



EUROPEAN COMMISSION
Secretariat-General

REFIT Platform

Brussels, 8 February 2016

STAKEHOLDER SUGGESTIONS

-MOBILITY AND TRANSPORT -

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Table of Contents

1.	SUMMARY	3
2.	MARKET ACCESS RULES IN ROAD FREIGHT TRANSPORT.....	4
2.1.	Submission by the Austrian Federal Economic Chamber (WKÖ).....	4
2.2.	Policy Context	4
3.	MUTUAL RECOGNITION OF TRAINING, QUALIFICATION AND LICENSING IN ROAD TRANSPORT	6
3.1.	Submission by the Austrian Federal Economic Chamber (WKÖ).....	6
3.2.	Submission by the Finnish Survey for better regulation	6
3.3.	Policy Context	6
4.	COMPLIANCE WITH EU SOCIAL RULES IN ROAD TRANSPORT	7
4.1.	Submission by the Austrian Federal Economic Chamber (WKÖ).....	7
4.2.	Policy Context	9
4.3.	Submission by the Board of Swedish Industry and Commerce (NNR)	10
4.4.	Policy Context	11
5.	TACHOGRAPH OBLIGATIONS.....	11
5.1.	Submission by the German Chambers of Industry and Commerce (DIHK)	11
5.2.	Policy Context	11
6.	ENVIRONMENTAL ZONES AT EUROPEAN LEVEL	12
6.1.	Submission by the Danish Business Forum (DBF).....	12
6.2.	Policy Context	13
7.	VIGNETTE	13
7.1.	Submission by Citizen.....	13
7.2.	Policy Context	14
8.	FLIGHT DELAY COMPENSATION REGULATION	15
8.1.	Submission by the Board of Swedish Industry and Commerce (NNR)	15
8.2.	Policy Context	16

1. SUMMARY

This briefing includes nine suggestions in six different areas:

Market Access Rules in Road Freight Transport:

- The Austrian Federal Economic Chamber (WKÖ) argues that planned simplification of existing legislation should not lead to further liberalisation of EU cabotage rules. An ex post evaluation¹ of the Regulations is currently being carried out and should be finalised by mid-2016.

Mutual Recognition of Training, Qualification and Licensing in Road Transport:

- The Austrian Federal Economic Chamber (WKÖ) suggests to facilitate the qualification process for becoming a driver and to reinforce mutual recognition of trainings in EU Member States. An evaluation of the Directive has been finalised in 2014.
- The Finnish Survey for better regulation voices concern that the qualification process for becoming a driver will result in a shortage of drivers capable of handling heavy-duty vehicles.

Compliance with EU Social Rules in Road Transport:

- The Austrian Federal Economic Chamber (WKÖ) suggests to simplify and harmonise EU social rules as they would not correspond to the practical needs of everyday business.
- The Board of Swedish Industry and Commerce (NNR) suggests introducing separate regulations for driving times and rest periods for road haulage and bus/coach traffic respectively. The Commission is currently evaluating² the effectiveness of the social legislation in road transport as well as its relevance in the context of the recent transport market developments.

Tachograph Obligations:

- The German Chambers of Industry and Commerce (DIHK) suggests that the obligation to install recording equipments in road transport should not apply within a radius of 150 km. Regulation (EU) No. 165/2014 on tachographs in road transport was adopted on 4 February 2014 and replaces the existing rules as from March 2016.

Environmental Zones:

¹Roadmap: http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_move_109_evaluation_access_road_transport_profession_en.pdf

²Roadmap: http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_move_008_009_010_evaluation_social_legislation_road_transport_en.pdf

- The Danish Business Forum (DBF) suggests to harmonise environmental zones at EU level, facilitating business in the transportation sectors. Currently implementation falls under the competence of the relevant Member State.

Vignette:

- A citizen suggests that Sweden should introduce a vignette for all foreign registered vehicles. Currently, this area falls under the competence of Member States.

Flight Delay Compensation Regulation:

- The Board of Swedish Industry and Commerce (NNR) suggests that the next revision of the regulation of airlines takes into account the airline's ambition to deliver its services at a reasonable cost. The file is currently under discussion by the co-legislators.

2. MARKET ACCESS RULES IN ROAD FREIGHT TRANSPORT

2.1. Submission by the Austrian Federal Economic Chamber (WKÖ)

The planned simplification and clarification of existing legislation should not lead to a further liberalisation of EU cabotage rules. We strongly support the idea that cabotage shall not be liberalised as long as social and economic framework conditions differ throughout the EU.

