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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs

{SWD(2017) 184 final}

{SWD(2017) 185 final}

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{SWD(2017) 187 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The driving and resting times of drivers have been regulated under EU law since 1969. Today, Regulation (EC) No 561/2006¹ (the 'Driving Time Regulation') establishes minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods. It also requires use of a tachograph as the main tool for checking compliance with those requirements. Successive regulations have been adopted to adapt tachographs to technological developments, the latest being Regulation (EU) 165/2014 on tachographs in road transport (the 'Tachograph Regulation'). This introduced the 'smart tachograph' connected to a positioning service based on a satellite navigation system.

Both the Driving Time and the Tachograph Regulations are part of a wider effort to improve the working conditions of drivers, ensure fair competition between operators and improve the road safety of European roads. Tighter requirements for tachograph use have gradually contributed to more efficient and consistent enforcement throughout the EU.

An ex-post evaluation of the social legislation in road transport and its enforcement, which was carried out in 2015-2017² as part of the Regulatory Fitness Programme (REFIT), concluded that the Driving Time Regulation has been only partly effective in improving drivers' working conditions and ensuring fair competition between operators. Road safety had improved over that period, but of course these improvements cannot be assigned solely to that Regulation.

The main difficulties encountered are linked to the shortcomings of the rules themselves, but also insufficient enforcement and their inability to address the emerging social and market challenges faced by the sector. The objective of this proposal, which is a REFIT initiative³, is to rectify the identified shortcomings and to help improve the working and business conditions in the sector. This will be achieved by clarifying and updating certain provisions and by further upgrading the use of current and future tachographs to ensure more cost-effective enforcement.

- **Consistency with other envisaged initiatives in the road transport sector**

This proposal is part of a broader ongoing review of the Union road transport legislation. It is closely linked with the initiative to improve the enforcement of the driving and resting time rules and to establish sector-specific criteria for posting of workers in road transport. It is also closely linked to the ongoing review of the market rules on: access to the profession of road transport operator (Regulation (EC) No 1071/2009), access to the international haulage market (Regulation (EC) No 1072/2009) and access to the international passenger market (Regulation (EC) No 1073/2009).

¹ OJ L102, 11.4.2006, p.1

² The ex-post evaluation covered Regulation (EC) No 561/2006, Directive 2006/22/EC on the enforcement of the provisions of the Regulation and Directive 2002/15/EC on the organisation of the working time of road transport mobile workers.

³ Initiative no. 11 in annex 2 to the Commission Work Programme 2017.

Social and market rules constitute a comprehensive and coherent legal framework, and enforcing them in a consistent and effective way is key to creating a fair, safe, environmentally and socially sustainable road transport sector. None of those initiatives on their own can effectively address the ongoing social and market challenges.

- **Consistency with other Union policies**

The proposal contributes to two of the priorities of this Commission, notably creating “a deeper and fairer internal market” and on “jobs, growth and investment”. It is consistent with actions aimed at combatting social unfairness and unfair competition and at creating a social framework for new employment opportunities and fair business conditions.

It fits with the objectives of the Social Agenda of the Commission as one of its aims is to ensure decent working conditions and appropriate social protection, and with the initiative on the creation of an EU pillar of Social Rights. It is also consistent with the Charter of Fundamental Rights of the European Union, Article 31 of which provides in particular for a right to daily and weekly rest periods. The provisions contained in the present proposal concerning weekly rest are meant to enhance flexibility for operators while allowing workers to retain adequate rest periods and favouring the possibility to have this rest at home or in an adequate accommodation.

The proposal contributes to the REFIT Programme by clarifying and adapting certain social provisions and making enforcement of them more cost-effective.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal amends Regulations (EC) No 561/2006 and (EU) 165/2014 and is therefore based on the same legal basis, namely Article 91(1) of the Treaty on the Functioning of the EU (TFEU)

- **Subsidiarity**

Under Article 4(2)(g) TFEU, the Union shares competence with Member States to regulate in the field of transport. However, existing rules can only be amended by the Union legislator.

Shortcomings in the current legislation mean that Member States implement and enforce the EU social rules differently. Commission guidelines or self-regulation by Member States would not be adequate to ensure that the social rules in road transport are consistently applied and enforced throughout the Union. An action at the Union level is therefore justified.

