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CONSULTATION PAPER REVISION OF THE COMMUNITY LEGISLATION ON THE ACCESS TO THE ROAD TRANSPORT MARKET AND ON THE ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR

IRU answers to the EU Commission Consultation Paper on access to the road transport market and admission to the occupation of road transport operator.

**PART A
ACCESS TO THE ROAD TRANSPORT MARKET**

IRU GENERAL OBSERVATIONS:

The IRU very much regrets that the consultation period for such important issues as access to the market and the profession was so short and scheduled during the summer period. Subsequently, the IRU suggests investigating the issues in depth within the framework of a public-private Committee of Enquiry.

Due to the tight deadline set by the Commission, a few of the IRU's replies do not necessarily represent an approved membership position yet. The positions will need to be officially adopted at the IRU's next General Assembly, due to take place in November 2006. The IRU Secretariat will indicate items still requiring approval with "Tbc by the IRU GA".

The answers given below are complemented by a dedicated Memorandum on controls in road transport (see Annex 1), which should be considered as an integral part of the IRU's contribution.

1. THE COMMUNITY ACQUIS ON ROAD TRANSPORT

1.1. The legal acts in force

1.2. Merging of the current acts

Question 1 – Is the merging of goods transport and passenger transport a real simplification? Which option is the preferred one?

IRU:

In principle, merging rules on market access in goods and passenger transport may bring some additional simplification and transparency.

However, bearing in mind that the markets for goods and passenger transport by road are quite different, including their differing levels of liberalisation, it is highly premature at this stage to advocate merging market access rules for the two sectors. They should be kept apart. This would also insure an acceptable level of transparency in the market access rules (including cabotage) of passenger and goods transport by road.

Instead, a gradual harmonisation should be the preferred option, where possible and applicable, starting with for example the rules relating to the Community licenses and the true certified copies. Such an approach would be more flexible and could respond to market needs. It would also allow the inclusion of sub-sectors, such as taxis and hire cars with drivers in the access to the profession rules.

2. BETTER REGULATING CERTAIN ASPECTS OF THE CURRENT REGIME

2.1. Geographical scope of Regulation 684/92

Question 2 – Should local services be covered by regulation 684/92 or should they be excluded, either from the regulation or from the authorisation regime?

IRU:

“Urban carriage in frontier areas” was considered a type of special regular service in the original Regulation 684/92 (Article 2). These services were not subject to an authorization when they were covered by a contract concluded between the organiser and the carrier.

Under Regulation 11/98, these services became ordinary international regular services, subject to authorization. They can in fact be considered local public transport but are international. Subsequently, they should remain within the scope of this regulation but should also remain subject to authorization.

2.2. Requirements for access to the market

Question 3 – Should higher qualitative requirements be imposed on hauliers/carriers engaged in certain types of road transport? If so, which ones?

IRU:

The industry supports maintaining a high level of professionalism in the road transport sector.

However, it does not support the introduction of a compulsory professional liability insurance which would lift responsibility from the operator more than anything else. Taking out a professional liability insurance policy should be down to the free choice of the operator.

By contrast, a voluntary quality charter may be developed by the industry (associations) since a related certification system may have a positive impact on service quality. (Tbc by the IRU GA.)

Furthermore, the introduction and the harmonisation of conditions of contractual liability insurance, as applied already in a great number of EU Member States, might be beneficial.

In addition, in goods transport, the contractual discipline should be reinforced, starting with a much more general use of CMR in the industry and the related consignment note. (See our reply also to Question 11 and other Questions.)

The enforcement of existing EU rules and international conventions regulating the carriage of sensitive goods like dangerous goods (ADR Convention), perishable foodstuffs (ATP Convention), and live animals (EU Directives) should be intensified.

As far as the bus and coach sector is concerned, operators are subject to liability in case of personal injuries, deaths and damage to property within the framework of the EU insurance legislation (and therefore, outside the access to market/profession regime). Operators face unlimited liability in the vast majority of the EU Member States. As a result, it is becoming increasingly difficult for operators to insure the risk. Priority should be given to the simplification, harmonisation and better application of existing rules in the field of liability in case of an accident and baggage loss, where, in order to create a level playing field between the different common passenger transport modes, a maximum liability ceiling must be introduced.

