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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2020/1054 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 July 2020

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Good working conditions for drivers and fair business conditions for road transport undertakings are of paramount importance to creating a safe, efficient and socially accountable road transport sector in order to ensure non-discrimination and to attract qualified workers. To facilitate that process it is essential that the Union social rules on road transport are clear, proportionate, fit for purpose, and are easy to apply and to enforce and implemented in an effective and consistent manner throughout the Union.
- (2) Having evaluated the effectiveness and efficiency of the implementation of the current set of Union social rules in road transport, and in particular Regulation (EC) No 561/2006 of the European Parliament and of the Council ⁽⁴⁾, certain deficiencies were identified in the implementation of that legal framework. Unclear rules on weekly rest periods, resting facilities and breaks in multi-manning, as well as the absence of rules on the return of drivers to their home, have led to diverging interpretations and enforcement practices in the Member States. Several Member States have recently adopted unilateral measures further increasing legal uncertainty and the unequal treatment of drivers and operators. However, the maximum driving periods per day and per week are effective in improving the social conditions of drivers and road safety in general. Unremitting efforts are necessary to ensure compliance.

⁽¹⁾ OJ C 197, 8.6.2018, p. 45.

⁽²⁾ OJ C 176, 23.5.2018, p. 57.

⁽³⁾ Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of 7 April 2020 (OJ C 151, 6.5.2020, p. 1). Position of the European Parliament of 9 July 2020 (not yet published in the Official Journal).

⁽⁴⁾ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (3) To promote road safety, it is important to encourage transport undertakings to adopt a safety culture which is adhered to at all levels. In particular, in order to avoid infringements of driving and rest rules or endangering road safety, it should not be permitted to link performance-based pay to the time needed for the transportation of passengers to their destinations or for the delivery of goods.
- (4) The *ex post* evaluation of Regulation (EC) No 561/2006 confirmed that the inconsistent and ineffective enforcement of the Union social rules was mainly due to unclear rules, to inefficient and unequal use of the control tools and to insufficient administrative cooperation between the Member States.
- (5) In order to improve clarity and consistency, the exemption from the scope of Regulation (EC) No 561/2006 for the non-commercial use of a vehicle should be defined.
- (6) Clear, suitable, proportionate and evenly enforced rules are also crucial for achieving the policy objectives of improving working conditions for drivers, and in particular ensuring undistorted and fair competition between operators and contributing to road safety for all road users.
- (7) The existing requirements on breaks have turned out to be unsuitable and impractical for drivers in a team. Therefore, it is appropriate to adapt the requirement on recording breaks to the specificity of the transport operations carried out by drivers driving in a team, without jeopardising the safety of the driver and road safety.
- (8) Drivers engaged in long-distance international transport of goods spend long periods away from their homes. The current requirements on the regular weekly rest may prolong those periods unnecessarily. It is thus desirable to adapt the provisions on the regular weekly rest periods in such a way that it is easier for drivers to carry out international transport operations in compliance with the rules and to reach their home for their regular weekly rest period, and be fully compensated for all reduced weekly rest periods. Given the differences between passenger transport and goods transport, this possibility should not apply to drivers when engaged in passenger transport.
- (9) Any flexibility in the scheduling of the rest periods of drivers should be transparent and predictable for the driver and should in no way jeopardize road safety, by increasing the level of fatigue of drivers, or deteriorate the working conditions. This flexibility should therefore not alter the current working time of the driver or the maximum fortnightly driving time, and should be subject to stricter rules on the compensation for reduced rests.
- (10) In order to ensure that this flexibility is not abused, it is essential to clearly define its scope and also to provide for appropriate controls. That scope should be therefore limited to those drivers who spend their reduced weekly rest periods, during the reference period, outside of the Member States of the undertaking and outside of the country of the driver's place of residence. This can be checked by consulting the tachograph records at the roadside and at the transport undertaking's premises, as they contain the location of the beginning and the end of the rest period and information relating to individual drivers.
- (11) In order to guarantee effective enforcement, it is essential that the competent authorities, when carrying out roadside checks, should be able to ascertain that driving times and rest periods have been properly observed on the day of the check and over the preceding 56 days.
- (12) Rapid technological progress is resulting in the gradual automation of driving systems which require less or no direct input from the driver. To address those changes, current legislation, including rules on driving and resting times, may need to be adapted in order to guarantee road safety and a level playing field and to improve working conditions, whilst enabling the Union to pioneer new innovative technologies and practices. Therefore, the Commission should submit a report evaluating the use of autonomous driving systems in the Member States, including the benefits of autonomous driving technologies. That report should be accompanied, if appropriate, by a legislative proposal.
- (13) In order to promote social progress, it is appropriate to specify where the weekly rest periods may be taken, ensuring that drivers enjoy adequate rest conditions. The quality of accommodation is particularly important during the regular weekly rest periods, which the driver should spend away from the vehicle's cabin in a suitable accommodation, at the cost of the transport undertaking as an employer. In order to ensure good working conditions and the safety of drivers, it is appropriate to clarify the requirement for drivers to be provided with quality and gender-friendly accommodation for their regular weekly rest periods if they are taken away from home.

- (14) It is also necessary to provide for transport undertakings to organise the work of drivers in such a way that periods away from home are not excessively long and that drivers can benefit from long rest periods taken in compensation for reduced weekly rest periods. Organising the return should allow reaching an operational centre of the transport undertaking in its Member State of establishment or the driver's place of residence, and the drivers are free to choose where to spend their rest period. In order to demonstrate that the transport undertaking fulfils its obligations regarding the organisation of the regular return, the transport undertaking should be able to use tachograph records, duty rosters of the drivers or other documentation. Such evidence should be available at the transport undertaking's premises to be presented if requested by control authorities.
- (15) While regular weekly rest periods and longer rest periods cannot be taken in the vehicle or in a parking area, but only in suitable accommodation, which may be adjacent to a parking area, it is of utmost importance to enable drivers to locate safe and secure parking areas that provide appropriate levels of security and appropriate facilities. The Commission has already studied how to encourage the development of high-quality parking areas, including the necessary minimum requirements. The Commission should therefore develop standards for safe and secure parking areas. Those standards should contribute to promoting high-quality parking areas. The standards may be revised in order to cater for better access to alternative fuels, in line with policies developing that infrastructure. It is also important that parking areas are being kept free from ice and snow.
- (16) Safe and secure parking areas should be subject to auditing procedures to be certified in accordance with Union standards. Those auditing procedures should also ensure that the parking areas continue to meet these standards. The Commission should thus be tasked with preparing a certification procedure for development of safe and secure parking areas in the Union.
- (17) It is in the interests of road safety and enforcement that all drivers should be fully aware of the rules on driving and rest times and of the dangers of fatigue. Easily accessible information on available rest facilities is of importance in this regard. Therefore, the Commission should provide information on safe and secure parking areas through a user-friendly website. That information should be kept up to date.
- (18) In order to ensure the continued safety and security of parking areas, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of establishing standards for the level of service in safe and secure parking areas and procedures for the certification of the safety and security of parking areas. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽⁵⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (19) The revised TEN-T guidelines established by Regulation (EU) No 1315/2013 of the European Parliament and of the Council ⁽⁶⁾ envisage the development of parking areas on motorways approximately every 100 km to provide commercial road users with parking space that has an appropriate level of safety and security. In order to accelerate and promote the construction of adequate parking infrastructure, it is important that sufficient opportunities for co-funding by the Union are available in accordance with current and future Union legal acts establishing the conditions for that financial support.
- (20) Many road transport operations within the Union involve transport by ferry or by rail for part of the journey. Clear, appropriate provisions regarding rest periods and breaks should therefore be laid down for such operations.

⁽⁵⁾ OJ L 123, 12.5.2016, p. 1.

⁽⁶⁾ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

- (21) Drivers are sometimes faced with unforeseeable circumstances which make it impossible to reach a desired destination for taking weekly rest periods without infringing Union rules. It is desirable to make it easier for drivers to cope with those circumstances and to enable them to reach their destination for a weekly rest period. Such exceptional circumstances are sudden circumstances that are unavoidable and may not be anticipated, where it unexpectedly becomes impossible to apply the provisions of this Regulation in their entirety for a short period of time. Therefore, such circumstances cannot be invoked in a systematic manner to avoid compliance with this Regulation. In order to ensure proper enforcement, the driver should document the exceptional circumstances resulting in departing from the rules. In addition, a safeguard should ensure that driving time is not excessive.
- (22) To reduce and prevent diverging enforcement practices and to further enhance the effectiveness and efficiency of cross-border enforcement, it is crucial to establish clear rules for regular administrative cooperation between Member States.
- (23) Member States should take all measures necessary to ensure that national rules on penalties applicable to infringements of Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014 of the European Parliament and of the Council ⁽⁷⁾ are implemented in an effective, proportionate and dissuasive manner. It is important to ensure easy access by professionals to information on the penalties that apply in each Member State. The European Labour Authority, established by Regulation (EU) 2019/1149 of the European Parliament and of the Council ⁽⁸⁾, could facilitate this access by making the information available through the single Union-wide website acting as a single portal for accessing information sources and services at Union and national level in all of the official languages of the Union established by Regulation (EU) 2018/1724 of the European Parliament and of the Council ⁽⁹⁾.
- (24) In order to ensure uniform conditions for the implementation of Regulation (EC) No 561/2006 implementing powers should be conferred on the Commission in order to clarify any of the provisions of that Regulation and to establish common approaches on their application and enforcement. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁰⁾.
- (25) In order to ensure uniform conditions for the implementation of Regulation (EU) No 165/2014 implementing powers should be conferred on the Commission in order to lay down detailed provisions for the uniform application of the obligation to record and store data relating to any border crossing of the vehicle and activities and detailed provisions necessary for the uniform application of provisions on data requirements and functions, and the installation of tachographs. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (26) To enhance the cost-effectiveness of the enforcement of the social rules, the current and smart tachograph systems should be fully exploited and smart tachographs should be mandatory also for light commercial vehicles which are above a certain weight and which operate in international transport for hire and reward. Therefore, the functionalities of the tachograph should be improved to allow for more precise positioning.
- (27) The cost-effectiveness of enforcement of the social rules, the rapid development of new technologies, the digitalisation throughout the Union economy and the need for a level playing field among companies in international road transport make it necessary to shorten the transitional period for the installation of smart tachographs in registered vehicles. Smart tachographs will contribute to simplified controls and thus facilitate the work of national authorities.

⁽⁷⁾ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

⁽⁸⁾ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).

⁽⁹⁾ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

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

- (28) To ensure that drivers, operators and control authorities benefit as soon as possible from the advantages of smart tachographs, including their automated recording of border crossings, existing vehicle fleets should be equipped with such devices within an appropriate period after the entry into force of the detailed technical provisions. Such a period will ensure sufficient time for preparation.
- (29) In vehicles which are not equipped with smart tachographs, the crossing of Member State borders should be recorded in the tachograph at the nearest possible stopping place at or after the border.
- (30) The recording of activities on the tachograph is an important part of drivers' work. Therefore, it is crucial that drivers are provided with appropriate training on how to use new features of tachographs which are being introduced on the market. As employers, transport undertakings should bear the costs related to this training.
- (31) Control officers who check compliance with relevant Union law in the road transport sector face challenges due to the variety of tachograph devices in use and the fast evolving sophisticated manipulation techniques. This is particularly the case when those checks are carried out at the roadside. Therefore, it is crucial that control officers receive appropriate training to ensure that they are fully aware of the latest technological developments and manipulation techniques.
- (32) To reduce the burden on transport undertakings and control authorities where a control officer removes the seal of a tachograph for control purposes, the re-sealing by the control officer should be allowed under certain well-documented circumstances.
- (33) Taking into account the continuous technological developments, the Commission is studying the possibility of developing new technical solutions that offer the same benefits and security as those offered by the smart tachograph, at the same or lower associated costs.
- (34) It is important that transport undertakings established in third countries are subject to rules which are equivalent to Union rules when performing road transport operations in the territory of the Union. The Commission should assess the application of this principle at Union level and propose adequate solutions to be negotiated in the context of the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport ('AETR Agreement').
- (35) Transporting goods is different from transporting people. Therefore, the Commission should evaluate if more appropriate rules for passenger transport should be proposed, especially for occasional services as defined in point 4 of Article 2 of Regulation (EC) No 1073/2009 of the European Parliament and the Council ⁽¹¹⁾.
- (36) Since the objectives of this Regulation, namely to improve road safety and working conditions for drivers within Union through the harmonisation of the rules on driving times, breaks and rest periods in road transport and the harmonisation of the rules on the use and enforcement of tachographs cannot be sufficiently achieved by the Member States, but can rather, by reason of the nature of the objectives, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (37) Regulations (EC) No 561/2006 and (EU) No 165/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

- (1) in Article 2(1), the following point is inserted:

'(aa) from 1 July 2026, of goods in international transport operations or in cabotage operations, where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 2,5 tonnes; or';

⁽¹¹⁾ Regulation (EC) No 1073/2009 of the European Parliament and the Council of 21 October 2009 on common rules for access to the international market for coach and bus services and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88).

(2) Article 3 is amended as follows:

(a) point (aa) is replaced by the following:

‘(aa) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for:

(i) carrying materials, equipment or machinery for the driver’s use in the course of the driver’s work; or

(ii) for delivering goods which are produced on a craft basis,

only within a 100 km radius from the base of the undertaking and on the condition that driving the vehicle does not constitute the driver’s main activity and transport is not carried out for hire or reward;’

(b) the following point is inserted:

‘(ha) vehicles with a maximum permissible mass, including any trailer, or semi-trailer exceeding 2,5 tonnes but not exceeding 3,5 tonnes that are used for the transport of goods, where the transport is not effected for hire or reward, but on the own account of the company or the driver, and where driving does not constitute the main activity of the person driving the vehicle;’

(3) in Article 4, the following point is added:

‘(r) “non-commercial carriage” means any carriage by road, other than carriage for hire or reward or on own account, for which no direct or indirect remuneration is received and which does not directly or indirectly generate any income for the driver of the vehicle or for others, and which is not linked to professional or commercial activity.’;

(4) in Article 6, paragraph 5 is replaced by the following:

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

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

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

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

(6) Article 8 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘6. In any two consecutive weeks a driver shall take at least:

(a) two regular weekly rest periods; or

(b) one regular weekly rest period and one reduced weekly rest period of at least 24 hours.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.

By way of derogation from the first subparagraph, a driver engaged in international transport of goods may, outside the Member State of establishment, take two consecutive reduced weekly rest periods provided that the driver in any four consecutive weeks takes at least four weekly rest periods, of which at least two shall be regular weekly rest periods.

For the purpose of this paragraph, a driver shall be considered to be engaged in international transport where the driver starts the two consecutive reduced weekly rest periods outside the Member State of the employer's establishment and the country of the drivers' place of residence.;

(b) the following paragraph is inserted:

'6b. Any reduction in weekly rest period shall be compensated by an equivalent period of rest taken *en bloc* before the end of the third week following the week in question.

Where two reduced weekly rest periods have been taken consecutively in accordance with the third subparagraph of paragraph 6, the next weekly rest period shall be preceded by a rest period taken as compensation for those two reduced weekly rest periods.;

(c) paragraph 8 is replaced by the following:

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

Any costs for accommodation outside the vehicle shall be covered by the employer.;

(d) the following paragraph is inserted:

'8a. Transport undertakings shall organise the work of drivers in such a way that the drivers are able to return to the employer's operational centre where the driver is normally based and where the driver's weekly rest period begins, in the Member State of the employer's establishment, or to return to the drivers' place of residence, within each period of four consecutive weeks, in order to spend at least one regular weekly rest period or a weekly rest period of more than 45 hours taken in compensation for reduced weekly rest period.

However, where the driver has taken two consecutive reduced weekly rest periods in accordance with paragraph 6, the transport undertaking shall organise the work of the driver in such a way that the driver is able to return before the start of the regular weekly rest period of more than 45 hours taken in compensation.

The undertaking shall document how it fulfils that obligation and shall keep the documentation at its premises in order to present it at the request of control authorities.;

(e) the following paragraph is added:

'10. No later than 21 August 2022, the Commission shall evaluate and report to Parliament and to the Council on whether more appropriate rules for drivers engaged in occasional services of carriage of passengers, as defined in point 4 of Article 2 of Regulation (EC) No 1073/2009 can be adopted.;

(7) the following Article is inserted:

'Article 8a

1. The Commission shall ensure that information about safe and secure parking areas is easily accessible to drivers engaged in the carriage of goods and passengers by road. The Commission shall publish a list of all parking areas that have been certified, in order to provide drivers with adequate:

— intrusion detection and prevention,

- lighting and visibility,
- emergency contact points and procedures,
- gender-friendly sanitary facilities,
- food and beverage purchasing options,
- communications connections,
- power supply.

The list of such parking areas shall be made available on a single official website that is regularly updated.

2. The Commission shall adopt delegated acts in accordance with Article 23a to establish standards providing further detail concerning the level of service and security with regard to the areas listed in paragraph 1 and concerning the procedures for the certification of parking areas.

3. All parking areas that have been certified may indicate that they are certified in accordance with Union standards and procedures.

In accordance with point (c) of Article 39(2) of Regulation (EU) No 1315/2013 of the European Parliament and the Council (*), Member States are to encourage the creation of parking space for commercial road users.

4. By 31 December 2024, the Commission shall present a report to the European Parliament and to the Council on the availability of suitable rest facilities for drivers and of secured parking facilities, as well as on the development of safe and secure parking areas certified in accordance with the delegated acts referred to in paragraph 2. That report may list measures to increase the number and quality of safe and secure parking areas.

