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European Parliament

Mr. Michael CRAMER – Chairman of the TRAN Committee

Ref.: EU road and mobility packages –challenges for Romanian road hauliers

Dear Mr. Cramer,

The National Union of Road Hauliers from Romania – UNTRR is a professional and employers' association which represents the Romanian companies performing road transport of goods and passengers. Since our establishment in 1990, more than 14 000 Romanian road transport companies have been registered as UNTRR members.

Hereby, we would like to signalize to the Committee on Transport and Tourism of the European Parliament, the main challenges faced by Romanian road hauliers within the EU and to submit for your kind consideration our association's proposals in order to address these challenges by better, clear and fair EU legislation and enforcement. In this context, the upcoming European Commission's road initiatives are crucial for road transport sector's future within the EU.

Please find annexed herewith **UNTRR proposals concerning European Commissions initiatives in the field of road transport:**

I. ROAD PACKAGE

1. Transport Market liberalization
2. Urgent need for transparency of the national enforcement interpretations & practices
3. Driving and rest time rules
4. Drivers' shortage
5. Better enforcement, but not more regulation.

- II. **MOBILITY PACKAGE** - clear exclusion of road transport highly mobile staff from the scope of Posting of Workers Directive

We kindly ask you to consider our proposals in the process of revision and elaboration of EU road transport legislation and we remain at your disposal for any further information.

Expressing our trust in your support, may I thank you and assure you of our highest consideration.

Yours faithfully,

**Secretary General
Radu DINESCU**



UNTRR PROPOSALS CONCERNING EUROPEAN COMMISSIONS'S INITIATIVES IN THE FIELD OF ROAD TRANSPORT

I. ROAD PACKAGE

1. Transport Market liberalization

Eastern European countries like Romania are interested in immediate liberalization of the EU road transport market. We believe that opening of the market may have an important contribution to the harmonization of economic and social conditions between Eastern and Western Member States of the EU.

May we recall that at its public hearing of 17 January 2013 on the revision of EU Regulation 1071/2009 on access to the profession and EU Regulation 1072/2009 on access to the road haulage market, the European Commission (EC) presented a list of potential policy measures. UNTRR Romania, as well as other Eastern EU associations are fully supporting European Commission's proposed policy package 1 - Opening of cabotage without time extension.

May we also recall that EC White Paper 2011 established a Roadmap to a Single European Transport Area, but unfortunately the current situation in the EU is far from reaching there. It is obvious that instead of heading to the liberalization of cabotage, there are increasingly more barriers raised to international road transport by certain Western EU Member States – like the protectionist measures under the form of different national interpretations of EU regulations, for example:

- Denmark and Finland national interpretations (2013) of Regulation 1072/2009 concerning international transport and cabotage,
- Germany(2015) and France (2016) protectionist interpretation of Posting of Workers Directive concerning the application of national minimum wages to international drivers
- France and Belgium (2014) protectionist interpretation of Regulation 561/2006 by national legislation "against social dumping" – banning regular weekly rest in the vehicle.

The aim of these new provisions imposed by the developed Western EU Member States is to raise barriers for foreign competitors, especially those from Eastern Europe who are accused of social dumping.

Concerning the "social dumping" allegation, we consider that it is based on a misconception of its economical meaning, increasingly used in Western EU to justify protectionist measures against Eastern EU. Dumping means to sell a product or service below the cost of production. This is exactly the contrary of what it is happening in Eastern EU, where the wages of professional drivers performing international transport operations are higher than the average national ones. Consequently, the "social dumping" wording is not appropriate, when we are actually referring to different social standards between Western and Eastern EU. While we agree it is desirable to improve these social standards in Eastern EU, they can only be increased by economical harmonization between Eastern and Western EU, which would be a natural result of a free single market.

Concerning the ultimate goal of these types of national protectionist measures adopted by developed EU Member States, we consider they are actually a new "payment instrument" in exchange to the European regulations on access to the profession and especially to the market in road transport - once these EU regulations will be adjusted in a similar „Western EU”

desired manner by the new road and mobility packages of the European Commission, these national rules will be canceled.

QUO VADIS the European Union?

Protectionist measures are the wrong way to move forward on long term.

These measures adopted by Western EU Member States are seriously affecting EU values like the freedom of services on the European market. Their real cause is not the unfair competition of Eastern EU, but the fact that the Western economy does not perform, it is slowing down and the companies ask support from governments. However, comfort or easy solutions today will make more complicate and difficult future solutions. Through this approach, the EU is moving towards self-destruction. The EU is stronger when united and not divided, and it is very important to realize it before it is too late. We warn that the application of such measures pushes Europe on a path of neo-protectionism which ultimately will affect its overall competitiveness over other global competitors!

