



November 2014

## Proposal for a Regulation

Proposal for a Regulation from the European Commission regarding the classification of serious infringements of Union rules regarding road traffic, which may lead to a loss of good repute for road transportation undertakings and to the alteration of Annex III of Directive (EC) 2006/22

## About us

**The Austrian Federal Chamber of Labour is by law representing the interests of about 3.4 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske  
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.4 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm  
Director

## The AK Position in detail

The present proposal from the European Commission (EC) is rejected by the Federal Chamber of Labour (BAK) and shall be rejected by the Austrian representatives in the European Parliament (EP) and in the Council of the European Union.

The EC emphasised once again, in their draft Regulation and during questioning in the EP Transport Committee meeting on 03/11/2014 by Members of the EP, that they had strictly adhered to the framework of Regulation (EC) 1071/2009 (Art. 6 (1) (b) and (2) (b)), and that only offences concerning matters falling within the field of road traffic law could be considered and infringements of social conditions could not be included as they are part of social legislation. It is the view of the BAK that the EC's assessments are incorrect in several respects and run contrary to the aims of the basic Regulation:

- Art. 6 (1) (b) of Regulation (EC) 1071/2009 lists examples of which areas of Community law the serious infringements should be listed from. The words „in particular“ make it clear that this list is not exhaustive and that there may be other areas which can indicate a lack of good repute on the part of the undertaking.
- In Art. 6 (1) (b) of Regulation (EC) 1071/2009 there are thus 10 possible areas which are named. What is inexplicable, however, is why there are no individual infringements from the „Access to the profession“ field (Art. 6 (1) (b) (ix)) in the draft Regulation. Infringements of the rules concerning the requirements as to the establishment premises and the requirements regarding good repute, financial standing or professional competence are not contained in the proposal. Examples of this are: falsification of competency certificates, failure to appoint a responsible transport manager, or a ‚PO box‘ shell company without technical equipment and accessibility.
- The „EU social legislation“ relating to road transport all falls within the powers and responsibilities of road traffic law from the Treaty on the Functioning of the European Union (TFEU), regardless of whether this involves the driving times and rest periods from Regulation (EC) 561/2006, Regulation (EU) 165/2014 on tachographs, Directive (EC) 2002/15 on working time in road transport or Directive (EC) 2006/22 („Control Directive“). In the respective preambles of these legal acts, it was noted that they pursued the aim of improving competition conditions, social conditions and road safety. It is therefore incomprehensible why 20 offences from these provisions were not included in the list.
- The infringements against provisions regarding driver attestation or cabotage were not considered at all. These are precisely the cause of competition bias and the deterioration of social conditions and road safety. This contradicts the aims of

Regulation (EC) 1071/2009, whose preamble highlights how important adhering to the conditions is for a harmonised road traffic internal market under fair competition conditions (cf. in particular Recitals (1) to (4) and (24)).

In general, the following reasons are given for rejecting the draft Regulation:

- In the proposal's listing there was an attempt to assess certain offences more mildly in terms of the degree of severity in order to minimise the consequences for undertakings as much as possible.
- The infringement lists and the categorisation of offences according to their severity are so complex and inconsistent with regard to existing legal acts (e.g. altering Annex III of Directive (EC) 2006/22) that there is a risk of significant enforcement deficits for the regulatory authorities.
- Thus, even the preventative nature of the desired risk rating system is largely lost.

The following are specific examples showing that the aims of Regulation (EC) 1071/2009 have not been adhered to in the draft Regulation from the EC:

**Infringements against Regulations (EC) 561/2006 (driving and resting time) and 3821/85 (recording equipment):**

The already existing, proven catalogue of offences from Directive (EC) 2006/22 in the version of Directive (EC) 2009/5 has been altered in the present EC proposal to the benefit of undertakings: the recategorisation of offences means that, whereas before approximately 40

offences from this area were categorised as belonging to the most serious of infringements, in the present list in the EC proposal - where this involves the good repute of undertakings - there are now only 10 offences to be found in the most severe category. Directive (EC) 2006/22 in the version of Directive (EC) 2009/5 already establishes that „the category for the most serious infringements should include those where failure to comply with the relevant provisions creates a serious risk of death or serious bodily injury.“ (Art 9 (3) Directive (EC) 2006/22). The same applies here for Regulation (EC) 1071/2009: Art 6 (2) (b) (ii) establishes that „the degree of seriousness of infringements“ should be defined „according to their potential to create a risk of fatalities or serious injuries“. In the view of the BAK, the EC exceeds their own powers in this respect as they are altering a Directive legitimised by the Council and the EP, which states the same criteria in terms of the severity of offences, by downgrading 30 offences from the most serious to less serious categories. In addition, the aims of Regulation (EC) 1071/2009 are ignored, whereby these common rules should „contribute to greater road safety“ (Recital (1)).

