

European Commission  
Att. Mrs. V. Bulc

#### COURTESY TRANSLATION

City and date: The Hague, 12<sup>th</sup> July 2017  
Subject: Letter in the framework of the political dialogue regarding the EU Mobility package  
Our reference:

Dear Mrs Bulc,

The standing committee on Infrastructure and the Environment of the House of Representatives, in response to the publication of the mobility package dated 31 May 2017 by the European Commission, has conducted subsidiarity tests on the following five proposals from the mobility package:

- Driving and resting times (COM (2017) 277)
- Cabotage (COM (2017) 281)
- Posting drivers in the road transport sector (COM (2017) 278)

(hereafter discussed under the heading 'social proposals')

- Eurovignette (COM (2017) 275 and 276)
- EETS (COM (2017) 280)

(hereafter discussed under the heading 'Road pricing')

Article 5 of the EU Treaty and Protocol 2 of the Treaty on the Functioning of the European Union concerning the application of the subsidiarity and the proportionality principle were applied.

The outcome of these tests was that there is no majority support within the committee for a negative subsidiarity assessment for these proposals.

Particularly in the case of the proposals concerning road pricing and, to a lesser extent, the social proposals, doubts were expressed concerning subsidiarity, as the proposals affect the autonomy of the member states. For example, this applies to social regulations, as in the case of measures that impact competences relating to national social regulations. With regard to road pricing, several parliamentary groups are of the opinion that the proposed system would constitute a push factor in the direction of toll levying, which is an autonomous competence of the member states.

In contrast, several other parliamentary groups are of the opinion that the cross-border character of the package, coupled with the fact that the rules were formulated and must be amended at the EU level, leads to the conclusion that the EU level is the most appropriate legislative level and that it is at this level that good agreements should be made with regard to improved enforcement, a level playing field and improvements in the protection of drivers. Clearer rules and stricter enforcement of these rules are needed in order to 'prevent a race to the bottom'.

Several parliamentary groups do have doubts concerning *proportionality*: do these propositions constitute the proper solutions for the intended goals (e.g. a level playing field, protection of European drivers and fair competition)? They also expressed critical comments and questions concerning these EU proposals, within the framework of a political dialogue with the European Commission.

#### **Comments and questions of the parliamentary groups in the House of Representatives**

The committee acknowledges the problems in the European transport sector, in which the need for a level playing field is in constant tension with the need for proper social regulations and fair competition. This is due in part to differences in interpretation, implementation and enforcement within the member states. In the opinion of the committee, the existing regulations are essential to the proper functioning of the European transport market. The committee appreciates the fact that the European Commission wishes to do a thorough job of the revision, but it is also critical of the content of the EU proposals. It has therefore expressed several concerns and questions about the proposals.

#### **Social proposals**

##### *General – enforcement*

The European Commission argues that an unambiguous interpretation of laws and regulations in the EU member states is essential, but that the guidelines and self-regulation within the member states are not sufficient. Could the European Commission explain the latter argument? The IM

Committee asks how the proposals could be enforced better in terms of several aspects. For example, this is the case for the manual tachograph entry specified in the posting of workers directive. Some parliamentary groups also question whether the European Commission is actually attempting to claim more enforcement competences for itself. They are of the opinion that these competences should be located (and remain) with the member states. They further note that enforcement could be improved by making the definitions less ambiguous. The European Commission is invited to reflect upon this matter. Finally, questions arose concerning whether an enforcement assessment has been conducted on the proposals.

#### *Coherence with other proposals*

The legal, substantive and political effects of proposals relating to the area of transport (on the one hand) and the social domain (on the other hand) are not clear. The time frames and decision procedures for the directives on posting of workers and working times differ from those concerning the package on social rights within the area of social security and welfare. The committee would like to gain insight into the consequences that the EU proposals entail for the internal market, particularly with regard to the competitive position of the Dutch transport sector. The committee would also like to assess the proposals in relation to each other, especially given that some members of this committee are of the opinion that several aspects of the social policy are the responsibility of the member states themselves.

Several parliamentary groups are of the opinion that the proposals at hand constitute an explicit attempt to move social legislation more towards the EU and further away from the national parliaments.

The committee also considers the relationship with the proposal on rental vehicles unclear, and would like to ask the European Commission to elaborate on this relationship.

