, transit shall not be considered as posting of drivers. In these cases, drivers will be remunerated in accordance with the pay rates in the Member State of the trucking company's place of business. With regard to transit, the new set of rules is contradictory to a ruling of the Fiscal Court Berlin-Brandenburg (decision dd. 16.01.2019, case no. 1 K 1161/17 & 1 K 1174/17). There, the court held that the German law on minimum wages („MiLoG“) is applicable to businesses with registered seat in another Member State (here: Poland) and the employment contracts concluded with the drivers (that were subject to Polish law) already during transit. The court held that because the work was (partly) performed in Germany by the long-distance drivers employed in Poland, the case had sufficient connection to Germany to render the MiLoG applicable. Given the unambiguous wording of the future legislative texts, this jurisprudence can now be considered obsolete.

Thus, the future posting rules will be applicable to cabotage and international transport operations. The local pay rates of the host Member State incl. statutory minimum wages will apply for the entire period of posting and the drivers will also be entitled to the statutory amount of holidays. Trucking companies then also have to meet documentation requirements with customs authorities.

Fair competition and fighting illicit practices

In order to detect fraudulent activities, intelligent **tachographs** shall be installed to record border crossings and other activities such as driving times and rest periods. In the future, also light duty vehicles above 2.5 tonnes conducting international transport operations shall be equipped with such smart tachographs.

Further changes concern **cabotage** operations - situations where a foreign truck provides domestic deliveries in the territory of an EU Member State directly after an international journey from another Member State or from outside the EU. In 2017, almost half of the cabotage in the EU was carried out in Germany, almost 40% thereof being performed by Polish hauliers. While the existing limits to cabotage remain the same (three operations within seven days), the new rules introduce a

four-day “cooling off” period before cabotage in the same country with the same vehicle becomes possible again. Thereby, “systematic cabotage” that in the end equals a permanent occupation in the Member State and often leads to social dumping, shall be fought.

One of the main objectives of the Mobility Package I is to achieve fair competition in the road transport sector. Over the past years, the number of “**letterbox companies**” has increased significantly. Such businesses exist in a Member State as a mailing address only. The operational activities are carried out in another Member State. Usually, such companies are set up to circumvent legal obligations, typically in areas like taxation, social security, VAT and wages. Most often they remain unsanctioned as many Member States did not impose sanctions for such activities or do not even have a legal definition of such letterbox companies. Therefore, it will become mandatory that road haulage companies have substantial activities in the Member State in which they are registered. A further significant change is the new requirement of the return of the truck to the transport company's place of establishment every eight weeks. Again, this new set of rules will also apply for light duty vehicles with a permissible mass exceeding 2.5 tonnes and these businesses will for the first time also have to meet requirements with regard to their financial standing.

Entry into Force

However, Adina Vălean, Commissioner for transport, expressed in a statement that while the European Commission welcomes the social aspects of the Mobility Package I, it regrets that the new set of rules includes elements that are possibly not in line with the European Green Deal's ambitions and the European Council endorsement of the objective of achieving a climate-neutral EU by 2050. This specifically relates to the compulsory return of the vehicle to the Member State of establishment every eight weeks and the restrictions imposed on combined transport operations. This may lead to inefficiencies in the transport system and an increase in unnecessary emissions, pollution, and congestion, while the restrictions on combined transport could diminish its effectiveness to support multimodal freight operations. For example, in 2015, 23 % of all Heavy Duty Vehicles in the EU ran empty. Given that these measures were not part of the Commission's proposals for the Mobility Package I, the Commission is now assessing these two aspects on the climate, environment, and the functioning of the Single Market for a potential future impact assessment. In the European Commission's statement it is thus set out that the Commission, if necessary, will exercise its right to come forward with a targeted legislative proposal before the two provisions enter into force.

The new rules on rest times, including the return of drivers, will enter into force 20 days after being published in the



Official Journal and the rules on posting and market access 18 months after their publication (15th July 2020) in the Official Journal. Rules on return of trucks and other changes to market access rules will apply 18 months after the entry into force of the Regulation on market access. Given the European Commission's statement, it remains, however, to be seen if the Mobility Package I will enter into force with the content recently adopted.

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