Currently, the main identified problem is the lack of efficient enforcement of existing rules. The quality and frequency of controls has to be improved.

2.2. Policy Context

The suggestion of the WKO relates mostly to Regulation (EC) No 1072/2009 on access to the international road haulage market, which is currently being reviewed by the Commission together with Regulation (EC) No 1071/2009 on access to the occupation of road transport operator

Objectives of Regulation (EC) No 1072/2009 and Regulation (EC) No 1071/2009

As a general objective, both Regulations aim to:

- 1) Support the completion of the internal market in road transport, by ensuring a level-playing field between resident and non-resident hauliers.,
- 2) Improve the level of road safety and
- 3) Improve compliance with EU road transport social legislation in the profession.

As specific objectives, both Regulations aim to reduce the administrative burden both for transport undertakings and national authorities. In addition, Regulation (EC) No 1071/2009 aims to enhance compliance with road safety rules, such as roadworthiness of vehicles and road traffic rules, and social legislation (e.g. working time, driving time and rest period provisions). By setting higher standards for the examination granting access to the occupation and conditions for good repute, it also aims to achieve a higher level of

professional qualification of road transport operators. Finally, Regulation (EC) No 1072/2009 also aims to better define the temporary nature of cabotage operations (to operate on national markets other than their own).

As operational objectives, the Regulations aim for a set of common, simplified and clearer set of rules on the admission to occupation of road haulage operators, along with access to the market in the international carriage of goods by road and the conditions under which non-resident hauliers may operate within a Member State. Finally, the Regulations also aim to provide instruments to ensure the enforcement of these rules.

Instruments

To reduce the number of letterbox companies the Regulations introduced the following instruments:

- the setting of criteria for stable and effective businesses,
- the definition of professional and financial capacity of businesses,
- a European Register of Road Transport Undertakings which will cover also the exchange of information on infringements between Member States,
- requirements for the assignment of transport managers.

A common format of Union licence, certified copies and drivers' attestation should lead to reduced administrative burden and compliance costs. Furthermore, checks on Community licences, an improved definition of cabotage and the electronic exchange system should lead to improved enforcement.

Review of the regulations

An ex post evaluation³ of the Regulations is currently being carried out and should be finalised by mid-2016. The evaluation questions address effectiveness of the enforcement of the legislation as well as compliance with the social legislation. The evaluation also draws on information on the current market situation. Stakeholders have been consulted through targeted surveys and follow-up interviews.

If this evaluation reveals that there are significant problems with the Regulations, an impact assessment exercise may follow, assessing the options for addressing those problems including the possibility of a revision of the Regulations.

The suggestion of the WKO suggests that the current restrictions on cabotage operations, i.e. national transport operations by non-resident hauliers, should not be lifted as long as there are significant differences between Member States in terms of labour and social conditions applicable to transport workers. This is an issue which falls outside the scope of the ex post evaluation, but which may be relevant in the context of any future impact assessment, although independently of the evaluation.

³Roadmap: http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_move_109_evaluation_access_road_transport_profession_en.pdf

3. MUTUAL RECOGNITION OF TRAINING, QUALIFICATION AND LICENSING IN ROAD TRANSPORT

3.1. Submission by the Austrian Federal Economic Chamber (WKÖ)

To boost the attractiveness and practicability of initial qualification and periodic training of drivers, Directive 2003/59/EC has to be modified:

The mobility and transport sector already faces **the challenge to find and recruit new drivers**. Therefore the access to the profession should not be made unduly difficult. The initial qualification - besides its positive training effects – also acts as a hurdle to job entry in the sector. Therefore we propose that the trainee driver may first take up the profession without qualification or basic training (on sole basis of driving licence) for one year and then the initial qualification may be completed within this first year. This would encourage more people to engage in the driver's profession and facilitate their access to the profession.

Cross border problems also constitute a major concern in the field of driver training. Drivers that are employed in Austria and have their permanent residence in another Member State often face the problem that Austrian continuous training certificates are not recognised in other Member States. A general recognition requirement for continuous training certificates by other EU Member States has to be laid down in the Directive.

