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ETF Road Transport

## European Commission's Mobility package

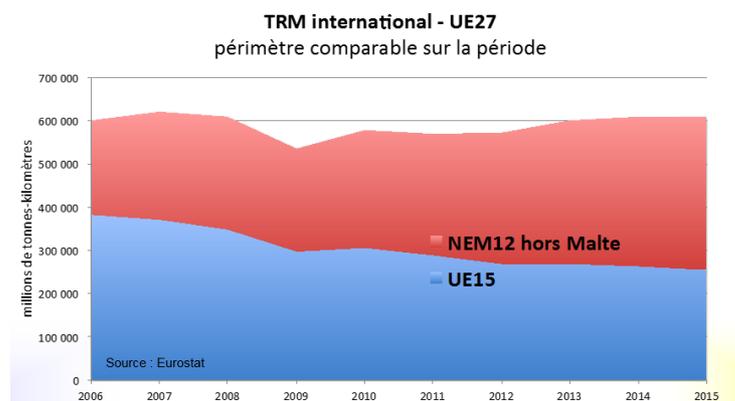
ETF briefing note

Cabotage

### PRELIMINARY CONSIDERATIONS

In 2014 the European Commission gave up its intentions to liberalise cabotage admitting that the sector was not ready for it. The cause: the degree of harmonisation of social conditions in the sector across the 28 EU Member States was not sufficient enough for a full opening of the market. In other words, the European Commission acknowledged that a full market opening scenario whereby operators established no matter where in the EU would be allowed to carry out transport operations on domestic markets of Member States with high(er) standards, on permanent rather than temporary basis would result in market distortions. To which labour cost were the key reason.

In their "Comparative study of employment and pay conditions of international lorry drivers in Europe" of November 2016, Comité National Routier (CNR) shows in figures what is well known already: while the New Member States dominate the international haulage markets (including cross-trade and bilateral transport), the hauliers of the EU15 Member States owe their existence purely to their domestic road transport activity. CNR calls this the challenge of cabotage, which looks a bit like this:



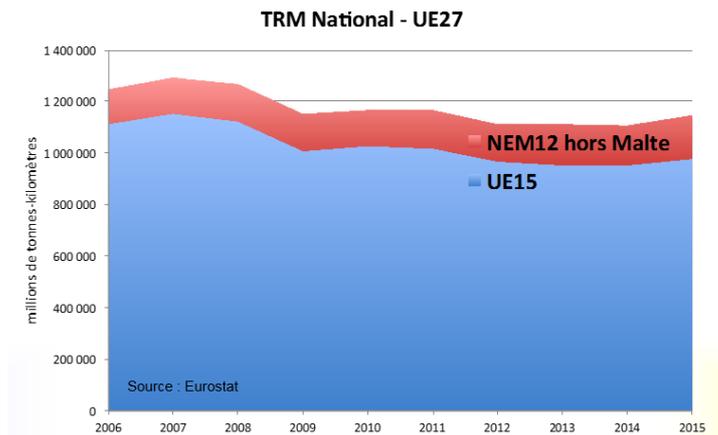
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With the launch of the Mobility Package, the European Commission insisted that there will be no further liberalisation of the cabotage. This is not exactly right, for several simple reasons:

- 1) The new cabotage proposal fails to properly address the chain cabotage, meaning that operators will still be able to repeatedly cross the border to qualify for as many cabotage 'slots' as possible
- 2) The new cabotage proposal introduces a definition of "cabotage operation" as multiple loadings and unloadings
- 3) The enforcement methods proposed in the Mobility Package are ineffective and non-realistic
- 4) In the above context, eliminating the restrictions on the number of cabotage operations while reducing the cabotage period to 5 days can only be interpreted as a decisive step towards full liberalisation of domestic haulage markets
- 5) The issue of combined transport remains untackled

With the above elements, the EU legislator cannot guarantee that under the future rules, cabotage will remain a TEMPORARY activity on the territory of a Member State other than the one where the road transport operator is established.

Moreover, the European Commission omits to include illegal cabotage in the list of infringements leading to the loss of good repute. This basically means a haulier can continue performing illegal cabotage, be of good repute, and keeping its Community licence.



