

Revision of Road Haulage Rules (EU Mobility Package)

Member Briefing Note



The EU Regulations on Operator Licensing, Access to the Market, Drivers' Hours and Tachographs have been revised. Furthermore, a new piece of legislation harmonising administrative requirements relating to local minimum wages for international drivers will be adopted. The revised regulations and the new directive were published in the Official Journal of the EU on 31 July 2020. The first changes will become applicable on 20 August 2020. This note describes the main changes.

1. Driving and rest time

The revised driving and rest time regulation was published in the Official Journal of the EU. Entry into force and applicability: 20 August 2020.

Exemption for certain vehicles under 7.5t used for own-account transport – applicable from 20 August 2020

The existing exemption for “vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5t used for carrying materials, equipment or machinery for the driver’s use in the course of his work” is extended to include vehicles “*delivering goods produced on a craft basis where the transport is not carried out for hire or reward*”. This exemption continues to include a 100km radius limit. It is also required that driving the vehicle does not constitute the driver’s main activity.

It is worth noting that the conditions are cumulative -except the one about the goods carried: equipment for the driver’s use or goods produced on a craft basis. There is no definition of “goods produced on a craft basis” which will make it difficult to use this exemption without facing enforcement risk / uncertainty. FTAI will work with the European Commission and the enforcement community to establish an interpretation of “craft basis”.

Multi-manning and breaks – applicable from 20 August 2020

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.

‘Return home’ rule – applicable from 20 August 2020

The employer must organise the work in such a way that drivers are able to return to the company’s operational centre where the driver is normally based or to the place of residence of the driver once in every 4-week period. The employer **must be able to demonstrate how this is planned and fulfilled**,

should it be requested by enforcement bodies. Policymakers, trade bodies and the enforcement community have voiced different interpretations of this provision. FTAI is seeking clarification as to whether drivers may decide not to use the possibility they are offered, ie. not to return to the place of residence / of establishment.

Two reduced weekly rest periods in a row (international drivers only) – applicable from 20 August 2020

Drivers engaged in international transport will have the possibility to take 2 reduced weekly rest periods in a row in every 4-week period provided that the driver in any 4 consecutive weeks takes at least four weekly rest periods, of which at least 2 shall be regular weekly rest periods.

The driver must start the reduced rests outside of the Member State of establishment in order to qualify for this possibility. If the first reduced rest begins inside the drivers' place of residence, the standard rules will apply.

After 2 consecutive reduced weekly rest periods, the compensation for both reductions must be taken en bloc *before* the next weekly rest period. This means that the compensation for both reduced weekly rests must have been completed before the end of 6x24 hour periods after the second reduced weekly rest finished.

Weekly rest in the cab – applicable from 20 August 2020

The revised regulation clarifies and confirms a recent decision of the European Court of Justice regarding taking regular weekly rest in the cab of a vehicle. A driver cannot take a weekly rest or any weekly rest period longer than 45 hours in the vehicle. Accommodation must be provided at the cost of the employer.

Policymakers considered extending the ban to reduced weekly rest periods but FTAI successfully argued that, in the absence of a network of safe and secure truck parking areas with appropriate driver facilities, such an obligation would have been pointless and virtually impossible to comply with.

Ferry rule – possibility to interrupt a reduced and regular weekly rest periods – applicable from 20 August 2020

As per current regulations, where a driver accompanies a vehicle which is transported by ferry or train and takes a regular *daily rest period*, that period may be interrupted twice by other activities not exceeding 1 hour in total (access to bunk or couchette is a pre-requisite).

The revised rules allow the interruption to also be applicable to *reduced weekly rest periods*, under the same conditions:

- ▶ Rest period may only be interrupted twice.
- ▶ The interruption cannot exceed one hour in total.
- ▶ The driver must have access to a, bunk or couchette, or, with the amendment, a sleeper cabin.

A *regular weekly rest* may now also be interrupted only where the ferry or train journey is scheduled for more than 8 hours and the driver has access to a sleeper cabin.