As a more realistic approach, we support gradual harmonization and further market liberalization:

- phased harmonization of minimum wage in EU over the next 10 years - like it happened for excise duty, VAT, etc
- continued market liberalization as a premise of economic and social harmonization, removing protectionist barriers. Setting some qualitative and quantitative criteria to be met in order to allow the liberalization - it may be a path to a gradual liberalization of the EU road transport market, but it is not acceptable the introduction of any quantitative restrictions when the operational conditions are aligned.

2. Urgent need for transparency of the national enforcement interpretations & practices

Different national interpretations of EU road transport legislation and different national enforcement practices between EU Member States lead to the discrimination of foreign hauliers from an EU Member State when operating in another EU Member State by the fact that later Member State's national legislation is not known.

Most recent case affecting Romanian hauliers is related to different national enforcement practices concerning Directive 2011/82/EU on facilitating the cross-border exchange of information on road safety related traffic offences: France sent to Romanian professional drivers in 2016 all traffic fines for entire 2015, although the European practice is to issue the traffic fines within 30 days!! Member States like Romania, Germany or Austria issue the fines in 30 days and send them within maximum 60 days since the traffic offence. Considering the different French practice to send the fines after almost 1 year since the traffic offence, we may say that France is more interested in fines than in enforcement.

Given the current fragmented interpretation and implementation of EU road transport legislation in the EU, providing clear information on the actual rules and their enforcement in the 28 Member States should be an absolute priority for the European Commission and an obligation of each EU Member State.

Since 2012, UNTRR requested to the European Commission to ensure the transparency of national regulations applied by EU Member States to international transport operators. In the context of the upcoming EU road package, we kindly ask European Commission to establish an **online platform where the EU Member States should have the obligation to post**

comprehensive information relating to applicable national rules, legal interpretations, national enforcement practices, documentation and any other national requirements applicable to foreign road transport operators. All the information should be available in all EU official languages.

3. Driving and rest time rules

Concerning regular weekly rest: Romanian road hauliers operations within the EU are affected by Belgian and French national laws banning regular weekly rest to be taken by professional drivers in the cabin of the vehicle. These national laws are targeting mainly foreign/Eastern drivers and not the national French or Belgian drivers who naturally spend their weekly rest at home. These initiatives, adopted under the popular umbrella of fighting against the social dumping, introduce national protectionism which is totally against the spirit of the European Union and the aim of the single market. UNTRR is seriously concerned by such approaches at national level, of the European Regulation no. 561/2006 whose aim is, actually, the "harmonization of certain social legislation relating to road transport", in the spirit of the liberalization of the European road transport market.

In the context of the current revision of Regulation 561/2006, at article 8.8. we kindly ask EC to clarify that **regular weekly rest should be allowed to be spent in the cabin.**

While we acknowledge the social need of the drivers to return home as an issue to be approached at the company level between drivers and their employers, we don't agree with introducing any EU obligation in this field, as it would affect the international operations of the transport companies, particularly those from South and Eastern regions of the EU (peripheral countries), distorting the competition within EU road transport market.

Moreover, European Commission should not think only to EU hauliers operating large fleets, but also to the impact on small sized EU hauliers operating only 1 truck and representing 40 % of EU fleet. How would this return home principle be applied to this small sized EU hauliers taking also in to consideration the human rights of these professional drivers/hauliers to dispose freely of their time during the rest period? No EU regulation could establish what a professional driver/small sized haulier should do during his/her break or rest period.

Concerning negligible vehicle movements when loading/unloading: we propose the revision of Regulation 561/2006 at article 6.5 so that negligible vehicle movements when loading/unloading (speed under 25 km/h) to be recorded as "other work" and not as driving time - because those minutes of moving the truck to/from platform affect the driving times and ruin the efficiency of the road transport company. In support of our request, may we also mention that the definition of mobile workers' working time provided by Directive 2002/15/EC, at art. 3(a), makes a clear distinction between the activity of driving and the activity of loading and unloading.

4. Drivers' shortage

The requirement of qualified labour force in international road transport is more and more present in Romania and in the EU. Road transport operators - multinational companies as well as Romanian capital companies are facing a shortage of professional drivers, having trucks not able to operate because they do not have drivers.

There is a high need for an European solution to the current driver shortage in the EU and in this context we ask EC to ensure the legal support for an **EU vocational training program for young people from the age of 18 to become professional drivers** - integrating driving license and CPC training with practical instructions and apprenticeship in transport companies. Access to EU funding would also support EU road transport sector to effectively address the problem at national level. In this context, we also ask European Commission to **revise the relevant legislation in order to allow young people from the from the age of 18 to become**

international transport drivers, as the current EU legislation allows today the possibility to obtain a driving license at the age of 18, but to perform only national transport, until the age of 21.