The committee would like to receive further details concerning the consequences of the proposals for the internal market and especially the increasing burdens imposed on the Dutch transport sector (e.g. the permit boundary, and rental vehicles). The extent to which the proposals concerning rental vehicles, secondment and cabotage interact with each other, the extent to which they could strengthen the internal market or, in contrast, the extent to which they could generate an uneven playing field are also unclear. The committee would like further details on this point.

#### *Effects on the Dutch transport sector*

There are concerns about the effects of the proposals on the Dutch transport sector and on the Dutch social security system, in addition to concerns about the possible fragmentation of the transport market, which could be highly disadvantageous to the Netherlands. This applies to both domestic and cross-border transport.

There are also questions concerning whether these proposals would require changes to the national interpretation of conditions of employment and entrepreneurship, as well as with regard to the possible implications of these proposals – both positive (opportunities for the transport sector) and negative (administrative burdens) – for the Dutch transport market.

### *Cabotage – COM (2017) 281*

Could the European Commission state whether the proposed changes to the cabotage proposals will produce the desired improvement, given the ambiguity of the new regulations, which makes them difficult to enforce. Several parliamentary groups also have substantive objections to easing the regulations on cabotage – the currently proposed unlimited number of stops during the cabotage period, which has the effect of expanding rather than restricting cabotage. There is also uncertainty concerning the social regulations (salaries, occupational health and safety regulations) that apply to drivers in this regard.

There are questions concerning the extent to which the proposed term can be enforced and monitored. The committee also referred to the necessity of using smart technologies (e.g. smart tachographs).

The committee asks whether research has been conducted on the effects on the crowding out of the national/local labour markets, and it requests an explanation of the choice to extend unlimited cabotage within five days preceding and following an international journey to neighbouring countries as well.

What are the consequences with regard to promoting a level playing field, increasing administrative burdens and enforcement? Have the effects on the individual member states been investigated? If not, why not? If so, what were the outcomes?

According to some parliamentary groups, the expansion of the cabotage does not offer a sufficient solution to the existing problems. Five successive days of cabotage produces a 'chain of cabotage'. A cooling-off period might offer a solution. What are the European Commission's thoughts on this possibility?

The proposals involve that information on the international use of light vehicles should be developed and collected by the member states. How will the supervision referred to in the proposal be arranged, and will this still offer the member states room to exclude the category of light vehicles from the regulation? Could the European Commission provide clarification on the mandatory rules on the professionalisation of the light commercial vehicles sector and on the specified reduction of differences in competition conditions between operators (and if so, what are these differences)? The committee would like to ask the European Commission to reflect upon the question of whether these rules would lead to the improvement of the European and national competition relationships and the internal market?

### *Letterbox companies*

The committee requests further information on the provisions on counteracting letterbox companies, specifically with regard to the 'proportionate relationships between activities, personnel and assets', as mentioned in the proposal. It would like to have additional clarification on the assessment framework that was adopted in this regard, as well as on questions concerning the consequences that these provisions would have.

### *Driving and resting times – COM (2017) 277*

According to several parliamentary groups, the regulations concerning driving and resting times are complex, which could lead to differences in practice. If a driver were to visit several different countries within a given month, thereby encountering different wage systems, this could create considerable administrative work. According to some parliamentary groups, the expansion of the reference period for driving and resting times could increase the possibility of poorer treatment, particularly for East-European drivers, by 'making them work non-stop for two weeks and then making them rest in their own member countries at very little cost'.

What is the definition of better substitute accommodations (for the 45-hour rest period), and how much leeway would entrepreneurs and member states have for flexibility in emergencies or under special circumstances? In addition, the ban does not appear very feasible or enforceable.

Overly strict implementation of the ban on spending the weekly rest period in the cabin would create problems in the scheduling of transports. Moreover, the provisions still allow room for excessive differences in interpretation, thus continuing to prevent the achievement of the intended goal.

The new rules on driving and resting times are intended to increase flexibility so that drivers do not needlessly stop along the roadside. There is a fear that this flexibility will be interpreted incorrectly if enforcement is inadequate.