Exceed driving time to reach home – applicable from 20 August 2020

It will be possible to exceed daily and weekly driving time by one hour in exceptional circumstances to reach the operational centre or the driver's place of residence, provided road safety is not jeopardised.

If the driver takes a 30-minute uninterrupted break immediately before this extra driving time, daily and weekly driving time can be exceeded by 2 hours.

It must be compensated *en bloc* with any rest period by the end of the third week following the week in question.

Centralised information about safe and secure truck parking areas

The European Commission will launch a public website centralising information about safe and secure truck parking areas. Information displayed on this website should make it easier for hauliers operating in the EU to find parking areas and compare their level of security and comfort.

- ▶ The website will only display those parking areas that will have been audited and deemed to comply with a common standard
- ▶ The standard will be based on the bronze / silver / gold classification set up in a [2009 study](#).¹

Tachograph record keeping for 56 days – applicable from 31 December 2024

From 31 December 2024, the period for which drivers must be able to produce record sheets, manual records and printouts is extended from 28 days to 56 days.

2. Timeline of tachograph retrofitting

A new version of smart tachograph will be introduced. Technical specifications of Smart Tachograph 2 are in the process of being written by the European Commission. They should be adopted by 20 August 2021.

New functionalities of the Smart Tachograph 2 include the automatic recording of border crossings and of loading and unloading activities.

Policymakers were keen on speeding up the roll-out of this new version of smart tachograph and therefore mandated the use of this future version for vehicles that are already in operation.

Retrofitting obligations will only apply to vehicles operating in countries other than their country of establishment.

- ▶ **20 August 2023:** Smart Tachograph 2 becomes mandatory in the EU for new vehicles.
- ▶ **31 December 2024:** vehicles fitted with an analogue or a digital tachograph must be retrofitted with a Smart Tachograph 2 if they operate abroad.
- ▶ **31 December 2025:** vehicles fitted with a Smart Tachograph 1 must be retrofitted with a Smart Tachograph 2 if they operate abroad.

¹ European Commission, Study on safe and secure parking areas for trucks, Final Report, February 2019: <https://ec.europa.eu/transport/sites/transport/files/2019-study-on-safe-and-secure-parking-places-for-trucks.pdf>

Whilst the retrofitting schedule is challenging considering the Smart Tachograph 2 does not exist yet, policymakers initially envisaged to mandate retrofitting as early as 2020 or 2021. FTAI highlighted the technical, practical and economic constraints that made such a retrofit timeline unrealistic and the deadline was therefore postponed. FTAI also successfully advocated an automatic adjustment mechanism in case the technical specifications are not available in the summer 2021 as planned. Should the adoption of specifications be significantly delayed, the retrofit deadline will automatically be postponed accordingly.

Smart Tachograph 2 is intended to help enforce certain rules that only apply to international road haulage – cabotage, administrative requirements relating to local minimum wages for international drivers – hence the need to automatically record border crossings. FTAI successfully argued that retrofitting should not be mandatory for vehicles engaged in domestic operations only.

3. Operator Licensing – Changes applicable from 20 February 2022

New mandatory criteria for stable establishment

The rules concerning establishment have been tightened up. This is intended to combat instances where vehicles are operating in a member state whilst the control of the business is conducted from another state.

Changes in 2011 aimed to define how much of a central controlling presence an operation must have in a member state to be considered to be ‘established’. These identified certain ‘**core business documents**’ which must be available at premises in the member state of establishment which can be accessed by enforcement officers. These included:

- ▶ Accounting documents
- ▶ Personnel management documents
- ▶ Driving and rest time

The new requirements build on this list, not only to tighten the onus of establishment, but also to aid in the enforcement of other areas on which the new regulation focuses:

- ▶ Transport contracts
- ▶ Documents relating to vehicles at the disposal of the undertaking
- ▶ Labour contracts
- ▶ Security documents
- ▶ Documents containing data on the dispatching and posting of drivers
- ▶ Documents containing data relating to cabotage

These documents may be in electronic form.

Operators must be **registered in the register of commercial companies** and be **subject to tax on revenues** when required under national law.

