



TLN reaction to the Q&A on the Return Home Vehicle obligation (European Commission, 7 June 2022)

TLN is pleased with the publication of the Q&A regarding such an important issue as the obligatory return home of the vehicle. However, TLN regrets that the EC did not consult the transport sector and trade unions (IRU and ETF) in advance, as was done with the Q&A on driving and resting times and cabotage. That could have removed some ambiguities in the Q&A.

Below you will find TLN's comments on certain Q&A's point by point.

TLN's approach is that the objectives of the Mobility Package must be achieved. Subsequently, the measure must be enforceable, executable and must be complied with by entrepreneurs and drivers.

Topic: Substance of the Rule

1. Which vehicles fall under the rule?

The EC is of the opinion that trailers and semi-trailers must fall under the obligation to return, after all this follows from the definition in Article 5 of EU Regulation 1071/2009.

TLN was surprised that the Commission opted for this legalistic interpretation, very different from the approaches taken in other Q&As, which adopted a much broader interpretation, also taking into account the objectives of the specific measure itself and the objectives of the Mobility Package in general. The approach in this Q&A assumes that trailers are part of the obligation to return, whereas the intention of the legislator was to return trucks regularly, to create better working conditions and a level playing field, and to prevent letterbox companies. None of this relates to the use of trailer. The inclusion of trailers in the obligation to return goes beyond the original purpose of the obligation. Moreover, trailers were never explicitly mentioned in the proposals and discussions on the return of the vehicle. As the Community licence and the tachograph are only linked to the motor vehicle, nobody linked the return obligation to trailers.

TLN **does not** see how the return of trailers and semi-trailers contributes to the objectives of the MP, and also is concerned about the enforcement, feasibility and compliance being impossible in practice.

Generally speaking, we observe that without the motor vehicle, trailers which are not used in a transport journey, are not subject to cabotage rules and to the posting of workers directive (and thus have no impact on any social condition or reward of the driver). So, with regard to the aims of the Mobility Package, this explanation is in our opinion of no relevance, and we don't see any added value. Rather, we expect it will only add to the already existing problems of capacity without proper justification.



More in detail we see the following challenges:

- Trailers do not have a tachograph and the obligation to return every 8 weeks can therefore not be verified by an objective device. The measure can never be effectively enforced in practice.
- Compliance with the measure requires extra administration in the burden of proof: how can this be objective and watertight?
- Trailers are, just like a container, a 'dead weight' and without a towing vehicle in front of it, obliging the trailer to return home has no value in the context of achieving MP targets. For that reason, returning trailers does not add anything extra in obtaining the goals of the MP.
- The establishment requirements refer to vehicles that require a permit. Trailers do not require a permit and therefore fall outside the scope of the establishment criteria.
- Trailers can be used by EU permit holders throughout Europe. The towing vehicle always determines the nationality of the vehicle. A licensed tractor can take any trailer on the road, regardless of where it is registered. In view of the frequent changes in the use of trailers, it is not possible for an operator to check whether a trailer that has been taken has complied with the 8-week obligation to return home.
Supposedly a carrier picks up a trailer at a factory location where the trailer is loaded, he cannot possibly check whether that trailer has been returned to the country of registration. If the carrier is stopped, he can however be held responsible, since he is driving the trailer at the time.
- The measure impedes the efficient use of trailers, so that even more trailers will have to be used to transport the same quantity of goods. This goes against every EU sustainability objective and creates unnecessary extra purchases of trailers in the market.

2. Where should the vehicle return?

The EC qualifies the tachograph data as **an effective and reliable way** to demonstrate that the vehicle has complied with the obligation, therefore, to demonstrate that the vehicle has returned within the 8 weeks **to the operational centre in the Member State** of establishment.

We do not agree with the qualification of tachograph data. The tachograph makes no registration of returning to the operational centre. The location of the vehicle is registered:

- only when the driver starts or ends his working day and he enters the country code in the tachograph
- every 3 hours of accumulated driving time if the vehicle has a smart tachograph
- each time when a border has been crossed, provided the driver enters the country code as he should

This however is not sufficient evidence that the vehicle has actually returned to the **operational centre**. It's merely proof that the vehicle has reached the country of registration. An extra input from the driver in the tachograph would be needed, which is not prescribed anywhere. Clarification is needed.



Topic: Enforcement and Control

3. Can tachograph data be used as evidence?

The EC states that **in case of a roadside check**, the undertaking should always have the possibility to demonstrate compliance with the obligation at a later stage through documents and evidence available at the premises of the undertaking. This implies the EC is of the opinion that enforcers have the authority to check on the roadside if the vehicle has returned. We have 2 questions:

Question 1:

What can an enforcer **on the roadside** do if and when he can prove the vehicle has not returned? Is there a legal basis to impose a fine for non-compliance on the spot? Or is the only way to handle this, to inform the authority of the Member State of establishment via the IMI system, to check the criteria for establishment and to consider whether the license should be revoked or not, as is mentioned in the answer on question 7? These answers seem to be in contradiction with each other.

Question 2: What is the (legal) basis for a roadside enforcer to check the tachograph data for compliance with the RHV obligation? Does article 1 of EU regulation 165/2014 provide this basis? Shouldn't there be also a legal basis in Directive 2006/22 and in Regulation 1071/2009?

Zoetermeer, 20-06-2022