With regard to sanctions, some parliamentary groups wonder whether the proposal's requirement that sanctions must be proportional and that changes to national sanctioning systems must be reported to the European Commission might create new competences for the European Commission and whether this requirement would impact the national competences. Some parliamentary groups indicate that the social regulations contained in this proposal constitute a competence of the member state (which is in charge of such matters as retirement ages, social premiums and working climate) and that, at the most, the European Commission should ensure that work within the member states proceeds in compliance with the locally applicable regulations (including those relating to occupational health and safety).

#### *Posting of drivers in the road transport sector – COM (2017) 278*

The proposal on posting of drivers in the road transport sector contains a provision that staying longer than three days in another EU country should be interpreted as posting. According to some parliamentary groups, this raises concerns with regard to the possibility of continuing to pay low wages for three days, as it would increase the opportunity for West-European transport companies to make East-European drivers 'work for poverty wages', and because it should not be possible for drivers to work for less than the legal minimum wage applying within a given EU country.

Questions prevail concerning the social conditions to which EU drivers in the Netherlands could appeal in the case of secondment, the administrative burdens that would accompany the proposal and the extent to which the member states would have a say in this matter.

Some members of the committee were surprised at the switch proposed by European Commissioner Bulc, which initially appeared to be aimed at creating better conditions of employment, but which ultimately made it possible for transport companies to 'evade the minimum wage' for three days.

Others expressed concerns about the scope, which they thought would be too broad, asking why the secondment regulations should apply to all international transport, given that the greatest problems now appear to consist largely of social dumping and unfair competition. This especially impacts long-term cross-trade (and not transit operations or bilateral transport). The regulations should thus be better focused in this regard. Would it be possible to make a differentiation that would do more justice to the various forms of international transport?

Finally, some parliamentary groups ask about the implications of adopting a common approach for the implementation and monitoring of 'other activities' outside the cabin (which are thus not visible on the tachograph). What would this mean for the competences of the European Commission, and under which conditions would this occur?

#### *Micro-enterprises*

It was argued that the three proposals offer no exemptions for micro-enterprises, despite an important distinction between smaller companies (e.g. butchers and bakers) and larger transport companies with regard to competition in cross-border transport. The committee would like to know why the European Commission is of the opinion that these companies should all be dealt with in the same way.

#### *General – in conclusion with regard to the 'social proposals'*

Several parliamentary groups within the committee ask whether these proposals will indeed achieve the desired goals. In their opinion, the policy is still not expected to reduce the burden for entrepreneurs in a number of countries, nor does it offer an adequate solution to preventing abuses. For this reason, the support base for the EU policy might decrease, they say. They ask whether the European Commission is of the opinion that the new proposals would achieve sufficient balance between flexible regulations, the reduction of complexity and a proper approach to social abuses, while increasing the feasibility of laws and regulations and reducing the burden on entrepreneurs.

## **Proposals concerning road pricing**

*Eurovignette* – COM (2017) 275 and 276

### *General*

Some parliamentary groups were positive about the proposals for the Eurovignette due to the application of the principles 'the polluter pays' and 'the user pays', and they are pleased that the proposals would not require member states to implement toll charges, but would only harmonise the manner in which any tolls might be levied. These parliamentary groups would like Europe to arrive at a uniform system that would create a level playing field and a fair manner of passing the costs on to the users.

Many of the parliamentary groups nevertheless had reservations concerning both the subsidiarity and the proportionality of the pricing of the infrastructure facilities. According to these parties, despite the necessity of a fair playing field in the transport sector, the proposal is too much driven by environmental goals, allowing member states insufficient space for their own interpretations. Although the European Commission would not directly require the member states to levy tolls, a member state might be forced into a difficult position if its neighbouring countries were to do so. According to some parliamentary groups, therefore, this would place indirect pressure on member states.

### *Competences of member states*

In the opinion of a number of parliamentary groups, the European Commission's proposals concerning the Eurovignette would impact the autonomy and policy discretion of the member states without any proof of the necessity of doing so. They argue that this proposal contains an array of conditions that would violate the basic assumption of autonomy. According to these parliamentary groups, the basic assumption should be that member states should determine for themselves whether and how they will tax their roads, thereby controlling their own tax systems, including their fundamental principles.

These parliamentary groups ask the European Commission to specify the competences that this proposal might grant it to require member states to invest or increase taxes.

