

THE EU MOBILITY PACKAGE FOR TRANSPORT

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Abstract: *The Transport Mobility Package adopted by the EU in 2020, entered into force in 2021, which brought a series of changes to EC Regulation 561/2006 and EU Regulation 165/2014, led to a series of dissatisfactions on the part of Romanian carriers. As a result of the legislative changes, their activity is affected, at the same time considering the measures as discriminatory both for them and for the other partners from the peripheral regions of Europe.*

Key words: *transport, European Regulations, measures.*

1. Introduction

In the field of transport, a series of legislative changes were adopted at the level of the European Union (Serban-Barbu, 2016), transposed into the national legislation, the purpose of the changes brought by the Mobility Package being to maintain a balance (Cotiţiu, 2015, p.4-5) between the safety of drivers, social equity and the sustainable economy.

On 31.07.2020, the regulations from the Mobility Package were published in the Official Journal of the European Union, respectively Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) no. 561/2006 on the minimum requirements regarding maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) no. 165/2014 regarding positioning by means of tachographs; 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 in order to adapt them to developments in the road transport sector; Regulation (EU) 2020/1056 of the European Parliament and of the Council of 15 July 2020 on electronic information relating to the transport of goods; Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 establishing specific rules regarding Directive 96/71/EC and Directive 2014/67/EU on the job relocation of drivers in the road transport sector and amendment of Directive 2006/22/EC regarding control requirements and Regulation (EU) no. 1024/2012.

The Mobility Package was transposed into national legislation by G.O. 12 of January 31, 2022 (Official Gazette no. 98 from January 31, 2022).

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2. New rules according to the mobility package

2.1. Job relocation rules

When transport operators carry out international transports, it is necessary for the employers to produce the necessary documentation, according to the labor legislation (Nenu, Popescu and Zenker, 2014, p.72), for the employees who are relocated to carry out the transport activity.

Directive (EU) 2020/1057 (<https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32020L1057>) establishes specific rules on the job relocation of drivers in the commercial road transport sector and the effective application of these rules. The directive provides rules that are better adapted to the highly mobile nature of work in the road transport sector. This aims to eliminate discrepancies between EU countries in the interpretation and application of provisions on the job relocation of workers in the road transport sector. The directive is intended to create a safe, efficient and socially responsible road transport sector, while providing more legal security, reducing the administrative burden for transport operators and preventing distortion of competition.

According to the Job relocation Directive (Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020), which applies from February 2, those who carry out cross-trade or cabotage operations (transport between two member states, different from the company's country of registration), transit operations or bilateral/multilateral transport and supplementary operations are subject to secondment additional loading/unloading carried out in the context of bilateral/multilateral transport operations not falling under the incidence of these regulations. Thus, drivers are to be paid at the level of the wages of the countries where they work and the wages of the state where the company is registered, which means a significant increase in costs.

With the entry into force of these rules, companies are obliged to enter the data of drivers, as well as of the vehicles they drive, in the European IMI platform (https://ec.europa.eu/internal_market/imi-net/index_ro.htm). This is an online application created and managed by the European Commission, the objective being to improve the single market, facilitating administrative cooperation and mutual assistance between member states (Regulation 1024/2012 of the European Parliament and of the Council on administrative cooperation through the Internal Market Information System - <https://cnred.edu.ro/sites/default/files/pdf/Regulamentul-UE-1024-2012.pdf>).

The IMI statement is a document that certifies that drivers are paid the minimum wage in the countries where they operate: loading, unloading or cabotage. The job relocation declaration must be generated from the European platform, at the latest upon entering the territory of the respective country. The declaration is not required in the country of origin.

The operator established in a member state has the obligation to register the information related to the activity of job relocating of the driver, in the European IMI platform, before the start of his relocation.

Control agents in a given country have the right to request from foreign drivers the statement of relocation, printed or in electronic format, sent by the operator on the

phone or tablet. The authenticity and validity of the relocation statement is checked on the spot by scanning the QR code on the declaration (the verification operation is done in real time via IMI).

Agents may decide to subsequently submit a request to the company to verify additional documentation that the driver has received the appropriate remuneration for the period of relocation.

The request for documents is made through IMI, so that the competent authority in the operator's country (e.g. the Labor Inspectorate, in Romania) can be responsible for requesting the data from the carrier.

Agents can request the transmission of the following documents through the IMI system: tachograph records; e-CMR documents; work contract; timesheets related to the work performed by the driver.

These documents must be sent within a maximum of 8 weeks from the end of the job relocation period.

2.2. Allowances specific to job relocation

Directive 2018/957 (<https://eur-lex.europa.eu/eli/dir/2018/957/oj>) relating to the introduction of revised rules on the job relocation of workers (applicable to transport starting from February 2, 2022) regulates the allowances specific to job relocation. "They often serve multiple purposes. To the extent that their purpose is to reimburse expenses incurred as a result of job relocation, such as travel, meal and lodging expenses, they should not be considered as part of remuneration.

It is the competence of Member States, in accordance with their national legislation and/or practice, to establish rules regarding the reimbursement of these expenses. The employer should reimburse to relocated workers such expenses, in accordance with national law and/or practice applicable to the employment relationship."