In line with Article 154 TFEU, which embodies the social partner organisations at European level to be consulted on issues concerning employment and social affairs set out in Article 153 of the Treaty, the Commission will launch a consultation process to seek the views of the social partners on the possible direction of Union action regarding Directive 2002/15/EC, which complements provisions of Regulation (EC) No 561/2006.

- **Proportionality**

The proposal does not go beyond what is necessary to address the identified problems of inadequate working conditions for drivers and distortions of competition between operators.

As indicated in Section 7.2 of the impact assessment, the proposal implements the policy option considered the most suitable and proportionate solution. This solution provides a

balance between improving working and resting conditions for drivers while enabling the operators to organise transport operations as efficiently as possible, and enforcing the existing rules effectively and consistently across borders.

The proposal focuses on simplifying and clarifying existing rules and adjusting certain rules to the needs of the sector. This will make the rules easier to comply with and to enforce in a coherent manner throughout the Union. The proposal will reduce administrative burden for operators and ensure that the requirements for administrative cooperation and mutual assistance between Member States are proportionate to the problems identified. The impact assessment concluded that the envisaged policy measures will have no disproportionate impact on SMEs.

- **Choice of the instrument**

As the proposal introduces a limited number of modifications to two interrelated regulations, the instrument chosen is also a regulation. Given the limited number of changes proposed, it does not appear necessary to recast the two regulations.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Driving Time Regulation was subject to a comprehensive ex-post REFIT evaluation in 2015-2017⁴ covering also Directive 2002/15/EC on the organisation of the working time and Directive 2006/22/EC on enforcement of social legislation. It was supported by an external support study.

The main issues, pertaining specifically to the Driving Time Regulation, were:

- divergent interpretations and enforcement of the provisions on the regular weekly rest, leading to uncoordinated national measures and unequal treatment of drivers and operators;
- persisting abuses of the rules on driving times, breaks and rest periods due to a lack of flexibility in their application, in particular in unforeseen circumstances;
- lack of clarity of the notion of 'non-commercial' carriage and operations for private purposes, leading to divergent interpretations and unequal treatment of drivers and operators;
- provision on breaks not suitable for 'multimanning' (driving in a team), leading to divergent enforcement practices;
- poor administrative cooperation and mutual assistance between the Member States, hindering efficient and consistent cross-border enforcement.

These issues have adverse effects on working and competition conditions and indirectly hamper further improvements in road safety.

The Tachograph Regulation was not part of this REFIT ex-post evaluation. However, the evaluation revealed that one shortcoming of the enforcement system is in the uneven and

⁴ <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

inefficient use of control tools and data exchange systems, including tachographs. The functionalities of the current tachograph system could be better used until smart tachographs are installed and used more widely.

- **Stakeholder consultations**

Extensive stakeholder consultations were performed to prepare this proposal, in line with the minimum standards for the consultation of interested parties set out in the Commission Communication of 11 December 2002 (COM(2002) 704 final).

The consultation process involved gathering opinions and collecting data. All the relevant stakeholder groups were asked to contribute to the consultation process: national transport ministries, national enforcement authorities, associations representing road transport freight and passenger transport operators, freight forwarders, shippers, SMEs, trade unions, drivers and other road transport workers.

In particular, the European Social Partners have been extensively consulted throughout the entire process. A variety of open and targeted consultation methods and tools were used:

- A High Level Conference of 4 June 2015 on a 'Social Agenda for Transport' launched a broad debate on the social aspects in road transport; it was attended by some 350 participants, mainly: decision makers, experts in transport and social partners.;

- Dedicated seminars at the end of 2015 which gathered industry stakeholders, representatives of Member States and the the European Social Partners. The discussions focused on the functioning of the social and internal market legislation in road transport ;

- A Road Transport Conference on 19 April 2016. One of the workshops was dedicated to the internal market and the social aspects of road transport. It involved around 400 participants, in particular representatives of the Member States, members of the European Parliament and key stakeholders who discussed the objectives and scope of the planned Road Initiatives;

- Five tailored surveys were launched to gather the views of the national transport ministries (the focus was on the implementation and interpretation of the rules), enforcement authorities (the focus was on enforcement practices, enforcement costs and benefits), undertakings (the focus was on the impact of the legislation on the operators in the market), trade unions (the focus was on the impact of the legislation on drivers) and other stakeholders such as industry associations (the focus was on cross-cutting views on the effects of the legislation). In total 1 441 responses were received (of which 1 269 were from road transport undertakings).