(*) Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).;

(8) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

With regard to regular weekly rest periods, that derogation shall only apply to ferry or train journeys where:

- (a) the journey is scheduled for 8 hours or more; and
- (b) the driver has access to a sleeper cabin in the ferry or on the train.’;

(b) paragraph 2 is replaced by the following:

‘2. Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Regulation, or to return from that location, when the vehicle is neither at the driver’s home nor at the employer’s operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a sleeper cabin, bunk or couchette.’;

(9) the following Article is inserted:

‘Article 9a

By 31 December 2025, the Commission shall draw up and submit to the European Parliament and to the Council a report evaluating the use of autonomous driving systems in the Member States. That report shall focus in particular on the potential impact of those systems on rules on driving and rest times. That report shall be accompanied, if appropriate, by a legislative proposal to amend this Regulation.’;

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

‘1. A transport undertaking shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled, the speed of delivery and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation.’;

(11) in Article 12, the following paragraphs are added:

‘Provided that road safety is not thereby jeopardised, in exceptional circumstances, the driver may also depart from Article 6(1) and (2) and Article 8(2) by exceeding the daily and weekly driving time by up to one hour in order to reach the employer’s operational centre or the driver’s place of residence to take a weekly rest period.

Under the same conditions, the driver may exceed the daily and weekly driving time by up to two hours, provided that an uninterrupted break of 30 minutes was taken immediately prior to the additional driving in order to reach the employer’s operational centre or the driver’s place of residence for taking a regular weekly rest period.

The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment, or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the destination or the suitable stopping place.

Any period of extension shall be compensated by an equivalent period of rest taken *en bloc* with any rest period, by the end of the third week following the week in question.’;

(12) in Article 13, paragraph 1 is amended as follows:

(a) point (e) is replaced by the following:

‘(e) vehicles operating exclusively on islands or regions isolated from the rest of the national territory not exceeding 2 300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicle, and which do not border another Member State’;

(b) the following points are added:

‘(q) vehicles or combinations of vehicles carrying construction machinery for a construction undertaking, up to a radius of 100 km from the base of the undertaking, provided that driving the vehicles does not constitute the driver’s main activity;

(r) vehicles used for the delivery of ready-mixed concrete.’;

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

‘2. In urgent cases Member States may grant, under exceptional circumstances, a temporary exception for a period not exceeding 30 days, which shall be duly reasoned and notified immediately to the Commission. The Commission shall immediately publish this information on a public website.’;

(14) Article 15 is replaced by the following:

‘Article 15

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

(15) in Article 16(3), point (a) is replaced by the following:

‘(a) include all the particulars specified in paragraph 2 for a minimum period covering the day of control and the previous 56 days; those particulars must be updated on regular intervals, the duration of which may not exceed one month;’;

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

‘1. Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EU) No 165/2014 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective and proportionate to the gravity of the infringements, as indicated in Annex III to Directive 2006/22/EC of the European Parliament and of the Council (*), as well as dissuasive and non-discriminatory. No infringement of this Regulation and of Regulation (EU) No 165/2014 shall be subject to more than one penalty or procedure. The Member States shall notify the Commission of those rules and measures, along with the method and criteria chosen at national level for assessing their proportionality. The Member States shall notify without delay any subsequent amendment affecting them. The Commission shall inform Member States of those rules and measures, and of any amendments thereto. The Commission shall ensure that this information is published on a dedicated public website in all official languages of the Union, containing detailed information on such penalties applicable in Member States.

(*) Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).’;

(17) Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

(c) the following paragraphs are inserted:

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

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

(18) the following Article is inserted:

'Article 23a

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 8a shall be conferred on the Commission for a period of five years from 20 August 2020.

The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 8a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (*).

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 8a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

(*) OJ L 123, 12.5.2016, p. 1.;

(19) in Article 24, paragraph 2 is replaced by the following:

'2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*) shall apply.

2a. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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

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

'2. In the cases referred to in point (b) of paragraph 1, the Commission shall adopt implementing acts setting out common approaches.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2a).'

Article 2

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

(1) in Article 1(1), the first subparagraph is replaced by the following:

‘1. This Regulation sets out obligations and requirements in relation to the construction, installation, use, testing and control of tachographs used in road transport, in order to verify compliance with Regulation (EC) No 561/2006, Regulations (EC) No 1071/2009 (*), (EC) No 1072/2009 (**), (EC) No 1073/2009 (***) of the European Parliament and of the Council and Directive 2002/15/EC of the European Parliament and of the Council (****) and Council Directives 92/6/EEC (*****), and 92/106/EEC (*****), and, as far as posting of workers in road transport is concerned, Directives 96/71/EC (*****), 2014/67/EU (*****), and (EU) 2020/1057 (*****) of the European Parliament and of the Council.

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- (*) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).
- (**) Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).
- (***) Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88).
- (****) Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).
- (*****), Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 23.1.1992, p. 27).
- (*****), Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).
- (*****), Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).
- (*****), Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (“the IMI Regulation”) (OJ L 159, 28.5.2014, p. 11).
- (*****), Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ L 249, 31.7.2020, p. 49).;

(2) in Article 3, paragraph 4 is replaced by the following:

‘4. No later than three years from the end of the year of entry into force of the detailed provisions referred to in the second paragraph of Article 11, the following categories of vehicles operating in a Member State other than their Member State of registration shall be fitted with a smart tachograph as provided in Articles 8, 9 and 10 of this Regulation:

- (a) vehicles fitted with an analogue tachograph;
- (b) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Regulation (EEC) No 3821/85 applicable until 30 September 2011;
- (c) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Regulation (EEC) No 3821/85 applicable from 1 October 2011; and
- (d) vehicles fitted with a digital tachograph complying with the specifications in Annex IB to Regulation (EEC) No 3821/85 applicable from 1 October 2012.

4a. No later than four years after the entry into force of detailed provisions referred to in the second paragraph of Article 11, vehicles which are fitted with a smart tachograph complying with Annex IC to Commission Implementing Regulation (EU) 2016/799 (*) operating in a Member State other than their Member State of registration shall be fitted with a smart tachograph as provided in Articles 8, 9 and 10 of this Regulation.

(*) Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ L 139, 26.5.2016, p. 1).;

(3) in Article 4(2), after the fourth indent the following indent is inserted:

‘— have enough memory capacity to store all of the data required under this Regulation;’;

(4) Article 7 is replaced by the following:

‘Article 7

Data protection

1. Member States shall ensure that the processing of personal data in the context of this Regulation is carried out solely for the purpose of verifying compliance with this Regulation and with Regulations (EC) No 561/2006, (EC) No 1071/2009, (EC) No 1072/2009, (EC) No 1073/2009, Directives 2002/15/EC, 92/6/EEC and 92/106/EEC and, as far as posting of workers in road transport is concerned, Directives 96/71/EC, 2014/67/EU and (EU) 2020/1057.

2. Member States shall, in particular, ensure that personal data are protected against uses other than those strictly linked to the Union legal acts referred to in paragraph 1 in relation to:

(a) the use of a global navigation satellite system (GNSS) for the recording of location data as referred to in Article 8;

(b) the use of remote communication for control purposes as referred to in Article 9, the use of tachographs with an interface as referred to in Article 10, the electronic exchange of information on driver cards as referred to in Article 31, and in particular any cross-border exchanges of such data with third countries; and

(c) the keeping of records by transport undertakings as referred to in Article 33.

3. Digital tachographs shall be designed in such a way as to ensure privacy. Only data necessary for the purposes referred to in paragraph 1 shall be processed.

4. Owners of vehicles, transport undertakings and any other entity concerned shall comply, where applicable, with the relevant provisions on the protection of personal data.’;

(5) in Article 8, paragraph 1 is replaced by the following:

‘1. In order to facilitate the verification of compliance with the relevant legislation, the position of the vehicle shall be recorded automatically at the following points, or at the closest point to such places where the satellite signal is available:

- the starting place of the daily working period,
- every time the vehicle crosses the border of a Member State,
- every time the vehicle performs loading or unloading activities,
- every three hours of accumulated driving time, and
- the ending place of the daily working period.

In order to facilitate the verification of compliance by control authorities, the smart tachograph shall also record whether the vehicle has been employed for the carriage of goods or passengers, as required by Regulation (EC) No 561/2006.

For those purposes, vehicles registered for the first time 36 months after the entry into force of the detailed provisions referred to in the first paragraph of Article 11 shall be fitted with a tachograph connected to a positioning service based on a satellite navigation system.

However, the recording of the border-crossing and additional activities referred to in the second and third indents of the first subparagraph and in the second subparagraph shall apply to vehicles that were registered in a Member State for the first time more than two years after the entry into force of the detailed provisions referred to in the second paragraph of Article 11, without prejudice to the obligation to retrofit certain vehicles later in accordance with Article 3(4).;

(6) Article 9 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Three years after the entry into force of detailed provisions referred to in the second paragraph of Article 11, Member States shall equip their control authorities to an appropriate extent with the remote early detection equipment necessary to permit the data communication referred to in this Article, taking into account their specific enforcement requirements and strategies. Until that time, Member States may decide whether to equip their control authorities with such remote early detection equipment.’;

(b) paragraph 3 is replaced by the following:

‘3. The communication referred to in paragraph 1 shall be established with the tachograph only when so requested by the equipment of the control authorities. It shall be secured to ensure data integrity and authentication of the recording and control equipment. Access to the data communicated shall be restricted to control authorities authorised to check infringements of the Union legal acts referred to in Article 7(1), and of this Regulation and to workshops in so far as it is necessary to verify the correct functioning of the tachograph.’;

(c) in paragraph 4 the following indent is added:

‘— exceeding maximum driving time.’;

(7) in Article 10, the following paragraph is added:

‘The tachographs of vehicles registered for the first time in a Member State more than two years after the entry into force of detailed provisions referred to in the second paragraph of Article 11 shall be equipped with the interface referred to in paragraph 1.’;

(8) Article 11 is amended as follows:

(a) the first paragraph is replaced by the following:

‘In order to ensure that smart tachographs comply with the principles and requirements set out in this Regulation, the Commission shall, by means of implementing acts, adopt detailed provisions necessary for the uniform application of Articles 8, 9 and 10, excluding any provisions which would provide for the recording of additional data by the tachograph.

By 21 August 2021, the Commission shall adopt implementing acts laying down detailed provisions for the uniform application of the obligation to record and store data relating to any border crossing of the vehicle and activities referred to in the second and third indent of the first subparagraph of Article 8(1) and in the second subparagraph of Article 8(1).

By 21 February 2022, the Commission shall adopt implementing acts laying down detailed provisions necessary for the uniform application of rules on data requirements and functions, including Articles 8, 9 and 10 of this Regulation, and the installation of, tachographs for vehicles referred to in point (aa) of Article 2(1) of Regulation (EC) No 561/2006.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(3).;

(b) in the second paragraph, the introductory phrase is replaced by the following:

‘The detailed provisions referred to in the first, second and third paragraphs of this Article shall:’

(9) in Article 22, paragraph 5, the third and fourth subparagraphs are replaced by the following:

‘The removed or broken seals shall be replaced by an approved fitter or a workshop without undue delay and at the latest within seven days of their removal or breaking. When the seals have been removed or broken for control purposes, they may be replaced by a control officer equipped with sealing equipment and a unique special mark without undue delay.

When a control officer removes a seal, the control card shall be inserted in the tachograph from the moment of the removal of the seal until the inspection is finished, including in the case of the placement of a new seal. The control officer shall issue a written statement containing at least the following information:

- vehicle identification number,
- name of the officer,
- control authority and Member State,
- number of the control card,
- number of the removed seal,
- date and time of seal removal,
- number of the new seal, where the control officer has placed a new seal.

Before replacing the seals, a check and calibration of the tachograph shall be performed by an approved workshop, except where a seal has been removed or broken for control purposes and replaced by a control officer.’

(10) in Article 26, the following paragraph is inserted:

‘7a. The competent authority of the issuing Member State may require a driver to replace the driver card by a new one if this is necessary to comply with the relevant technical specifications.’

(11) Article 34 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Drivers shall use record sheets or driver cards every day on which they drive, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised or is necessary in order to enter the symbol of the country after having crossed a border. No record sheet or driver card may be used to cover a period longer than that for which it is intended.’

(b) in paragraph 5, point (b) is amended as follows:

(i) point (iv) is replaced by the following:

‘(iv) under the sign : breaks, rest, annual leave or sick leave.’;

(ii) the following point is added:

‘(v) under the sign for “ferry/train”: In addition to the sign : the rest period spent on a ferry or train as required by Article 9 of Regulation (EC) No 561/2006.’;

(c) in paragraph 6, the following point is added:

‘(f) the symbols of the countries in which the daily working period started and finished. The driver shall also enter the symbol of the country that the driver enters after crossing a border of a Member State at the beginning of the driver’s first stop in that Member State. That first stop shall be made at the nearest possible stopping place at or after the border. Where the crossing of the border of a Member State takes place on a ferry or train, the driver shall enter the symbol of the country at the port or station of arrival.’

(d) paragraph 7 is replaced by the following:

'7. The driver shall enter in the digital tachograph the symbols of the countries in which the daily working period started and finished.

From 2 February 2022 the driver shall also enter the symbol of the country that the driver enters after crossing a border of a Member State at the beginning of the driver's first stop in that Member State. That first stop shall be made at the nearest possible stopping place at or after the border. Where the crossing of the border of a Member State takes place on a ferry or train, the driver shall enter the symbol of the country at the port or station of arrival.

Member States may require drivers of vehicles engaged in transport operations inside their territory to add more detailed geographic specifications to the country symbol, provided that those Member States have notified those detailed geographic specifications to the Commission before 1 April 1998.

It shall not be necessary for drivers to enter the information referred to in the first subparagraph if the tachograph is automatically recording location data in accordance with Article 8.;

(12) Article 36 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (i) is replaced by the following:

'(i) the record sheets for the current day and the preceding 56 days.;

(ii) point (iii) is replaced by the following:

'(iii) any manual records and printouts made during the current day and the preceding 56 days.;

(b) in paragraph 2, point (ii) is replaced by the following:

'(ii) any manual records and printouts made during the current day and the preceding 56 days.;

Article 3

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

However, point (15) of Article 1 and point (12) of Article 2 shall apply from 31 December 2024.

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

Done at Brussels, 15 July 2020.

For the European Parliament
The President
D.M. SASSOLI

For the Council
The President
J. KLOECKNER

REGULATION (EU) 2020/1055 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 15 July 2020****amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Experience with the implementation of Regulations (EC) No 1071/2009 ⁽⁴⁾ and (EC) No 1072/2009 ⁽⁵⁾ of the European Parliament and of the Council has revealed that the rules in those regulations offer scope for improvement on a number of points.
- (2) So far, and unless otherwise provided for in national law, the rules on access to the occupation of road transport operator do not apply to undertakings that are engaged in the occupation of road haulage operator solely by means of motor vehicles with a permissible laden mass not exceeding 3,5 tonnes or combinations of vehicles not exceeding that limit. The number of such undertakings which are active in both national and international transport operations has been increasing. As a result, several Member States have decided to apply the rules on access to the occupation of road transport operator, provided for in Regulation (EC) No 1071/2009, to those undertakings. In order to avoid possible loopholes and to ensure a minimum level of professionalisation of the sector using motor vehicles intended exclusively for the carriage of goods and with a permissible laden mass not exceeding 3,5 tonnes by way of common rules, and thus to approximate competitive conditions between all operators, that Regulation should be amended. The requirements for access to the profession should become mandatory for operators using motor vehicles or combinations of vehicles intended exclusively for the carriage of goods and with a permissible laden mass exceeding 2,5 tonnes but not exceeding 3,5 tonnes involved in international transport.
- (3) Under Regulation (EC) No 1072/2009, certain international haulage activities are exempted from the need for a Community licence in order to enter the European road haulage market. Within the framework of the organisation of that market, road haulage undertakings carrying goods in motor vehicles or combinations of vehicles which have a permissible laden mass not exceeding 2,5 tonnes should be exempted from the need for a Community licence or other carriage authorisation.
- (4) Although vehicles having a permissible laden mass below a certain threshold are excluded from the scope of Regulation (EC) No 1071/2009, that Regulation gives Member States the possibility to apply part or all of the provisions thereof to such vehicles.
- (5) Currently, Member States are entitled to make access to the occupation of road transport operator subject to requirements that are additional to those specified in Regulation (EC) No 1071/2009. This possibility has not proven to be necessary in order to respond to imperative needs and has led to divergences in respect of such access. It should therefore be abolished.

⁽¹⁾ OJ C 197, 8.6.2018, p. 38.

⁽²⁾ OJ C 176, 23.5.2018, p. 57.

⁽³⁾ Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of 7 April 2020 (OJ C 153, 7.5.2020, p. 1). Position of the European Parliament of 9 July 2020 (not yet published in the Official Journal).

⁽⁴⁾ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

⁽⁵⁾ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

- (6) In order to combat the phenomenon of so-called 'letterbox companies' and to guarantee fair competition and a level playing field in the internal market, it is necessary to ensure that road transport operators established in a Member State have a real and continuous presence in that Member State and conduct their transport business from there. Therefore, and in light of experience, it is necessary to clarify and strengthen the provisions regarding the existence of an effective and stable establishment while avoiding the imposition of a disproportionate administrative burden.
- (7) The real and continuous presence in the Member State of establishment should in particular require that the undertaking carries out transport operations with the appropriate technical equipment situated in that Member State.
- (8) Regulation (EC) No 1071/2009 requires undertakings to conduct effectively and continuously their operations with the appropriate technical equipment and facilities at an operating centre situated in the Member State of establishment, and it allows for additional requirements at national level, the most common of which being a requirement to have parking spaces available in the Member State of establishment. However, those, unevenly applied, requirements have not been sufficient to ensure a genuine link with that Member State in order to efficiently fight letterbox companies and to reduce the risk of systematic cabotage and nomadic drivers organised from an undertaking to which the vehicles do not return. Considering that, in order to ensure the proper functioning of the internal market in the area of transport, specific rules on the right of establishment and the provision of services may be necessary, it is appropriate to further harmonise the establishment requirements and to strengthen the requirements linked to the presence of the vehicles used by the transport operator in the Member State of establishment. Defining a clear minimum interval within which the vehicle has to return also contributes to ensuring that those vehicles can be correctly maintained with the technical equipment situated in the Member State of establishment and facilitates controls.