Obviously, the issue needs further investigation, possibly within the framework of a public-private Committee of Enquiry as suggested by the IRU.

2.3. Community licence

Question 4 – Should Member States be required to verify whether the haulier/operator still satisfies the conditions for maintaining the licence at shorter intervals on a regular basis?

IRU:

See the reply by the IRU to Question 4 in Part B.

Question 5 – Should the validity of the Community licence be reduced to a shorter period of validity than 5 years? If so, to how many years should it be reduced?

The period of validity of the licences should remain 5 years. Shortening it would not solve the problem of “no return” by disqualified holders, on the contrary: the administrative burden would just increase by more frequent licence renewal periods. Maintaining a licence validity period of 5 years does not contradict the need for more frequent checks on fulfilling the criteria in justified cases (see above reply to Question 4, including a proposal for an on-line central register)¹.

2.4. Certified copies

Question 6 – Should the Regulation provide more detailed specifications for certified copies, i.e. standardize them in order to avoid confusion during an inspection? If so, what specifications or new (security) features should be introduced? Could a gradual shift to an on-line registry of the issued Community licences be envisaged?

IRU:

Yes, Regulations 684/92 and 881/92 should specify more details relating to the true certified copies of the Community licence. The flexibility allowed to the Member States to produce them should be reduced.

The aim of the Community licence was to create one single control document which would facilitate controls. This aim has not yet been achieved.

A separate space should be entered on the EU-licenses for national authorities to indicate special national requirements for companies established in their country. If introduced, some thought may be given to abandoning the separate national licenses and keeping only the Community license for all operators.

Regarding certified copies, particular problems which should be addressed are:

- Set a unique colour for the true certified copies as is the case for the original Community licence.
- Reduce the number of models to 1 per Member State.
- Lay down details on how the true copies need to be certified.
- Define details on the inclusion of distinctive country symbols of the Member States. This symbol should be printed in advance.
- Facilitate the use of true certified copies on temporary replacement vehicles.

The Commission should also examine how information technology can be better employed to handle the true copies of the Community licence and facilitate road-side and in-company controls.

A future on-line licence register would solve this problem.

¹ The IRU Member Association in Belgium, FBAA, calls to abolish the Community license for passenger transport by bus and coach.

2.5. Driver attestation

2.5.1. General considerations

Question 7 – Should the driver attestation be made more uniform across the Community? Should the format of the current paper based document be changed? Should it gradually be made electronically readable?

IRU:

It is regrettable that a special transport-sector document had to be introduced for a labour market intervention instead of the strict application and control of general residence and employment permits. It is recommended to re-investigate whether the achieved and achievable results of such an intervention are in balance with the costs of this type of administrative procedure.

In the given situation, yes, the driver attestation for nationals of non-EU Member States should be made more uniform. The paper document could be replaced by an electronic attestation card or be incorporated within the driver card of the digital tachograph system.

However, it should be noted that possession of the digital tachograph driver card will not become a universal requirement for all drivers for a number of years.

While a new technical specification for digital tachograph cards would also have to be devised in order to incorporate this new function, this should not be seen as an absolute barrier. An electronic attestation card and one incorporated into the digital tachograph driver card could be parallel solutions thereby providing companies with a choice of systems most suited to their needs. The driver attestation should not be introduced for passenger transport by bus and coach.

Ideally, the future electronic EU driver's license is the "candidate" to integrate all driver data that needs to be checked. In the long term, interoperable plastic cards incorporating all relevant data on the company, driver and vehicle, with the possibility of adapting them to technical or legislative progress, would probably become a universal solution.

The issue needs further elaboration, including within the framework of the proposed public-private Committee of Enquiry. Among other things, the "legal feasibility" of the above proposals should be carefully scrutinised under existing EU legislation, splitting legal responsibility for the driver attestation, the digital tachograph card and the driving licence between the operator and the driver (as "legal entities") respectively.

Question 8 – Should the current maximum period of validity of 5 years be shortened?

IRU:

The period of validity should be identical to that of the digital tachograph driver card; a maximum of 5 years. Where Member States have introduced a shorter period of validity for digital tachograph cards, the EU attestation period should also be shortened to correspond to this time frame.

2.5.2. Extension to all EU nationals

Question 9 – Are stakeholders of the opinion that the obligation to hold a driver attestation should be extended to drivers who are EU nationals?