- Interviews with 90 stakeholders (of which 37 were with drivers) to gather insights on their experiences of how national bodies enforce EU road transport legislation, how effective this enforcement is, and on any challenges with compliance.

- A public consultation⁵ between 5 September and 11 December 2016, aimed at confirming the problems identified in the ex-post evaluation and identifying potential solutions to them. Of the 1 378 responses received 1 209 were from drivers, operators,

⁵ Summary of findings: http://ec.europa.eu/transport/modes/road/consultations/2016-social-legislation-road_en

shippers, forwarders and citizens and 169 from national authorities, enforcement bodies, workers' organisations and industry associations;

- A SME panel survey between 4 November 2016 and 4 January 2017. 109 respondents provided their views on the objectives of the revision of the legal framework and on potential solutions;

- An on-line survey of drivers (345 responses were received, providing views on potential measures. However, these views were not fully representative, as 140 replies were from the Netherlands and 127 from the UK).

- The Commission also launched a survey of the national authorities and national enforcement bodies (41 responses received from 27 EU Member States plus Norway and Switzerland), and operators' survey (73 responses, however again not fully representative as 58 replies were from Hungary); and

- Interviews with 7 transport companies, 9 national industry associations, 9 national authorities, 4 national workers' unions and 6 European Social Partners.

The European Social Partners in the road transport sector were also regularly informed and consulted during several bilateral meetings with the Commission and at regular meetings of the Sectoral Social Dialogue Committee on Road Transport and of the Social Partners' working group.

The consultation activities confirmed that main problems are:

- 1) inadequate working conditions for drivers
- 2) distortions of competition between transport operators; and
- 3) regulatory burdens for operators and Member States.

They also identified the main legal issues behind those challenges, i.e. unclear or unsuitable social rules, differing interpretations of the rules, inconsistent and ineffective enforcement and poor administrative cooperation between the Member States.

As regards the draft policy measures, all stakeholders strongly supported strengthening enforcement and cooperation between enforcement bodies, although some national enforcement authorities raised concerns about potential additional enforcement costs.

The issue of adequate rest facilities when taking a regular weekly rest was highlighted by the trade unions, national authorities, drivers, operators and associations representing operators.

There were mixed reactions regarding the draft measures on the calculation of the average weekly rest and on allowing further flexibility when applying the driving and rest time rules to allow the drivers to reach home to take their regular weekly rest. Operators and drivers were in favour of these measures, while the trade unions were not supportive and enforcers raised concerns about effectively monitoring compliance.

- **Collection and use of expertise**

External contractors assisted the Commission by producing a support study for the ex-post evaluation in June 2016⁶, and a separate support study for the impact assessment, which was completed in May 2017.

- **Impact assessment**

This proposal is supported by an impact assessment, which has received a positive opinion with recommendations from the Regulatory Scrutiny Board. All the Board's main comments were addressed in the revised version of the impact assessment (see Annex 1 to the impact assessment report).

The impact assessment considered four policy options. The first three are cumulative in terms of increasing the level of regulatory intervention and expected impacts, while option four was horizontal and its measures could be combined with any of the three first options.

The first policy option focused on clarifying the legal framework and improving cooperation between enforcement authorities. The second focused on strengthening enforcement. The third policy package proposed substantive changes in the rules, in particular on performance-based pay and derogations for domestic and international passenger transport by coach. The fourth policy option established sector-specific criteria for posting workers in road transport and provides for specific enforcement measures. It included three variants based on time thresholds.

Policy option 1 appeared to be the least effective in addressing the legal uncertainty and inequality between drivers and operators. This was mainly because the measures would be voluntary and Member States could choose whether or not to introduce them. This voluntary approach would add to the concern of proliferation of national measures with which drivers and operators would have to cope.

