

CONTRIBUTION TO COMMISSION CONSULTATION ON ACCESS TO THE PROFESSION

PART A: ACCESS TO THE ROAD TRANSPORT MARKET – International work

Question 1 - merging of the current acts

Option 2, but we would also propose including the combined transport Directive n° 92/106/EEC with those for goods vehicles. Consolidating all the legislation applying to a single industry into a single location makes it far easier for both operators and enforcers to understand the requirements. This greatly aids compliance.

Question 2 – Scope of Regulation 684/92

Provision of Regulations (EC) n° 684/92 and 881/92 govern exclusively vehicles carrying out passenger and goods transport at international level and this should not be changed.

Question 3 – qualitative requirements

No specific comments.

Questions 4&5 – intervals to verify compliance

CORTE's view is that the legislation might say something like:

- Issue licences for 5 years
- Re-confirm compliance *at least* every five years
- But re-confirm [20%] at least every 2 years with these operators selected based on risk of non-compliance informed by infringements reported in own or any other Member State.

Question 6 – Certified copies of Community Authorisations

CORTE believes these should be standardised. The numbering system should also be standardised to enable Member States to build and share databases of operators by a common identifier – ie CA number. There are clear benefits to the Community Authorisation including the vehicle identifier, particularly in positively confirming who the operator is and that the CA is genuine.

But this carries an impact for operators that may be difficult – or even impossible – to overcome. In particular, there is an impact when a vehicle about to embark on an international journey has to be replaced at short notice (eh through breakdown). While Member States' enforcement authorities can handle that domestically via electronic notification and verification, reliance on a paper certificate on the vehicle renders the system simply unworkable. So, on balance, we do not propose that the CA include the specific vehicle identifier.

Over time, a shift to reliance on an on-line registry would be acceptable so long as the registry could identify validity from vehicle registration number, thus facilitating easy roadside confirmation of entitlement and eventually facilitating ANPR identification.

Question 7 – driver attestation

Over time we should seek to reduce the amount of paper carried and building all the requirements to drive a large vehicle into a single card is desirable – that would include tachograph, driver attestation and driver CPC.

CORTE would like to see a feasibility study of this looking at the likely system costs.

Question 8 - Driver attestation period of validity

No views.

Question 9 – extension of driver attestation to EU nationals

No views.

Question 10 – journey forms for passenger transport

See answer to question 11.

Question 11 – journey form for goods transport

This would be a massive help in managing cabotage. Enforcing the limits of cabotage is currently extremely difficult involving long and resource-intensive investigations.

A requirement to carry a standard journey form would improve the enforceability of cabotage significantly.

Question 12 – application for passenger service authorisations

Simplification is needed.

Question 13 – shorter turnarounds for passenger authorisation process

We support the shortening of these periods, which should be a wise move from a service operator point of view.

Question 14 – passenger service appeals

No views.

Question 15 – content of authorisation procedures

No views.

Question 16 – urban passenger cabotage operations

This is to local authorities and to industry to respond

Question 17 – cabotage definitions

The current situation is a nonsense. Operators carrying out cabotage operations in different Member States have to comply with different requirements. Standardisation is essential, as is a clearly defined limit. That needs to be linked to the requirement to carry some sort of standardised documentation – standardisation is crucial as no enforcer can cope with the wide array of community languages, so we need to rely on things being in the same place.

Question 18 – options

These are really central policy questions, but we can offer a view. If the purpose of cabotage is to reduce empty running, then a very short period of cabotage would seem to fit the bill. By very short, we mean one, possibly two days, or limited to one or maybe two cabotage journeys between truly international trips.

So we favour option 2.

However, standardised documentation is essential with the broader Union, and will be more so as more countries join, particularly those who do not use the Roman alphabet.

Question 19 – areas to be added to the list for caboteurs to comply with

We would propose the following additions

- Working Time, perhaps, but that should apply anyway.
- Carriage of mandatory docs, eg if we go for a CPC card – this one's important
- Restrictions on vehicle movements relating to emission standards as developing across several major cities, for example LLEZ in London.

Question 20 – employment rules for “posted” drivers

Legal cabotage operations should mean that drivers are not posted to another Member State (MS) for prolonged periods. So this should not be an issue.

Question 21 – Other issues

Where one MS reports infringements of the cabotage rules, or significant infringements of relevant road transport legislation, to another MS, legislation should require a response within a reasonable period, for example 1 month.

PART B – ACCESS TO OCCUPATION – O-LICENSING

Question 1 - Is there a need for higher standards, if so what and for whom?

Financial Standing

CORTE would prefer that the current requirement be re-framed. It is not clear that a cash-in-the-bank requirement achieves much, nor is a blanket figure fair across Member States which have significantly different GDP per capita.

We propose that it be replaced with a requirement for undertakings to provide a sound business plan for at least one year. Virtually all businesses will have to produce such a plan anyway and it is certainly good business practice.