3.2. Submission by the Finnish Survey for better regulation

The directive concerning the qualification of drivers of certain road vehicles (2003/59/EC) and the directive on driving licences (2006/126/EC) will result in a shortage of drivers capable of handling heavy-duty vehicles because of the age and qualification requirements. In particular, this affects agricultural and other business operations requiring short-distance haulage with heavy-duty vehicles. Another problem is the required supervision of training in the form of traditional classroom instruction. This should be taken into account in the on-going revision of the directive regarding the professional qualifications of drivers of heavy-duty vehicles.

3.3. Policy Context

The submissions concern **Directive 2003/59/EC** on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods and passengers, which has been gradually introduced since 2008.

Objectives

The purpose of the Directive is to raise the standard of new drivers and to maintain and enhance the professionalism of existing truck and bus drivers throughout the EU through continuous update of their capacities. Raising the level of qualification of drivers is seen as an important element in increasing road safety and the training foreseen by the Directive aims specifically at increasing drivers' awareness of the risks and the ways to reduce them.

Moreover, the Directive is meant to help attract more drivers to the freight and passenger transport industries by valorising the profession and by enhancing the free movement of

workers within the EU. The standardisation of regulations for training and qualification throughout the EU, intends to ensure equal conditions of competition.

Instruments

The Directive establishes the mandatory initial qualification and periodic training requirements for drivers who are nationals of Member States or who are working for an undertaking based in the European Union. The training is organised by training centres approved by the Member States. The testing of initial qualification, when applied, is organised by a dedicated entity under supervision of competent authorities in the Member States. Compliance with the knowledge requirements is attested by a certificate issued to drivers, called the Certificate of Professional Competence (CPC).

Evaluation

An evaluation of the Directive that was finalised in 2014 concluded:

- In terms of level playing field, the training and testing provisions resulted in many different training and testing systems, and a wide variety of content of training programmes, and a wide variety of costs related to training and testing. The Consultant concluded that the defined scope in terms of training and testing provisions is relevant but not sufficient to ensure a level playing field.
- The Directive did not contribute to the attractiveness of the sector by enhancing requirements for professional competence due to the additional training and financial burden, as well as the lack of prospect to receive a recognized diploma at the end of the training. But the provisions on minimum age of the Directive contribute to making the profession more attractive because of the improved link with other schooling.

The evaluation concluded that the Directive in principle contributes to ensuring free movement of drivers within the EU road transport sector, but because of problems with recognition of partial and completed training undergone in a foreign country the Directive was only partial successful.

4. COMPLIANCE WITH EU SOCIAL RULES IN ROAD TRANSPORT

4.1. Submission by the Austrian Federal Economic Chamber (WKÖ)

Despite the revision of Regulation (EEC) No 3821/85 on recording equipment in road transport and the partial adaptation of Regulation (EC) No 561/2006 on driving time and rest periods through the adoption of Regulation (EU) No 165/2014, there is still a need to simplify and harmonise EU social rules because they do not correspond to the practical needs of everyday business. Thus, the current legal regime has to be reviewed and ultimately revised.

From a business point of view, **the rules lack practicability in a formal way**: EU social legislation is characterised by numerous, partly overlapping rules of different legal quality, which make it difficult for companies to keep track:

- Regulation (EC) No 561/2006 sets up rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road.
- Regulation (EU) No 165/2014 determines which vehicles have to be equipped with tachographs and how they have to be used.

- Directive 2006/22/EC sets up rules for checking systems of compliance with the above mentioned regulations.
- In addition to Regulation (EC) No 561/2006, Directive 2002/15/EC lays down rules regarding maximum weekly working times, rest periods, breaks and night work and implements essential definitions such as working time or periods of availability.
- Moreover the European Commission addressed various decisions and recommendations to Member States, of which some either have not been transposed into national law at all or have been interpreted in a different manner.
- There is a wide range of interpretations regarding various passages in EU social legislation.

Those framework conditions make it nearly impossible for transport companies to manage their daily routines effectively.

Moreover, the provisions in question also **lack practicability as regards content**: EU social rules are primarily designed to prevent overtired drivers from driving and thus increase road safety. The corresponding legal provisions prescribing extensive documentation and strict compliance have reached dimensions that make it almost impossible to conduct transport operations in an economically feasible way. Furthermore, it is necessary to develop social rules especially designed for the bus and coach sector to account for the flexibility that is needed and for the different economic circumstances in goods and passenger transport.