The cycle for such returns should be synchronised with the obligation on the transport undertaking in Regulation (EC) No 561/2006 of the European Parliament and of the Council ⁽⁶⁾ to organise its operations in a manner that enables the driver to return home at least every four weeks, so that both obligations can be fulfilled through the return of the driver together with the vehicle at least every second four-week cycle. This synchronisation strengthens the right of the driver to return and reduces the risk that the vehicle has to return only to fulfil this new establishment requirement. However, the requirement to return to the Member State of establishment should not require a specific number of operations to be conducted in the Member State of establishment or otherwise limit the operators' possibility to provide services throughout the internal market.

- (9) To the extent that access to the occupation of road transport operator depends on the good repute of the undertaking concerned, clarifications are needed as regards the persons whose conduct must be taken into account, the administrative procedures which must be followed and waiting periods in respect of rehabilitation once a transport manager has lost good repute.
- (10) In view of their potential to considerably affect the conditions for fair competition in the road transport market, serious infringements of national tax rules should be added to the items relevant to the assessment of good repute.
- (11) In view of their potential to considerably affect the road transport market and the social protection of workers, serious infringements of Union rules on the posting of workers in road transport, cabotage and the law applicable to contractual obligations should be added to the items relevant to the assessment of good repute.
- (12) Given the importance of fair competition in the internal market, infringements of Union rules relevant to this issue, including rules on access to the market such as cabotage rules, should be taken into account in the assessment of the good repute of transport managers and transport undertakings. The terms of the empowerment pursuant to which the Commission is to define the degree of seriousness of relevant infringements should be clarified accordingly.
- (13) National competent authorities have had difficulties identifying the documents which undertakings may submit in order to prove their financial standing, in particular in the absence of certified annual accounts. The rules regarding the evidence required to prove financial standing should be clarified.

⁽⁶⁾ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (14) Undertakings engaged in the occupation of road haulage operator by means of motor vehicles or combinations of vehicles intended exclusively for the carriage of goods, involved in international transport and which have a permissible laden mass exceeding 2,5 tonnes but not exceeding 3,5 tonnes should have a minimum financial standing to ensure that they have the means to carry out operations on a stable and long-lasting basis. However, since the operations conducted with these vehicles are generally of a limited size, the corresponding requirements for financial standing should be less demanding than those that apply to operators using vehicles above that limit. Combinations of vehicles should be taken into account when determining the required financial standing. The competent authority should apply the higher level of financial requirement if the permissible laden mass of the combination of vehicles exceeds 3,5 tonnes.
- (15) In order to maintain and create high standards for undertakings without creating negative impacts on the internal market in road transport, Member States should be allowed to apply the financial requirements referring to the use of heavy vehicles also to the undertakings established on their territories in respect of vehicles with a permissible laden mass not exceeding 3,5 tonnes.
- (16) In order to ensure a reliable road transport sector and to improve the collection of debts owed to bodies governed by public law, Member States should have the possibility to require compliance with payment obligations towards public entities, such as value added tax debts and social security contributions, and to require that undertakings are not subject to proceedings that have been introduced to protect their assets.
- (17) The information about transport operators contained in the national electronic registers should be as complete and up-to-date as possible in order to allow national authorities in charge of enforcing the relevant rules to have a sufficient overview of the operators being investigated. In particular, information regarding the registration number of the vehicles at the disposal of operators and the risk rating of the operators should allow a better national and cross-border enforcement of the provisions of Regulations (EC) No 1071/2009 and (EC) No 1072/2009. The rules on the national electronic register should therefore be amended accordingly.
- (18) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt, inter alia, the technical procedures for electronic consultation of the national electronic registers of the other Member States. That might entail procedures necessary to ensure that it is possible for the competent authorities to access the harmonised risk rating of an undertaking under Article 9 of Directive 2006/22/EC of the European Parliament and of the Council ⁽⁷⁾ during roadside checks. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽⁸⁾.
- (19) The definition of the most serious infringement concerning exceeding the daily driving time, as provided for in Annex IV of Regulation (EC) No 1071/2009, does not fit the existing relevant provision laid down in Regulation (EC) No 561/2006. That inconsistency leads to uncertainty and diverging practices among national authorities resulting in difficulties in the enforcement of the rules in question. That definition should therefore be clarified to ensure consistency between the two Regulations.
- (20) The rules on national transport performed on a temporary basis by non-resident hauliers in a host Member State ('cabotage') should be clear, simple and easy to enforce, while maintaining the level of liberalisation achieved so far.
- (21) Cabotage operations should help to increase the load factor of heavy duty vehicles and reduce empty runs, and should be allowed as long as they are not carried out in a way that creates a permanent or continuous activity within the Member State concerned. To ensure that cabotage operations are not carried out in a way that creates a permanent or continuous activity, hauliers should not be allowed to carry out cabotage operations in the same Member State within a certain time after the end of a period of cabotage operations.

⁽⁷⁾ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

⁽⁸⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (22) While the further liberalisation established by Article 4 of Council Directive 92/106/EEC⁽⁹⁾, compared to cabotage under Regulation (EC) No 1072/2009, has been beneficial in promoting combined transport and should, in principle, be retained, it is necessary to ensure that it is not misused. Experience shows that, in certain parts of the Union, that provision has been used in a systematic manner to circumvent the temporary nature of cabotage and as the basis for the continuous presence of vehicles in a Member State other than that of the establishment of the undertaking. Such unfair practices risk leading to social dumping and jeopardise respect of the legal framework relating to cabotage. It should therefore be possible for Member States to derogate from Article 4 of Directive 92/106/EEC and to apply the provisions relating to cabotage in Regulation (EC) No 1072/2009 in order to address such problems by introducing a proportionate limit to the continuous presence of vehicles within their territory.
- (23) Effective and efficient enforcement of the rules is a prerequisite for fair competition in the internal market. Further digitalisation of enforcement tools is essential in order to free up enforcement capacity, to reduce unnecessary administrative burdens on international transport operators and, in particular, small and medium-sized enterprises, to better target high-risk transport operators and to detect fraudulent practices. The means by which road transport operators can prove compliance with the rules for cabotage operations should be clarified. Roadside controls should be based on transport documents and, if available, on tachograph records. In order to simplify the provision of relevant evidence and its treatment by the competent authorities, the use and transmission of electronic transport information should be recognised as means of proving compliance. The format used for that purpose should ensure reliability and authenticity. Considering the increasing use of efficient electronic exchange of information in transport and logistics, it is important to ensure coherence in the regulatory frameworks and to establish provisions addressing the simplification of administrative procedures.
- (24) Transport undertakings are the addressees of the rules on international carriage and are, as such, subject to the consequences of any infringements committed by them. However, in order to prevent abuses by undertakings contracting transport services from road haulage operators, Member States should also provide for clear and predictable rules on sanctions against consignors, freight forwarders, contractors and sub-contractors in cases where they knew, or, in light of all relevant circumstances ought to have known, that the transport services that they commission involve infringements of Regulation (EC) No 1072/2009.
- (25) The European Labour Authority, whose scope of activities, as set out in Article 1(4) of Regulation (EU) 2019/1149 of the European Parliament and of the Council⁽¹⁰⁾, covers Regulation (EC) No 1071/2009, will play an important role in assisting Member States to adequately enforce the rules of this Regulation. This role will in particular concern concerted checks, the facilitation of cooperation and exchanges of information between Member States, the promotion and sharing of best practices, supporting capacity building, training and awareness raising campaigns.
- (26) In order to take into account market developments and technical progress the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend Annexes I, II and III to Regulation (EC) No 1071/2009 and to amend Annexes I, II and III to Regulation (EC) No 1072/2009. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in line with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽¹¹⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to the Commission's expert groups meetings dealing with the preparation of delegated acts.
- (27) Since the objectives of this Regulation, namely to introduce a degree of harmonisation in certain areas so far not harmonised by Union law, in particular in respect of transport with light commercial vehicles and enforcement practices, and to approximate conditions of competition and to improve enforcement, cannot be sufficiently

⁽⁹⁾ Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).

⁽¹⁰⁾ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).

⁽¹¹⁾ OJ L 123, 12.5.2016, p. 1.

achieved by the Member States but can rather, by reason of the nature of the objectives pursued in combination with the cross-border nature of road transport, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve the objectives pursued.

- (28) Regulations (EC) No 1071/2009, (EC) No 1072/2009 and Regulation (EU) No 1024/2012 of the European Parliament and of the Council ⁽¹²⁾ should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1071/2009

Regulation (EC) No 1071/2009 is amended as follows:

- (1) in Article 1, paragraph 4 is amended as follows:

- (a) point (a) is replaced by the following:

‘(a) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3,5 tonnes engaged exclusively in national transport operations in their Member State of establishment;’

- (b) the following point is inserted:

‘(aa) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles, the permissible laden mass of which does not exceed 2,5 tonnes;’

- (c) point (b) is replaced by the following:

‘(b) undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator;’

- (d) the following subparagraph is added:

‘For the purposes of point (b) of the first subparagraph, any carriage by road, other than carriage for hire or reward or on own account, for which no direct or indirect remuneration is received and which does not directly or indirectly generate any income for the driver of the vehicle or for others, and which is not linked to professional activity, is to be considered as carriage exclusively for non-commercial purposes.’

- (2) in Article 3, paragraph 2 is deleted;

- (3) Article 5 is replaced by the following:

‘Article 5

Conditions relating to the requirement of establishment

1. In order to satisfy the requirement laid down in point (a) of Article 3(1), in the Member State of establishment an undertaking shall:

- (a) have premises at which it is able to access the originals of its core business documents, whether in electronic or any other form, in particular its transport contracts, documents relating to the vehicles at the disposal of the undertaking, accounting documents, personnel management documents, labour contracts, social security documents, documents containing data on the dispatching and posting of drivers, documents containing data relating to cabotage, driving time and rest periods, and any other document to which the competent authority must have access in order to verify the undertaking’s compliance with the conditions laid down in this Regulation;
- (b) organise its vehicle fleet’s activity in such a way as to ensure that vehicles that are at the disposal of the undertaking and are used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it;

⁽¹²⁾ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’) (OJ L 316, 14.11.2012, p. 1).

- (c) be registered on the register of commercial companies of that Member State or on a similar register whenever required under national law;
- (d) be subject to tax on revenues and, whenever required under national law, have a valid value added tax registration number;
- (e) once an authorisation has been granted, have at its disposal one or more vehicles which are registered or put into circulation and authorised to be used in conformity with the legislation of that Member State, regardless of whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or under a hire or leasing contract;
- (f) effectively and continuously conduct its administrative and commercial activities with the appropriate equipment and facilities at premises as referred to in point (a) situated in that Member State and manage its transport operations effectively and continuously using the vehicles referred to in point (g) with the appropriate technical equipment situated in that Member State;
- (g) on an ongoing basis, have at its regular disposal a number of vehicles that comply with the conditions laid down in point (e) and drivers who are normally based at an operational centre in that Member State, in both cases proportionate to the volume of transport operations carried out by the undertaking.

2. In addition to the requirements laid down in paragraph 1, Member States may require an undertaking to have, in the Member State of establishment:

- (a) proportionate to the size of the activity of the undertaking, duly qualified administrative personnel at the premises or the transport manager reachable during customary business hours;
- (b) proportionate to the size of the activity of the undertaking, operational infrastructure other than the technical equipment referred to in point (f) of paragraph 1 in the territory of that Member State, including an office which is open during customary business hours.;

(4) Article 6 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the second subparagraph is replaced by the following:

'In determining whether an undertaking has satisfied that requirement, Member States shall consider the conduct of that undertaking, its transport managers, executive directors and any other relevant person as may be determined by the Member State. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties incurred by or infringements of the undertaking itself, its transport managers, executive directors and any other relevant person as may be determined by the Member State.;

(ii) in point (vi) of point (a) of the third subparagraph, the word 'and' is deleted;

(iii) in point (a) of the third subparagraph the following point is added:

'(vii) tax law; and';

(iv) in point (b) of the third subparagraph the following points are added:

'(xi) the posting of workers in road transport;

(xii) the law applicable to contractual obligations;

(xiii) cabotage.;

(b) paragraph 2 is replaced by the following:

'2. For the purposes of point (b) of the third subparagraph of paragraph 1, where the transport manager or the transport undertaking has been convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements of Union rules as set out in Annex IV, in one or more Member States, the competent authority of the Member State of establishment shall carry out and complete in an appropriate and timely manner an administrative procedure, which shall include, if appropriate, an on-site inspection at the premises of the undertaking concerned.

During the administrative procedure, the transport manager or other legal representatives of the transport undertaking, as the case may be, shall be given the right to present their arguments and explanations.

During the administrative procedure, the competent authority shall assess whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. In that assessment, the competent authority shall take into account the number of serious infringements of national and Union rules as referred to in the third subparagraph of paragraph 1, as well as the number of most serious infringements of Union rules as set out in Annex IV for which the transport manager or the transport undertaking has been convicted or has had penalties imposed. Any such finding shall be duly reasoned and justified.

Where the competent authority finds that the loss of good repute would be disproportionate, it shall decide that the undertaking concerned continues to be of good repute. The reasons for this decision shall be recorded in the national register. The number of such decisions shall be indicated in the report referred to in Article 26(1).

Where the competent authority does not find that the loss of good repute would be disproportionate, the conviction or penalty shall lead to the loss of good repute.;

(c) the following paragraph is inserted:

'2a. The Commission shall adopt implementing acts laying down a list of categories, types and degrees of seriousness of serious infringements of Union rules referred to in point (b) of the third subparagraph of paragraph 1 which, in addition to those set out in Annex IV, may lead to the loss of good repute. Member States shall take into account information on those infringements, including information received from other Member States, when setting the priorities for checks pursuant to Article 12(1).

To that end, the Commission shall:

- (a) lay down the categories and types of infringement which are most frequently encountered;
- (b) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries and to distort competition in the road transport market, including by undermining the working conditions of transport workers;
- (c) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, taking into account the number of vehicles used for the transport activities managed by the transport manager.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3).;

(5) Article 7 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'1. In order to satisfy the requirement laid down in point (c) of Article 3(1), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year. The undertaking shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that for each year it has at its disposal capital and reserves totalling at least:

- (a) EUR 9 000, for the first motor vehicle used;
- (b) EUR 5 000 for each additional motor vehicle or combination of vehicles used that has a permissible laden mass exceeding 3,5 tonnes; and
- (c) EUR 900 for each additional motor vehicle or combination of vehicles used that has a permissible laden mass exceeding 2,5 tonnes but not exceeding 3,5 tonnes.

Undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles that have a permissible laden mass exceeding 2,5 tonnes but not exceeding 3,5 tonnes shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that for each year they have at their disposal capital and reserves totalling at least:

- (a) EUR 1 800 for the first vehicle used; and
- (b) EUR 900 for each additional vehicle used.

Member States may require that undertakings established in their territories demonstrate that they have at their disposal for these vehicles the same amounts of capital and reserves as for the vehicles referred to in the first subparagraph. In such cases, the competent authority of the Member State concerned shall inform the Commission accordingly, and the Commission shall make that information publicly available.;

(b) the following paragraph is inserted:

'1a. In addition to the requirements set out in paragraph 1, Member States may require that the undertaking, the transport manager or any other relevant person as may be determined by Member States not have outstanding non-personal debts owed to bodies governed by public law, and not be bankrupt or subject to insolvency or winding-up proceedings.;

(c) paragraph 2 is replaced by the following:

'2. By way of derogation from paragraph 1, the competent authority may agree or require that an undertaking demonstrate its financial standing by means of a certificate determined by the competent authority, such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other financial institutions including insurance companies or by another binding document providing a joint and several guarantee for the undertaking in respect of the amounts specified in paragraph 1.;

(d) the following paragraph is inserted:

'2a. By way of derogation from paragraph 1, in the absence of certified annual accounts for the year of an undertaking's registration, the competent authority shall agree that an undertaking demonstrate its financial standing by means of a certificate, such as a bank guarantee, a document issued by a financial institution establishing access to credit in the name of the undertaking, or by another binding document as determined by the competent authority proving that the undertaking has at its disposal the amounts specified in paragraph 1.;

(6) Article 8 is amended as follows:

(a) paragraph 5 is replaced by the following:

'5. Member States may promote periodic training on the subjects listed in Annex I at three-year intervals to ensure that the person or persons referred to in paragraph 1 are sufficiently aware of developments in the sector.;

(b) paragraph 9 is replaced by the following:

'9. The Commission is empowered to adopt delegated acts in accordance with Article 24a to amend Annexes I, II and III in order to adapt them to market developments and technical progress.;

(7) in Article 9, the following paragraph is added:

'For the purpose of granting a licence to a road haulage undertaking which only operates motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3,5 tonnes, Member States may decide to exempt from the examinations referred to in Article 8(1) persons who provide proof that they have continuously managed, for the period of 10 years before 20 August 2020, an undertaking of the same type.;

(8) in Article 11(4), the third subparagraph is deleted;

(9) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Competent authorities shall regularly monitor whether undertakings which they have authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3 of this Regulation. To that end, Member States shall carry out checks, including, where appropriate, on-site inspections at the premises of the undertaking concerned, targeting those undertakings which are classed as posing an increased risk. For that purpose, Member States shall extend the risk rating system established by them pursuant to Article 9 of Directive 2006/22/EC of the European Parliament and of the Council (*) to cover all infringements specified in Article 6 of this Regulation.

