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

REGULATION (EU) 2020/1055 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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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.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/1055 of the European Parliament and of the Council. (See end of Document for details)*

(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.

(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.

(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

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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.

(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