



Ms Violeta Bulc
Commissioner for Transport
European Commission
Rue de la Loi 200
BE-1040 Brussels
BELGIUM

17 February 2015

Re: Impact new German minimum wage law on transport operations and other developments in road transport

Dear Commissioner, *dear Ms. Bulc,*

As you know, transport is a key pillar of the single market, allowing for the free movement of goods and people across borders. The cost and efficiency of transport services directly affect trade flows, mobility and the competitiveness of European companies. Therefore, BUSINESSEUROPE aims to remove remaining regulatory, administrative and technical barriers in all modes of transport and avoid the introduction of new restrictions.

In this context, we are concerned about recent developments in a number of EU countries resulting in new obstacles to international transport operations, considerably affecting free movement. Such national measures will not only have a disruptive impact on the transport sector, but also on the free movement of goods and services as such, going against the principles of the single market as set out by the EU Treaties.

The new German minimum wage law

On 1 January 2015, a new minimum wage law entered into force in Germany. The new law is being applied to all transport operations whether they are domestic or international. This implies that a foreign transport company has to pay the German minimum wage for the time an employee, e.g. a truck driver, spends in Germany, also when carrying out an international transport, including in case of bilateral point to point transport, cross-border trade and transit operations. Furthermore, transport and logistics companies are obliged to inform the German Customs Authorities ahead of the transport operation *by fax* that they will be on German territory and for how long and keep separate records for time worked in Germany in German language.

While Germany has of course the right to introduce a minimum wage, BUSINESSEUROPE and its members are greatly concerned about the impact of this new national legislation on international transportation via road, inland waterways and rail. Besides the current lack of information on its application, the uncertainty regarding the documents to be provided and its enforcement, it causes additional administrative burden and adds costs not only for the transport sector, but various other sectors such as construction, the metal industry and manufacturing.



Moreover, the new legislation negatively impacts free movement in the single market and we have doubts about its scope and the compatibility with EU law. In particular, the new German law may be in breach of the principles contained in the Rome I Regulation, which aim to ensure that, in general, an employment contract should be governed by the legislation of one Member State, and not several Member States. Such a breach could have detrimental consequences for the single market, not least if extended to other sectors.

We call on the Commission to swiftly complete its pre-infringement procedure and thoroughly assess the legality as well as the proportionality of this national measure, also determining whether the scope of the new law and the administrative burdens it imposes on foreign companies do not unduly restrict access to the German market.

The current moratorium on transit operations is a welcome development, but companies need real clarity and certainty if and how the new German law will affect their daily business.

The EKAER case in Hungary

On 1 January 2015 Hungary introduced an electronic public road transportation control system called 'EKAER', which aims at fighting VAT fraud on certain goods transported on public roads. While we support the objective of fighting fraud, we are concerned that the EKAER system will negatively impact cross-border transport operations and make it difficult for foreign entrepreneurs to provide international transport operations on Hungarian territory.

Companies transporting goods on public roads via any motor vehicles subject to charge will be required to apply for an EKAER number. Every number will be valid for 15 days and those organising and executing the transit must be able to present it during potential roadside checks by the authorities. If the taxpayer fails to meet their obligation to apply for an EKAER number or to report the entire shipment, the shipment or its undeclared part is considered as a product of unverified origin, and the authority can impose a penalty up to 40% of the value of the product. This can also include seizing the goods up to the amount of the penalty, or applying a seal on the vehicle and immobilising it.

Our members have raised concerns regarding this new system. All transport going into Hungary needs to be notified to the Hungarian authorities ahead of the transport operation, indicating the driver's name, cargo, license plate, etc. which imposes significant administrative burdens and additional costs. In addition, the fact that the EKAER number must correspond to a certain vehicle and even the driver, means a loss of flexibility and an additional challenge for achieving efficient logistics.

Hungarian tax authorities have announced that no controls will take place during February, but transport and logistics companies are greatly concerned and there is a lot of uncertainty about the application and enforcement of this new system. In this context, we call on the Commission to thoroughly investigate this issue and determine whether this national measure is proportionate and not in breach with EU law.



Resting time truck drivers – new French and Belgian legislation

The regulation adopted by France and Belgium in June 2014 that forbids truck drivers to take their weekly rest in the cabin of their vehicles is another example of complementing national measures with a potential to restrict free movement. BUSINESSEUROPE sent a letter on this issue to Mr Karamitsos, acting Deputy Director General in DG MOVE on 15 January 2015 to encourage the Commission to swiftly complete its pre-infringement procedure and thoroughly assess these national measures. Diverse national rules that complement EU legislation or diverse interpretation of EU law cause problems for business. It causes legal uncertainty and disrupts the level playing field that European companies need to compete fairly within the single market.

Consequently, BUSINESSEUROPE urges the Commission – as the guardian of the single market – to look carefully into the issues mentioned above, which illustrate a worrying trend of disruptive national developments.

We thank you for taking our view into consideration and remain at your disposal for any additional questions.

Yours sincerely,

Markus J. Beyrer