Companies will also have to have **a number of vehicles and drivers based in that Member State** which is proportional to the volume of transport carried out by the company.

Vehicles must return to the country of establishment of the operator at least once every 8 weeks. More constraining options were proposed – including an obligation to return once a week to load or unload goods in the country of establishment – but defeated.

FTAI will work with DTTAS to ensure any new measures are implemented in a way which minimises operational change to Irish operators.

New optional criteria for stable establishment

Member States may also impose the following requirements:

- ▶ have administrative staff proportional to the size of activity must be present at the premises or transport manager reachable during work hours;
- ▶ have an office open in work hours and other operational infrastructure.

New mandatory criteria for good repute

Standards on repute are amended to specifically name **“executive directors”** in the consideration of conduct.

Aspects that must be considered when assessing an operator’s repute now include **tax law**, and those for a transport manager now include the **posting of workers in road transport (ie, minimum wage requirements applicable to international drivers), the law applicable to contractual obligations and cabotage**.

The legislation also sets out a process to be undertaken by the Commission in the future to **categorise infringements which may lead to loss of repute** by degree of seriousness.

4. Cabotage – Changes applicable from February 2022

As per current rules, a haulier can carry out 3 cabotage operations in 7 days in a country other than its country of registration following an international transport operation. From February 2022, there will be a 4-day cooling-off period after 3 permitted operations in 7 days, during which the operator can’t perform cabotage again in the same EU country with the same vehicle.

FTAI pushed back on some very restrictive proposals including one that would have reduced the period during which cabotage operations can take place to 48 hours instead of 7 days.

FTAI will work with the enforcement community in Europe to establish how the new provisions will be interpreted and enforced, for instance to determine whether the start of the cooling-off period is triggered at the time of unloading or at midnight on the next day.

5. Minimum wage requirements (aka “posting of drivers”)

Currently all EU countries are free to introduce their own administrative requirements applying to hauliers established in other countries for the purpose of proving that drivers are paid the local minimum wages of the countries they drive to (eg, MiLoG requirements in Germany, SPSI declarations in France, Limosa declarations in Belgium, etc).

From February 2022, international hauliers will face **a single set of requirements** in all countries that decide to require proof that drivers employed by operators established in another EU country are paid the local minimum wages. Member States may require hauliers to:

- ▶ Submit a posting declaration through a standardised, multilingual form on a digital platform -the declaration will contain the identity of the operator, the contact details of the transport manager, the identity of the driver as well as their place of residence and driving licence number, the start date of the employment contract and the law applicable to it, the beginning and end date of the posting, the number plates of the vehicles, and the type of transport services (freight vs. passenger; international vs. cabotage).
- ▶ Keep the following documents on board in paper or electronic format: copy of the posting declaration; evidence of transport (eg. CMR); tachograph records.
- ▶ Provide the following documents upon request via the digital platform after the end of the posting period: time sheets, employment contract, proof of payment.

FTAI successfully argued that the requirements should be identical in all Member States. EU countries will not be able to add any other requirements. For instance, from February 2022, France will no longer be allowed to require Irish hauliers to have a local representative based in France to do international transport to/from France or cabotage in France.

Moreover, **certain types of transport operations will be exempted** and will not require any posting declaration or any other requirements in relation to minimum wages:

- ▶ transit
- ▶ “point-to-point” operations aka “bilateral transport operations” (ie. an international operation without any cabotage or cross-trade)
- ▶ one additional cross-trade operation on the way to the bilateral destination or 2 additional cross-trade operations on the way back. From 20 August 2023, this exemption will only apply to vehicles fitted with a Smart Tachograph 2.

FTAI will work with the enforcement community in Europe to clarify the detailed interpretation of these exemptions and obtain certainty about how they will be enforced in practice.

6. Light commercial vehicles (LCVs)

LCVs and Operator licensing – Changes applicable from 20 May 2022

Operator licensing will be newly applied to vehicles with a maximum permissible mass (MPM) exceeding 2.5t and up to 3.5t which are engaged in international transport operations. A transport operation which

starts and finishes in the same country but transits another EU Member State does not count as an international movement.