IRU:

The driver attestation already covers the most sensitive group of drivers: non-EU nationals. An extension of the driver attestation to drivers who are EU nationals is not justified.

If need be, the digital tachograph card may be adapted in the future via a new technical specification, to incorporate new requirements in the social dimension. (See also our reply to Question 7.)

The driver attestation should not be introduced for passenger transport by bus and coach.

2.6. Other control documents

2.6.1. Journey forms for passenger transport

Question 10 - Should the control documents for occasional services be harmonised and the specifications be made as detailed as possible to avoid confusion during an inspection?

IRU:

Currently, there are 4 different types of journey forms: the EU journey form, the Interbus journey form, the ASOR journey form and the bilateral journey form. These control documents should be harmonised and one single journey form model should be created for all different occasional services, whether they are EU, Interbus, ASOR or bilateral. In practical terms, the renegotiation of any of these international conventions should be avoided due to the lengthy procedures involved.

The Commission should also examine how information technology can be better employed to handle journey forms.

2.6.2. A journey form for goods transport?

Question 11 - What is the stakeholders' opinion on the use of a uniform, Communitywide journey form in goods transport by road replacing the variety of national documents?

IRU:

In the future, this issue may be solved by a central on-line register of licences.

For the time being, no additional Community journey form for goods transport should be introduced and even national journey forms should be done away with. This logbook-type, bureaucratic and unreliable document is unnecessary for transport for hire and reward. Instead:

- The harmonised certified true copy of the Community licence (or an EU harmonised national certificate for own-account operators) should be sufficient for basic and general checking purposes.
- An original consignment note, as required by administrative law in the majority of EU Member States, should be on board the vehicle for checking purposes in domestic, cabotage and international transport operations since this is an authentic document on the transport operation, compared to a logbook of limited legal value. Harmonisation of national law in this respect would be desirable.
- Companies undertaking international transport operations (e.g. for operations to and from non-EU countries, where even trip permits are still used as a tool for checking), conclude individual or framework transport contracts, for e.g. on the basis of the CMR, which is on its way to being provided with an e-consignment note.
- Another solution should be found for own-account operations, where the consignment note does not exist and there is no transport contract either.
- In general, the use of the consignment note would "regularise" many other semi-regular or irregular aspects of transport market operations, it would contribute to "cleaning" the profession, it would make operations more transparent and it would contribute to increasing quality in the profession (see also reply to Question 3).

2.6.3. Processing the application for passenger service authorisations

Question 12 - Should the authorisation regime for international regular passenger services be maintained, simplified or abolished?

IRU:

Currently, a system of controlled competition exists for international regular services. It provides the necessary means of control and certainty for legitimate operators. With full liberalisation, the entire international regular services network could be jeopardised and the quality of services offered to passengers could be negatively affected. In addition, liberalisation cannot be approached without also ending discrimination in favour of railway services, the opening up of local public transport markets and the liberalisation of international regular services cabotage.

For the IRU, ending discrimination in favour of rail and the introduction of a higher degree of fairness and transparency in the authorisation procedure, should receive absolute priority.

Question 13 - Provided that stakeholders are in favour of maintaining the current authorisation regime, is it feasible for national administrations to apply a shorter authorisation processing periods?

IRU:

The Commission should also examine to what extent the current consultation periods for the granting of an authorisation could be reduced. It is crucial to avoid authorities refusing authorisations in order to avoid being forced to grant a tacit authorisation.

Question 14 - Provided that stakeholders are in favour of maintaining the current authorisation regime, are these appeals processes clear and effective?

IRU:

The appeals processes are necessary and very useful. However, they are long and can jeopardise the continuity of an existing service or delay the start of a new one.

Appeals cases can be avoided by improving the clarity of the Regulation. For example, sometimes problems arise because different Members from one and the same pool of operators apply for the same authorisation in the two termini of the service and do not use the same application dossier. This creates the impression that two different applications are involved, whereas in reality there is only one.

The chance that the authorisations are refused on the basis of article 7.4 grows because authorities do not want to compromise the existence of regular services already authorised by granting too many authorisations. So, the chance that an appeal will be launched also increases.