Policy option 3 may have some negative side-effects in terms of the working conditions of drivers in passenger transport. This is because the measure on delayed weekly rest could increase the fatigue index by 20- 33 % and increase risks to road safety by 4 -5 %. These increased fatigue and risk indexes would go together with a 3-5% reduction in compliance costs for operators.

The preferred option is a combination of policy option 2 and policy option 4. The impacts of policy option 4 strengthen the expected effects of policy option 2 by improving the working and resting conditions of drivers (decrease in fatigue index by 28% and in periods away from home by 43% for EU-13 drivers and by 16% for EU-15 drivers). Combining policy options 2 and 4 will also lead to synergy gains from more efficient monitoring of the rules on posting, thereby saving costs for operators.

Combining policy options 2 and 4 is, overall, the most effective way to address the problems identified in the impact assessment. It is estimated that policy option 4 will bring savings for operators that provide cross-border road transport services, of around EUR 785 million per year as regards administrative costs. The savings from the measures in option 2 could not be quantified. However, it is expected that they will reduce infringements and hence decrease

⁶ Final report <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf>

significant non-compliance costs. In addition, policy option 2 will allow more efficient transport operations and will provide an incentive for more frequent returns to home of the driver. Both policy options will, however, trigger slightly increased enforcement costs for national authorities (between 1,3% and 8%) in the transitional period when introducing the revised rules. Both will also increase slightly compliance costs for certain operators, because they will require them to pay accommodation for the regular weekly rest to be taken outside the vehicle (approximately EUR 50-160 per trip).

The proposal is in line with the preferred option in the impact assessment.

- **Regulatory fitness and simplification**

The proposal pursues the REFIT objective of increasing effectiveness of legislation and reducing regulatory burdens for businesses. It does so mainly by simplifying and adapting the rules to the needs of the sector and by enhancing the use of digital recording equipment (tachographs) to make checks more efficient. While enforcement costs for national authorities are expected to increase slightly, this increase is justified by the improved working conditions of drivers and business conditions for operators. This will create savings in non-compliance costs. The proposal will also make enforcement more efficient, for example by improving the features of the future 'smart' tachograph. The proposal does not exempt micro-enterprises as it would lead to a risk of unequal competitive conditions and unequal working conditions.

- **Fundamental rights**

The proposal contributes to the objectives of the Charter of Fundamental Rights and in particular Article 31, which provides for the right to fair and just working conditions.

4. BUDGETARY IMPLICATIONS

The proposal will have no implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Developments in the number, types and frequency of infringements against social rules will be monitored through a combination of national implementation reports and analysing data from the EU enforcement organisations. The implementation and enforcement issues will be regularly monitored and assessed by the Committee on Road Transport.

Other market developments and their potential impacts on working and competition conditions will be assessed based on relevant data collected for other initiatives, in particular the revision of the Regulation on access to international haulage market (Regulation (EC) No 1072/2009) and the Regulation on access to the occupation of road haulier (Regulation (EC) No 1071/2009).

- **Detailed explanation of the specific provisions of the proposal**

The main elements of the proposal are:

Regulation (EC) No 561/2006

Article 3

Article 3(h) is amended to clarify, in line with the Court of Justice ruling in case C-317/12 *Lundberg*, that private individuals using vehicles which would fall within the scope of Regulation (EC) No 561/2006, to carry private belongings for their own purposes, are not obliged to record their driving times and rest periods and are therefore not obliged to have or use a tachograph or a driver's card.

Article 4

Article 4(r) is added to define the notion of 'non-commercial' carriage, which is commonly used in this Regulation, because not having a uniform definition creates uncertainties and disparities in interpretation.

Article 6

Article 6(5) is amended to clarify the obligation and to harmonise the practice of recording a driver's other work than driving and periods of availability. Full records of all driver's activities, and not only driving, which is automatically recorded by a tachograph, is important to effectively monitor a driver's working patterns, which may lead to fatigue and create risks to road safety.

Article 7

A third paragraph is added to Article 7 to clarify that drivers driving in a team may take their obligatory break in a vehicle which is driven by another driver. This is already a current practice following non-binding guidance from the Commission.

