AK EUROPA

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AK Position Paper

Opinion of the Federal Chamber of Labour (BAK) on the Proposal of 2015 for a Regulation from the European Commission supplementing Regulation (EC) 1071/2009 with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator and amending Annex III to Directive (EC) 2006/22 of the European Parliament and of the Council

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About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.4 million em-ployees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, communityand military service - of the 3.4 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
President

Werner Muhm
Director

The AK position in detail

The basis for the above draft Regulation from the European Commission (EC) is Regulation (EC) 1071/2009 (Art. 6 (2) (b)), which also establishes that undertakings with poor ratings in terms of complying with statutory provisions should be subject to more targeted controls than those undertakings which do comply with these provisions.

With respect to the offences list suggested by the EC in 2014, which was rejected by the European Parliament (EP), the 2015 proposal contains hardly any noteworthy changes (see below for more detail). There is still a tendency in the listing to assess certain offences more mildly in terms of their severity level in order to minimise consequences for undertakings (they can go as far as to lead to a licence withdrawal). This can be seen in particular using the table for the group of infringements against the provisions on driving times and rest periods, on recording equipment or on working time for drivers (Regulations (EC) 561/2006, 165/2014 and Directive (EC) 2002/15), for which there is already a list in the form of Directive (EC) 2006/22, which implements a rating of „very serious" in several circumstances, whereas the present draft only classifies the same offences as „serious"; despite the fact that the same criteria are authoritative for classifying offences into the highest category both for Directive (EC) 2006/22 and Regulation (EC) 1071/2009, namely the high risk of serious bodily injury or death (cf. Art. 9 (3) of Directive (EC) 2006/22 and Art. 6 (2) (b) (ii) of Regulation (EC) 1071/2009). By devaluing the severity of the offences and mitigating the consequences for undertakings, labour law standards are compromised. There is a risk that this may impact negatively on road safety and on competition conditions.

In its explanations on the draft proposal as it now stands, the EC claims that it was drafted „fully in line" with Regulation (EC) 1071/2009 and that therefore no infringements other than those which can lead to serious injuries and cases of death could be considered. However, this ignores the majority of the aims of the Regulation at hand. According to Recitals 1, 2, 6, 12 and 22, in addition to improving road traffic safety, the regulations should serve above all to s**atisfy the aims of creating fair competition, improving market transparency, creating better social protection and achieving uniform control standards**. It was noted in Recitals 8, 9 and 24 that strict criteria for good repute are required in order to achieve the stated targets. Besides the „road safety" aim, the EC proposal does not comply with all of these additional aims.

It should be noted that the establishment of national risk rating systems in accordance with Art. 9 of Regulation (EC) 2006/22 is highlighted in Recital 7. Through the proposal itself there is, however, huge interference with this provision, so that - should the EC proposal be accepted - new assessment criteria must be created for the national risk ratings systems; they cannot continue to apply unchanged.

In Recital 8, the European Register of Road Transport Undertaking (ERRU) is referenced. It must be noted here that in the EC's „Refit" programme of 19/05/2015, it was shown on pages 46 and 47 that only 12 Member States had established their national register (NER), which is to be the basis for the ERRU, although the underlying Regulation (EC) 1071/2009 has been in force since 04/12/2011. The first, most pressing task of the EC would therefore be to implement the EC Regulation itself.

At the end of the draft Regulation, it was decided in the EC Committee of 30/10/2015 that the effective date should be 01/01/2017.

In its opinion of 2014, the Federal Chamber of Labour (BAK) rejected the EC proposal at that time as it ran contrary to the aims of the basic legal acts (in particular to Regulation (EC) 1071/2009), it breached the principle of proportionality and, in addition, the EC exceeded its own powers. Since the current 2015 proposal from the EC is largely unchanged from the previous year's version, the BAK still cannot provide its consent.

The BAK has the following views on the individual groups of infringements in the Annex:

Group 1: Infringements against Regulation (EC) 561/2006 (driving and resting time):

This catalogue of offences was subject to only minor changes; offence No 34 (Art. 10 (2)) was re-classified from category SI (serious) to VSI (very serious), and new infringements were added to the provisions in Art. 8 (6) and Art. 8 (6a). Art 8 (6) in No 28, Art 8 (6a) in Nos 30 – 32.

With regard to offences Nos 30 - 32 according to Art. 8 (6a) (12-day rule in international occasional bus services) it must generally be noted that these provisions cannot be verified in any Member State and that in this respect no assessment software for the tachographs is available to the supervisory bodies. Any violations and categorisation are therefore only on paper.

Additional criticism with respect to 2014: The categorisation is inconsistent, in addition to the fact that the list does not correspond to that of Annex III of Regulation (EC) 2006/22. Even if - as the EC argues - only the guidelines in Annex IV of Regulation (EC) 1071/2009 are to be complied with, there is no corresponding offence in the MSI category (most serious) for „breaks" (see Nos 14 and 15). It must be expressly noted here that the vast number of offences reach a maximum category of VSI and that no MSI offences are provided for.

Consequences (Examples):

1. The daily rest period (Art. 8 (2)) must amount to at least 9 hours; if it amounts - generally according to the proposal - to less than 7 hours, this can at most be a VSI category; even if an employer grants no rest time for three whole days, this never leads to an MSI offence (question to the EC: is this because there is still no risk of serious injury or death?)

2. The weekly rest period must be granted after at most 6 „24-hour units" for the transport of goods (Art. 8 (6)). If these 6 „24 hour units" are exceeded by more than 12 hours, the offence shall be assessed at most as VSI - even if the driver had to manage for a month without weekend rest, for example.

There is no offence and corresponding categorisation pursuant to Art. 8 (8), whereby the regular weekly rest period must not be spent in the driver's cabin.