The current regime differentiates:

- Daily and weekly driving time
- Breaks:
 - in Art 4 d of Regulation 561/2006 (including complicated and inflexible rules on splitting the break) .
 - in Art 5 of Directive 2002/15.
 - in Art 34 of Regulation 165/2014 (without any definition, what is exactly meant by it).
- Daily and weekly rest periods (including complicated rules on extension/reduction and complicated separate rules for buses, like the 12 day rule)
- Other work (including a complicated reference to Directive 2002/15).
- Periods of availability (also including a complicated reference to Directive 2002/15).

This lack of practicability in form and content is aggravated by:

- the coexistence of digital and analog tachographs
- non-binding recommendations and decisions of the European Commission
- diverging control and enforcement practices in Member States.

Thus, **compliance with the social rules is getting more and more difficult** for drivers and companies whereas controls regarding the compliance with the rules have become increasingly stringent.

This leads to:

- excessive burdens for companies and drivers.
- overburdened national authorities and control officers in Member States.
- rapidly increasing legal uncertainty for companies and drivers.

Concluding, the **following measures are of utmost importance**:

1. The EU has to decide on obligatory, harmonised rules on working conditions for

mobile workers which have to be applied in a uniform way in all Member States.

2. The legal framework has to be transparent, clear and comprehensible in order to prevent different interpretation by Member States.
3. Key provisions have to be governed primarily by EU law. The leeway for Member States to introduce deviating national rules shall be reduced to a minimum.
4. EU wide harmonised rules on tolerances for minor infringements have to be introduced. This could include cases where the driver exceeds the maximum driving time or reduces the minimum rest period or break only by a few minutes.

The implementation of those measures would lead to growing acceptance and more compliance with EU social rules.

4.2. Policy Context

The social rules in road transport are established in two main legislative acts: Regulation (EC) No 561/2006 on driving times, break and rest periods and Directive 2002/15/EC on working time of mobile workers. They are accompanied by a set of uniform minimum requirements to control compliance with the driving times' rules and laid down in enforcement Directive 2006/22/EC. The main tool for recording driver's activities and controlling compliance by enforcers is the recording equipment (tachograph) which shall be installed and used in accordance with Regulation (EU) No 165/2014.

Policy objectives

These interlinked legislative acts share the same policy objectives of: (1) improving working conditions of drivers, (2) enhancing road safety by averting driver's fatigue and (3) ensuring undistorted competition among companies. As a global cross-cutting objective, these legal acts aim to support the completion of common market for road transport services, which should be accompanied by measures ensuring adequate working conditions and effective enforcement of the rules in force. In particular, Directive 2002/15/EC identifies the need to protect workers against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working pattern.

As specific objectives, the social legislation aimed at ensuring adequate work organisation of drivers in terms of driving times, periods of other work, breaks and rest. It also aimed at preventing infringements and ensuring that the existing social provisions are interpreted, applied and enforced in a uniform manner in all Member States. In particular, Regulation (EC) No 561/2006 identifies in its recitals that effective and uniform enforcement of the provisions is crucial if the objectives are to be achieved and the application of the rules is not to be brought into disrepute. By setting minimum common standards for checking compliance with the Regulation's provisions (via Directive 2006/22/EC) and introducing co-liability and exteriority of infringements principles it also aimed to create a common enforcement space and promote compliance culture.

As operational objectives, the legislative acts aimed at laying down common simplified, clearer and enforceable rules, determining the responsibilities of Member States authorities, transport operators and of drivers with regard to compliance with the provisions and introducing measures to facilitate more effective and uniform checks and sanctions throughout the European Union as well as to promote cooperation between the

Member States in this regard.

Instruments

The instruments put in place in order to improve compliance cover the following: clearer rules on driving and rest time, obligations on record-keeping, co-liability of operators and drivers, obligation for national penalty system for infringements as well as minimum requirements and guidelines for enforcement.

Evaluation

The Commission is currently evaluating⁴ the effectiveness of the social legislation in road transport as well as its relevance in the context of the recent transport market developments. The objective is to assess whether this legislation is "fit for purpose" and to address ambiguous and inconsistently applied provisions. Both freight and passenger transport sector are being assessed. The evaluation also looks into developments in levels of compliance and in cost-effectiveness of enforcement over the period of 2007-2014. The roadmap of this evaluation is available at http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_move_008_009_010_evaluation_social_legislation_road_transport_en.pdf . The evaluation should be finalised by mid 2016.