These problems arise from a lack of clarity in article 6 on the submission of applications for authorisation. Giving a larger role to the undertaking that manages the pool, in preparing and submitting the application for authorisation, could help solve this problem and lead to fewer appeals cases.

Question 15 - Provided that stakeholders are in favour of maintaining the current authorisation regime, are there other aspects of the regulatory regime which could be changed to simplify the administrative procedures or to otherwise improve the functioning of the authorisation regime by focusing it e.g. on safety and social requirements compliance?

IRU:

A higher degree of fairness and transparency should be created in the authorisation procedure. An end should also be made to the discrimination between passenger transport by bus and coach, on the one hand, and rail on the other. Article 7.4.f, which refers to the possibility to refuse an authorisation if the viability of an existing railway service is seriously affected, should be deleted from the Regulation. This part of the article has never been used and is obsolete.

The enforcement of existing rules is of paramount importance. In relation to this point, the IRU has made a number of suggestions to improve enforcement. Here is a summary (the full list could be found in the Memorandum on controls in road transport attached to these replies):

- The EU has made substantial progress in establishing a system of consulting and informing the industry about the legislative process and its outcome. Yet, many things remain to be done in specific areas, such as the interpretation of rules, national particularities in enforcement, categorisation of infringements and sanctions, information on traffic bans etc...
- Beyond the EU, with some minor exceptions at bilateral, intergovernmental and industry level, there does not exist an established international system and culture of consultation, information exchange and alerting the industry about enforcement, modification or entry into force of new rules in individual countries.
- As a result, lengthy road-side checks, under-informed operators, drivers and enforcement agents without minimum foreign language skills, divergent infringement/sanction regimes and unjustified penalties are everyday realities.
- More transparency in the implementation and enforcement process in the different EU Member States is needed. Information on transposition dates, entry into force and national particularities, with Internet links to national laws, should be made readily available, including on the websites of the EU and other relevant intergovernmental bodies and institutions. Control officers should also be informed and made aware of the entry into force of new EU rules in the various EU countries, in cases of different transposition dates. (In the future, a central computerised on-line register of licences accessible from the road side via satellite communication would help their work enormously.)
- A European system of information exchange on new and/or country-specific rules could be created.
- The competence and knowledge of control officers should be reinforced, to allow effective and fast controls.
- The potential for raising the awareness and knowledge of rules, both of operators, drivers and control officers is practically unlimited and should be tackled in a genuine public private partnership, through training, including with the support of the IRU Academy, joint awareness campaigns, public-private MoUs and codes of conducts, common methodologies (checks, sanctions) and classifications of infringements (heavy, medium, low) etc... In an improved political environment and perception of bus and coach transport, the attitude of control officers should also change.
- Road-side checks are also of great concern in road transport. This is particularly the case in collective passenger transport by bus and coach, where road-side checks are typically carried out at the backdrop of several dozens of passengers waiting for the check to be completed.
- Controls should be shorter and better targeted (focus on an agreed selection of main items²) and there should be an improved exchange of information between relevant control authorities inside and outside the country (avoid superposition of identical controls en route, with for e.g. an international/European control form), including with licence-issuing authorities.
- The duration of controls should not exceed a reasonable time frame, for e.g. comparable to that of controls on private cars.

² As a matter of fact, to avoid lengthy controls of brakes at the road side, some countries (D) have worked out a « safety certificate » for brakes, carried on board of the vehicle and proving that adequate controls have been performed; the certificate exempts the vehicle from such checks at the road side.

- The post-control situation should also be clarified, in particular, in cases where a vehicle with passengers or perishable foodstuffs on board is immobilised.
- A dedicated code of best practice for control officers should also be developed to address the practical aspects of issues, such as information to be given to drivers/operators, the duration of controls etc..., in order to guarantee the welfare of passengers.
- Priority should be given to identifying and addressing the small minority of frequent and serious offenders, such as operators working without authorisations, rather than penalising honest operators.
- The place and role of controls at premises may also need to be redefined, in order to better target frequent/serious offenders.
- The creation and promotion of a European network of bus and coach terminals. It should link the main European destinations to support an effective and high quality system of international regular lines. An international regular line should not exist if it does not have the support of a bus and coach terminal at the departure and destination level. This would also facilitate controls by focusing them at terminals, thus better targeting and reducing controls at the roadside, which constitute a major problem for the service. Indeed, in the USA, coaches are controlled on the road side only in emergency situations.
- Based on their outstanding safety performances, buses and coaches should enjoy equal treatment with private cars, in particular in the case of (temporary) traffic restrictions due to difficult traffic or weather conditions.

