

GZ 100.132/0140-SI/BLI/2015
Commissioner
Violeta BULC

DG Mobility and Transport
B – 1049 Brussels

Vienna, 21st December 2015

Re.: Draft Regulation on the amendment to Regulation 1071/2009/EC regarding the classification of serious infringements

Dear Commissioner!
Dear Colleague!
Dear Violeta!

I am contacting you with reference to the matter mentioned above: this draft has meanwhile been submitted already twice by the EC. The last time it was rejected by the EU Parliament (Motion for a resolution by the EP of 4th December 2014, B8-0325/2014) both for legal considerations (infringement of competences by the EC) as well as for material considerations related to transport policy (contradiction with the objectives specified by the basic legal instrument).

With great regret (also considering our discussions in the most recent meeting of the Council of Transport Ministers) I had to realise that the current renewed draft is „de facto“ unmodified compared with the draft then rejected by the EP at the time. Austria hence now rejects this draft regulation both for basic material as well as transport policy considerations. Let me explain the reasons on the basis of some very salient examples (of which there also are numerous others in this draft):

The legal instruments that constitute the basis for this implementing regulation (in particular EC Regulation 1071/2009) all basically pursue the goals of 1. „an improvement of road safety“ (consideration 1, EC Regulation 1071/2009); 2. that – in accordance with EUCJ-jurisdiction – strict enforcement and effective and dissuasive sanctions are required (considerations 20 and 21). This mainly because the negative consequences in the event of infringements (eg. non-compliance with driving times and rest, tachograph manipulations, non- or false declaration of transport documents for transports of hazardous goods; excess of dimensions and weights of vehicles etc.) against these rules in most cases are fatal (consequences of accidents, fatalities and/or severely injured victims, but also severe material damages to the environment and infrastructure).

Austria takes the view that the current draft regulation infringes several legal principles at once:

1. The principle of proportionality considering that the catalogue of criteria and the categorisation are in many regards contradictory to the basic legal instruments and their objectives and as such render an efficient control almost impossible and execution causes a disproportionately high unbureaucratic and financial burden. This

mainly applies to Annex II which shall define the proportion between the various categories of the seriousness of the infringements. Annex II therefore provides application rules for offences in the medium to the lowest category. Obviously, however, it was overlooked that no consequences for entrepreneurs for infringements of the highest seriousness are laid down; which from an Austrian perspective is again incompatible with the objectives of the basic regulation (EC/1071/2009). With a view to the register to be set up this would, however, be urgently required;

2. The competence principle by materially amending a legal instrument legitimated on a broad democratic basis (Council and EP) by adding a 4th category of seriousness and shifting the seriousness of the infringements towards a “trivialisation” of the infringements (with serious negative consequences). Very grave examples to be listed here include the definition of new tolerances for dimensions and weights, but also the „new categorisation“ of the rest and driving times (which would then de facto allow weekly working times of more than 100 hours!!!). The Commission here not only infringes the rights of the EP (co-decision procedure). From a transport policy perspective it is also no less than „grossly negligent“ to classify de facto tolerances for trucks of up to 20% in width (i.e. vehicles with a width of 3.12 m!!!) and the total weight (+8 tons, i.e. 48 to 53 tons!!!) as generally „allowed“ (only classified as a serious infringement) or to norm such tolerances at all.
3. And as such also contradicts EUCJ jurisdiction (sanctions must be effective and dissuasive).

Dear colleague, especially with a view and in the light of the recent discussions in the Council, also in connection with the social provisions (securing fair competition) as well as transport safety (unfortunately a negative tendency) I urge you to again carefully reconsider the present draft regulation regarding serious infringements against EU provisions for road transport and to revise it carefully.

I wish you and your family a very Merry and Peaceful Christmas and a lot of success, energy, and health for the New Year.

Alois Stöger
Federal Minister