Based on the results of this evaluation the Commission may assess the potential solutions to address these outstanding issues in the framework of an impact assessment exercise.

The focus of any such work could be put on clarifying, simplifying and adapting (where necessary) the rules and by ensuring that they are interpreted, applied and enforced in a uniform and efficient manner in all Member States so that operators and drivers can equally benefit from common rights and obligations, legal clarity and a level playing field.

In addition the Commission is planning to adopt the implementing act in 2017 providing a common training curriculum for enforcers and containing guidelines for controlling compliance with the drivers' hour rules and with the Tachograph Regulation's provisions. The objective is to enhance the consistency and effectiveness of enforcement and to ensure that drivers and operators are treated in a decent and fair way when facing the checks.

4.3. Submission by the Board of Swedish Industry and Commerce (NNR)

Legislation

EU Regulations for driving times and rest periods:

Regulation 561/2006 Regulation 3821/85 Regulation 165/2014

Burden on business

The demand for information is disproportionately high and involves a heavy burden of work and administration for a bus company. Minor offenses lead to disproportionate penalties, for example, a number of minute's breaches gathered leads to withdrawal of operating licenses and / or the traffic manager may not continue to operate.

⁴ Roadmap: http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_move_008_009_010_evaluation_social_legislation_road_transport_en.pdf

Simplification proposal

Separate regulations for driving times and rest periods for road haulage and bus/coach traffic respectively. Bus traffic in scheduled services is run on the basis of timetables. Current regulations are also particularly badly suited to the needs of coach traffic.

Effects of the simplification proposal

Time-saving Reduced costs Increased investments Reduced uncertainty 40% of all Swedish transport company state that these regulations constitute a major obstacle for growth (see Report from “Swedish Agency for Economic and Regional Growth” 2014). Every bus company needs a comprehensive administration of regulatory frameworks, costing businesses upwards of 2 per cent of the total expenditure. There is no current economic assessment of the cost for bus companies, but it is likely that these regulations will cost the industry up to SEK 100 million per year.

4.4. Policy Context

Please refer to box 4.2.

5. TACHOGRAPH OBLIGATIONS

5.1. Submission by the German Chambers of Industry and Commerce (DIHK)

The installation obligation for vehicles which are covered by the exceptions under Article 13 of Regulation 561/2006 should only apply in the future from a distance of 150 km and up.

Particularly for SMEs in rural areas that offer specialized services, the distance between 100km and 150km is business-relevant. It is these SME which drive the economic development in these areas. In order not to burden them, we keep up our claim to extend the radius to 150km.

This would take into account the fact that the companies affected by the exceptions frequently only cover short distances and use only a few vehicles, the conversion of which is disproportionately expensive for small and medium-sized enterprises in particular.

Consideration should also be given to expanding the exceptions to certain categories of vehicles which are currently not - or only partly - covered, such as construction site vehicles or courier, express and parcel services.

5.2. Policy Context

The submission by the DIHK concerns Regulation (EC) No 561/2006

Objectives

Regulation (EC) No 561/2006 establishes the rules on driving and resting times for professional drivers using vehicles heavier than 3.5 tonnes or constructed/adapted for carrying more than 8 passengers. The main objectives are to: ensure appropriate working conditions, enhance road safety and secure a level playing field in the sector of passenger and goods transport.

Compliance with these provisions is controlled mainly by checking the records made in the recording equipment (tachograph), which must be installed in the vehicles covered by this Regulation. Certain types of vehicles or transport operations are exempt from the Regulation permanently, as set out in its Article 3, or are subject to national derogations which may be granted by Member States on their territories in accordance with Article 13.1. This covers in particular vehicles used for specific transport operations carried out on short distances where driving does not constitute the driver's main activity.

The vehicles used for transport operations exempted from the Regulation are also exempt from the obligation to have the tachograph installed in accordance with Regulation (EU) No. 165/2014 on tachographs in road transport. The latter one was adopted on 4 February 2014 replacing existing rules (Regulation (EEC) No 3821/85) as from March 2016, *while some of the dispositions have already taken effect as of 2 March 2015.*

Possibilities and impacts of expanding the radius from the base of the undertaking within which certain vehicles may operate being exempt from using tachograph was thoroughly considered in the Commission impact assessment accompanying the tachograph Regulation (EU) No 165/2014. In view of lessening administrative burden for SMEs and safeguarding, in the same time, the policy objectives of enhancing working conditions, road safety and fair competition, the legislator decided to extend the exemptions for certain types of transport operations by expanding the current radius from 50km to 100km. In addition, the 'construction' vehicles have become permanently exempt, under certain conditions, from the obligation to install and use the tachograph in order to record the driving and resting times.