The business plan should demonstrate that the company:

- Has the management capability to run effectively
- Has sufficient funds to maintain vehicles appropriately
- Is making realistic assumptions about transport rates and margin
- Is viable within the constraints of legal operation

Analysis of the plan would be conducted in pretty much the same way as the current assessment of available capital. This is done by Executive Officers with training and guidance. Complex cases are passed to the licencing authority (Traffic Commissioner) who can call upon the services of an analyst. Once in place, the assessment would lead to a small increase in administration costs and there would be cost in defining the assessment indicators (which would need to be done in partnership with industry).

Professional Competence

It is not clear to us how a transport consultant can be said to have full and effective control of the transport operations. We would support a staged move to a requirement to have the CPC holder as a full-time employee of the undertaking. However, the benefits of this need to be weighed carefully against the impact on small businesses; two thirds of operators have 5 vehicles or fewer, though we do not know how many of these use consultants as CPC holders.

The many alternatives to the CPC should be reviewed with the intention of removing them wherever possible.

Question 2 – Additional criteria

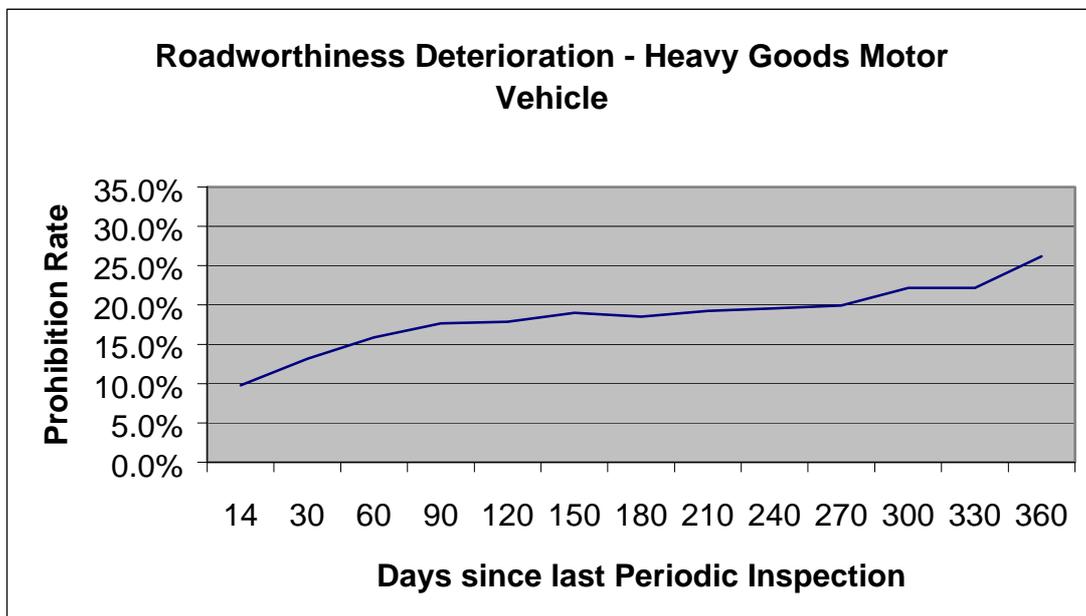
CORTE strongly advocates that transport undertakings are required to have in place robust systems to manage road safety and environmental aspects of the operation. This would include systems to ensure:

- Compliance with driving and rest periods, plus working time

- Safe loading – both in terms of weight and security
- Vehicle condition – regular safety inspections in addition to routine maintenance.

Systems to ensure that vehicles are kept in a safe condition are essential. Maintenance according to manufacturer’s schedules is normally only every six months. While this may be appropriate in terms of lubrication and filtration systems, it is rarely adequate in relation to safety-critical items that can either wear out far more quickly than this or be readily damaged.

An analysis of VOSA¹’s data conducted a couple of years ago shows that vehicle condition deteriorates rapidly after annual test, and then even further in the period immediately preceding the following year’s inspection:



The application process should include an opportunity for others to object. Objectors might include enforcement bodies, neighbouring premises or those affected by the proposed application, and others. Where the applicant originates from outside that Member State, the competent body in their home state should have an opportunity to comment. A licence should not be granted until all objections have been heard and resolved.

Positive identification of applicants is critical to the integrity of the scheme. But the Access legislation should include a requirement on Member States to identify positively that applications are bona fide.

Moves to enforcement from the record require undertakings to specify their vehicles on the licence. This is because enforcing, or charging, bodies need to be able to identify the user of the vehicle at the time, not just its owner. This is a growing

¹ VOSA is the UK member of CORTE

requirement with road charging often enforced by Automatic Number Plate Reader systems, and proposals to do likewise in low emission zones. In addition, vehicles can then be quickly linked to the operator and their enforcement history allowing inspections to be targeted accordingly – as required by Directive n° 2006/22/EC.