(*) Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).;

(b) in paragraph 2, the second subparagraph is deleted;

(10) in Article 13(1), point (c) is replaced by the following:

‘(c) a time limit not exceeding six months, where the requirement of financial standing had not been satisfied, in order to demonstrate that that requirement is again satisfied on a permanent basis.’;

(11) Article 14 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘The competent authority shall not rehabilitate the transport manager earlier than one year from the date of the loss of good repute and, in any event, not before the transport manager has demonstrated that he or she has followed appropriate training for a period of at least three months or passed an exam on the subjects listed in part I of Annex I to this Regulation.’;

(b) paragraph 2 is replaced by the following:

‘2. Unless and until a rehabilitation measure is taken in accordance with the relevant provisions of national law and paragraph 1 of this Article, the certificate of professional competence referred to in Article 8(8) of the transport manager who has been declared to be unfit shall no longer be valid in any Member State.’;

(12) Article 16 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) point (c) is replaced by the following:

‘(c) the names of the transport managers designated as meeting the requirements laid down in Article 3 relating to good repute and professional competence or, as appropriate, the name of a legal representative.’;

(ii) the following points are added:

‘(g) the registration numbers of the vehicles at the disposal of the undertaking pursuant to point (g) of Article 5(1);

(h) the number of people employed in the undertaking on 31 December of the previous year, which shall be recorded in the national register by 31 March of each year;

(i) the risk rating of the undertaking pursuant to Article 9(1) of Directive 2006/22/EC.’;

(iii) the second, third and fourth subparagraphs are replaced by the following:

‘The data referred to in points (a) to (d) of the first subparagraph shall be publicly accessible, in accordance with the relevant provisions on personal data protection.

Member States may choose to keep the data referred to in points (e) to (i) of the first subparagraph in separate registers. In such cases, the data referred to in points (e) and (f) shall be made available upon request or shall be directly accessible to all the competent authorities of the Member State in question. The requested information shall be provided within five working days of receipt of the request.

The data referred to in points (g), (h) and (i) of the first subparagraph shall be available to the competent authorities during roadside checks no later than 12 months from the entry into force of the implementing act, adopted pursuant to paragraph 6, specifying the functionalities that allow for the data to be made available to the competent authorities during roadside checks.

The data referred to in points (e) to (i) of the first subparagraph shall only be accessible to authorities other than the competent authorities where those authorities are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to secrecy or are otherwise under a formal obligation of secrecy.’;

(b) paragraph 4 is replaced by the following:

‘4. Member States shall take all necessary measures to ensure that all data contained in the national electronic register are kept up to date and are accurate.’;

(c) in paragraph 6, the following subparagraphs are added:

'By 14 months after the adoption of an implementing act on a common formula for calculating the risk rating as referred to in Article 9(1) of Directive 2006/22/EC, the Commission shall adopt implementing acts, specifying the functionalities that allow for the data referred to in points (g), (h) and (i) of the first subparagraph of paragraph 2 to be made available to the competent authorities during roadside checks.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 25(2).';

(d) paragraph 7 is deleted;

(13) Article 18 is replaced by the following:

'Article 18

Administrative cooperation between Member States

1. Member States shall designate a national contact point responsible for the exchange of information with the other Member States with regard to the application of this Regulation. Member States shall forward to the Commission the names and addresses of their national contact points by 4 December 2011. The Commission shall draw up a list of all contact points and forward it to the Member States.

2. The competent authorities of the Member States shall cooperate closely and shall swiftly provide one another with mutual assistance and with any other relevant information in order to facilitate the implementation and enforcement of this Regulation.

3. The competent authorities of the Member States shall exchange information on convictions and penalties for any serious infringements referred to in Article 6(2). A Member State which receives notification of a serious infringement referred to in Article 6(2) which has resulted in a conviction or a penalty in another Member State during the previous two years shall record that infringement in its national electronic register.

4. Member States shall reply to requests for information from all competent authorities of other Member States and shall carry out checks, inspections and investigations concerning compliance with the requirement laid down in point (a) of Article 3(1) by road transport operators established in their territory. Such requests for information may include access to documents required to prove that the conditions laid down in Article 5 are met. Requests for information by competent authorities of Member States shall be duly justified and reasoned. To this end, requests shall include credible indications of possible infringements of point (a) of Article 3(1), indicate the purpose of the request and specify in sufficient detail the information and documents which are being requested.

5. Member States shall submit the information requested by other Member States pursuant to paragraph 4 within 30 working days from the receipt of the request. A shorter time limit may be mutually agreed between the Member States.

6. Where the requested Member State considers that the request is insufficiently reasoned, it shall inform the requesting Member State accordingly within 10 working days from the receipt of the request. The requesting Member State shall further substantiate the request. Where the requesting Member State is unable to further substantiate the request, the requested Member State may reject the request.

7. Where it is difficult to comply with a request for information or to carry out checks, inspections or investigations, the requested Member State shall inform the requesting Member State accordingly within 10 working days from the receipt of the request, giving the reasons for the difficulty. The Member States concerned shall discuss with each other with a view to finding a solution to any difficulty raised. In the event of persistent delays in the provision of information to the requesting Member State, the Commission shall be informed and shall take appropriate measures.

8. The exchange of information referred to in paragraph 3 shall take place through the message exchange system, namely the European Registers of Road Transport Undertakings (ERRU) established by Commission Regulation (EU) No 1213/2010 (*). The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in paragraphs 4 to 7 shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council (**). For this purpose, each Member State may designate the contact point referred to in paragraph 1 as the competent authority and shall inform the Commission thereof through IMI.

9. Member States shall ensure that the information transmitted to them pursuant to this Article is used only in respect of the matter(s) for which it was requested. Any processing of personal data shall be carried out solely for the purposes of complying with this Regulation and shall be in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council (**).

10. Mutual administrative cooperation and assistance shall be provided free of charge.

11. A request for information shall not preclude the competent authorities from taking measures in line with the relevant national and Union law to investigate and prevent alleged breaches of this Regulation.

(*) Commission Regulation (EU) No 1213/2010 of 16 December 2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings (OJ L 335, 18.12.2010, p. 21).

(**) Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (“the IMI Regulation”) (OJ L 316, 14.11.2012, p. 1).

(***) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1);

(14) in Article 23, the following paragraphs are added:

‘By way of derogation from Article 1(2), 21 May 2022 road haulage undertakings engaged in international transport operations solely by means of motor vehicles or combinations of vehicles, the permissible laden mass of which does not exceed 3,5 tonnes, shall be exempt from the provisions of this Regulation unless the law of the Member State of establishment provides otherwise.

By way of derogation from Article 16(2), the requirement to include the risk rating of the undertakings in the national electronic registers shall apply from 14 months after the entry into force of the implementing act on a common formula for calculating the risk rating referred to in Article 9(1) of Directive 2006/22/EC.’;

(15) Article 24 is deleted;

(16) the following Article is inserted:

‘Article 24a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 8(9) shall be conferred on the Commission for an indeterminate period of time from 20 August 2020.

3. The delegation of power referred to in Article 8(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in line with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (*).

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted under Article 8(9) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

(*) OJ L 123, 12.5.2016, p. 1.’;

(17) Article 25 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*) shall apply.

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

(b) paragraph 3 is replaced by the following:

‘3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’;

(18) Article 26 is amended as follows:

(a) the title is replaced by the following:

‘Reporting and review’;

(b) in paragraph 1, point (b) is replaced by the following:

‘(b) the number of authorisations granted under this Regulation by year and by type, the number of suspended authorisations, the number of withdrawn authorisations, the number of declarations of unfitness and the reasons on which those decisions were based. Reports relating to the period after 21 May 2022 shall also include a breakdown of these items by:

(i) road passenger transport operators;

(ii) road haulage operators using exclusively motor vehicles or combinations of vehicles, the permissible laden mass of which does not exceed 3,5 tonnes; and

(iii) all other road haulage operators.’;

(c) the following paragraphs are added:

‘3. Every two years Member States shall report to the Commission on the requests made by them under Article 18(4) to (9), on the replies received from other Member States and on the actions that they have taken on the basis of the information provided.

4. By 21 August 2023, on the basis of the information gathered by the Commission under paragraph 3 and on the basis of further evidence, the Commission shall present a detailed report to the European Parliament and the Council on the extent of administrative cooperation between Member States, on any possible shortcomings in this respect and on possible ways to improve the cooperation. On the basis of this report, it shall assess whether it is necessary to propose additional measures.

5. The Commission shall evaluate the implementation of this Regulation by 21 August 2023 and report to the European Parliament and the Council on the application of this Regulation.

6. Following the report referred to in paragraph 5, the Commission shall regularly evaluate this Regulation and shall submit the evaluation results to the European Parliament and the Council.

7. Where appropriate, the reports referred to in paragraphs 5 and 6 shall be accompanied by relevant legislative proposals.’;

(19) Annex IV is amended as follows:

(a) the title is replaced by the following:

‘Most serious infringements for the purpose of article 6(2)’;

(b) in point 1, point (b) is replaced by the following:

‘(b) exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more.’;

(c) point 2 is replaced by the following:

- ‘2. Not having a tachograph and/or speed limiter, or having in the vehicle and/or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.’.

Article 2

Amendments to Regulation (EC) No 1072/2009

Regulation (EC) No 1072/2009 is amended as follows:

(1) in Article 1, paragraph 5 is amended as follows:

(a) point (c) is replaced by the following:

‘(c) until 20 May 2022: carriage of goods in vehicles the permissible laden mass of which does not exceed 3,5 tonnes;’;

(b) the following point is inserted:

‘(ca) from 21 May 2022: carriage of goods in vehicles the permissible laden mass of which does not exceed 2,5 tonnes;’;

(2) Article 4 is amended as follows:

(a) in paragraph 2, the third subparagraph is deleted;

(b) paragraph 4 is replaced by the following:

‘4. The Community licence and the certified true copies shall correspond to the model set out in Annex II, which also lays down the conditions governing its use. They shall contain at least two of the security features listed in Annex I.

In the case of vehicles used for the carriage of goods, the permissible laden mass of which does not exceed 3,5 tonnes and for which the lower financial requirements established in the second subparagraph of Article 7(1) of Regulation (EC) No 1071/2009 are applied, the issuing authority shall write in the “particular remarks” section of the Community licence or of the certified true copy thereof: “≤ 3,5 t”.

The Commission is empowered to adopt delegated acts in accordance with Article 14b to amend Annexes I and II in order to adapt them to technical progress.’;

(3) in Article 5, paragraph 4 is replaced by the following:

‘4. The Commission is empowered to adopt delegated acts in accordance with Article 14b to amend Annex III in order to adapt it to technical progress.’;

(4) Article 8 is amended as follows:

(a) the following paragraph is inserted:

‘2a. Hauliers are not allowed to carry out cabotage operations, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, in the same Member State within four days following the end of its cabotage operation in that Member State.’;

(b) in paragraph 3, the first subparagraph is replaced by the following:

‘3. National road haulage services carried out in the host Member State by a non-resident haulier shall only be deemed to comply with this Regulation if the haulier can produce clear evidence of the preceding international carriage and of each consecutive cabotage operation carried out. In the event that the vehicle has been in the territory of the host Member State within the period of four days preceding the international carriage, the haulier shall also produce clear evidence of all operations that were carried out during that period.’;

(c) the following paragraph is inserted:

'4a. Evidence referred to in paragraph 3 shall be presented or transmitted to the authorised inspecting officer of the host Member State on request and within the duration of the roadside check. It may be presented or transmitted electronically, using a revisable structured format which can be used directly for storage and processing by computers, such as an electronic consignment note (e-CMR) under the Additional Geneva Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the Electronic Consignment Note of 20 February 2008. During the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity in order to provide, before the end of the roadside check, any evidence referred to in paragraph 3.'

(d) paragraph 5 is amended as follows:

'5. Any haulier entitled in the Member State of establishment to carry out the road haulage operations for hire or reward specified in points (a) to (ca) of Article 1(5) in accordance with that Member State's legislation shall be permitted, under the conditions set out in this Chapter to carry out, as the case may be, cabotage operations of the same kind or cabotage operations with vehicles in the same category.'

(5) Article 10 is amended as follows:

(a) in paragraph 3, the first subparagraph is replaced by the following:

'3. The Commission shall examine the situation on the basis in particular of the relevant data and, after consulting the committee established pursuant to Article 42(1) of Regulation (EU) No 165/2014 of the European Parliament and of the Council (*) shall decide within one month of receipt of the Member State's request whether safeguard measures are necessary and shall adopt them if they are necessary.

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

(b) the following paragraph is added:

'7. In addition to paragraphs 1 to 6 of this Article and by way of derogation from Article 4 of Directive 92/106/EEC, Member States may, where necessary to avoid misuse of the latter provision through the provision of unlimited and continuous services consisting in initial or final road legs within a host Member State that form part of combined transport operations between Member States, provide that Article 8 of this Regulation apply to hauliers when they carry out such initial and/or final road haulage legs within that Member State. With regard to such road haulage legs, Member States may provide for a longer period than the seven-day period provided for in Article 8(2) of this Regulation and may provide for a shorter period than the four-day period provided for in Article 8(2a) of this Regulation. The application of Article 8(4) of this Regulation to such transport operations shall be without prejudice to requirements following from Directive 92/106/EEC. Member States making use of the derogation provided for in this paragraph shall notify the Commission thereof before applying their relevant national measures. They shall review those measures at least every five years and shall notify the results of that review to the Commission. They shall make the rules, including the length of the respective periods, publicly available in a transparent manner.'

(6) the following Article is inserted:

'Article 10a

Checks

1. In order to further enforce the obligations laid down in this Chapter, Member States shall ensure that a coherent national enforcement strategy is applied on their territory. That strategy shall focus on undertakings with a high risk rating as referred to in Article 9 of Directive 2006/22/EC of the European Parliament and of the Council (*).

2. Each Member State shall ensure that the checks provided for in Article 2 of Directive 2006/22/EC include a check on cabotage operations, where relevant.

3. At least twice per year, Member States shall undertake concerted roadside checks on cabotage operations. Such checks shall be undertaken at the same time by the national authorities in charge of enforcing the rules in the field of road transport of two or more Member States, each national authority operating in its own territory. Member States may combine those activities with those provided for by Article 5 of Directive 2006/22/EC. The national contact points designated in accordance with Article 18(1) of Regulation (EC) No 1071/2009 shall exchange information on the number and type of infringements detected after the concerted roadside checks have taken place.

(*) Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).;

(7) the following Articles are inserted:

'Article 14a

Liability

Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and subcontractors for non-compliance with Chapters II and III, where they knew, or, in the light of all relevant circumstances ought to have known, that the transport services that they commissioned involved infringements of this Regulation.

Article 14b

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 4(4) and Article 5(4) is conferred on the Commission for an indeterminate period of time from 20 August 2020.

3. The delegation of power referred to in Article 4(4) and Article 5(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in line with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (*).

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted under Article 4(4) and Article 5(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

(*) OJ L 123, 12.5.2016, p. 1.;

(8) Article 15 is deleted;

(9) Article 17 is replaced by the following:

'Article 17

Reporting and review

1. By 31 March of every second year, at the latest, Member States shall inform the Commission of the number of hauliers possessing Community licences on 31 December of each of the previous two years and of the number of certified true copies corresponding to the vehicles in circulation on that date. Reports relating to the period after 20 May 2022 shall also include a breakdown of these items by road haulage operators engaged in international transport operations solely by means of vehicles the permissible laden mass of which does not exceed 3,5 tonnes and the remaining road haulage operators.

2. By 31 March of every second year, at the latest, Member States shall inform the Commission of the number of driver attestations issued in each of the previous two calendar years, as well as the total number of driver attestations in circulation on 31 December of each of the previous two years. Reports relating to the period after 20 May 2022 shall also include a breakdown of these items by road haulage operators engaged in international transport operations solely by means of vehicles, the permissible laden mass of which does not exceed 3,5 tonnes, and the remaining road haulage operator.
3. By 21 August 2022, at the latest, Member States shall forward to the Commission their national enforcement strategy adopted pursuant to Article 10a. By 31 March of every year, at the latest, Member States shall inform the Commission on the enforcement operations performed in the previous calendar year pursuant to Article 10a, including, where appropriate, the number of checks performed. This information shall include the number of vehicles checked.
4. The Commission shall draw up a report on the state of the Union road transport market by 21 August 2024. The report shall contain an analysis of the market situation, including an evaluation of the effectiveness of controls and the evolution of employment conditions in the profession.
5. The Commission shall evaluate the implementation of this Regulation, in particular the impact of the amendments to Article 8 introduced by Regulation (EU) 2020/1055 of the European Parliament and of the Council (*), by 21 August 2023 and report to the European Parliament and the Council on the application of this Regulation.
6. Following the report referred to in paragraph 5, the Commission shall regularly evaluate this Regulation and submit the evaluation results to the European Parliament and the Council.
7. Where appropriate, the reports referred to in paragraphs 5 and 6 shall be accompanied by relevant legislative proposals.

(*) Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector (OJ L 249, 31.7.2020, p. 17).

Article 3

Amendments to Regulation (EU) No 1024/2012

In the Annex to Regulation (EU) No 1024/2012 the following point is added:

- ‘15. Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (*): Article 18(8).

(*) OJ L 300, 14.11.2009, p. 51.’