Group 2: Infringements against Regulation (EC) 165/2006 (Tachograph):

There are hardly any changes here from the previous year's proposal. However, reference is now made to the new Regulation (EC) 165/201, which replaced Regulation (EC) 3821/85. The corresponding article changes were carried out here, but the offences list remains unchanged. For two offences, No 18 (Art. 34 (3)) and No 20 (Art. 34 (5)), the categories were upgraded in comparison to the 2014 offences list, from SI to VSI.

Criticism:
As an example we can only draw attention to the fact that there are no offences pursuant to the provisions in Art. 3 (4) and Art. 9 (7) regarding the obligations of undertakings with respect to intelligent tachographs or Art. 22 (5) with respect to the obligations of undertakings regarding sealing the tachograph.

Some offences have not been categorised seriously enough. Consequences (Example): A failure to keep records is only classified as VSI (Nos 12 and 13 of Art. 33(2)). In the event of manipulations (cf. offence No 10 or 11 of Art. 32 (3), category MSI) it is much more skilful - with respect to possible operational controls - to destroy data than it is to keep it; then there is at least no great risk to reputation.

Group 3: Infringements against Directive (EC) 2002/15 (working time rules):

There are no changes here. Here as well the problem arises of offences being categorised at most as VSI. For example, exceeding the maximum possible working time of 60 hours in a week by more than 10 hours (cf. offence No 4 of Art. 4) is at most considered a VSI. This shall also apply for a weekly working time of more than 100 hours. The EC's apparent underlying approach, whereby violating „social conditions" (in reality, they are predominantly transport matters according to the TFEU) could never lead to serious bodily injury or death, is simply false.

Group 4: Infringements against Directive (EC) 96/53 (weight and dimension rules):

There are no changes here. If the EC were to argue that their hands are tied due to Annex IV of Regulation (EC) 1071/2009, this would only be half the story. Z 7 from Annex IV of Regulation (EC) 1071/2009 only refers to the permitted total weight and not to the length and width of the vehicle.

On the EC's argumentation, it must be noted in general that in Regulation (EC) 1071/2009 Art. 6 (2) (a) - not to mention Recital 24 - reference is made to the unpopular Annex IV. The provisions of Art. 6 (1) (3) (b) were made more precise. On the one hand, with respect to the list of conditions for good repute, the words „**at least**" have been added and, on the other hand, the exemplary character of this area has been emphasised in the list itself with the words „**in particular**" . The EC is therefore mistaken when stating that its list of offences is fully in line with the EC Regulation and that its hands are tied such that it cannot include additional offences or give them a more serious categorisation.

Group 5: Infringements against Directives (EC) 2014/45 and 2014/47 (roadside inspection):

There are no changes here.

Group 6: Infringements against Directive (EC) 92/6 (speed limitation devices):

The change of the statutory basis of Directive (EC) 2002/85 to Directive (EC) 92/6 is acceptable, the latter Directive is the basic Directive and was revised by the former. In any case, the offences of „switching off the speed limitation device", „incorrectly setting the speed limitation device" and „breaking the seal" are missing - these should be covered by the infringements in Group 5.

Group 7: Infringements against Directive (EC) 2003/59 (initial qualification and periodic training of drivers):

In this case, the first two offences were re-classified from SI to VSI.

Group 8: Infringements against Directive (EC) 2006/126 (Driving licence requirements):

There are no changes here.

Group 9: Infringements against Directive (EC) 2008/68 (transport of dangerous goods by road):

There are no changes here.

Infringements against Regulation (EC) 1071/2009 (admission to the occupation of road transport operator):

As before, no consideration of this EC Regulation, even though it imposes specific requirements on undertakings. Specific examples can be found in the first draft of the list from the EC of 10/10/2012: for example, the following were classified in the most serious category: „the undertaking has no premises with the most important company documents" (Art. 5) (a), „the transport manager or the undertaking does not satisfy the requirements of good repute" (Art 6), „the transport manager or the undertaking does not satisfy the requirements of professional competence" (Art. 8), „the undertaking does not satisfy the requirements of financial standing" (Art. 7), „falsifying the annual accounts or other significant documentation to prove financial standing" (Art. 7) or „the undertaking fails to notify the competent authorities of the alteration of important data within the specified period".

Group 10: Infringements against Regulation (EC) 1072/2009 (access to the international road haulage market):

There are no changes here. If the EP requested that cabotage provisions were to be included in the offences catalogue, then this would be the basis of this. In the first version of the list of 10/10/2012 they were indeed included and categorised as VSI (then the highest category). In that proposal there were 8 offences for cabotage alone; the following 4 were categorised as VSI: „illegal cabotage; more than 3 transports or exceeding the time period of 7 days" (Art. 8 (2)), „cabotage appears legal, but the undertaking cannot provide more than three of the required documents for it" (Art. 8 (3)), „the implementation of the cabotage operations does not comply with the transport agreement" (Art. 9 (1)) and the „cabotage operations do not comply with the provisions regarding the weights and measures in the receiving Member State" (Art. 9 (1)).

Group 11: Infringements against Regulation (EC) 1073/2009 (access to the international coach and bus services market):

There is only one minor change here: offence No 4 relating to Art. 19 was reclassified as SI.

Group 12: Infringements against Regulation (EC) 1/2005 (animal transport):

There is only one minor change here: offence No 4 relating to Art. 7 was classified as SI.

Annex II:

There are no changes here. Even in the present provision there is no reference to the MSI offences.

Annex III:

There are no changes except for the change in the EC Regulation's designation of recording equipment. The significant criticism regarding the EC exceeding its own powers, which the BAK expressed in its opinion from 2014, continues to apply.

Should you have any further questions
please do not hesitate to contact

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