There are allowances specific to the job relocation which are not paid through the reimbursement of the costs incurred by the driver.

This should be clearly stated in the national legislation applied to the employment relationship. There are also allowances excluded from the remuneration, those allowances specific to the job relocation, which are paid by reimbursing the costs incurred by the driver.

Where there is no clarity in the national legislation applicable to the employment relationship as to which parts of the allowance are paid by way of reimbursement, the entire allowance should be deducted from remuneration.

It should be checked at national level what parts of allowances are paid as reimbursement and then deducted from remuneration.

2.3. Regular return of driver and vehicle to base

According to EU Regulation 2020/1054 (<https://eur-lex.europa.eu/eli/reg/2020/1054/oj>), which amends the provisions of Regulation 561/2006 on this matter, transport operators have the obligation to organize the work

of drivers to ensure that they can return to the country at least every 4 weeks (or 3 weeks in the case of two consecutive short breaks).

Their place of return is either the employer's operational center where the driver is normally located, or the driver's place of residence (at his choice), but there is no possibility to exempt the employer from the obligation to organize work for the driver's return at the place of return.

To prove compliance to this obligation, transport companies will use tachograph records, drivers' working hours or other documents to prove compliance (tickets or other travel arrangements – for example, the driver traveled on a minibus provided by an employer).

Evidence must be kept for 12 months at the companies headquarters. The driver shall not be required to possess such evidence. After carrying out a traffic control, the control authorities may decide to request additional information about a driver's activity from the competent authorities.

At the same time, the Mobility Package also provides the obligation to return the trucks to the operational center every two months, provision that entered into force from February 2022, though in 2020, Romania and other countries including Bulgaria, Cyprus, Lithuania, Poland and Hungary had requested the partial cancellation of EU acts (<https://economedia.ro/directiva-detasariei-in-transporturi-guvernul-da-ordonanta-pentru-completarea-legislatiei-care-intra-in-vigoare-din-februarie-pachetul-mobilitate-impact-major-pentru-firmele-romanesti.html#.Y5WEHX1BzIU>). According to Romania, but also to 8 other states from the European Union, the current form of the Mobility Package 1 is also in contradiction with the Green Deal objectives of the Union (Stanciu, 2015, p. 23), because this fact will lead, according to the 9 states, to an increase in the number of "empty races" that will generate additional CO₂ emissions (Duminică, 2015, p. 23) from the road transport sector.

2.4. Rest and driving times

According to art. 8 paragraph 6 letter b) of Regulation 561/2006, the maximum continuous driving time provided by the legislator is 4 hours and 30 minutes, the breaks must be 45 minutes in total, which can be divided into two periods and should be taken after 4 hours and a half at the latest: the first, at least 15 minutes, the second, at least 30 minutes.

The maximum daily driving time is 9 hours with the possibility of extension to 10 hours, twice a week, and the maximum weekly driving time cannot exceed 56 hours. The total limit is 90 driving hours for two weeks. A daily service time is also provided, namely 12 hours or 10 hours if the working time is during the night between 0:00 and 5:00 a.m..

Regular daily rest for simple crew must be at least 11 consecutive hours in a 24-hour period and may be reduced to nine hours three times a week; this can be taken in two parts with a first part of at least three hours and a second part of at least nine hours. For the double crew, the daily rest is 9 consecutive hours in a 30-hour period. The minimum weekly rest is 45 consecutive hours – the option for a reduced rest period of 24 hours in

2 consecutive weeks is conditioned by its being compensated in bulk before the end of the 3rd week.

The new changes provide flexibility for weekly rest, namely the possibility for drivers to take 2 consecutive reduced weekly rests, namely drivers employed in international freight transport (Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020).

The 2 consecutive reduced rest periods must be taken outside the driver's Member State of residence and the 2 compensations must be taken as a block and attached to the mandatory regular weekly rest following the two consecutive reduced weekly rests.

Regulation 561/ 2006 provides through the provisions of art. 12 par.2 and 3 the possibility to exceed the daily and weekly driving time by 1 hour if the driver is to arrive home for a weekly rest, as well as the possibility to exceed the daily and weekly driving time by 2 hours if the driver is to arrive home for a regular weekly rest. The driver must take a 30 minutes break before the additional driving time.

These situations are admissible if certain conditions are met, namely: it is an exceptional situation, it must not reduce the rest period, it must compensate for the extension by additional rest attached to another rest period within 3 weeks.

The exceptional situations referred to by the legislator are the unforeseen circumstances beyond the will of the driver or operator (weather conditions, congestion, delays at loading/unloading points, etc.) when he cannot reach one of the places indicated above for a weekly rest without violating the rules regarding daily or weekly rest. The driver is obliged to indicate manually the reason for the deviation from the driving time limits on the printed sheet or the registration sheet or the work schedule. This declaration makes the driver responsible for the information declared.

Also, the Regulation 561/2006 through the provisions of art. 8 paragraph 8 prohibits regular weekly rest in the truck cabin. The cost of accommodation is to be covered by the employer and the burden of proof falls on the control authorities, with no obligation for drivers to provide evidence such as hotel bills. Drivers or employers can only be fined for failing to comply with a prohibition on taking regular weekly rest (more than 45 hours) in the vehicle when drivers are caught taking a regular weekly rest inside the vehicle at the time of the check.