Own-account vans are not concerned.

Vans in scope of operator licensing will be subject to reduced levels of **financial standing** compared to heavy vehicles. The legislation has set the rates for vehicles between 2.5t and 3.5t as EUR 1,800 for the first vehicle and EUR 900 for each additional vehicle. In a mixed fleet the ‘first vehicle’ must always be a heavy vehicle applying the rate of EUR 9,000.

	Light fleet (only vehicles 2.5t-3.5t)	Heavy fleet (only vehicles 3.5t and greater)	Mixed fleet (Vehicles 2.5t- 3.5t and 3.5t and greater)
First vehicle	EUR 1,800	EUR 9,000	EUR 9,000
Each subsequent vehicle 3.5t and greater		EUR 5,000	EUR 5,000
Each subsequent vehicle 2.5t-3.5t	EUR 900		EUR 900

Please note: The new criteria for stable establishment and good repute described in section 3 will also apply to operators of vans in scope of operator licensing.

The legislation does not identify a distinct qualification for **professional competence** for an operator who only operates vans in scope of operator licensing, suggesting that such an operation would need to employ the services of a holder of an existing international CPC. However, it does identify a path for “acquired rights” whereby an operator can demonstrate they have operated in international van operations for greater than 10 years.

FTAI will work with DTTAS to ensure an effective regulatory framework is established. It would remain to be seen whether operator licensing as we know it currently for vehicles greater than 3.5t was applied to vehicles 2.5t-3.5t, or whether a lighter regulatory regime – which still met the requirements of the regulation – were kept.

LCVs and Drivers’ hours & tachograph – Changes applicable from July 2026

Vans with MPM exceeding 2,5 tonnes used in international transport or cabotage are brought into scope of driving and rest times rules from July 2026. Vans used on own account will only be exempted if driving does not constitute the driver’s main activity.

Vans that are being brought into scope will have to comply with drivers’ hours rules, including the changes described above. They will also have to be equipped with tachographs (smart tachograph, version 2) from July 2026 because the scope of tachograph regulations mirrors the scope of laid down in EU Drivers Hours rules.

FTAI was very vocal in the decision-making process to highlight how challenging changes of this magnitude will be for van operators. A transition period before the new rules become applicable to vans – July 2026 – was secured. Vans that are exclusively used for domestic transport were eventually kept out of scope, ie. they do not have to be fitted with a tachograph and are not subject to drivers’ hours rules.

7. Joint liability of shippers

A joint liability principle was introduced, whereby shippers can be held liable for the infringements committed by the hauliers they use where they knew or ought to have known the transport services they commissioned involved infringements. This will be applied in a different way for different infringements.

When checking **drivers' hours and tachograph requirements**, enforcement authorities will be *allowed* to check joint liability of shippers from the summer 2020. Whilst this remains optional for enforcers, all EU countries will have to introduce rules and sanctions for shippers with regards to infringements of **cabotage and posting rules** committed by hauliers by February 2022.

Policymakers considered creating a status of trusted haulier specifically for the purpose of applying the shipper liability provisions. Shippers using legitimate hauliers that were nevertheless not part of the envisaged scheme would have faced a greater legal risk. FTAI successfully argued that such a scheme would require enforcement resources that would be best used to target demonstrable road safety risks. It could de facto have made the trusted status quasi mandatory without any guarantees there would be sufficient resources to manage the scheme effectively and reliably.

8. Useful links

Revised EU Regulation on driving and rest time:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.249.01.0001.01.ENG&toc=OJ:L:2020:249:TOC

Revised EU Regulations on access to the profession (operator licensing) and access to the market (cabotage):

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.249.01.0017.01.ENG&toc=OJ:L:2020:249:TOC

Revised EU Directive on enforcement of certain road haulage rules and new rules on minimum wage requirements (posting of drivers):

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.249.01.0049.01.ENG&toc=OJ:L:2020:249:TOC