Article 4

Entry into force

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

It shall apply from 21 February 2022.

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

Done at Brussels, 15 July 2020.

For the European Parliament

The President

D.M. SASSOLI

For the Council

The President

J. KLOECKNER

REGULATION (EU) 2020/1056 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 15 July 2020
on electronic freight transport information
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 and Article 100(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) The efficiency of freight transport and logistics is vital for the growth and competitiveness of the Union economy, the functioning of the internal market and the social and economic cohesion of all regions of the Union.
- (2) The aim of this Regulation is to encourage the digitalisation of freight transport and logistics to reduce administrative costs, improve enforcement capabilities of competent authorities, and enhance the efficiency and sustainability of transport.
- (3) The movement of goods, including waste, is accompanied by a large amount of information which is still exchanged in paper format among businesses, and between businesses and competent authorities. The use of paper documents represents a significant administrative burden for logistics operators and an additional cost for logistics operators and related industries (such as trade and manufacturing), in particular for SMEs, and has a negative impact on the environment.
- (4) The absence of a uniform legal framework at Union level requiring competent authorities to accept relevant freight transport information, required by legislation, in electronic form, is considered to be the main reason for the lack of progress towards the simplification and greater efficiency of information exchanges made possible by available electronic means. The acceptance by competent authorities of information in electronic form with common specifications would ease not only communication between competent authorities and economic operators but, indirectly, also the development of uniform and simplified business-to-business electronic communication across the Union. It would also lead to significant administrative cost savings for economic operators, and particularly SMEs, which constitute the large majority of transport and logistics companies within the Union.
- (5) Some areas of Union transport law require competent authorities to accept digitised information, but this concerns far from all relevant Union legal acts. It should be possible to use electronic means to make regulatory information on the transport of goods available to competent authorities throughout the territory of the Union in respect of all relevant phases of transport operations conducted within the Union. Furthermore, that possibility should apply to all regulatory information and to all transport modes.
- (6) Competent authorities should therefore be required to accept information made available electronically whenever economic operators are obliged to make information available as proof of compliance with requirements laid down in Union legal acts covered by this Regulation. This requirement should also cover information requested by the authorities as additional information in accordance with the provisions of those Union legal acts, for example, when some information is missing. The same should apply where national law requires the provision of regulatory

⁽¹⁾ OJ C 62, 15.2.2019, p. 265.

⁽²⁾ Position of the European Parliament of 12 March 2019 (not yet published in the Official Journal) and position of the Council at first reading of 7 April 2020 (OJ C 157, 8.5.2020, p. 1). Position of the European Parliament of 8 July 2020 (not yet published in the Official Journal).

information identical, in whole or in part, to information to be provided pursuant to Union legal acts falling within the scope of this Regulation. Authorities should also endeavour to communicate electronically with the economic operators concerned in relation to that information. Such communication should be without prejudice to relevant provisions of Union legal acts and national law related to follow-up measures during or after regulatory information checks. The obligation for competent authorities to accept information made available electronically by economic operators should also apply whenever provisions of Union legal acts or national law falling within the scope of this Regulation require information that is also referred to in relevant international conventions such as the conventions governing the international contracts of carriage in the different transport modes, for example the UN Convention on the Contract for the International Carriage of Goods by Road (CMR), the Convention concerning International Carriage by Rail (COTIF), the IATA Resolution 672 on E-air Waybill, the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), and the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (CMNI).

- (7) Since this Regulation is only intended to facilitate and encourage the provision of information between the economic operators and competent authorities by electronic means, it should be without prejudice to the provisions of Union legal acts or national law determining the content of regulatory information and, in particular, should not impose any additional regulatory information or language requirements. While this Regulation is intended to allow the compliance with regulatory information requirements by electronic means rather than by means of paper documents, it is without prejudice to the possibility for the economic operators concerned to present that information in paper format, as provided for in the relevant provisions of Union legal acts or national law, and should be without prejudice to relevant Union requirements regarding the documents to be used for the structured presentation of the information in question. This Regulation should be without prejudice to the provisions of Regulation (EC) No 1013/2006 of the European Parliament and of the Council⁽³⁾ concerning procedural requirements for shipments of waste and to the provisions referring to controls by customs offices. This Regulation should also be without prejudice to the reporting obligations, including those relating to the competence of customs offices or the competence of other authorities, set out in Regulation (EU) No 952/2013 of the European Parliament and of the Council⁽⁴⁾ or in implementing or delegated acts adopted thereunder or in Regulation (EU) 2019/1239 of the European Parliament and of the Council⁽⁵⁾.
- (8) The use of electronic means to exchange regulatory information can reduce administrative costs for economic operators and can enhance the efficiency of competent authorities. Both economic operators and competent authorities would need to take the necessary measures to make possible electronic exchanges of regulatory freight transport information (eFTI) in machine-readable format via platforms based on information and communications technology (eFTI platforms), including acquiring the necessary equipment. However, the economic operators concerned should remain responsible for providing information in human-readable format whenever specifically requested by competent authorities in order to allow competent authorities to perform their duties in situations where access to an eFTI platform is not available.
- (9) In order to enable economic operators to provide relevant information in electronic form in the same way in all Member States, it is necessary to rely on common specifications, which should be adopted by the Commission by means of delegated and implementing acts referred to in this Regulation.
- (10) Common specifications on the definition and technical characteristics of data elements should ensure data interoperability by establishing a single comprehensive data set to be used for the electronic communication of the information. This comprehensive data set should contain all the data elements corresponding to the information requirements contained in the relevant provisions of Union legal acts and national law, where each data element that is common to one or more subsets is included only once.
- (11) Common specifications should also set out common procedures and detailed rules for access and processing of that information by competent authorities, including any related communication between competent authorities and the economic operators concerned, such as requests for additional information, necessary for competent authorities to exercise their respective regulatory enforcement competences in accordance with the relevant provisions of Union legal acts and national law.

⁽³⁾ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

⁽⁴⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁽⁵⁾ Regulation (EU) 2019/1239 of the European Parliament and of the Council of 20 June 2019 establishing a European Maritime Single Window environment and repealing Directive 2010/65/EU (OJ L 198, 25.7.2019, p. 64).

- (12) When laying down those common specifications, due account should be taken of relevant data exchange specifications laid down in relevant Union legal acts and contained in relevant European and international standards for data exchange, including multimodal standards, and of the principles and recommendations set out in the Commission's Communication of 23 March 2017 entitled the 'European Interoperability Framework – Implementation Strategy', which provides an approach to the delivery of European digital public services commonly agreed by the Member States. Due care should also be taken that those specifications remain technologically neutral and open to innovative technologies.
- (13) With a view to minimising costs for both competent authorities and economic operators, the establishment of access points for competent authorities could be considered. Those access points would act only as intermediaries between the eFTI platforms and competent authorities, and should therefore neither store nor process the eFTI data to which they mediate access, except for metadata connected to eFTI data processing, such as operation logs necessary for monitoring or statistical purposes. Member States could also agree to establish joint access points for their respective competent authorities.
- (14) This Regulation should establish the functional requirements applicable to eFTI platforms which should be used by economic operators to make regulatory freight transport information available to competent authorities in electronic form in order to meet the conditions for the mandatory acceptance of this information by competent authorities, as laid down in this Regulation. Requirements should also be established for third-party platform service providers (eFTI service providers). Those requirements should ensure, in particular, that all eFTI data can be processed solely in accordance with a comprehensive rights-based access-control system that provides assigned functionalities, that all competent authorities can have immediate access to that data in accordance to their respective regulatory enforcement competences, that the processing by electronic means of personal data can be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁶⁾, and that the processing of sensitive commercial information can be carried out in a way that respects the confidentiality of that information.
- (15) The Commission should adopt specifications regarding the functional requirements for eFTI platforms. When adopting those specifications, the Commission should seek to ensure the interoperability of the eFTI platforms in order to facilitate the exchange of data between such platforms and to allow economic operators to use the eFTI platform of their choice. In order to facilitate implementation and minimise costs, the Commission should also take into account relevant technical solutions and standards used by existing ICT systems. At the same time, the Commission should ensure that those specifications remain technologically neutral to the greatest extent possible, in order to encourage continuous innovation and to avoid technological lock-in.
- (16) To build the confidence of both competent authorities and economic operators as regards compliance by eFTI platforms and eFTI service providers with those functional requirements, the Member States should put in place a certification system underpinned by accreditation in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽⁷⁾. To take advantage of the benefits of certification, providers of ICT systems that are already in use are encouraged to ensure that those systems comply with the requirements for eFTI platforms laid down in this Regulation, and to apply for certification. The certification of ICT systems should be carried out without delay.
- (17) The use of eFTI platforms provides economic operators with guaranteed acceptance of regulatory information and provides competent authorities with reliable and secure access to that information. Nevertheless, and notwithstanding the obligation for all competent authorities to accept the information made available through a certified eFTI platform in accordance with this Regulation, the use of other ICT systems should remain possible if a Member State so chooses. At the same time, this Regulation should not prevent the business-to-business use of eFTI platforms, or prevent the use of additional functionalities on eFTI platforms, provided that this does not adversely affect the processing of the regulatory information that falls within the scope of this Regulation, in compliance with the requirements of this Regulation.

⁽⁶⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁷⁾ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (18) In order to ensure uniform conditions for the implementation of the obligation to accept regulatory information made available in electronic form pursuant to this Regulation, implementing powers should be conferred on the Commission. In particular, implementing powers should be conferred on the Commission to establish common procedures and detailed rules for competent authorities for the access to and processing of that regulatory information where the economic operators concerned make that information available electronically, including detailed rules and technical specifications, and to establish detailed specifications for the implementation of the requirements for eFTI platforms and for eFTI service providers. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽⁸⁾.
- (19) In order to ensure the proper application of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending Part A of Annex I to take into account any delegated or implementing acts adopted by the Commission which establish new Union regulatory information requirements in relation to the transport of goods; and amending Part B of Annex I, in order to incorporate the lists of regulatory information requirements in national law that have been notified to the Commission by the Member States in accordance with this Regulation, and in order to incorporate any new provision of relevant national law which introduces changes to the national regulatory information requirements, or lays down new relevant regulatory information requirements that fall within the scope of this Regulation that have been notified to the Commission by the Member States in accordance with this Regulation; and in respect of supplementing this Regulation by establishing and amending the common data set and data subsets in relation to the respective regulatory information requirements covered by this Regulation; and supplementing certain technical aspects of this Regulation, namely as regards the rules on certification and the use of the certification mark of eFTI platforms and the rules on certification of eFTI service providers. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽⁹⁾.

In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. Furthermore, the engagement of all relevant stakeholders in the appropriate fora, such as the group of experts established by Commission Decision of 13 September 2018 setting up the 'Digital Transport and Logistics Forum', is important in the development and preparation of those acts.

- (20) Since the objective of this Regulation, namely to ensure a uniform approach to acceptance by competent authorities of freight transport information made available electronically, cannot be sufficiently achieved by the Member States but can rather, by reason of the need to establish common requirements, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (21) Processing by electronic means of personal data required as part of freight transport regulatory information should be carried out in accordance with Regulation (EU) 2016/679.
- (22) The Commission should carry out an evaluation of this Regulation. Information should be collected in order to inform this evaluation and to assess the performance of this Regulation against the objective that it pursues.
- (23) Effective and efficient enforcement necessitates that all competent authorities have direct and real-time access to relevant regulatory information in electronic form. To that end, and in accordance with the 'digital by default' principle mentioned in the Commission's Communication of 19 April 2016 entitled 'EU eGovernment Action Plan 2016–2020 – Accelerating the digital transformation of government', the use of electronic means should become the predominant way to exchange regulatory information between the economic operators and competent authorities. Therefore, the Commission should assess possible initiatives with a view to establishing an obligation for economic operators to use electronic means to make regulatory information available to competent authorities. The Commission should propose, where appropriate, corresponding initiatives, including possible amendments to this Regulation and other relevant Union legal acts. With a view to improving the enforcement capabilities of

⁽⁸⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽⁹⁾ OJ L 123, 12.5.2016, p. 1.

competent authorities and minimising costs for both competent authorities and the economic operators, the Commission should also consider further measures such as enhanced interoperability of and a common access point to ICT systems and platforms used for recording and processing regulatory information as provided for in other Union transport law.

- (24) This Regulation cannot be effectively applied before the delegated and implementing acts provided for in it have entered into force. For that reason, the Commission has a legal obligation to adopt those delegated and implementing acts and should start immediately to work on them in order to ensure the timely adoption of the relevant specifications, where possible in advance of the respective deadlines set in this Regulation. The timely adoption of those delegated and implementing acts is essential for the Member States and economic operators to have enough time to take the necessary measures in compliance with this Regulation. Therefore, different application periods in this Regulation should be set accordingly.
- (25) Likewise, the notification obligation of Member States under this Regulation should be performed within one year of the date of entry into force of this Regulation in order to enable the Commission to adopt the first delegated act pursuant to this Regulation in a timely manner.
- (26) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁰⁾,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a legal framework for the electronic communication of regulatory information between the economic operators concerned and competent authorities in relation to the transport of goods on the territory of the Union.

For that purpose, this Regulation:

- (a) lays down the conditions based on which competent authorities are required to accept regulatory information when that information is made available electronically by the economic operators concerned;
- (b) lays down rules on the provision of services related to making regulatory information available electronically by the economic operators concerned to competent authorities.

Article 2

Scope

1. This Regulation applies to:

(a) regulatory information requirements set out in:

(i) Article 6(1) of EEC Council Regulation No 11 ⁽¹¹⁾;

(ii) Article 3 of Council Directive 92/106/EEC ⁽¹²⁾;

(iii) Article 8(3) of Regulation (EC) No 1072/2009 of the European Parliament and of the Council ⁽¹³⁾;

⁽¹⁰⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽¹¹⁾ EEC Council: Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community (OJ P 52, 16.8.1960, p. 1121).

⁽¹²⁾ Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).

⁽¹³⁾ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

(iv) point (c) of Article 16 and Article 18(1) of Regulation (EC) No 1013/2006; this Regulation is without prejudice to controls by customs offices provided for in relevant provisions of Union legal acts;

(v) Chapter 5.4 of Part 5 of Annex A to the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), concluded at Geneva on 30 September 1957, as referred to in Section I.1 of Annex I to Directive 2008/68/EC of the European Parliament and of the Council⁽¹⁴⁾; Chapter 5.4 of Part 5 of the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID), appearing as Appendix C to COTIF concluded at Vilnius on 3 June 1999, as referred to in Section II.1 of Annex II to that Directive; and Chapter 5.4 of Part 5 of the Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN), concluded at Geneva on 26 May 2000, as referred to in Section III.1 of Annex III to that Directive;

(b) regulatory information requirements laid down in delegated or implementing acts adopted by the Commission pursuant to a Union legal act referred to in point (a) of this paragraph or pursuant to Directive (EU) 2016/797 of the European Parliament and of the Council⁽¹⁵⁾ or to Regulation (EC) No 300/2008 of the European Parliament and of the Council⁽¹⁶⁾. Those delegated or implementing acts shall be listed in Part A of Annex I to this Regulation;

(c) regulatory information requirements set out in the provisions of national law listed in Part B of Annex I to this Regulation.

2. By 21 August 2021, Member States shall notify the Commission of the provisions of national law and corresponding regulatory information requirements that require the provision of information identical, in whole or in part, to the information to be provided pursuant to the regulatory information requirements referred to in points (a) and (b) of paragraph 1.

Subsequent to that notification, the Member States shall notify the Commission of any provisions of national law that:

(a) introduce changes to regulatory information requirements set out in the provisions of national law listed in Part B of Annex I; or

(b) lay down new relevant regulatory information requirements that require the provision of information identical, in whole or in part, to the information to be provided pursuant to the regulatory information requirements referred to in points (a) and (b) of paragraph 1.

Member States shall make such notifications within one month from the adoption of such provisions.

3. The Commission shall adopt delegated acts in accordance with Article 14, amending:

(a) Part A of Annex I in order to incorporate references to any regulatory information requirements referred to in point (b) of paragraph 1 of this Article;

(b) Part B of Annex I in order to incorporate or delete references to national law and regulatory information requirements in accordance with the notifications made pursuant to paragraph 2 of this Article.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'regulatory information' means information, whether or not presented in the form of a document, that is related to the transport of goods in the territory of the Union, including of goods in transit, which is to be made available by an economic operator concerned in accordance with the provisions referred to in Article 2(1) in order to prove compliance with the relevant requirements of the acts laying down those provisions;

(2) 'regulatory information requirement' means a requirement to provide regulatory information;

⁽¹⁴⁾ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

⁽¹⁵⁾ Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44).

⁽¹⁶⁾ Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97, 9.4.2008, p. 72).