The Commission and the legislator gave due consideration to the different categories of the vehicles that could be exempted. The current list presents a reasonable compromise between road safety requirements and those practical and factual considerations that mandate introducing exceptions to the general rule. In line with the principle of subsidiarity it is within the remit of national authorities to apply or not apply some of the options foreseen in the Regulation.

6. ENVIRONMENTAL ZONES AT EUROPEAN LEVEL

6.1. Submission by the Danish Business Forum (DBF)

Challenge

City environmental zones are not harmonised across the EU. Member States have different requirements and different labelling, which creates problems for businesses in the transportation sector because trucks and busses need several different labels to enter environmental zones if they operate internationally.

Suggestion

The European Commission should introduce common labelling or a system for mutual recognition of labels associated with environmental zones. This should ensure that

environmental zones in all countries are based on the same requirements. The objective is that companies can simply use one authorisation when driving in European environmental zones.

6.2. Policy Context

Many cities in Europe use vehicle access regulations such as Low Emission Zones (LEZ), Urban Road Tolls or Traffic Limited Zones to improve air quality, reduce traffic congestion and make historic city centres attractive to tourists.

The Commission has no competence over these local access regulations. From a subsidiarity perspective, these zones are regulated at national, regional or even local level, considering the local circumstances and preferences of that national, regional or local entity. Therefore, their design and requirements differ considerably between Member States, within the same Member State and between individual municipalities. This is because the competences are differently organised across the Member States

However, Member States are bound to reach a set of objectives determined by the Directives listed below:

- 1996/62 on ambient air quality assessment and management,
- 1999/30 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air and
- 2008/50 on ambient air quality and cleaner air for Europe is often one of the drivers to establish a LEZ.

In this context the Commission has committed itself in the White Paper on Transport in 2011 to develop a validated framework for urban road user charging and access restriction schemes and their applications, including a legal and validated operational and technical framework covering vehicle and infrastructure applications.

The European Commission has recently launched a study to assist it in the preparation of non-binding guidance documents on six specific aspects of access regulations. The project was launched in December 2014 and will be completed by December 2016.

7. VIGNETTE

7.1. Submission by Citizen

Original:

Hejsan. Mitt namn är XXX, 38 år från Helsingborg och jag har funderingar kring många ämne, särskild när det gäller TRAFFIKEN, då jag kör mycket både i Sverige och övriga Europa. Nästan alla länder använder VIGNETTER på sina vägar, och det är dyrt, speciell när man samlar ihop alla transiterade länder. Det är lite orättviss. Till och med Tyskland vill införa "TOLL ROAD". SVERIGE MÅSTE INFÖRA OCKSÅ VIGNETTE för alla utländsk registrerade bilar som rullar på svenska vägar. På detta sätt löser man också problemet med invandrare som bor/jobbar I Sverige, MEN har sina bilar mer eller mindre

registrerade i sina/andra länder. Sverige är det enda landet med 110 Km/h på motorväg och det är fruktansvärt o köra landet runt med detta hastighet. Sen vår land ligger långt ifrån toppen när det gäller andra saker, såsom: SOS telefoner på sidan av motorvägen (som finns i många andra civiliserade länder) RASTPLATSER med parkeringar och toaletter (som finns i dom flesta länder, men IGEN: inte i Sverige) för mindre motorvägar och mycket kaos pga låg hastighet och bara 2 fil, där det behövs fler(ex. E6an Skåne) förbjuds av dubbdäck (undantag ex. kanske om bilen är registrerad i norra Sverige). Många idioter kör dubbdäck halva året, (i Skåne åtminstone) bara för att det är 1dec-31 mars, även om det aldrig blir vinterlag. Så är det folk som följer "regler" utan att tänka på logisk, liksom lagen skyddar 100% någon, bara för att man följer den.