2.7. Road cabotage

2.7.1. Passenger transport

Question 16 - Should urban and suburban cabotage operations in the course of international services be authorized? Under which conditions?

IRU:

Currently, cabotage within the framework of an international regular service is technically possible but not one single Member State allows it because they all wish to protect their domestic regular service market. However, before tackling the problem of urban and suburban cabotage, the main problem should first be tackled.

This is the creation of a European framework for application and granting of authorisations for cabotage within the framework of an international regular service. However, the Member States may not be ready for such a change. The recent political agreement on the public service requirements proposals has demonstrated how reluctant Member States are to opening up their domestic regular service markets.

No urban and suburban cabotage operations in the course of international regular services can be realistically considered until Member States show more willingness to open up their entire domestic regular service markets.

2.7.2. Road cabotage for goods

2.7.3. Better definition of road cabotage

Question 17 - Do stakeholders perceive the varying rules as a problem? Do stakeholders consider that a clearer and more precise definition of road cabotage would be useful?

IRU:

A clearer and more precise definition would be very beneficial.³ Simplicity of regulation is just as important as transparency and easy control / enforcement.

Indeed, this is an issue, which needs further investigation and consultation, preferably within the framework of the proposed public-private Committee of Enquiry.

2.7.4. Options to be considered

Question 18 - What are the stakeholders' views on these approaches? What alternatives could be proposed for a clear and easily enforceable definition of road cabotage?

IRU:

Goods transport cabotage should be done irregularly and on a purely occasional basis to increase the efficiency of international operations.⁴

In all cases, the original consignment note containing relevant information about an individual or framework transport contract should be on board the vehicle for control purposes (see our reply to Question 11).

The problem with the consignment note (or even with a logbook type of a control tool) is that it provides information about operations conducted in the past and says nothing about the general framework of the cabotage operations, such as for example the duration of the contract, the total quantity of the transport journeys, the operations still expected to be made etc... Furthermore, contracts are often concluded verbally without any written trace.

Still, the IRU tends to believe that cabotage operations should be checked by preference on the basis of commercial documents (contracts⁵ and related consignment notes) and the latter should be made compulsory for cabotage operations in written standard form highlighting all the aspects of importance for the control of the cabotage operations (cargo quantity, number of trips, duration of the mandate, loading / unloading places, etc...). In the case of cabotage, not only the original consignment note but also a true copy of this contract should be on board the vehicle.

In any case, while the contract would serve a good commercial purpose and could be used for checking purposes by authorities, a logbook (carnet de route) would just add to administration and bureaucracy (including for the authorities) with a low level of reliability.

Obviously, the issue needs further investigation and debate. In particular, the impact of recently introduced national rules on cabotage (time limitation) in EU Member States could be studied. Practical experience with applying rules implemented within the ECMT multilateral quota system of goods transport licenses, where the results of similar restrictions and their control efficiency have been contested and even controversial, including in terms of the efficiency of the transport operation itself, could be included in this research. This could also be a subject for the proposed public-private Committee of Enquiry.

³ According to the IRU Member Association in Denmark, DTL: "In order to maintain the flexibility of transport operations and to insure maximum efficiency in the use of assets, we recommend the Interpretative Communication from the European Commission published on 12 November 2004 to be made mandatory as the European guideline for whether a specific cabotage operation is legal or not."

⁴ The IRU Member Association in Germany, BGL, believes that cabotage as per Example 2 cannot be properly controlled and would disturb the integration of border regions.

⁵ The IRU Member Association in the NL, TLN, suggests conducting a study on the applicability of the CMR-document for *international, national and cabotage transport journeys* as the obligatory document to be checked.

2.7.5. National rules applicable to cabotage

Question 19 - Which areas should be added to the list or deleted from the list contained in Art. 6 (1) of Regulation 3118/93?

IRU:

Operators from one Member State active on the territory of another Member State should abide by all laws and regulations in force in this "other Member State". There is no reason to list any of these "local" regulations; the only requirement being that none of the local regulations may contradict any EU rule.