- (3) 'competent authority' means a public authority, agency or other body which is competent to perform tasks pursuant to the legal acts referred to in Article 2(1) and for which access to regulatory information is necessary, such as checking, enforcing, validating or monitoring compliance on the territory of a Member State;
- (4) 'electronic freight transport information' or 'eFTI' means a set of data elements that are processed by electronic means for the purpose of exchanging regulatory information among the economic operators concerned and between the economic operators concerned and competent authorities;
- (5) 'eFTI data subset' means a set of structured data elements that correspond to the regulatory information required pursuant to specific Union legal act or national law referred to in Article 2(1);
- (6) 'eFTI common data set' means a comprehensive set of structured data elements that correspond to all the eFTI data subsets, where the data elements common to the different eFTI data subsets are included only once;
- (7) 'data element' means the smallest unit of information which has a unique definition and precise technical characteristics, such as format, length and character type;
- (8) 'processing' means an operation or set of operations performed on eFTI, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making eFTI available, alignment or combination, restriction, erasure or destruction;
- (9) 'operation log' means an automated record of the electronic processing of eFTI;
- (10) 'eFTI platform' means a solution based on information and communication technology (ICT), such as an operating system, an operating environment, or a database, intended to be used for the processing of eFTI;
- (11) 'eFTI platform developer' means a natural or legal person which has developed or acquired an eFTI platform either for the purpose of processing regulatory information related to its own economic activity or for putting that platform on the market;
- (12) 'eFTI service' means a service consisting of eFTI processing by means of an eFTI platform, alone or in combination with other ICT solutions, including other eFTI platforms;
- (13) 'eFTI service provider' means a natural or legal person which provides an eFTI service to the economic operators concerned on the basis of a contract;
- (14) 'economic operator concerned' means a transport or logistics operator, or any other natural or legal person, who is responsible for making regulatory information available to competent authorities in accordance with the relevant regulatory information requirements;
- (15) 'human-readable format' means a way of presenting data in an electronic form that can be used as information by a natural person without requiring any further processing;
- (16) 'machine-readable format' means a way of presenting data in an electronic form that can be used for automatic processing by a machine;
- (17) 'conformity assessment body' means a conformity assessment body within the meaning of Regulation (EC) No 765/2008, which is accredited in accordance with that Regulation to carry out the conformity assessment of eFTI platforms or eFTI service providers;
- (18) 'shipment' means the transport of a determined set of goods, including waste, between the first place of pick-up and final place of delivery under the terms of a single transport contract or of multiple consecutive transport contracts, including, where applicable, the transfer between different modes of transport, irrespective of the quantity or number of containers, packages or pieces transported.

CHAPTER II

REGULATORY INFORMATION MADE AVAILABLE ELECTRONICALLY

Article 4

Requirements for economic operators concerned

1. For the purposes of Article 5(1), (2) and (3), the economic operators concerned shall comply with the requirements set out in this Article.

2. Where the economic operators concerned make regulatory information available electronically to a competent authority, they shall do so on the basis of data processed on a certified eFTI platform and, if applicable, by a certified eFTI service provider. That regulatory information shall be made available by the economic operators concerned in machine-readable format and, at the request of the competent authority, in human-readable format.

3. Information in machine-readable format shall be made available via an authenticated and secure connection to the data source of an eFTI platform. The economic operators concerned shall communicate the unique electronic identifying link referred to in point (e) of Article 9(1) that enables the competent authority to uniquely identify the regulatory information related to the shipment.

4. Information in human-readable format requested by competent authorities shall be made available on the spot, on the screen of an electronic device owned by the economic operator concerned.

Article 5

Requirements for competent authorities

1. As from 30 months after the date of entry into force of the first of the delegated and implementing acts referred to in Articles 7 and 8, competent authorities shall accept regulatory information made available electronically by the economic operators concerned in accordance with Article 4, including where such regulatory information is requested by competent authorities as additional information.

2. Where the economic operator concerned has made, regulatory information required pursuant to Regulation (EC) No 1013/2006 available electronically in accordance with Article 4 of this Regulation, the competent authorities concerned shall also accept such regulatory information without the agreement referred to in Article 26(3) and (4) of Regulation (EC) No 1013/2006.

3. Where regulatory information required pursuant to a specific Union legal act or national law referred to in Article 2(1) includes official validation, such as stamps or certificates, the respective authority shall provide that validation electronically, in accordance with the requirements established by the delegated and implementing acts referred to in Articles 7 and 8.

4. In order to comply with the requirements set out in paragraphs 1 to 3 of this Article, Member States shall take measures to enable all their competent authorities to access and process regulatory information made available by the economic operators concerned in accordance with Article 4. Those measures shall comply with delegated and implementing acts referred to in Articles 7 and 8.

Article 6

Confidential commercial information

Competent authorities, eFTI service providers and the economic operators concerned shall take measures to ensure the confidentiality of commercial information that is processed and exchanged in accordance with this Regulation and ensure that such information may be accessed and processed only when authorised.

Article 7

eFTI common data set and eFTI data subsets

1. The Commission shall adopt delegated acts in accordance with Article 14 to supplement this Regulation by establishing and amending the eFTI common data set and eFTI data subsets in relation to the respective regulatory information requirements referred to in Article 2(1), including corresponding specifications on the definition and technical characteristics for each data element included in the eFTI common data set and eFTI data subsets.

2. When adopting the delegated acts referred to in paragraph 1, the Commission shall:

(a) take into account relevant international conventions and Union law; and

(b) seek to ensure the interoperability of the eFTI common data set and eFTI data subsets with relevant data models that are accepted internationally or at Union level, including multimodal data models.

3. The first such delegated act shall cover all the elements referred to in paragraph 1 and shall be adopted no later than 21 February 2023.

*Article 8***Common procedures and rules for access**

1. The Commission shall adopt implementing acts laying down common procedures and detailed rules, including common technical specifications, for access by competent authorities to eFTI platforms, including procedures for the processing of regulatory information and for communication between competent authorities and the economic operators concerned in relation to that information.
2. When adopting the implementing acts referred to in paragraph 1, the Commission shall seek to enhance the efficiency of the administrative procedures and to minimise compliance costs both for the economic operators concerned and competent authorities.
3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2). The first such implementing act shall cover all the elements referred to in paragraph 1 of this Article and shall be adopted no later than 21 February 2023.

CHAPTER III

eFTI PLATFORMS AND eFTI SERVICE PROVIDERS

SECTION 1

Requirements for eFTI platforms and eFTI service providers*Article 9***Functional requirements for eFTI platforms**

1. The eFTI platforms used for processing regulatory information shall provide functionalities that ensure that:
 - (a) personal data can be processed in accordance with Regulation (EU) 2016/679;
 - (b) commercial data can be processed in accordance with Article 6;
 - (c) competent authorities can access and process data in accordance with the specifications adopted by means of delegated and implementing acts referred to in Articles 7 and 8;
 - (d) the economic operators concerned can make information available to competent authorities in accordance with Article 4;
 - (e) a unique electronic identifying link can be established between a shipment and the related data elements, including a structured reference to the eFTI platform where the data is made available, such as a unique reference identifier;
 - (f) data can be processed solely on the basis of authorised and authenticated access;
 - (g) all data processing is duly recorded in operation logs in order to allow, as a minimum, the identification of each distinct processing operation, the natural or legal person having made the operation and the sequencing of the operations on each individual data element; if an operation involves modifying or erasing an existing data element, the original data element shall be preserved;
 - (h) data can be archived and remain accessible for competent authorities in accordance with the relevant Union legal acts and national law laying down the respective regulatory information requirements;
 - (i) the operation logs referred to in point (g) of this paragraph are archived and remain accessible for competent authorities for auditing purposes for the period of time specified in the relevant Union legal acts and national law laying down the respective regulatory information requirements and, for monitoring purposes, for the periods of time referred to in Article 17;
 - (j) data is protected against corruption and theft;
 - (k) the data elements processed correspond to the eFTI common data set and to eFTI data subsets as established by the delegated acts referred to in Article 7, and can be processed in any of the official languages of the Union as provided for by the relevant Union legal acts and national law laying down the respective regulatory information requirements.

2. The Commission shall adopt implementing acts laying down detailed specifications regarding the requirements set out in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2). When adopting those specifications, the Commission shall:

- (a) seek to ensure the interoperability of the eFTI platforms;
- (b) take into account relevant existing technical solutions and standards;
- (c) ensure that those specifications remain, to the largest extent possible, technologically neutral.

The first such implementing act shall cover all the elements referred to in paragraph 1 of this Article and shall be adopted no later than 21 August 2023.

Article 10

Requirements for eFTI service providers

1. eFTI service providers shall ensure that:

- (a) data is processed only by authorised users and in accordance with clearly defined and assigned processing rights within the eFTI platform, in accordance with the relevant regulatory information requirements;
- (b) data is stored and accessible in accordance with the Union legal acts and national law laying down the respective regulatory information requirements;
- (c) competent authorities have immediate access to regulatory information concerning a freight transport operation processed by means of their eFTI platforms, free of any charges or fees;
- (d) data is appropriately secured, including against unauthorised or unlawful processing and against accidental loss, destruction or damage.

2. The Commission shall adopt implementing acts laying down detailed rules regarding the requirements set out in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2). The first such implementing act covering all the elements referred to in paragraph 1 of this Article shall be adopted no later than 21 August 2023.

SECTION 2

Certification

Article 11

Conformity assessment bodies

1. Conformity assessment bodies shall be accredited in accordance with Regulation (EC) No 765/2008 for the purposes of performing the certification of eFTI platforms and eFTI service providers as set out in Articles 12 and 13 of this Regulation.

2. For the purposes of accreditation, conformity assessment bodies shall meet the requirements laid down in Annex II. National accreditation bodies shall communicate to the national authority designated in accordance with paragraph 3 of this Article the address of the website where they make publicly available the information on the accredited conformity assessment bodies, including an up-to-date list of these bodies.

3. Each Member State shall designate an authority that shall maintain an up-to-date list of the accredited conformity assessment bodies, eFTI platforms and eFTI service providers which hold a valid certification on the basis of the information provided pursuant to paragraph (2) of this Article and to Article 12(2) and Article 13(2). Those designated national authorities shall make that list publicly available on an official government website.

4. By 31 March each year, those designated national authorities shall notify to the Commission the list referred to in paragraph 3 together with the address of the website where that list is publicly available. The Commission shall publish those website addresses on its official website.

*Article 12***Certification of eFTI platforms**

1. Upon application by an eFTI platform developer, a conformity assessment body shall assess the compliance of the eFTI platform with the requirements laid down in Article 9(1). In the case of a positive assessment, the conformity assessment body shall issue a compliance certificate for that eFTI platform. In the case of a negative assessment, the conformity assessment body shall provide the reasons for the negative assessment to the applicant.
2. Each conformity assessment body shall maintain an up-to-date list of the eFTI platforms that it has certified and for which it has withdrawn or suspended certification. It shall make that list publicly available on its website and shall communicate the address of that website to the designated national authority referred to in Article 11(3).
3. Information made available to competent authorities by means of a certified eFTI platform shall be accompanied by a certification mark.
4. The eFTI platform developer shall apply for a reassessment of its certification if the technical specifications laid down in the implementing acts referred to in Article 9(2) are revised.
5. The Commission is empowered to adopt delegated acts in accordance with Article 14 to supplement this Regulation by laying down rules on the certification of eFTI platforms and on the use of the certification mark, including rules on the renewal, suspension and withdrawal of certification.

*Article 13***Certification of eFTI service providers**

1. Upon application by an eFTI service provider, a conformity assessment body shall assess the compliance of the eFTI service provider with the requirements laid down in Article 10(1). In the case of a positive assessment, the conformity assessment body shall issue a compliance certificate. In the case of a negative assessment, the conformity assessment body shall provide the reasons for the negative assessment to the applicant.
2. Each conformity assessment body shall maintain an up-to-date list of the eFTI service providers that it has certified and for which it has withdrawn or suspended certification. It shall make that list publicly available on its website and shall communicate the address of that website to the designated national authority referred to in Article 11(3).
3. The Commission is empowered to adopt delegated acts in accordance with Article 14 to supplement this Regulation by laying down rules on certification of eFTI service providers, including rules on the renewal, suspension and withdrawal of certification.

CHAPTER IV

DELEGATIONS OF POWER AND IMPLEMENTING PROVISIONS*Article 14***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 2(3), Article 7, Article 12(5) and Article 13(3) shall be conferred on the Commission for a period of five years from 20 August 2020. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.
3. The delegation of power referred to in Article 2(3), Article 7, Article 12(5), Article 13(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 2(3), Article 7, Article 12(5) and Article 13(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 15

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER V

FINAL PROVISIONS

Article 16

Review

1. No later than 21 February 2029, the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, to the Council and to the European Economic and Social Committee.

The Commission shall also assess possible initiatives with a view in particular to:

- (a) establishing the obligation for economic operators to make available electronically regulatory information to competent authorities, in accordance with this Regulation;
- (b) establishing further interoperability and interconnectivity between the eFTI environment and the different ICT systems and platforms used for recording and processing regulatory information as provided for in other Union transport law.

These assessments shall in particular cover the amendment of this Regulation and that of other relevant Union legal acts and shall be accompanied, where appropriate, by a legislative proposal.

2. Member States shall provide the Commission with the necessary information set out in Article 17 for the preparation of the report referred to in paragraph 1 of this Article.

Article 17

Monitoring

By 21 August 2027, and every five years thereafter, Member States shall provide the Commission, on the basis of the operation logs referred to in points (g) and (i) of Article 9(1), with the number of times competent authorities accessed and processed the regulatory information that was made available electronically by the economic operators concerned in accordance with Article 4.

That information shall be provided in respect of each year covered by the reporting period.

Article 18

Entry into force and application

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

2. It shall apply from 21 August 2024.
3. However, Article 2(2), Article 5(4), Article 7, Article 8, Article 9(2) and Article 10(2) shall apply from the date of entry into force of this Regulation.

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

Done at Brussels, 15 July 2020.

For the European Parliament

The President

D.M. SASSOLI

For the Council

The President

J. KLOECKNER

ANNEX I

REGULATORY INFORMATION THAT FALLS WITHIN THE SCOPE OF THIS REGULATION

PART A – Regulatory information requirements referred to in point (b) of Article 2(1)

List of delegated and implementing acts referred to in point (b) of Article 2(1):

- (1) Commission Implementing Regulation (EU) 2015/1998 ⁽¹⁾ laying down detailed measures for the implementation of the common basic standards on aviation security: Annex 6.3.2.6 (a), (b), (c), (d), (e), (f) and (g).

PART B – National law

The relevant provisions of national law requiring the provision of information identical, in whole or in part, to the information specified in points (a) and (b) of Article 2(1) are listed below.

[Member State]

- (1) Legal act: [provision]

⁽¹⁾ Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (OJ L 299, 14.11.2015, p. 1).

ANNEX II

REQUIREMENTS RELATING TO CONFORMITY ASSESSMENT BODIES

1. A conformity assessment body shall be established under national law and have legal personality.
2. A conformity assessment body shall be a third-party body independent of the organisation or the eFTI platform or platform service provider it assesses.

A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of eFTI platform or platform service provider which it assesses may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.

3. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the eFTI platform or platform service provider which they assess, nor the representative of any of those parties.

A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of that eFTI platform or platform service provider, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are accredited. This shall in particular apply to consultancy services.

Conformity assessment bodies shall ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

4. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field, and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.
5. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it by Articles 12 and 13 of this Regulation, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

A conformity assessment body shall have at its disposal the necessary:

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out;
- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure and the degree of complexity of the technology in question.

A conformity assessment body shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner.

6. The personnel responsible for carrying out conformity assessment tasks shall have the following:
 - (a) sound technical and vocational training covering all the conformity assessment activities;

- (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;
 - (c) appropriate knowledge and understanding of the requirements set out in Articles 9 and 10 of this Regulation;
 - (d) the ability to draw up compliance certificates, records and reports demonstrating that assessments have been carried out.
7. The impartiality of the conformity assessment bodies, their top level management and of the personnel responsible for carrying out the conformity assessment tasks shall be guaranteed.
- The remuneration of the top level management and personnel responsible for carrying out the conformity assessment tasks of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.
8. Conformity assessment bodies shall take out liability insurance, unless liability is assumed by the State in accordance with national law or the Member State itself is directly responsible for the conformity assessment.
9. The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under Articles 12 and 13 of this Regulation or any provision of national law giving effect to them, except to the competent authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.
10. Conformity assessment bodies shall participate in, or ensure that their personnel responsible for carrying out the conformity assessment tasks are informed of, the relevant standardisation activities and relevant regulatory activities.
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DIRECTIVES

DIRECTIVE (EU) 2020/1057 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 July 2020

laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) In order to create a safe, efficient and socially responsible road transport sector it is necessary to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable conditions for business and for fair competition for road transport operators ('operators'), on the other. Given the high degree of mobility of the workforce in the road transport sector, sector-specific rules are needed to ensure a balance between the freedom of operators to provide cross-border services, free movement of goods, adequate working conditions and social protection for drivers.
- (2) In view of the inherent high degree of mobility of road transport services, particular attention needs to be paid to ensuring that drivers benefit from the rights to which they are entitled and that operators, most of which are small enterprises, are not faced with disproportionate administrative barriers or discriminatory controls which unduly restrict their freedom to provide cross-border services. For the same reason, any national rules applied to road transport must be proportionate as well as justified, taking account of the need to ensure adequate working conditions and social protection for drivers and to facilitate the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators.
- (3) The balance between enhancing social and working conditions for drivers and facilitating the exercise of the freedom to provide road transport services based on fair competition between national and foreign operators is crucial for the smooth functioning of the internal market.
- (4) Having evaluated the effectiveness and efficiency of the current Union social legislation in the road transport sector, certain loopholes in the existing provisions and deficiencies in their enforcement have been identified, such as those with regard to the use of letterbox companies. Furthermore a number of discrepancies exist between Member States in the interpretation, application and implementation of those provisions, creating a heavy administrative burden for drivers and operators. This creates legal uncertainty, which is detrimental to the social and working conditions of drivers and to the conditions for fair competition for operators in the sector.
- (5) In order to ensure that Directives 96/71/EC ⁽⁴⁾ and 2014/67/EU ⁽⁵⁾ of the European Parliament and of the Council are correctly applied, controls and cooperation at Union level to tackle fraud relating to the posting of drivers should be strengthened.

⁽¹⁾ OJ C 197, 8.6.2018, p. 45.

⁽²⁾ OJ C 176, 23.5.2018, p. 57.

