

TLP opinion on the proposal for a regulation on measures against transport operators that facilitate or engage in trafficking in persons or smuggling of migrants in relation to illegal entry into the territory of the European Union

There are the biggest road transport operators, truck and trailer manufacturers and road transport service providers among members of Employers Association Transport and Logistics Poland (TLP). They face a problem of immigrants entering their trucks illegally almost on daily basis when providing road transport services to the UK. That is why we find it very important the idea to combat the issue of human trafficking or smuggling. However, the proposal for a regulation on that issue submitted by the EC seems to be very strict and very far interfering into the freedom of services provided by hauliers as well as their right to be fairly judged and face the consequences of involvement in such crimes as human trafficking or smuggling.

First of all, it is not clear why the proposal refers to illegal entry into the EU territory, whereas hauliers have been struggling for many year now with illegal immigrants problems within the EU territory, especially in Northern France. What is more, those problems remain unsolved even today. Yet they result in many unfair fines being imposed on hauliers even in case they can prove they did everything they could in order to avoid such situation. Persons or companies involved in intentional human trafficking or smuggling should be penalized severely. That goes without saying. However, at the same time law abiding hauliers should have the right to fair trial in case illegal immigrants have been found in their vehicles. It is not sufficient nor fair to propose they have only the opportunity to be heard. They should have the right to be heard and trialed in official manner, not only given opportunity. That should include the right to appeal as well.

What is very disturbing is the proposal to give the EC the power to suspend the community licence of a EU road transport operator without any national trial whatsoever. It should be noted that community licence is being issued by the national competent authority and in case of any serious infringements or crimes it can be revoked by this authority but only based on the full administrative or court proceedings being conducted first. Taking such extreme decisions promptly and solely by the EC, with only the possibility, not the right, of the haulier of being heard could result in many road transport businesses being ruined and simply closed. How it refers to the assumption that any person or business is not guilty until it is proven otherwise by the official court ruling or final administrative decision proving certain infringements? We do not see any possible way of appeal in the proposal. That could lead to potential abuse of power and not proportioned sanctions in case someone is proved not guilty eventually.

It should be also clearly stated and noted the difference of responsibility of the driver and the haulier and their rights to prove they act in accordance with binding rules. It is possible that driver could take a decision on illegal activity on his own, without any knowledge of the haulier. How than the operator should or could be held accountable for such driver's exclusive decision? Suspending community licence by the EC in that or similar cases, thus severely punishing road transport operators without proving their guilt or innocent first, should not be a part of the EU legislation. That is a prerogative of member states competent authorities and we should keep it that way.

Your sincerely,

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