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## NEW PROPOSALS ON CABOTAGE IN MORE DETAIL – USELESS TO CHANGE RULES IF FAILING TO TACKLE THE REAL LOOPHOLES AND TAKE EFFECTIVE ENFORCEMENT MEASURES

### Chain cabotage

The problem with the current cabotage rules is the so called ‘chain’ cabotage, notably the practice whereby hauliers engage in repetitive international journeys (with loads such as pallets, etc.), to then qualify for as many cabotage ‘slots’ (i.e. journeys on a territory of a particular Member State). In its proposals, the European Commission attempts to define in what circumstances the carriage of empty containers or pallets can be considered as carriage of goods but how likely is it for a carrier to be caught in a wrong? Unless the carrier has a really bad day and it is stopped for a roadside check, but judging by the low enforcement capacity of the Member States, risks of being caught in breach of this future provision are quite remote.

### New cabotage proposal introduces a definition of “cabotage operation”

The ETF considers that the definition of ‘cabotage operation’ as multiple loadings and unloadings impact negatively on the enforceability of the rules, lead to abuse against the temporary character of cabotage and create distortions on domestic road haulage markets. Indeed, as long as an operation is interpreted as multiple loadings and unloadings, the limit of 5 days becomes idle, restrictions become artificial and the full opening of domestic road freight markets becomes a fact, against the declared intention of the legislator.

### The enforcement methods proposed in the Mobility Package are ineffective and non-realistic

A European Commission staff working document dated November 2014 signalled that across the EU Member States, over the period 2011 – 2012 the number of enforcement officers dropped by 75% from almost 383.5 thousand to 96.7 thousand.

The European Commission intentions to set annual mandatory thresholds for cabotage checks and also a mandatory number of concerted (cross-border) checks are welcome, but one wonders how this will be managed in the context where the available control capacities can barely cope with checks on driving and rest time, weight limits and vehicle safety.

Furthermore, the European Commission proposes for cabotage to be controlled with the aid of tachograph data – this will consist in the manual introduction by drivers, at each stop, of the country code they find themselves in. But as mentioned in the ETF briefing paper on the posting of workers, manual inputs are fiddly and unreliable. In a survey carried out by the ETF from 2008 to 2011, 60% of approximately 1000 interviewed drivers said that they were under pressure to record working time as break or rest rather than as ‘other work’. This is to show how untrustworthy manual recordings may be.

As already signalled by the ETF in its set of concrete proposals on tackling illegal cabotage and letter-box companies, checking compliance with the cabotage rules has been, even with the current rules, hugely problematic.

Art. 8.4 of the current regulation prohibits enforces to demand any additional documents during checks. Roadside inspectors will then have to determine whether the haulier subject to checks is engaged in legal or illegal cabotage by comparing and cross-checking disparate documents and data such as tachograph



recordings, the haulier's Community licence, CMRs (paper-based consignor notes, as to date only 9 Member States are using e-CMRs). An evaluation study ran by the European Commission on the effectiveness of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009<sup>1</sup> shows that enforcement agencies consider CMRs as insufficient for the enforcement of cabotage rules in terms of 'verifying the start of cabotage operations, its link to international carriage, the calculation of the 7-day period and the identification of the number of journeys carried out within the period.' Other problems with the CMR note – the study points out – are that it is easy to falsify or easy to deny access to during roadside checks. All these make controls cumbersome, time consuming and inconclusive.

Art. 8.3 of the current regulation does make it mandatory for the haulier to produce clear evidence of the cabotage and incoming international operations. However, it fails to clearly request that this evidence is kept on board of vehicle.

Unfortunately, the above flaws in the current cabotage regulation have been addressed only partially in the Mobility Package. The only change with the new proposal is that a) if requested, the company performing cabotage must provide **during the roadside check** evidence of the incoming international journey; b) during the roadside check, the driver is allowed to contact the company with the view to get the proof of this journey.

In the ETF view these changes are too minor to tackle the substantial problem of illegal cabotage.

Last but not least, illegal cabotage is still not included in the list of infringements leading to the loss of good repute. In other words may continue to do so and still stay in business. In 2014 Commissioner Bulc gave guarantees that, with the new Mobility Package cabotage will be included in the list but this appears not being the case.

### New cabotage definition: 5 days and unlimited operations

In the context where the new European Commission proposal

- Defines a cabotage operation as multiple loadings and unloadings
- Fails to find an effective solution to 'chain cabotage'
- Fails to being in viable enforcement solutions

defining cabotage as a period of 5 days of unlimited operations can only be perceived as an attempt to full liberalisation of the EU haulage market.