⁽³⁾ Position of the European Parliament of 4 April 2019 (not yet published in the Official Journal) and position of the Council at first reading of 7 April 2020 (OJ C 149, 5.5.2020, p. 1). Position of the European Parliament of 9 July 2020 (not yet published in the Official Journal).

⁽⁴⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

⁽⁵⁾ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

- (6) The Commission, in its proposal of 8 March 2016 for the revision of Directive 96/71/EC, recognised that the implementation of that Directive raises particular legal questions and difficulties in the highly mobile road transport sector and indicated that those issues would be best addressed through sector-specific road transport legislation.
- (7) In order to ensure the effective and proportionate implementation of Directive 96/71/EC in the road transport sector, it is necessary to establish sector-specific rules reflecting the particularities of the highly mobile workforce in the road transport sector and providing a balance between the social protection of drivers and the freedom of operators to provide cross-border services. The provisions on the posting of workers, in Directive 96/71/EC, and on the enforcement of those provisions, in Directive 2014/67/EU, apply to the road transport sector and should be made subject to the specific rules laid down in this Directive.
- (8) Given the highly mobile nature of the transport sector, drivers are not generally posted to another Member State under service contracts for long periods of time, as is sometimes the case in other sectors. It should therefore be clarified in which circumstances the rules on long-term posting in Directive 96/71/EC do not apply to such drivers.
- (9) Balanced sector specific rules on posting should be based on the existence of a sufficient link between the driver and the service provided, and the territory of a host Member State. To facilitate enforcement of those rules a distinction should be made between different types of transport operations depending on the degree of connection with the territory of the host Member State.
- (10) When a driver engages in bilateral transport operations from the Member State where the undertaking is established (the 'Member State of establishment') to the territory of another Member State or a third country or back to the Member State of establishment, the nature of the service is closely linked with the Member State of establishment. It is possible that a driver undertakes several bilateral transport operations during one journey. It would be a disproportionate restriction to the freedom to provide cross-border road transport services if the posting rules, and therefore the terms and conditions of employment guaranteed in the host Member State, would apply to such bilateral operations.
- (11) It should be clarified that international carriage in transit across the territory of a Member State does not constitute a posting situation. Such operations are characterised by the fact that the driver passes the Member State without loading or unloading freight and without picking up or setting down passengers and there is therefore no significant link between the driver's activities and the Member State transited. The qualification of the driver's presence in a Member State as transit is, therefore, not affected by stops, for example, for hygiene reasons.
- (12) When a driver is engaged in a combined transport operation, the nature of the service provided during the initial or final road leg is closely linked with the Member State of establishment if the road leg on its own is a bilateral transport operation. By contrast, when the transport operation during the road leg is carried out within the host Member State or as a non-bilateral international transport operation, there is a sufficient link with the territory of a host Member State and therefore the posting rules should apply.
- (13) Where a driver performs other types of operations, notably cabotage operations or non-bilateral international transport operations, there is a sufficient link to the territory of the host Member State. The link exists in case of cabotage operations as defined by Regulations (EC) No 1072/2009 ⁽⁶⁾ and (EC) No 1073/2009 ⁽⁷⁾ of the European Parliament and of the Council since the entire transport operation takes place in a host Member State and the service is thus closely linked to the territory of the host Member State. A non-bilateral international transport operation is characterised by the fact that the driver is engaged in international carriage outside of the Member State of establishment of the undertaking making the posting. The services performed are therefore linked with the host Member States concerned rather than with the Member State of establishment. In those cases, sector-specific rules are only required with regard to the administrative requirements and control measures.
- (14) Member States should ensure that, in line with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are laid down by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in their territories, have been declared

⁽⁶⁾ Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

⁽⁷⁾ Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88).

universally applicable or otherwise apply in accordance with Article 3(1) and (8) of Directive 96/71/EC, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. This should include, where relevant, those terms and conditions of employment laid down by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned. The relevant information should, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments. In line with Directive 2014/67/EU, the involvement of the social partners is to be sought.

- (15) Union operators face growing competition from operators based in third countries. It is therefore of the utmost importance to ensure that Union operators are not discriminated against. According to Article 1(4) of Directive 96/71/EC, undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State. That principle should also apply with regard to the specific rules on posting provided for in this Directive. It should, in particular, apply when third country operators perform transport operations under bilateral or multilateral agreements granting access to the Union market.
- (16) The multilateral quota system of the European Conference of Ministers of Transport ('ECMT') is one of the main instruments regulating access to the Union market by third country operators and access to third country markets by Union operators. The number of permits allocated to each ECMT member country is decided on a yearly basis. Member States need to respect their obligation not to discriminate against Union undertakings, including when agreeing conditions for access to the Union market within ECMT.
- (17) The power to negotiate and conclude the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport ('AETR') lies with the Union as part of its exclusive external competences. The Union should, in accordance with Article 2(3) of Regulation (EC) No 561/2006 of the European Parliament and of the Council⁽⁸⁾, align the control mechanisms that can be used to control the respect of national and Union social rules by third country undertakings with the control mechanisms that apply to Union undertakings.
- (18) Difficulties have also been experienced in applying the rules on the posting of workers specified in Directive 96/71/EC and the rules on the administrative requirements laid down in Directive 2014/67/EU to the highly mobile road transport sector. Uncoordinated national measures on the application and enforcement of the provisions on the posting of workers in the road transport sector have generated legal uncertainty and a heavy administrative burden on non-resident Union operators. This has created undue restrictions to the freedom to provide cross-border road transport services, with negative side-effects for jobs and the competitiveness of operators. Therefore, administrative requirements and control measures need to be harmonised. This would also prevent operators from suffering unnecessary delays.
- (19) In order to ensure effective and efficient enforcement of the sector-specific rules on posting of workers and to avoid a disproportionate administrative burden on non-resident Union operators, specific administrative requirements and control measures should be established in the road transport sector, taking full advantage of control tools such as the digital tachograph. In order to monitor compliance with the obligations set out in this Directive and Directive 96/71/EC, and at the same time to reduce the complexity of that task, Member States should only be allowed to impose on operators the administrative requirements and control measures specified in this Directive, which are adapted to the road transport sector.
- (20) Transport undertakings need legal certainty about the rules and requirements with which they have to comply. Those rules and requirements should be clear, understandable and easily accessible to transport undertakings, and should enable effective checks to be carried out. It is important that new rules do not introduce an unnecessary administrative burden and that they duly take into account the interests of small and medium-sized enterprises.

⁽⁸⁾ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (21) The administrative burden and document management tasks incumbent on drivers should be reasonable. Therefore, while certain documents should be available in the vehicle for inspection during roadside checks, other documents should be made available via the public interface connected to the Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council⁽⁹⁾ by the operators and, where necessary, by the competent authorities of the Member State of establishment of the operator. The competent authorities should use the framework of mutual assistance between Member States set out in Directive 2014/67/EU.
- (22) To facilitate the control of compliance with the posting rules set out in this Directive, operators should submit a posting declaration to the competent authorities of the Member States where they post drivers.
- (23) In order to reduce the administrative burden on operators it is necessary to simplify the process of sending and updating posting declarations. Therefore, the Commission should develop a multilingual public interface, to which operators have access and via which they can submit and update posting information and submit other relevant documents to IMI, as necessary.
- (24) Given that, in some Member States, social partners play a crucial role in enforcing social legislation in the road transport sector, Member States should be allowed to provide national social partners with the relevant information which has been shared via IMI, for the sole purpose of checking compliance with posting rules while respecting Regulation (EU) 2016/679 of the European Parliament and of the Council⁽¹⁰⁾. The relevant information should be provided to social partners by other means than IMI.
- (25) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to specify the functionalities of the public interface connected to IMI. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹¹⁾.
- (26) Adequate, effective and consistent enforcement of the rules on working time and rest time is crucial to improving road safety, to protecting the working conditions of drivers and to preventing distortions of competition resulting from non-compliance. Therefore it is desirable to extend the scope of the existing uniform enforcement requirements set out in Directive 2006/22/EC of the European Parliament and of the Council⁽¹²⁾ to include controlling compliance with the working time provisions set out in Directive 2002/15/EC of the European Parliament and of the Council⁽¹³⁾.
- (27) In view of the series of data necessary to carry out controls of the compliance with rules on working time set out in Directive 2002/15/EC, the extent of roadside checks depends on the development and introduction of technology enabling a sufficient period of time to be covered. Roadside checks should be limited to those aspects that can be checked efficiently through the tachograph and related recording equipment on board, and comprehensive checks should only be carried out on the premises.
- (28) Roadside checks should be executed efficiently and quickly, with a view to completing the checks in the shortest time possible and with a minimum of delay for the driver. A clear distinction should be made between the obligations of operators and the obligations of drivers.

⁽⁹⁾ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (the IMI Regulation) (OJ L 316, 14.11.2012, p. 1).

⁽¹⁰⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹¹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽¹²⁾ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

⁽¹³⁾ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

- (29) Cooperation between Member State enforcement authorities should be further promoted through concerted checks, which Member States should endeavour to extend to checks at premises. The European Labour Authority, whose scope of activities, as set out in Article 1(4) of Regulation (EU) 2019/1149 of the European Parliament and of the Council ⁽¹⁴⁾, covers Directive 2006/22/EC, could play an important role in assisting Member States carrying out concerted checks and could support education and training efforts.
- (30) The administrative cooperation between Member States with regard to the implementation of social rules in the road transport sector has proven to be insufficient, making cross-border enforcement more difficult, inefficient and inconsistent. It is therefore necessary to establish a framework for effective communication and mutual assistance, including the exchange of data on infringements and of information on good practices in enforcement.
- (31) With a view to fostering effective administrative cooperation and an effective exchange of information, Regulation (EC) No 1071/2009 of the European Parliament and of the Council ⁽¹⁵⁾ requires Member States to interconnect their national electronic registers (NER) through the European Register of Road Transport Undertakings (ERRU) system. The information accessible through that system at roadside checks should be extended.
- (32) To facilitate and improve communication between Member States, to ensure a more uniform application of social rules in the transport sector and to facilitate operators' compliance with administrative requirements when posting drivers, the Commission should develop one or more new modules for IMI. It is important that IMI allows for validity checks on posting declarations to be carried out during roadside checks.
- (33) The exchange of information in the context of effective administrative cooperation and mutual assistance between Member States should comply with the rules on personal data protection laid down in Regulations (EU) 2016/679 and (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁶⁾. The exchange of information through the IMI should also comply with Regulation (EU) No 1024/2012.
- (34) In order to improve the effectiveness, efficiency and consistency of enforcement, it is desirable to develop the features and extend the use of the existing national risk rating systems. Access to the data contained in risk rating systems would enable the competent control authorities of the Member State concerned to better target checks at non-compliant operators. A common formula for calculating the risk rating of a transport undertaking should contribute to fairer treatment of operators during checks.
- (35) As a consequence of the entry into force of the Treaty of Lisbon, the powers conferred on the Commission under Directive 2006/22/EC should be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).
- (36) In order to ensure uniform conditions for the implementation of Directive 2006/22/EC, implementing powers should be conferred on the Commission to increase the minimum percentage of the days worked by drivers checked by Member States to 4 %; to further clarify the definitions of the categories of statistics to be collected; to designate a body for the active promotion of the exchange of data, of experience and of intelligence between the Member States; to establish a common formula for calculating the risk rating of an undertaking; to establish guidelines on best enforcement practice; to establish a common approach to the recording and controlling of periods of other work and to the recording and controlling of periods of at least one week during which a driver is away from the vehicle and is unable to carry out any activities with that vehicle; and to promote a common approach to the implementation of that Directive, to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EC) No 561/2006 between enforcement authorities

⁽¹⁴⁾ Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).

⁽¹⁵⁾ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).

⁽¹⁶⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

and to facilitate dialogue between the transport sector and enforcement authorities. In particular, when adopting implementing acts for the development of a common formula for calculating the risk rating of an undertaking, the Commission should ensure the equal treatment of undertakings when taking into account the criteria specified in this Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

- (37) In order to reflect developments in best practice as regards checks and standard equipment to be available to enforcement units and to establish or update the weighting of gravity of infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014 of the European Parliament and of the Council⁽¹⁷⁾, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending, respectively, Annexes I and II and Annex III of Directive 2006/22/EC. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽¹⁸⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (38) Directive 2006/22/EC should therefore be amended accordingly.
- (39) Transport undertakings are the addressees of certain special rules on posting and bear the consequences of any infringements of those rules that they commit. However, in order to prevent abuse by undertakings contracting transport services from road haulage operators, Member States should also provide for clear and predictable rules on sanctions against consignors, freight forwarders, contractors and sub-contractors in cases where they knew, or, in light of all relevant circumstances ought to have known, that the transport services that they commissioned involved infringements of special rules on posting.
- (40) In order to ensure fair competition conditions and a level playing field for workers and business, there is a need to make progress towards smart enforcement and to provide all possible support for the full introduction and use of risk rating systems.
- (41) The Commission should evaluate the impact of the application and of the enforcement of the rules for the posting of workers on the road transport sector and submit a report on the results of that evaluation to the European Parliament and to the Council, together, where appropriate, with a legislative proposal.
- (42) Since the objectives of this Directive, namely to ensure adequate working conditions and social protection for drivers, on the one hand, and suitable conditions for business and for fair competition for operators, on the other, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (43) The national measures transposing this Directive should apply from the date 18 months after the date of entry into force of this Directive. Directive (EU) 2018/957 of the European Parliament and of the Council⁽¹⁹⁾ is to apply to the road transport sector, in accordance with Article 3(3) of that Directive, from 2 February 2022,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Specific rules on the posting of drivers

1. This Article establishes specific rules as regards certain aspects of Directive 96/71/EC relating to the posting of drivers in the road transport sector and of Directive 2014/67/EU relating to administrative requirements and control measures for the posting of those drivers.

⁽¹⁷⁾ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

⁽¹⁸⁾ OJ L 123, 12.5.2016, p. 1.

⁽¹⁹⁾ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 173, 9.7.2018, p. 16).

2. These specific rules apply to drivers employed by undertakings established in a Member State which take the transnational measure referred to in point (a) of Article 1(3) of Directive 96/71/EC.

3. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations in respect of goods.

For the purpose of this Directive, a bilateral transport operation in respect of goods means the movement of goods, based on a transport contract, from the Member State of establishment, as defined in Article 2(8) of Regulation (EC) No 1071/2009, to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment.

From 2 February 2022, which is the date from which drivers are required, pursuant to Article 34(7) of Regulation (EU) No 165/2014, to record border crossing data manually, Member States shall apply the exemption for bilateral transport operations in respect of goods set out in the first and second subparagraphs of this paragraph also where, in addition to performing a bilateral transport operation, the driver performs one activity of loading and/or unloading in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unload them in the same Member State.

Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the exemption for additional activities set out in the third subparagraph shall apply to a maximum of two additional activities of loading and/or unloading, under the conditions set out in the third subparagraph.

The exemptions for additional activities set out in the third and fourth subparagraphs of this paragraph shall apply only until the date from which smart tachographs complying with the requirement of recording border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation (EU) No 165/2014 are required to be fitted in the vehicles registered in a Member State for the first time, under the fourth subparagraph of Article 8(1) of that Regulation. From that date the exemptions for additional activities set out in the third and fourth subparagraphs of this paragraph shall apply solely to drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 of that Regulation.

4. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing bilateral transport operations in respect of passengers.

For the purpose of this Directive, a bilateral transport operation in international occasional or regular carriage of passengers, within the meaning of Regulation (EC) No 1073/2009, is when a driver performs any of the following operations:

- (a) picks up passengers in the Member State of establishment and sets them down in another Member State or a third country;
- (b) picks up passengers in a Member State or a third country and sets them down in the Member State of establishment;
or
- (c) picks up and sets down passengers in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009.

From 2 February 2022, which is the date from which drivers are required, pursuant to Article 34(7) of Regulation (EU) No 165/2014, to record border crossing data manually, Member States shall apply the exemption for bilateral transport operations in respect of passengers set out in the first and second subparagraphs of this paragraph also where, in addition to performing a bilateral transport operation, the driver picks up passengers once and/or sets down passengers once in Member States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same shall apply to the return journey.

The exemption for additional activities set out in the third subparagraph of this paragraph shall apply only until the date from which smart tachographs complying with the requirement of recording of border crossings and additional activities referred to in the first subparagraph of Article 8(1) of Regulation (EU) No 165/2014 are required to be fitted in the vehicles registered in a Member State for the first time, under the fourth subparagraph of Article 8(1) of that Regulation. From that date the exemption for additional activities set out in the third subparagraph of this paragraph shall apply solely to drivers using vehicles fitted with smart tachographs, as provided for in Articles 8, 9 and 10 of that Regulation.

5. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when the driver transits through the territory of a Member State without loading or unloading freight and without picking up or setting down passengers.

6. Notwithstanding Article 2(1) of Directive 96/71/EC, a driver shall not be considered to be posted for the purpose of Directive 96/71/EC when performing the initial or final road leg of a combined transport operation as defined in Council Directive 92/106/EEC ⁽²⁰⁾, if the road leg on its own consists of bilateral transport operations, as defined in paragraph 3 of this Article.

7. A driver performing cabotage operations as defined in Regulations (EC) No 1072/2009 and (EC) No 1073/2009 shall be considered to be posted under Directive 96/71/EC.

8. A posting shall, for the purpose of Article 3(1a) of Directive 96/71/EC, be considered to be ending when the driver leaves the host Member State in the performance of the international carriage of goods or passengers. That period of posting shall not be cumulated with previous periods of posting in the context of such international operations performed by the same driver or by another driver whom he or she replaces.

