

## CEA comments on the revision of the Community legislation on the access to the road transport market and on admission to the occupation of road transport operator

CEA reference:	AU 6075/RC 6047 (08/06)	Date:	09/08/06
Referring to:	EU Commission Consultation paper: Revision of the Community legislation on the access to the road transport market and on admission to the occupation of road transport operator		
Related CEA documents:	CEA Letter from 25.05.2005 to "Enterprise & Industry" DG, Unit B3		
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### Summary

- The Comité Européen des Assurances - CEA - is following with great interest the initiatives launched by the European Commission aimed at improving, by a review and simplification in the next 3 years over 220 existing legislative texts, the quality of regulation and helping to strike the right balance between costs and benefits of legislation<sup>1</sup>.
- As part of the process, CEA is following the revision of the Community legislation on the access to the road transport market and on the admission to the occupation of road transport operation and is very concerned by the proposal put forward without prior consultation of the Insurance industry, to consider a general requirement of professional liability insurance for road transport operators to supplement or replace the current system of financial standing provided by article 3(3) Directive n° 96/26/EC<sup>2</sup>
- CEA opposes to such a "new *avenue to explore*" which does not take into account the basic technical requirements for liability insurance products to work and the current market availability in this specific area of road transport

<sup>1</sup> COM (2005) 535 final and CEA Letter from 25.05.2005 to "Enterprise & Industry" DG, Unit B3

<sup>2</sup> Cf. Question n°13 in the consultation paper, Part B

- Therefore CEA recalls in line with the core objectives and methodology set out in the EU Strategy for simplification of the regulatory environment that:

1°- Any "*new avenue to explore*" in the area of financial standing of road transport operators should be based on an in- depth analysis of the impact on all stakeholders in particular the insurance industry;

2°- In case of substantial modifications to the existing regulations, the recasting of the Community acquis on road transport especially the rules on conditions for admission to the occupation of road haulage operator, should be envisaged where it clearly contributes to the clarity, efficiency and simplification of Community law.

- Both prerequisites will definitely be lacking if a general requirement of professional liability insurance for road transport operators to supplement or replace the current system of financial standing, were to be implemented.

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## | Liability insurance mechanisms versus financial guarantee mechanisms

### Misunderstanding of how liability insurance products work

Liability insurance lines cannot be seen as a remedy to economical difficulties faced by operators in most Member states.

In 4.2, page 18 under "*New avenue to explore*", the consultation paper states that regulated professions such as audit, finance and engineering provide professional liability insurance as a means of providing customers and third parties with guarantees in the event of default, irrespective of fault. This is incorrect. A professional liability policy provides an guarantee to the insured - not the third party or their customer - in respect of claims for compensation made against them for their **breach of professional duty** that results in a financial loss suffered by the third party, almost always the party with whom the insured has entered into a contract to provide a professional service. Claims are **invariably based on negligence by the insured party**.

Professional indemnity insurance products cover the financial consequences of a professional negligence and not the lack of financial standing. The confusion might exist though as a poor financial standing might generate a lack of means and as a result a professional negligence. However, from an insurance standpoint, **professional indemnity insurance has no link with financial standing and cannot be used as a financial instrument to compensate a lack of securities or a financial gap**.

### Misunderstanding of the basic prerequisites for mandatory insurance requirements

Based on a misunderstanding of how liability insurance products work, the consultation paper asks whether the option of compulsory professional liability insurance should be considered in greater depth (Party B, question n° 13).

CEA recalls that any new forms of compulsory insurance schemes in Europe should be **carefully thought through in close liaison with the insurance industry**. In particular any new compulsory insurance schemes should not be seen as a means to protect consumers nor should it be envisaged as a means to monitor compliance to safety/financial standards.

The practical problems this causes, and in particular the detrimental effects of compulsory insurance are generally lost sight of by their advocates - even though they are of crucial importance for the economy and society:

- Insurance protection can only be tailored to a limited extent to the individual protection requirements of a business. By fixing a lump sum for the specified scope of the insurance, small and medium-sized enterprises must frequently purchase insurance cover which goes beyond their need for protection and are thus burdened by unwarranted additional expenditure. Compared with large enterprises, which are also crucially affected by the setting of the minimum standard, these enterprises are therefore burdened disproportionately more
- When new liability risks and scenarios arise, the insurance markets need time to generate information about the new risks in order to develop and extrapolate the insurance cover. Compulsory insurance, however, specifies a minimum standard immediately, which serves to hinder this development process and consequently the wide availability of insurance cover. The path to far-reaching insurance cover can, however, not be cut short. In any case the insurance cover is made much more expensive because of the undetermined basis for insurance practice in the case of the new risks
- The more extensive the scope of the insurance specified, the sooner the incentives for businesses to adopt a policy of active risk management are lost. At the same time, the narrow legal framework of compulsory insurance makes it more difficult for insurance to agree on incentive devices which will encourage their policyholders to engage in active risk management. Compulsory insurance can therefore - contrary to the regulatory function of liability law - even lead to a lower safety level for society.
- Finally, compulsory insurance leads to more bureaucracy and thus to **additional costs** for the authorities, insurers and businesses, since the conclusions and existence of compulsory insurance cover must constantly be monitored.

In addition, in some cases insurers cannot fulfil the function they are given of monitoring safety standards in a manner similar to the authorities: they are service providers for their insureds and do not have legal powers.

Furthermore, the risk assessment of insurers is geared to company-specific decisions and not to society-based or legal safety standards.

## | Economic insight: Lack of Market availability

There is a confusion between financial guarantees and professional indemnity insurance which are **two different instruments provided by different markets**.

Insurance guaranteeing financial standing is available from a limited market, usually specialist underwriters and probably within the surety bonds market, but bonds are not contracts of insurance and, may also be offered by banks and the like. There may be requirements for counter indemnities, for example, an insurer issuing a bond may require a bank or other party to provide a financial guarantee so that the insurer can recover any claims payment from another source. **However there are some serious**

doubts on how wide any guarantee may be and whether there is anything like sufficient insurance market capacity in Europe to support the all road transport industry in the EU.

There are also arrangements for the likes of travel agents whereby a trade body can arrange guarantees in the event of a member becoming insolvent and unable to fulfil its contractual obligations. Again, there are some serious doubts on whether something similar would be available for the road transport sector, but in any case it is not something currently provided for by liability insurers in Europe.

## | Conclusion:

- CEA opposes to a general requirement of professional liability insurance for road transport operators to supplement or replace the current system of financial standing provided by article 3(3) Directive n° 96/26/EC<sup>3</sup>
- There are some serious doubts as to whether this proposal set out in the consultation paper will meet the (cost) efficiency required by the EU Strategy for simplification of the regulatory environment mainly because:
- It is based on a clear misunderstanding of how liability insurance products work and the current market availability;
- It seems to ignore the detrimental effects of compulsory insurance - even though they are of crucial importance for the economy and society. Ultimately this will be contrary to the final objective of “Better regulation for growth and jobs in Europe”.

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## | About CEA

CEA is the European insurance and reinsurance federation. CEA's 33 national member associations represent more than 5,000 insurance and reinsurance companies. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €970bn, employ over one million people and invest more than €6,300bn in the economy.

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<sup>3</sup> Cf. Question n°13 in the consultation paper, Part B