Article 8

Article 8 is amended to clarify and adapt the weekly rest requirements to the needs of the sector and to actual practice in arranging transport schedules, in particular as regards long distance transport operations. It aims to improve drivers' resting conditions and to facilitate enforcement, in particular checking the compensation owed to the driver for reduced weekly rest.

Article 8(6) is amended to clarify that drivers may arrange for their weekly rest periods in a more flexible manner over a period of four consecutive weeks, while ensuring that compensation for a reduced weekly rest is taken together with a regular weekly rest within three weeks. This amendment does not change current requirements on the maximum daily and weekly driving times.

Article 8(7) is amended to specify that any compensation for a reduced weekly rest must be attached to a regular weekly rest of at least 45 hours. This will make it easier to check rest taken in compensation and will allow drivers to benefit from an accumulated weekly rest.

Article 8(8)a is added to clarify that 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 a driver with adequate accommodation with appropriate sleeping and hygiene facilities if drivers are not able to take a weekly rest at a private place of their choice.

Article 8(8)b is added to further specify the obligation on transport undertakings to organise the drivers' work in such a way that they are able to return to their home for a weekly rest at least once within three consecutive weeks.

Article 9

Article 9 is amended to adapt to the current practice of taking rest periods on ferry or on train. The current rules do not allow to record rest periods of 24 hours and longer taken partly on ferry or on train as reduced weekly rest. This creates unnecessary burdens for drivers and operators. The amendment, therefore, specifies that a driver accompanying a vehicle which is transported by ferry or train is also allowed to take also a reduced weekly rest on a ferry or train.

Article 12

Article 12(2) is added to help a driver cope with unforeseen circumstances which delay transport operation or prevent the driver from reaching his or her home to take a weekly rest. It specifies that drivers may postpone the start of their weekly rest to reach their home provided that they comply with the daily and weekly driving time limits and with the required minimum duration of a weekly rest period.

Article 14

Article 14 is amended to specify that temporary exceptions from the general rules granted by Member States in urgent cases must be appropriately justified by the exceptional circumstances and the urgency involved in addressing them.

Article 15

Article 15 adds an obligation on Member States to inform the Commission about their national rules on driving times, breaks and rest periods applicable to the bus drivers exempted from the Regulation.

Article 19

Article 19 is amended to specify that national penalties imposed for infringing the Regulation should be proportionate to the seriousness of the infringement, as classified in relevant Union legislation. It also adds that any changes to the national penalty system should be notified to the Commission.

Article 22

Article 22 is amended to further deepen the administrative cooperation and exchange of data and information between Member States. The objective is to make the implementation of the provisions of this Regulation and cross-border enforcement more consistent and effective.

Article 22(1) is amended to specify that mutual assistance between Member States must be provided promptly, within clearly specified deadlines under Directive 2006/22/EC.

Article 22(2)(c) is added to clarify that the exchange of information also covers data on the risk rating of undertakings and other information necessary to ensure effective and efficient enforcement.

Article 22(3)a specifies that assigned bodies for intracommunity liaison must be responsible for organising the smooth exchange of information.

Article 22(3)b is added to clarify that mutual assistance should be free of charge.

Article 25

Article 25(2) is amended to specify that in cases where it is necessary the Commission will adopt implementing acts to clarify any of the provisions of this Regulation. These acts should ensure uniform application and enforcement of the Regulation.

Regulation (EU) 165/2014

Article 8

Article 8 is amended to further improve features of 'smart' tachographs to make it possible to more precisely position vehicles used for cross-border transport operations. This makes it easier to enforce the social rules.