Legitimate local rules legislated according to the subsidiarity principle should however be made known (under the form of a multilingual EU brochure available as well on the Internet) and accessible beforehand for local authorities and (foreign) operators engaging in cabotage traffic. Transport associations should help their members with respective information.

It should also be pointed out that making cabotage subject to the conditions governing the transport contract prevailing in the Member State where the cabotage operation is carried out is interpreted in different ways in the various EU Member States.

Several countries consider that these terms include international private law (regulating conflicts between legislation systems in international relations) of the country "cabotaged", a fact which allows the contracting parties to choose freely the applicable law for the transport contract.

In practical terms, it means that a non-resident transport operator can impose his own transport conditions. By contrast, in other Member States, international private law is not included in the conditions governing the transport contract, a fact which deprives the contracting parties of their freedom to choose the applicable law. In this case, for e.g. a German operator doing cabotage in Greece should abide by Greek law, of which his knowledge is limited due to reasons such as the language barrier.

To solve this problem, the CMR rules should ideally apply to cabotage. Therefore, Article 6 of Regulation 3118/93 should be completed as follows: "With regard to conditions of the transport contract, the parties are free to accept in their contract the rules of the CMR Convention".

In addition, special consideration should be given to the posting of workers within the framework of the provision of services: Directive 96/71/EC provides that certain mandatory rules, social rules in force in the host Member State (e.g. on working time, minimum pay and minimum holidays), also apply to posted workers. Cabotage operations in principle fall within the scope of this Directive. However, the Directive allows Member States to provide for certain exemptions if the activity is carried out for no longer than a month or the amount of work to be done is not significant (see also our reply to Question 20 below).

The proposed public-private Committee of Enquiry may be the appropriate framework to further elaborate a solution to this issue.

Question 20 - What is the stakeholders' experience with the application of Directive 96/71 to cabotage transport operations? What is their opinion on exempting cabotage (OJ L 18, 21.1.1997, p.1) operations from the scope of that Directive provided that cabotage is limited to a period shorter than one month?

IRU:

It seems apparent that Directive 96/71/EC on the Posting of Workers was framed primarily with other sectors of European industry in mind rather than the road transport sector. Construction workers who may be posted to work in another Member State for long periods of time present a clear case where the Directive is necessary, appropriate and may be easily enforced via a foreman or designated individual who can liaise with local and home authorities to ensure that his posted workforce receives equivalent pay and conditions to those established under the collective agreements of the host country.

For the majority of cabotage operations undertaken by the road transport sector, the need and enforceability of such an approach is less clear. The administrative burden on companies which have to ensure that each driver receives the correct balance of country specific pay and benefits would outweigh the advantages when drivers are performing cabotage in different Member States for short periods of time. Indeed, such a complicated administrative burden coupled with the inconvenience for drivers of receiving constantly changing pay and conditions might make cabotage operations untenable overall. A rigid or literal enforcement of the Directive on each and every cabotage operation would be a blow to attempts to reduce empty running and to the goal of creating a genuine single market in road transport services.

It is interesting to note that maritime cabotage is exempted from the scope of Directive 96/71, presumably for reasons very similar to those set out above. The IRU sees no reason why road transport cabotage should be treated differently. Nevertheless, and without reference to the potential definitions of cabotage set out in 2.7.4, if such cabotage operations were to be carried out during periods of more than 30 consecutive days, the application of the Directive could become more easily understandable and enforced.

The proposed public-private Committee of Enquiry may be the appropriate framework to further elaborate a solution to this issue.

2.8. Other questions or issues

Question 21 - Are there any other issues regarding the market access in road transport that stakeholders would like to raise?

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IRU GENERAL OBSERVATIONS:

The IRU regrets very much that the consultation period for such important issues as access to the market and the profession was so short and scheduled during the summer period. Subsequently, the IRU suggests investigating the issues in depth within the framework of a public-private Committee of Enquiry.

Due to the tight deadline set by the Commission, a few of IRU's replies do not necessarily represent an approved membership position yet. The positions will need to be officially adopted at the IRU's next General Assembly, due to take place in November 2006. The IRU Secretariat will indicate items still requiring approval with "Tbc by the IRU GA".