**Example with respect to Regulation (EC) 561/2006:** If the required weekly rest period of 45 hours is undercut, a reduction of this rest period by more than 9 hours would be rated as an offence of the highest category; in the present proposal there is no longer an offence against the weekly rest period in the highest category.

**Example with respect to Regulation (EC) 3821/85:** The recording equipment does not function properly (e.g. it has not been checked, calibrated and sealed correctly). Until now this infringe-

ment was allocated to the highest category - thus classified as posing a significant risk that it may lead to death or serious bodily injury; in the present EC proposal, the same infringement was moved from the most serious category to the moderately severe category.

Furthermore, the BAK notes that the draft Regulation of the EC does not consider that the provisions of Regulation (EC) 3821/85 regarding the recording equipment were partially invalidated on 02/03/2015, and are to be wholly invalidated on 02/03/2016 with Regulation (EU) 165/2014 on tachographs; an adjustment of the infringement list to the new article designations is therefore necessary.

**Infringements of Directive (EC) 2002/15 (working time rules):**

The list of offences in this group is to be judged from the same perspective as those for the two previous EC Regulations and in the view of the BAK is completely indisputable. There is no longer a single breach here that falls into the most serious category; even exceeding the maximum weekly working time of 48 hours by more than 12 hours, exceeding the maximum possible daily working time in the case of preceding night work by more than three hours and falsifying or failing to provide working time records from independent drivers is not included in the most serious infringements category, although there is clearly a high risk of death here.

**Infringements of Directive (EC) 96/53 (weight and dimension rules):**

It is the view of the BAK that the EC clearly exceeds their own powers here, fails to adhere to the framework of Art. 6 (2) (b) (ii) with respect to classifying infringements according to their se-

verity and contradicts the aims of the basic Regulation: the assessment of the transgressions is largely contrary to those changes which the Council and the EP had requested on the occasion of the current amendment of Directive (EC) 96/53. According to the EC proposal, for example, a weight infringement shall only be classified as a serious infringement if the maximum permitted total weight (40 t) is exceeded by 20% (8 t); there are no infringements in the most serious category for overruns in length or width. This rating in the EC proposal goes against the improvement of road traffic safety desired in Regulation (EC) 1071/2009 and runs contrary to the efforts to make strict controls for implementing the provisions necessary (Recital 20) and to make sanctions work as effective deterrents (Recital 21). If this infringements list indicates to transport undertakings that ample tolerances are planned in the event of a sanction, then the deterrent nature is lost on them. In the interests of transport safety and infrastructure costs, the categorisation of infringements against the maximum permitted weight is far too liberal.

In the view of the BAK, the basic principle of subsidiarity also seems to have been undermined: it should be noted that the national provisions of the Motor Vehicles Act do not recognise any tolerances for overloading. In the view of the BAK, Austria therefore cannot give its consent if an infringement is classified as „very serious“ only when the maximum permitted weight (40 t) is exceeded by 20% (8 t).

**Annex II:**

According to the new EC draft Regulation, the relationship between the individual infringement severity categories should be established in this Annex. For this reason, rules of implementa-

tion were provided for in Annex II for offences in the moderate and lowest categories.

In the view of the BAK, it is not compatible with the aims of the basic Regulation (Regulation (EC) 1071/2009) if it has clearly been completely overlooked that no comments are made on the consequences for undertakings of committing infringements of the highest severity. This would however be urgently necessary with respect to the required transparency and the register to be established (Recitals (13) to (17)).

### **Annex III:**

The alteration of the existing, proven catalogue of offences from Directive (EC) 2006/22 in the version of Directive (EC) 2009/5 intended in the EC proposal is firmly rejected by the BAK. As referenced above, in the view of the BAK the EC lacks the power to alter the act legitimised on a broad democratic basis (by the Council and the EP) and to dilute the ranking with respect to the severity of the offences by inserting a new fourth category of severity. As has already been referenced above, this has the consequence that there are only 10 offences in the most serious category of infringements; whereas there are approximately 40 infringements in the current categorisation. The aims of the common rules (Recital 1), whereby there should be no varying effects with regard to the distortion of competition and no lack of market transparency (Recitals (2) and (3)), and the aim for a more uniform and effective application of the provisions (Recital (4)), have thus been completely overlooked. The fact that according to the EC proposal there shall be two different lists of offences with varying ratings of offence severity in the areas of infringements

against driving times and rest periods and against handling recording equipment, one to assess the good repute of undertakings according to Regulation (EC) 1071/2009 and one to assess the sanctions against undertakings and their driving personal, is detrimental to the aims of Regulation (EC) 1071/2009 and will lead to further disharmony when implementing the provisions in individual Member States.

Should you have any further questions  
please do not hesitate to contact

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