### The issue of combined transport remains untackled

Combined transport covers the transport of goods in load units, by rail, maritime or inland waterway, whereby road transport represents the initial and/or final leg of the journey, on a distance that must not exceed 150 kms between the loading and unloading point. Combined transport is governed by an EU directive adopted in 1992 (Directive 92/106/EC), at a time when the EU included only 11 Member States, a group presenting a certain degree of harmonisation of market, economic and social conditions. One of the aims of the combined transport directive was to boost operations through liberalisation of road cabotage. Indeed, combined transport was regarded as a forerunner of the liberalisation of cabotage. The road leg of combined transport is exempt from the scope of the today's cabotage rules because allegedly this road leg is considered part of an international rather than a domestic journey. As mentioned in the

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<sup>1</sup> Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009, final report, Ricardo, December 2015



introduction of this document, the last attempt by the European Commission to lift the cabotage restrictions within the EU road haulage market is dated 2013. Since and around then, a number of studies showed that differences between Member States – in terms of wage levels, social costs, tax regimes, labour provisions, etc. – are so significant and persisting, that the EU is not yet ready for the removal of cabotage restrictions. In the context, it is hard to understand how a directive adopted in 1992 can still foster ‘free cabotage zones’, impacting on jobs and working conditions in the sector, affecting domestic operators some of which perceive the exemption as against their interest<sup>2</sup>, pushing fair competition and compliance with labour and social rules into grey areas, and aggressively distorting domestic markets.

## THE PROBLEM WITH THE EUROPEAN COMMISSION PROPOSALS

**They primarily impact on the Member States exposed to cabotage risking to lead to further distortion of domestic road transport and labour markets.**

**They don’t make rules simpler, clearer or more enforceable.**

## ETF PROPOSALS

The ETF proposals launched in September 2016, follow two main objectives: a) to preserve the temporary character of cabotage; b) to substantially improve enforcement

- **Chain cabotage** / introduce a waiting period for the vehicles engaged in cabotage activity. This in effect would mean that a vehicle will be prevented to enter the Member State most recently subject to cabotage for a minimum period of one week following the last cabotage operation on its respective territory
- **Definition of cabotage operation** / a clear definition of a ‘cabotage operation’ as a single-loading single-unloading journey, as the only possible definition in line with the spirit of the ‘temporary’ nature of cabotage, as required by the above regulation
- **Definition of cabotage** / the number of allowed cabotage operations should be reduced to 1, in a maximum period of 7 days, and the cabotage operation should be strictly linked to the incoming international journey
- **Including combined transport in the scope of cabotage rules**
- Stepping up **enforcement**, notably by:
  - **bringing forward the deadline for the mandatory introduction of the ‘smart’ tachograph to all vehicles engaged in international transport** (including of course cross-trade transport and cabotage). This can be done by means of a derogation to Regulation (EU) No 165/2014. How will this improve enforcement, in practice? One of the functions of the future ‘smart’ tachograph is the mandatory automatic recording of the exact position of vehicle and driver at the start and the end of the driver’s working day, as well as at every three hours of cumulated driving time. Hence its capacity to record the period of time spent by driver and vehicle in a given Member State. Hence its capacity to indicate the nature of cabotage – legal / illegal. Additional benefits of this measure will also consist of the following:
    - a) Tachograph data is secured;
    - b) Tachograph data will allow detection of illegal cabotage in real time, during roadside checks;

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<sup>2</sup> European Commission final ex-post evaluation report on Combined transport directive SWD(2016) 140 final



- c) Tachograph data will allow control of the haulier's past compliance with cabotage rules during company checks, as according to the new EU tachograph rules, hauliers have the obligation to store tachograph data on the exact geo-positioning of the vehicle at the company site for one year
- **introduce a mandatory pre-notifications for cabotage operations, to be kept on board vehicle** This would consist in a simple declaration to the responsible national competent authorities at the latest at the start of the international journey to which cabotage is linked, and would include information necessary in order to allow adequate control of cabotage. The cabotage pre-notification must be kept on board vehicle as clear evidence of cabotage operations as well as of the relating incoming international journey
  - **include cabotage in the list on categorisation of infringements leading to the loss of good repute.** This will ensure that a company performing illegal cabotage will be subject to a procedure leading either to full compliance or to the loss of good repute and therefore loss of the right to operate within the EU.

For more please see the ETF proposal on enforcement solution which can be downloaded here: <http://www.etf-europe.org/RespectDrivers.cfm>

*Brussels, 12 June 2017*



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