Article 34

Article 34 adds an obligation on drivers to record in a tachograph the position of their vehicle after having crossed a border, at the earliest suitable stopping place. Doing so will make it easier to monitor compliance with the social rules. This obligation does not apply to drivers using 'smart' tachographs which automatically record border crossings.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Good working conditions for drivers and fair business conditions for road transport undertakings are of paramount importance to creating a safe, efficient and socially accountable road transport sector. To facilitate that process it is essential that the Union social rules in road transport are clear, fit for purpose, easy to apply and to enforce and implemented in an effective and consistent manner throughout the Union.
- (2) Having evaluated the effectiveness and efficiency of the implementation of the existing set of Union social rules in road transport, and in particular Regulation (EC) No 561/2006 of the European Parliament and of the Council⁹, certain deficiencies were identified in the existing legal framework. Unclear and unsuitable rules on weekly rest, resting facilities, breaks in multi-manning and the absence of rules on the return of drivers to their home, lead to diverging interpretations and enforcement practices in the Member States. Several Member States recently adopted unilateral measures further increasing legal uncertainty and unequal treatment of drivers and operators.
- (3) The ex-post evaluation of Regulation (EC) No 561/2006 confirmed that inconsistent and ineffective enforcement of the Union social rules was mainly due to unclear rules,

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ 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 and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

inefficient use of the control tools and insufficient administrative cooperation between the Member States.

- (4) Clear, suitable and evenly enforced rules are also crucial for achieving the policy objectives of improving working conditions for drivers, and in particular ensuring undistorted competition between operators and contributing to road safety for all road users.
- (5) The existing requirement on breaks turned out to be unsuitable and impractical for drivers in a team. Therefore, it is appropriate to adapt the requirement on recording breaks to the specificity of the transport operations carried out by drivers driving in a team.
- (6) Drivers engaged in long-distance international transport operations spend long periods away from their home. The current requirements on the regular weekly rest unnecessarily prolong those periods. It is thus desirable to adapt the provision on the regular weekly rest in such a way that it is easier for drivers to carry out transport operations in compliance with the rules and to reach their home for a regular weekly rest, and be fully compensated for all reduced weekly rest periods. It is also necessary to provide that operators organise the work of drivers in such a way that these periods away from home are not excessively long.
- (7) There are differences among Member States in the interpretation and implementation of the weekly rest requirements as regards the place where the weekly rest should be taken. It is therefore appropriate to clarify that requirement to ensure that drivers are provided with adequate accommodation for their regular weekly rest periods if they are taken away from home.
- (8) Drivers are often faced with unforeseen circumstances which make it impossible to reach a desired destination for taking a weekly rest without violating Union rules. It is desirable to make it easier for drivers to cope with those circumstances and enable them to reach their destination for a weekly rest without breaching the requirements on maximum driving times.
- (9) To reduce and prevent diverging enforcement practices and to further enhance the effectiveness and efficiency of cross-border enforcement it is crucial to establish clear rules for regular administrative cooperation between Member States.
- (10) In order to ensure uniform conditions for the implementation of Regulation (EC) No 561/2006 implementing powers should be conferred on the Commission in order to clarify any of the provisions of that Regulation and to establish common approaches on their application and enforcement. Those powers should be exercised in accordance with Regulation (EU) No 182/2011¹⁰.
- (11) To enhance cost-effectiveness of enforcement of the social rules the potential of the current and future tachograph systems should be fully exploited. Therefore the functionalities of the tachograph should be improved to allow for more precise positioning, in particular during international transport operations.

¹⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (12) Regulations (EC) No 561/2006 and (EU) 165/2014 of the European Parliament and of the Council¹¹ should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 561/2006 is amended as follows:

- (1) in Article 3, the following point (h) is replaced by the following:

"(h) vehicles or combinations of vehicles used for the non-commercial carriage of goods;"

- (2) In Article 4, the following point (r) is added:

"(r) 'non-commercial carriage' means any carriage by road, other than carriage for hire or reward or for own account, for which no remuneration is received and which does not generate any income.

- (3) in Article 6(5), the first sentence is replaced by the following:

"A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability, as defined in Article 3(b) of Directive 2002/15/EC, in accordance with Article 34(5)(b)(iii) of Regulation (EU) No 165/2014. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.";

- (4) in Article 7, the following third paragraph is added:

"A driver engaged in multi-manning may decide to take a break of 45 minutes in a vehicle driven by another driver provided that the driver taking the break is not involved in assisting the driver driving the vehicle.";

- (5) Article 8 is amended as follows:

(a) in paragraph 6, the first subparagraph is replaced by the following:

"6. In any four consecutive weeks a driver shall take at least:

(a) four regular weekly rest periods, or

(b) two regular weekly rest periods of at least 45 hours and two reduced weekly rest periods of at least 24 hours.