9. Member States shall ensure that, in accordance with Directive 2014/67/EU, terms and conditions of employment referred to in Article 3 of Directive 96/71/EC, which are laid down by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in their territories, have been declared universally applicable or otherwise apply in accordance with Article 3(1) and (8) of Directive 96/71/EC, are made available in an accessible and transparent way to transport undertakings from other Member States and to posted drivers. The relevant information shall, in particular, cover the constituent elements of remuneration rendered mandatory by such instruments, including, where relevant, by collective agreements that are generally applicable to all similar undertakings in the geographical area concerned.

10. Transport undertakings established in a non-Member State shall not be given more favourable treatment than undertakings established in a Member State, including when performing transport operations under bilateral or multi-lateral agreements granting access to the Union market or parts thereof.

11. By way of derogation from Article 9(1) and (2) of Directive 2014/67/EU, Member States may only impose the following administrative requirements and control measures with respect to the posting of drivers:

(a) an obligation for the operator established in another Member State to submit a posting declaration to the national competent authorities of a Member State to which the driver is posted at the latest at the commencement of the posting, using a multilingual standard form of the public interface connected to the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012; that posting declaration shall consist of the following information:

(i) the identity of the operator, at least in the form of the number of the Community licence where this number is available;

(ii) the contact details of a transport manager or other contact person in the Member State of establishment to liaise with the competent authorities of the host Member State in which the services are provided and to send out and receive documents or notices;

(iii) the identity, the address of the residence and the number of the driving licence of the driver;

(iv) the start date of the driver's contract of employment, and the law applicable to it;

(v) the envisaged start and end date of the posting;

(vi) the number plates of the motor vehicles;

(vii) whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations;

(b) an obligation for the operator to ensure that the driver has at his or her disposal in paper or electronic form and an obligation for the driver to keep and make available when requested at the roadside:

(i) a copy of the posting declaration submitted via IMI;

⁽²⁰⁾ Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).

- (ii) evidence of the transport operations taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009;
 - (iii) the tachograph records and in particular the country symbols of the Member States in which the driver was present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006 and (EU) No 165/2014;
- (c) an obligation for the operator to send via the public interface connected to IMI, after the period of posting, at the direct request of the competent authorities of the Member States where the posting took place, copies of documents referred to in point (b) (ii) and (iii) of this paragraph as well as documentation relating to the remuneration of the driver in respect of the period of posting, the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC⁽²¹⁾, time-sheets relating to the driver's work, and proof of payments.

The operator shall send the documentation via the public interface connected to IMI no later than eight weeks from the date of the request. If the operator fails to submit the requested documentation within that time period, the competent authorities of the Member State where the posting took place may request, via IMI, the assistance of the competent authorities of the Member State of establishment, in accordance with Articles 6 and 7 of Directive 2014/67/EU. When such a request for mutual assistance is made, the competent authorities of the Member State of establishment of the operator shall have access to the posting declaration and other relevant information submitted by the operator via the public interface connected to IMI.

The competent authorities of the Member State of establishment shall ensure that they provide the requested documentation to the competent authorities of the Member State where the posting took place via IMI within 25 working days from the day of the request for mutual assistance.

For the purpose of ascertaining whether a driver is not to be considered to be posted pursuant to paragraphs 3 and 4 of this Article, Member States may only impose as a control measure an obligation for the driver to keep and make available, where requested at the roadside check, in paper or electronic form, the evidence of the relevant international carriages, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009, and tachograph records, as referred to in point (b)(iii) of this paragraph.

12. For the purposes of control, the operator shall keep the posting declarations referred to in point (a) of paragraph 11 up to date in the public interface connected to IMI.

13. The information from the posting declarations shall be saved in the IMI repository for the purpose of checks for a period of 24 months.

A Member State may allow the competent authority to provide national social partners by other means than IMI with relevant information available in IMI to the extent necessary for the purpose of checking compliance with posting rules and in accordance with national law and practices, provided that:

- (a) the information relates to a posting to the territory of the Member State concerned;
- (b) the information is used exclusively for the purpose of enforcing the posting rules; and
- (c) any data processing is carried out in accordance with Regulation (EU) 2016/679.

14. By 2 February 2021, the Commission shall specify, by way of an implementing act, the functionalities of the public interface connected to IMI. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 4(2).

15. Member States shall avoid unnecessary delays in the implementation of the control measures that might affect the duration and dates of the posting.

⁽²¹⁾ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

16. The competent authorities in the Member States shall cooperate closely and shall provide each other with mutual assistance and all relevant information, subject to the conditions laid down in Directive 2014/67/EU and in Regulation (EC) No 1071/2009.

Article 2

Amendment of Directive 2006/22/EC

Directive 2006/22/EC is amended as follows:

(1) the title is replaced by the following:

'Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC';

(2) Article 1 is replaced by the following:

'Article 1

Subject matter

This Directive lays down minimum conditions for the implementation of Regulations (EC) No 561/2006 (*) and (EU) No 165/2014 (**) of the European Parliament and of the Council and Directive 2002/15/EC of the European Parliament and of the Council (***).

(*) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

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

(***) Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).;

(3) Article 2 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'These checks shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles falling within the scope of Regulations (EC) No 561/2006 and (EU) No 165/2014 and of mobile workers and drivers falling within the scope of Directive 2002/15/EC. Roadside checks on compliance with Directive 2002/15/EC shall be limited to aspects that can be checked efficiently through the tachograph and related recording equipment. A comprehensive check on compliance with Directive 2002/15/EC may only be carried out at the premises.;

(b) in paragraph 3, the first and second subparagraphs are replaced by the following:

'Each Member State shall organise checks in such a way that at least 3 % of days worked by drivers of vehicles falling within the scope of Regulations (EC) No 561/2006 and (EU) No 165/2014 are checked. During the roadside check, the driver shall be allowed to contact the head office, the transport manager or any other person or entity in order to provide, before the end of the roadside check, any evidence which is found to be missing on board; this is without prejudice to the driver's obligation to ensure the proper use of tachograph equipment.

From 1 January 2012 the Commission may, by means of an implementing act, increase the minimum percentage to 4 %, provided that the statistics collected pursuant to Article 3 show that, on average, more than 90 % of all vehicles checked are equipped with a digital tachograph. In making its decision, the Commission shall also take into account the effectiveness of existing enforcement measures, in particular the availability of digital tachograph data at the premises of undertakings. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 12(2).;

(c) the following paragraph is inserted:

'3a. Each Member State shall organise checks on compliance with Directive 2002/15/EC, taking into account the risk rating system provided for in Article 9 of this Directive. Those checks shall be targeted at an undertaking if one or more of its drivers have been continuously or seriously infringing Regulation (EC) No 561/2006 or (EU) No 165/2014.;

(d) paragraph 4 is replaced by the following:

'4. The information submitted to the Commission in accordance with Article 17 of Regulation (EC) No 561/2006 and Article 13 of Directive 2002/15/EC shall include the number of drivers checked at the roadside, the number of checks at the premises of undertakings, the number of working days checked and the number and type of infringements reported, and shall indicate whether passengers or goods were transported.;

(4) the fifth paragraph of Article 3 is replaced by the following:

'The Commission shall, if required, further clarify, by means of implementing acts, the definitions of the categories mentioned under points (a) and (b) of the first paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).;

(5) Article 5 is replaced by the following:

'Article 5

Concerted checks

Member States shall, at least six times per year, carry out concerted roadside checks on drivers and vehicles falling within the scope of Regulation (EC) No 561/2006 or (EU) No 165/2014. Member States shall, in addition, endeavour to organise concerted checks at premises of undertakings.

Such concerted checks shall be carried out at the same time by the enforcement authorities of two or more Member States, each operating in its own territory.;

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

'1. Checks at premises shall be planned in the light of past experience in relation to the various types of transport and undertakings. They shall also be carried out if serious infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014 or Directive 2002/15/EC have been detected at the roadside.;

(7) Article 7 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

'(b) to forward the biennial statistical returns to the Commission under Article 17 of Regulation (EC) No 561/2006.;

(ii) the following point is added:

'(d) to ensure exchange of information with the other Member States pursuant to Article 8 of this Directive with regard to the application of national provisions transposing this Directive and Directive 2002/15/EC.;

(b) paragraph 3 is replaced by the following:

'3. The exchange of data, of experience and of intelligence between Member States shall be actively promoted, primarily, but not exclusively through the Committee referred to in Article 12(1) and any such body as the Commission may designate by way of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).;

(8) Article 8 is replaced by the following:

'Article 8

Exchange of information

1. Information made available bilaterally under Article 22(3) of Regulation (EC) No 561/2006 shall also be exchanged between the designated bodies notified to the Commission in accordance with Article 7 of this Directive:

(a) at least once every six months after the entry into force of this Directive;

(b) upon reasoned request by a Member State in individual cases.

2. A Member State shall provide the information requested by another Member State pursuant to point (b) of paragraph 1 within 25 working days from the receipt of the request. A shorter time limit may be mutually agreed between the Member States. In urgent cases or in cases requiring only a simple consultation of registers, such as registers of a risk rating system, the requested information shall be provided within three working days.

Where the requested Member State considers that the request is insufficiently reasoned, it shall inform the requesting Member State accordingly, within 10 working days from the receipt of the request. The requesting Member State shall further substantiate the request. Where the requesting Member State is unable to further substantiate the request, the requested Member State may reject the request.

Where it is difficult or impossible to comply with a request for information or to carry out checks, inspections or investigations, the requested Member State shall inform the requesting Member State accordingly within 10 working days from the receipt of the request and provide reasons to duly justify that difficulty or impossibility. The Member States concerned shall discuss with one another with a view to finding a solution.

In the event of persistent delays in the provision of information to the Member State to whose territory the worker is posted, the Commission shall be informed and shall take appropriate measures.

3. The exchange of information provided for in this Article shall be implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council (*). This does not apply to information which Member States exchange through direct consultation of national electronic registers referred to in Article 16(5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council (**).

(*) Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

(**) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51).;

(9) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall introduce a risk rating system for undertakings based on the relative number and gravity of any infringement of Regulation (EC) No 561/2006 or of Regulation (EU) No 165/2014 or of national provisions transposing Directive 2002/15/EC that an individual undertaking has committed.

By 2 June 2021 the Commission shall, by means of implementing acts, establish a common formula for calculating the risk rating of an undertaking. That common formula shall take into account the number, gravity and frequency of occurrence of infringements and the results of controls where no infringement has been detected, as well as whether a road transport undertaking has been using the smart tachograph, pursuant to Chapter II of Regulation (EU) No 165/2014, on all its vehicles. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive.;

(b) in paragraph 2, the second sentence is deleted;

(c) paragraph 3 is replaced by the following:

‘3. An initial list of infringements of Regulation (EC) No 561/2006 and Regulation (EU) No 165/2014 and their weighting of gravity is set out in Annex III.

With a view to establishing or updating the weighting of gravity of infringements of Regulation (EC) No 561/2006 or (EU) No 165/2014, the Commission is empowered to adopt delegated acts in accordance with Article 15a of this Directive to amend Annex III to take account of regulatory developments and road safety considerations.

The category for the most serious infringements should include those in which failure to comply with the relevant provisions of Regulations (EC) No 561/2006 and (EU) No 165/2014 creates a serious risk of death or serious personal injury.’;

(d) the following paragraphs are added:

‘4. In order to facilitate targeted roadside checks, the data contained in the national risk rating system shall be accessible to all the competent control authorities of the Member State concerned at the time of control.

5. Member States shall make the information contained in their national risk rating system directly accessible through interoperable national electronic registers as referred to in Article 16 of Regulation (EC) No 1071/2009 to competent authorities of other Member States in accordance with Article 16(2) of that Regulation.’;

(10) Article 11 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The Commission shall, by means of implementing acts, establish guidelines on best enforcement practice. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2).

Those guidelines shall be published in a biennial report of the Commission.’;

(b) paragraph 3 is replaced by the following:

‘3. The Commission shall, by means of implementing acts, establish a common approach to the recording and controlling of periods of other work, as defined in point (e) of Article 4 of Regulation (EC) No 561/2006, including the form of the recording and specific cases in which it is to take place, and to the recording and controlling of periods of at least one week during which a driver is away from the vehicle and is unable to carry out any activities with that vehicle. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive.’;

(11) Articles 12 to 15 are replaced by the following:

‘Article 12

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 42(1) of Regulation (EU) No 165/2014. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

*Article 13***Implementing measures**

At the request of a Member State or on its own initiative the Commission shall adopt implementing acts in particular with one of the following aims:

- (a) to promote a common approach to the implementation of this Directive;
- (b) to encourage a coherence of approach between enforcement authorities and a harmonised interpretation of Regulation (EC) No 561/2006 between enforcement authorities;
- (c) to facilitate dialogue between the transport sector and enforcement authorities.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12(2) of this Directive.

*Article 14***Negotiations with third countries**

Once this Directive has entered into force, the Union shall begin negotiations with the relevant third countries with a view to the application of rules equivalent to those laid down in this Directive.

Pending the conclusion of these negotiations, Member States shall include data on checks carried out on vehicles from third countries in their returns to the Commission as set out in Article 17 of Regulation (EC) No 561/2006.

*Article 15***Updating of the Annexes**

The Commission is empowered to adopt delegated acts in accordance with Article 15a to amend Annexes I and II to introduce necessary adaptations to reflect developments in best practice.

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

(12) The following article is inserted:

*'Article 15a***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 9(3) and Article 15 shall be conferred on the Commission for a period of five years from 1 August 2020. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 9(3) and Article 15 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (*).

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 9(3) and Article 15 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

(*) OJ L 123, 12.5.2016, p. 1.;

(13) Annex I is amended as follows:

(a) Part A is amended as follows:

(i) points (1) and (2) are replaced by the following:

- ‘(1) daily and weekly driving times, breaks and daily and weekly rest periods; also the preceding days’ record sheets which have to be carried on board the vehicle in accordance with Article 36(1) and (2) of Regulation (EU) No 165/2014 and/or the data stored for the same period on the driver card and/or in the memory of the recording equipment in accordance with Annex II to this Directive and/or on printouts;
- (2) for the period referred to in Article 36 paragraphs (1) and (2) of Regulation (EU) No 165/2014, any cases where the vehicle’s authorised speed is exceeded, to be defined as being any periods of more than one minute during which the vehicle’s speed exceeds 90 km/h for category N₃ vehicles or 105 km/h for category M₃ vehicles (categories N₃ and M₃ as defined in Directive 2007/46/EC of the European Parliament and of the Council (*));

(*) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).;

(ii) point (4) is replaced by the following:

‘(4) the correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets) or, where appropriate, presence of the documents referred to in Article 16(2) of Regulation (EC) No 561/2006;’

(iii) the following point is added:

‘(6) extended maximum weekly working times of 60 hours as set out in Article 4 point (a) of Directive 2002/15/EC; other weekly working times as set out in Articles 4 and 5 of Directive 2002/15/EC only where technology enables effective checks to be carried out.’

(b) Part B is amended as follows:

(i) in the first paragraph, the following points are added:

- ‘(4) compliance with maximum average weekly working times, breaks and night work requirements set out in Articles 4, 5 and 7 of Directive 2002/15/EC;
- (5) observance of the obligations of undertakings as regards the payment for drivers’ accommodation and the organisation of the work of drivers, in accordance with Article 8(8) and (8a) of Regulation (EC) No 561/2006.’

(ii) the second paragraph is replaced by the following:

‘Member States may, if appropriate, check on the joint liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with Regulations (EC) No 561/2006 and (EU) No 165/2014.’

*Article 3***Amendment to Regulation (EU) No 1024/2012**

In the Annex to Regulation (EU) No 1024/2012 the following points are added:

- ‘13. Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Regulations (EC) No 561/2006 and (EU) No 165/2014 and Directive 2002/15/EC as regards social legislation relating to road transport activities, and repealing Council Directive 88/599/EEC (*): Article 8.
14. Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (**): Article 1(14).

(*) OJ L 102, 11.4.2006, p. 35.

(**) OJ L 249, 31.7.2020, p. 49.’

*Article 4***Committee procedure**

1. The Commission shall be assisted by the committee established by Article 42(1) of Regulation (EU) No 165/2014. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 5***Penalties and sanctions**

1. Member States shall lay down rules on sanctions against consignors, freight forwarders, contractors and sub-contractors for non-compliance with national provisions adopted pursuant to Article 1, where they knew, or, in the light of all relevant circumstances, ought to have known, that the transport services that they commissioned involved infringements of those provisions.
2. Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to Article 1 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate, dissuasive and non-discriminatory.

*Article 6***Smart enforcement**

Without prejudice to Directive 2014/67/EU and in order to further enforce the obligations provided for in Article 1 of this Directive, Member States shall ensure that a coherent national enforcement strategy is applied on their territory. That strategy shall focus on undertakings with a high-risk rating, referred to in Article 9 of Directive 2006/22/EC.

*Article 7***Evaluation**

1. The Commission shall evaluate the implementation of this Directive, in particular the impact of Article 1, by 31 December 2025 and report to the European Parliament and the Council on the application of this Directive. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal. The report shall be made public.
2. Following the report referred to in paragraph 1, the Commission shall regularly evaluate this Directive and submit the evaluation results to the European Parliament and the Council. The evaluation results shall, if appropriate, be accompanied by relevant proposals.

*Article 8***Training**

Member States shall cooperate in the provision of education and training to enforcement authorities, building on existing enforcement schemes.

Employers shall be responsible for ensuring that their drivers acquire knowledge about their rights and obligations stemming from this Directive.

*Article 9***Transposition**

1. By 2 February 2022, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 2 February 2022.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 10***Entry into force**

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

*Article 11***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 15 July 2020.

For the European Parliament

The President

D.M. SASSOLI

For the Council

The President

J. KLOECKNER

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