Translation:

Hello. My name is XXX, 38, from Helsingborg, Sweden, and I have concerns about various topics, especially when it comes to traffic as I drive a lot, both in Sweden in Europe. Almost all countries use their own vignettes and this is expensive, especially when transiting several countries. Sweden should introduce a vignette for all foreign registered vehicles on Swedish roads. It would solve the problem of immigrants living or working in Sweden who have their cars registered in another country. Furthermore, Sweden is the only country with a 110km/h speed limit on the highway and it's terrible to move around like this. We have less SOS telephones on the side of the highway than other countries and less rest areas with parking spaces and toilet. We should also prohibit studded tires as a lot of people use them even though not necessary.

7.2. Policy Context

The citizens' comments and request relates to the European transport policy and touches on a number of different issues like (i) road charging, (ii) maximum speed and (iii) road infrastructure. Currently, this area falls under the competence of Member States.

Road charging

When talking about vignettes and road charging reference should be made to the Eurovignette Directive (Directive 1999/62/EC)⁵, though this Directive only covers road charging for heavy goods vehicles and not passenger cars. The case of road charging for passenger cars is not covered by any specific European legislation and Member States are free to decide on charging for passenger cars though they would need to ensure to respect the principle of non-discrimination ensuring that way that both national and non-national drivers pay the same charge for the similar use of the network.

Maximum Speed

The determination of maximum speed on the road network is a choice of the Member State and there is no European legislation covering this. This is equally subject to the principle of subsidiarity, so better regulated at Member State level.

Road infrastructure

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:187:0042:0050:EN:PDF>

The issue of road infrastructure management and its safety aspects is generally covered by a Directive on the Infrastructure Safety Management (Directive 2008/96/EC), though this Directive only covers the roads that are part of the Trans-European Transport Network (TEN-T). Though Member States are free to apply the Directive equally to other roads outside the TEN-T. The general idea of this Directive is to impose safety audits and reports that enable Member States to implement continuous improvements to the infrastructure in order to benefit the safe use of the roads. Though it would seem that the installation of SOS phones is a discretionary choice that remains under the responsibility of each Member State.

Finally, the issue of infrastructure design and the specific points raised and related to rest areas and the specific design of the highways (2, 3 or more lanes in every direction) is again an issue of subsidiarity. Where European legislation covers the design of a highway by means of minimum requirements for a road to be considered as a highway, the Member States are free to decide on the specific design of their national road network, taking into account the national needs and circumstances. The issue therefore neither falls under EU regulation, nor its implementation in Member States.

To conclude: while Europe has quite some competences on road infrastructure, its design, management and even the charging for the use of this infrastructure, the issues raised by the citizen fall under the competence of the relevant Member State.

8. FLIGHT DELAY COMPENSATION REGULATION

8.1. Submission by the Board of Swedish Industry and Commerce (NRR)

Legislation: Regulation (EC) No 261/2004

Burden on business: Regulation of airlines compared to other modes of transportation is disproportionately strict. The costs for the airlines are often massive relative to the harm travellers have suffered. Interpretation of the regulation differs in 1 member states, causing great uncertainty about the airlines' obligations towards passengers. A big problem is the lack of a uniform interpretation of "extraordinary circumstances" among consumer organizations and airlines. Rulings in several high profile cases have significantly increased the levels of compensation to be paid by airlines. Air safety is a given in all airlines and the high flight safety has evolved through persistent work in industry to minimize damage to people and the environment while minimizing the cost of operations. Delays, cancellation or rescheduling of flights take place only when the flight safety may be at risk and solely to avoid jeopardizing the safety of passengers or the aircraft's crew. It should be noted that any changes to scheduled flights disrupts airline planned activities and highest priorities given to avoid changes in the flight schedule. Legislators need to acquire a better understanding of how regulation works and what impact future revisions will get both for passengers and for airlines. Airlines are currently punished for their aspirations to maintain a high level of flight safety. Suggestions for future (up-coming) revision risk impairing the passenger's opportunities to seamlessly travel while increasing costs for airlines. So called interlining between airlines enabling passengers to transfer from one airline to another in an airport in a smooth way, with current proposals comes to an end.

Simplification proposal: The next revision of the regulation must take into account the airline's ambition to deliver its services with the highest level of aviation safety. The

airlines should not be punished for delivering a safe and secure service to their customers in a disproportionate manner. Obligation to provide care should be done in a cost-reasonable manner and on the same level as required for other modes of transport. Harmonization and compliance with application across the Member States have to ensure that competition between airlines or other transport modes is not distorted.