One objection of a number of parliamentary groups is that this proposal does not represent harmonisation of the existing regulations, rather an expansion of the sphere of action, frameworks, conditions, stipulations, regulations and basic assumptions of such a nature that member states hardly have any room for manoeuvre should they wish to switch to a form of road pricing for one or more modalities. Member states have their own instruments for formulating their own policy regarding pricing and investment in infrastructure, based on their own political choices. They argue that no European laws and regulations are needed in this regard.

With this proposal, the European Commission also prescribes the basis for fees, at least with regard to a mandatory level of CO<sub>2</sub> emissions, although options remain open for a range of ways to pass costs on to external parties (which are also prescribed).

The committee would like to have further details on the consequences that each modality would have for the Netherlands. Several parliamentary groups are of the opinion that the member states should be responsible for decision-making concerning the fee structure. The factors that could be processed into the external cost charges range from environmental requirements and noise pollution to congestion charges and the location of roads. The committee would like to receive information on how this proposal could affect the densely populated, industrial areas from and at which a great deal of cargo transport departs and arrives, which such plans would render inaccessible (at least at a reasonable cost). It also requests information on the extent to which the proposal could reduce the accessibility of various areas in Europe.

Another question concerns how basic assumptions relating to fees should be assessed. In this light, certain parliamentary groups refer to the argument that fees should not become more than twice as high in 'mountainous areas and areas surrounding agglomerations, in as much as it is justified by the lower rate of population dispersion, the gradient of the roads, altitude and/or temperature inversions'. What would this actually mean for the Dutch situation?

If a member state intends to enact a measure that would pass costs on to external parties, the proposals would require this to be assessed, and it would be necessary for the fee provision to be carried out by an 'independent entity'. Various parliamentary groups ask how this assessment and feedback would take place, what the roles of the European Commission and the member states would be in this regard, and what the competences of such an entity would be.

#### *Environmental goals as the basis for charges*

Whereas several parliamentary groups reacted positively with regard to linking environmental policy to road pricing, others would like the European Commission to justify why this proposal is expected to counteract environmental pollution and how this relates to European source-based policy. European source-based policy should, in their opinion, form the basis for achieving environmental goals, but this assumption no longer appears to be the case in this proposal. Is this correct?

#### *Technical resources*

Questions on technical resources that would improve and facilitate enforcement have already been posed above (under the proposal on cabotage). A number of parliamentary groups regret that the monitoring equipment could not immediately be made suitable for monitoring such aspects as driving times, border crossings and cabotage. Although the bases and goals differ, it should be possible to combine them into a single system. They request the European Commission to reflect upon this point.

#### *Goal of the Eurovignette proposal*

One of the European Commission's motives for the Eurovignette proposal is that member states are not doing enough to reduce congestion and to manage and maintain their roads. In addition, the European Commission argues that the member states are not doing enough to stimulate employment opportunities and that the proposal could create jobs. Part of the committee emphasise that member states should be responsible for managing, maintaining and investing in infrastructure, and thus for reducing congestion and stimulating employment opportunities, and that this does not justify EU proposals in this area, arguing that mandatory reports from member states concerning congestion charges would tend to decrease the base of public support. The committee asks the European Commission to specify which cross-border problem would be further resolved with this proposal or how it would contribute to the reinforcement of the internal market.

#### *Allocation of proceeds*

The proposals state that the proceeds from congestion charges should be used to improve road management and maintenance (according to the European Commission, this currently amounts to a value of €65 billion). Several parliamentary groups do not believe that proceeds from national road (or other) taxes or other types of charges could serve as a structural source of funding for infrastructure elsewhere in Europe. They further emphasise that member states should always determine the manner in which they wish to interpret this.

A number of parliamentary groups are also not convinced that the proceeds realised in this manner should be used to reduce congestion, particularly by improving public transport, eliminating bottlenecks in the Trans-European Network (TEN) or stimulating alternative infrastructure for users. Could additional details be provided concerning what is intended here and why the expected proceeds would be necessary for this purpose? To what extent does the European Commission consider the charging options in this proposal to constitute a manner to increase the budget for roads in the EU, and is its aim exchange between member states in this regard?