2.5. Cabotage rules

Three cabotage operations were allowed in a foreign country within seven days. With the entry into force of the Mobility Package, the carrier is able to carry out a maximum of three cabotage operations within seven consecutive calendar days, but, nevertheless, the driver will not be able to carry out another cabotage on the territory of the same country if less than four days have passed since the last trip of this type.

This means that the carrier will be able to carry out a maximum of three cabotage operations in the next seven calendar days, but the driver will not be able to manage another cabotage within the territory of the same country. A break of at least four days will be introduced before other cabotage operations and can be carried out in the same country, using the same truck.

The truck will remain unused. Through the new legislation, the European forum wants to replace the existing restriction on the number of cabotage operations - transport operations in another EU country following a cross-border delivery, with a time limit of 3 days and to introduce the registration of border crossing points by tachographs. Also, there will be a "waiting period" in the country of origin (60 hours) before moving to another cabotage, in order to avoid the practice of "systematic cabotage".

2.6. Licenses for carriers with a fleet of vehicles from 2.5 t to 3.5 t in international transport

After the entry into force of the Mobility Package, new obligations were imposed on companies that carry out transport with vehicles with a gross vehicle weight of 2.5-3.5 tons, such as obtaining the authorization to exercise the occupation of road transport operator and the authorization community and demonstrating financial capacity at a certain level (Gheoculescu, 2022, p.487).

The most important change for carriers managing a fleet of vehicles under 3.5 tones is the introduction of an authorization to practice the occupation of road transport operator, which was not requested until now.

2.7. Replacement of tachographs

The legislator also makes new changes in the matter of tachographs, requiring the old ones to be replaced with the latest generation intelligent ones according to a schedule: the mandatory replacement of analogue and digital tachographs (Singh, 2017, p. 37) with second generation intelligent tachographs must be carried out by December 2024, there being also the obligation to store and present for inspection the data on the tachograph for that day and 56 previous days; the mandatory replacement of first-generation smart tachographs with second-generation smart tachographs to take place by September 2025 at the latest; the use of tachographs and the recording of working time and rest periods for drivers of vehicles up to 3.5 t in international transport will be mandatory from July 2026.

The new smart tachographs will automatically record the position of the vehicle at successive points (or at the closest to those where a GPS signal is available). In addition, to facilitate the verification of compliance by the control authorities, the tachograph records information on the purpose (transport of goods or passengers) for which the vehicle was used.

3. Conclusions

The mobility package adopted by the EU member states implies some restrictions and rules for EU carriers, which were intended to be introduced to protect drivers, goods and traffic safety. In fact, these rules do nothing else than to restrict access to the EU market of carriers from Eastern Europe. Carriers in Western Europe cannot keep up with the prices offered by carriers in the East, mainly due to the wages offered to drivers. A

series of measures have been introduced to facilitate the work of drivers, but all of these will have repercussions on transport operators.

The Romanian authorities, through the Ministry of Transport and the Ministry of Foreign Affairs, considered that the provisions contained in this package have a "restrictive and disproportionate character" and announced at the time of adoption that "they reserve the right to use all the action options they have at their disposal, including the introduction of actions to the Court of Justice of the European Union" (which is what happened at the beginning of January 2022, <https://www.bursa.ro/guvernul-a-sesizat-curtea-de-justitie-a-uniunii-europene-asupra-unor-prevederi-ale-pachetului-mobilitate-i-24200141>), because it was not possible to agree on texts that include proportionate and balanced measures in order to improve working conditions in the transport sector and, at the same time, support the competitiveness of companies, including the Romanian ones, from the road transport sector" (<https://www.caleaeuropeana.ro/mae-dupa-votul-parlamentului-european-privind-pachetul-de-mobilitate-romania-isi-rezerva-dreptul-unor-actiuni-la-curtea-de-justitie-a-uniunii-europene/>).

Reducing the time will make the carrier incur higher costs. This is the first stage of the mobility package and it will be mandatory for all carriers this year. Previously, there were some rules, namely that the weekly break of drivers could no longer be taken in the truck, but at the hotel.

These were implemented starting from 2016 by various countries to improve the working conditions of drivers, spending longer rest periods at home and combating their inadequate rest.

Another important aspect is the driver's salary. It is desired that the minimum salary of the driver who works mainly in EU countries be adjusted to the level of the EU countries in which he works, even if he is employed in Romania and the company has headquarters in Romania. This is a positive aspect, as their migration is no longer encouraged, given that they were and are attracted to Western countries by considerably higher wages and large allowances for children (<https://www.forbes.ro/pachetul-mobilitate-1-ajutor-sau-amenintare-242881>).

The changes brought in the transport legislation through the Mobility Package are beneficial to drivers, but in the medium and long term, all of these will lead to an increase in the price of transport and, implicitly, the entire economic activity of the state and the standard of living of the citizens will be affected, if other measures are not taken to prevent the negative effects of these changes.

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