Effects of the simplification proposal: Time-saving; Reduced costs; Reduced uncertainty

8.2. Policy Context

The Air Passenger Rights Regulation (EC) No 261/2004 is a regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights. It repealed Regulation (EEC) No 295/91, and came into effect on 18 February 2005. It sets out the entitlements of air passengers when a flight that they intend to travel on is delayed or cancelled, or when they are denied boarding to such a flight due to overbooking, or when the airline is unable to accommodate them in the class they had booked.

In 2007 the Commission issued a Communication⁶ where the main shortcomings related to the application of the Regulation were identified with a set of remedial measures. The Commission has committed to stakeholders and EU institutions to continue the efforts to improve the application in order to ensure harmonised interpretation and enforcement of the Regulation and to report on it regularly.

The Commission EU Citizenship Report of October 2010 on dismantling obstacles to EU citizens' rights⁷ announced measures to ensure a set of common rights for passengers travelling by any transport mode across the EU and the adequate enforcement of these rights.

The Commission Communication of 11 April 2011⁸ reported on the varying interpretation being taken on the provisions of Regulation (EC) No 261/2004, due to grey zones and gaps in the current text, and the non-uniform enforcement across Member States.

Main problems identified could be summarized as follows:

- **Legal grey areas:** lacking definitions and unclear provisions in the text of Regulation 261/2004 leave grey zones in the passengers' rights which have led to inconsistencies and loose standards in the application of the law;
- **Complaint handling:** Passengers encounter difficulties in enforcing their rights as airlines' complaint-handling procedures are ill-defined or because there is no complaint handling body to turn to.

⁶ COM 168 (2007)

⁷ COM(2010) 0603, 16 Octobre 2010

⁸ Communication from the Commission to the European Parliament and the Council on the application of Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0174:FIN:EN:PDF>). COM (2011) 174 final

- **Sanctioning:** inconsistent or insufficiently effective sanctioning policies by national authorities do not give sufficient incentives for compliance
- **Disproportionate financial costs:** the financial cost of some of the obligations imposed by the Regulation may become disproportionate for the airlines in certain circumstances (e.g. unlimited provision of accommodation in exceptional circumstances).

Current State of Play

In March 2013, the Commission adopted a proposal⁹ to amend Regulation 261/2004 which is currently discussed by the co-legislators.

The proposal clarifies where necessary and removes legal grey areas and loopholes. The main point to clarify is the notion of "**extraordinary circumstances**" which permits an airline to avoid the payment of compensation. For more legal certainty, a definition of the term is proposed, which is directly inspired by EU case law.

Furthermore, the Commission proposed a better coordination of enforcement policies to ensure a more effective and consistent enforcement of these rights across the EU. That will also serve to ensure a level-playing field between the carriers.

Another aim of the revision is to reduce the disproportionate financial burden of air carriers. In particular, with regard to the **compensation for long delays**, the Commission proposed to increase the threshold for compensation from three to five hours (and more for medium and long haul flights). According to our calculations, this cuts the cost of financial compensation by half and even more for the charter airlines.

Other measures meant to address the same problem are:

1. Limit the assistance and care in case of extraordinary circumstances

Under current rules, air carriers must provide refreshments, meals and accommodation for an indefinite period of time, potentially involving high financial costs (e.g. ash cloud crisis). There is no limit to assistance even if there is a major disruption beyond the control of the air carrier. Under the proposal, the provision of accommodation will be limited to three nights in exceptional circumstances. This limitation does not apply to passengers with reduced mobility, persons accompanying them, unaccompanied children, pregnant women and persons with specific medical needs.

2. Regional operations

As for small-scale regional operations – flights with small aircraft on short distances – the cost of the obligations under the Regulation can go out of proportion with the carriers' revenue, the proposal lifts the obligation to provide accommodation to passengers of flights of less than 250 km and with aircraft with less than 80 seats. Again this derogation does not apply to passengers with reduced mobility, persons accompanying them, unaccompanied children, pregnant women and persons with specific medical needs.

3. Sharing the economic burden

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013PC0130>

Today, some national provisions may hinder air carriers from seeking redress from third parties responsible for the flight disruption. Under the proposal, national law may not restrict the air carriers' right to seek compensation from responsible third parties.

The costs and benefits of the various measures have been thoroughly studied in the impact assessment.