#### *Scope of the Eurovignette guidelines*

The committee asks the European Commission to provide reasons supporting why the Eurovignette directive has been expanded to include buses, touring cars, and passenger and commercial vehicles, as there are doubts concerning whether this would contribute to the objective of reinforcing the internal market.

#### *Relationship to toll charges by member states*

The committee would like to know what the relationship is between the suspension of the European Commission's infringement proceedings against Germany last year due to the discriminatory levying of tolls (Pkw-Maut) and to the abolition of timed vignettes due to discriminatory provisions. Could the European Commission provide further explanation on this point?

#### *Abolition of existing vignettes*

A number of parliamentary groups denounce the fact that this proposal would oblige member states to scrap existing vignettes and prescribe the manner in which member states are to apply pricing (or other) instruments, as well as when and how.

#### *Reporting obligations/burdens*

The committee asks why member states should report to the European Commission on their investments in road infrastructure and what would justify such an increase in administrative burdens. They also ask what the European Commission intends to accomplish with these reports, particularly given that the European Commission already makes assumptions concerning the manner in which external costs are passed on within the member states. Could the European Commission explain its choice to prescribe a detailed manner of payment and settlement (e.g. receipts)?

#### *Consequences of the proposals*

The IM Committee would like to know what the consequences of this policy would be for the Dutch transport sector, including bus and passenger transport. Does the European Commission have an idea of this and, if so, could it be shared with the House?

Could the European Commission indicate what this proposal would mean for the levying of tolls for the Wester Schelde Tunnel, the Kil Tunnel and the future temporary imposition of tolls on the Blankenburg Connection and the A15? What does this proposal imply with regard to the charges that will soon be required for every motorised vehicle if, in any case, payments are to be based on CO<sub>2</sub> emissions? Exactly which rules will apply to means of payment?

Could the European Commission provide an analysis of the impact of the mandatory abolition of the existing Eurovignette for cargo vehicles weighing 12 tonnes and more? What are the implications of the extension of the scope for the directive for buses and coaches that will soon fall under the obligatory extension of the Eurovignette with regard to its impact on the administrative and financial burden to companies? The committee also requests greater clarity regarding the consequences of the extension to include vehicles weighing 3.5 tonnes and more as of 1 January 2020, in terms of increased financial, administrative and other burdens.

To what extent does the European Commission think that it will be possible to extend the Eurovignette as of 1 January 2020, with regard to the adjustment of the Eurovignette Treaty, the legislation and the levy systems? The abolition of the Eurovignette could result in a loss of income, while there is very little time to arrive at another proposal. To what extent does the current proposal take this into account?

#### *EETS – COM (2017) 280*

With regard to the EETS directive, the committee is of the opinion that the proposal to improve the technical coordination amongst the various toll systems in Europe could facilitate lorry drivers, who must currently cope with all sorts of boxes in lorries. In the opinion of several members, changes could be realised only through action at the European level.

*Coherence between the Eurovignette and the EETS*

More insight is needed into the dependency and coherence between the EETS directive and the Eurovignette directive, in order to assess whether the Eurovignette directive forms the basis for implementing the EETS directive or whether the two proposals can exist alongside each other.

*Information exchange between member states*

How does the European Commission envision the implementation of the EETS proposal, which would gain an additional dimension (i.e. with regard to privacy) through the facilitation of information exchange amongst EU member states (in case of non-payment of tolls in another member state)?

What does the EETS directive mean for the use of ANPR data (automatic registration plate recognition) by the Dutch government (or the government of any individual member state)? To what extent would the EETS directive expand or restrict the use of such data? What is the basis for assuming that this would improve the exchange of information on unpaid tolls? To this end, would it not be necessary to open registration plate registers and to connect ICT systems to each other for purposes including correspondence in the national language, as demonstrated by the implementation of the guidelines for Cross Border Enforcement (CBE)? How does the European Commission envision the implementation, and will it be necessary to adjust tax directives? If not, the committee would like to receive additional explanation on this point. If so, the members would like to receive additional insight into the consequences of this implementation and the manner in which it will affect the policy discretion of individual member states.

The committee looks forward to your response to the questions it has posed, and would appreciate receiving a reply as soon as possible, in any event within three months of the date of this letter.

Yours sincerely,

Deputy Chair of the standing committee for Infrastructure and the Environment

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