Consideration should be given to linking drivers to the licence. This has a number of advantages, though it needs careful costing. The benefits include:

- A much greater ability to identify an operator's risk of non compliance by linking driver enforcement histories (in line with Directive n° 2006/22/EC),
- Possibility of allowing an employing operator of an agency driver to verify that the driver has not been driving for another operator immediately prior to reporting for duty,
- Obviates the need for a driver attestation.

Question 3 – Exemptions & Dispensations

The threshold should be aligned with those for other related requirements at 3.5T. We can see no justification for continuing grandfather rights. The effect of aligning the threshold is likely to be small as the trucks tend to be built around the 3.5T and 7.5T thresholds.

We also support the application of the Directives to companies having entered the profession before 1978.

Question 4 – periodic checks – more frequent?

Option B, which proposes supplementing 5-year checks with targeted inspections. Targeted checks should be based on risk, in line with the new Enforcement Directive n° 2006/22/EC.

Question 5 – should operators disqualified in one MS be prevented from setting up elsewhere? If so, how?

Absolutely. There are a number of examples of companies who have lost their licence here and then set up elsewhere. Clearly that is a nonsense. However, preventing this happening may not be easy and will mean further and more effective exchanges of information between Member States.

Perhaps a simple first step would be for MS authorities to consult another MS where an undertaking or key individual of the undertaking (Director, transport manager) is a resident of another Member State.

Question 6 – simplification

No views.

Question 7 – repute and repeat offences

It would seem sensible that repeat offences are taken into account but this needs to be done in a sensible way to avoid penalising large operators. Perhaps a better option is to have a requirement for effective management control systems. Licencing bodies could then tailor the size of the licence to the systems in place – down to no vehicles. Repeat offences would be an indicator of poor systems.

Systems should be required to ensure compliance with the current list of relevant offences:

- Driving and rest periods
- Weights and dimensions
- Road safety and vehicle safety
- Protection of the environment
- Professional liability

Question 8 – should we define *serious offences*?

It would seem sensible to at least provide guidance on what constitute serious offences. Perhaps this would be better in something reasonably flexible such as a CIC rather than in a Directive.

Question 9 – to whom should the requirement for good repute apply?

We see no reason for drawing this more broadly, provided the nominated person truly has control.

Question 10 – systematic notification of convictions from courts

This should be for individual Member States to sort out. Situations vary, and some of the proposals are potentially costly.

Question 11 – information exchange on infringements

The issue is more to do with what happens to the information exchanged. There is little to no evidence that Member States take any account of information supplied to them. What is required is feedback. However, this could lead to a massive bureaucracy so we propose a system of feedback for serious offences only, with serious defined as in Q8 above.

An exchange system and methodology are anyway needed as stated in Article 8 of Directive n° 2006/22/EC.

Question 12 – assessment of financial standing

No views.

Question 13 – compulsory professional liability insurance

No views.

Question 14 – further harmonisation of CPC exam

It would be worthwhile to further harmonise the system of examinations and to make mandatory the involvement of road hauliers' representatives.

Question 15 – should CPC holder be employee of company and permanent resident of that country

Making the CPC holder have to be a full-time employee of the company has many advantages. It is hard to see how someone who is employed as a contractor or consultant can truly be permanently and effectively in control of the transport operation. Defining this as a full-time employee would be helpful. But we need to assess the costs involved in small businesses

Residence seems irrelevant. Provided the nominated person truly has control, then residence need not matter. The issue may be more whether a single CPC-holder can effectively manage a large dispersed company and we see it for licencing authorities to make this judgement.

Perhaps some clear criteria here would be useful – akin to the authority and responsibility of a quality manager in a quality system eg direct access to the board, able to stop the operation if need be.

Question 16 – other comments & suggestions

Exit from the occupation

We have talked much about access to the occupation, but little about exit from it. It is clear to us that many Member States either do not have adequate systems to remove undertakings from the occupation, or are reluctant to use them. It is essential that licensing authorities take action on operators with poor compliance records. Licensing authorities must be free from any financial or other pressure not to withdraw an undertaking's entitlement to operate.

Scope

From road safety and competition perspectives, there is no logical argument for not applying all these requirements to operators carrying only their own goods ie “own account”.

The Licence Burden vs The Compliance Burden

CORTE is committed to reducing the compliance burden wherever possible. That may seem at odds with the proposals in this paper. It is certainly true that a more robust licensing system will increase the administrative burden at the time of application. We should acknowledge that. But we should also point out that many of the measures proposed here will be beneficial to operators once the licence has been granted. Many of these measures focus on improved targeting of enforcement effort which will benefit compliant operators. Other measures have in mind increasing compliance with the requirement to hold a licence which clearly has competitive benefits for licence holders.

Question 17 – any proposals to reduce administrative burdens

No views.