For the purposes of point (b), the reduced weekly rest periods shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.

(b) paragraph 7 is replaced by the following:

"7. Any rest period taken as compensation for a reduced weekly rest period shall immediately precede or follow a regular weekly rest period of at least 45 hours.";

¹¹ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

(c) the following paragraphs 8a and 8b are inserted:

"8a. The regular weekly rest periods and any weekly rest of more than 45 hours taken in compensation for previous reduced weekly rest shall not be taken in a vehicle. They shall be taken in a suitable accommodation, with adequate sleeping and sanitary facilities;

(a) either provided or paid for by the employer, or

(b) at home or at another private location chosen by the driver.

8b. A transport undertaking shall organise the work of drivers in such a way that the drivers are able to spend at least one regular weekly rest period or a weekly rest of more than 45 hours taken in compensation for reduced weekly rest at home within each period of three consecutive weeks.";

(6) in Article 9, paragraph 1 is replaced by the following:

"9. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period or reduced weekly rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest or reduced weekly rest period the driver shall have access to a bunk or couchette at their disposal.";

(7) in Article 12, the following second paragraph is added:

"Provided that road safety is not thereby jeopardised, the driver may depart from Article 8(2) and the second subparagraph of Article 8(6) to be able to reach a suitable accommodation as referred to in Article 8(8a) to take a daily or weekly rest there. Such a departure shall not result in exceeding daily or weekly driving times or shortening daily or weekly rest periods. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable accommodation.

(8) in Article 14, paragraph 2 is replaced by the following:

"2. In urgent cases Member States may grant, under exceptional circumstances, a temporary exception for a period not exceeding 30 days, which shall be duly justified and notified immediately to the Commission.";

(9) Article 15 is replaced by the following:

"Article 15

Member States shall ensure that drivers of vehicles referred to in Article 3(a) are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods. Member States shall inform the Commission about the relevant national rules applicable to such drivers.";

(10) in Article 19, paragraph 1 is replaced by the following:

"1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EU) No 165/2014 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate to their gravity as determined in accordance with Annex III to Directive 2006/22/EC of the European Parliament and of the Council¹², dissuasive and non-discriminatory. No infringement of this Regulation

¹² Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85

and Regulation (EU) No 165/2014 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of those measures and the rules on penalties by the date specified in the second subparagraph of Article 29. They shall notify without delay any subsequent amendments thereto. The Commission shall inform Member States accordingly.";

(11) Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall work in close cooperation and provide each other with mutual assistance without undue delay in order to facilitate the consistent application of this Regulation and its effective enforcement, in line with the requirements set out in Article 8 of Directive 2006/22/EC.

(b) in paragraph 2, the following point (c) is added:

"(c) other specific information, including the risk rating of the undertaking, liable to have consequences for compliance with the provisions of this Regulation.";

(c) the following paragraphs 3a and 3b are inserted:

"3a. For the purpose of the exchange of information within the framework of this Regulation, Member States shall use the bodies for intracommunity liaison designated pursuant to Article 7 of Directive 2006/22/EC.";

"3b. Mutual administrative cooperation and assistance shall be provided free of charge.";

(12) in Article 25, paragraph 2 is replaced by the following:

"2. In the cases referred to in paragraph 1 the Commission shall adopt implementing acts setting out common approaches in accordance with the advisory procedure referred to in Article 24(2)."

Article 2

Regulation (EU) No 165/2014 is amended as follows:

(1) in Article 8(1), the second indent is replaced by the following:

"– every three hours of accumulated driving time and every time the vehicle crosses the border;"

(2) in Article 34(7), the first subparagraph is replaced by the following:

"7. The driver shall enter in the digital tachograph the symbols of the countries in which the daily working period started and finished as well as where and when the driver has crossed a border in the vehicle on arrival at the suitable stopping place. Member States may require drivers of vehicles engaged in transport operations inside their territory to add more detailed geographic specifications to the country symbol, provided that those Member States have notified those detailed geographic specifications to the Commission before 1 April 1998."

concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President