5. BETTER ENFORCEMENT, BUT NOT MORE REGULATION

Concerning the revision of Regulation 1071/2009 on access to the profession - establishment & letterbox companies:

We consider that more clarity is needed to understand the model/definition of letterbox companies.

A company meeting all the criteria for access to the profession, as set by current Regulation 1071/2009, cannot be a letter box company. For instance, a multinational company with a branch/company registered in Romania where it holds a community license issued by Romanian authorities for international carriage of goods by road as well as certified true copies for all its vehicles which are all registered in Romania – it can NOT be considered a letterbox company just because the decisions are not taken in Romania, but at the parent-company's headquarter from another EU Member State. Similarly, Dacia-Renault Romania could also be considered letterbox company because for its car models, for the production capacity and for the sales markets - all the decisions are taken in France and not in Romania.

We were surprised to learn that, although the definition of letterbox companies is not clear, the EC ex-post evaluation study of Regulation 1071/2009 identifies letterbox companies in EU (but no letterbox company in Romania). May we also mention that in Romania, in addition to the establishment requirements set by Regulation 1071/2009, national legislation provides the obligation of road transport operators to ensure parking spaces for their vehicles.

Consequently, we don't consider necessary a revision of Regulation 1071/2009 in this respect, but support a better control at national level.

Concerning the treatment of vehicles less than 3.5t :

UNTRR does not support the inclusion of vehicles bellow 3.5 tones in the scope of the road package. On the one hand, there is a limited enforcement capacity of EU Member States to issue licenses and to control all vehicles bellow 3.5 tones, considering their much higher number within EU. On the other hand, it is important to clarify how EU rules would be applied to non-EU vehicles bellow 3.5 tones operated on EU territory, as these vehicles are practically like cars.

II. MOBILITY PACKAGE

Lack of clarity in the current EU social legislation creates legal uncertainty for Romanian road hauliers on which social legislation is applicable to their international transport operations in EU. The current provisions of EU legislation (notably Directive on posting of workers) have led to national protectionist interpretations such as law MiLoG by which Germany imposes its national minimum wage to be paid by foreign hauliers to their drivers for the international transport operated on the territory of this Member State. We are highly concerned that, although European Commission has launched an infringement procedure against MiLoG-Germany, the European Commission does not approach in its current revision of the Posting of Workers Directive the problems faced by the road transport thus maintaining the legal uncertainty for the EU road hauliers, leading to barriers to international road transport in EU by EU regulations.

The Posting of Workers Directive is not suitable for the road transport sector as it does not take into account the sector's highly mobile workforce, transnational character nor the administrative burdens and enforcement difficulties of applying it to international transport

operations, including the cabotage. UNTRR is against any application of Posting of Workers Directive to road transport and we ask EC for a **clear exclusion of road transport highly mobile staff (the professional drivers) from the scope of Posting of Workers Directive (PWD) - similarly to the existing exclusion from PWD scope of merchant navy undertakings as regards seagoing personnel.**

Concerning the principle "the same pay for the same job in the same place", we are against its introduction in the revised PWD.

This would be an unacceptable and harmful interference of the European Commission in national wage-setting mechanisms at company level. Employers are responsible for determining wages, taking into account the performance of a worker, productivity and the economic situation. Both in national and cross-border contexts wages can thus differ between workers doing similar jobs and working at the same workplace, whether they are employed within the same or by different companies. **Which is EC vision of road transport market in EU?**

- **Is the Utopic society where everything will be identical from Portugal to Romania? Same labor cost, same everything?** Communism proved it does not work.
- **Is the market economy, where there are differences in wages, or house pricing in every country, even within various areas of the same city?** These differences make our world more dynamic and attractive for trade. Please note that each EU enlargement increased EU GDP/capita for the existing members of the EU which are now adopting protectionist measures against the hauliers from younger EU Member States.

In case this principle "the same pay for the same job in the same place" is to be applied by European Commission for the employees, we ask EC to apply the same principle for employers: "the same tariff for the same service/operation in the same place", as only by obtaining the same (higher) transport tariff for an international transport operation in a Western EU Member State, an Eastern EU haulier may cover the same (higher) Western salary cost.

In this context, we are highly concerned by the revised PWD proposal to replace the **"minimum wage" with remuneration set by collective agreements.** This would lead to the obligation of road hauliers to pay to the same driver different (28!) salaries/remunerations set by each Member State crossed when performing the same international transport operation - in the end, blocking international road transport operations within EU, despite EU fundamental principle on the freedom to provide services within a Single European Transport Area.