Initial comments on access to the market by goods transport operators:

Goods transport by road is often undertaken by *freight forwarders* who do not operate any vehicles and who conclude (sub) contracts with the "real" transport operators of their choice to carry the cargo from A to B. While access to the profession for transport operators is well regulated, this is not the case for forwarders. This imbalance is particularly visible regarding the financial standing requirement for the transport operator defined per vehicle, which is not the case for the forwarder, who still exercises the function of the "contractual operator" and controls the whole operation.

Thus, future legislation on access to the profession should also include the "*contractual operator*", who may or may not operate any vehicles (see also our reply to Question 1). (Tbc by the IRU GA.)

1. INTRODUCTION

2. GENERAL QUESTIONS

2.1. Level of standards

Question 1: Is there a need, and for what reasons, for higher minimum standards for admission to the occupation? If so, should they apply to all road transport professions or only to certain categories? Which ones?

IRU:

First and foremost, there is a need for reinforced control and enforcement / sanctioning of existing rules on access to the profession⁶, since current important problems in the road transport market could be mitigated if existing rules were simply applied and observed.

Secondly, it is a general experience that the present rules are applied to varying extents in the various EU Member States. Therefore, there is an absolute necessity to harmonise the different interpretations and enforcement practices of the EU access-to-the-profession rules.

Indeed, there is a clear link between legislation, its enforcement and controls. So far, interpretation, enforcement and controls have largely remained outside the legislative facilitation and harmonisation mainstream, mainly because of the prevailing national competencies in this area. Typically, interpretation of legislation, enforcement, controls and sanctions are issues that are dealt with almost exclusively at national and sometimes even at sub-national (regional) level. Cooperation and information exchange between authorities is at its beginning, even within the EU, whilst other stakeholders, such as the road transport industry, are only occasionally recognised as

⁶ The representatives of the road transport sector prefer using the term "access to the profession" to using "admission to the occupation". In the context of the present replies, the two terms mean the same.

having a stake in the area of enforcement and control. A multi-stakeholder Europe-wide/International Forum with various configurations dealing with different issues related to enforcement, control and prevention can certainly prepare the ground and accompany such a strategy.

Thirdly, a continuous enhancement of criteria in respect of training for and obtaining of a CPC diploma would be reasonable^{7 8}. For this purpose, a review of training curricula could be envisaged in the form of public-private consultations (PP comitology) every five years. The inclusion of a logistics part / section may also be considered, including for “sister” professions, such as freight forwarders (see below).

Fourthly, staying within the framework of a Directive, a proper interpretation (clearer definition) of one or another of the three qualitative criteria would be necessary, for e.g. good repute criteria and proof, or the form and means of justifying financial standing.

Fifthly, access to the profession should cover all road transport professions and exemptions should be the rare exception rather than the rule. General rules should cover also all categories of undertakings, independently from for e.g. the admissible weight of the vehicles they use (above 3.5 tonnes in goods transport), or the type of activity exercised on the road transport market.

In addition, admission criteria should be drafted and legislated for industries closely linked to and impacting the road transport sector to a great extent, like for e.g. the freight forwarding profession and logistics service providers (so called “contractual operators”). (Tbc by the IRU GA.)⁹

EU access to the profession rules, similar to those existing in the bus, coach and road freight sector, should also be introduced in the taxi and hire-car with driver sector, as it is currently the case in several EU Member States, such as Sweden, Germany, Austria and Slovenia. The IRU has elaborated a detailed proposal to extend the current EU rules to the EU taxi sector. Within the framework of its training Academy, the IRU is also working on a training curriculum for taxi driver and operators’ training, based on the current EU rules.

Sixthly, regular exchange of best practices (Member States, industry, training and examination bodies etc.) in implementing the quality criteria should be promoted.

Further developing the issue may become a task of the proposed public-private Committee of Enquiry.

Question 2: Should criteria other than good repute, financial standing and professional competence be included? If so, what should they be? For example, should criteria which prevent ‘letter-box’ companies from engaging in the occupation be included? If yes, how?

IRU:

The threefold qualitative criteria of the road transport sector have proved their merits notwithstanding definite negative side effects such as periodical over-supply in certain market segments and geographic areas.¹⁰ If they are properly applied (see reply to Question 1), there is no need for additional criteria to be introduced.

⁷ The IRU Member Association in the UK, FTA, thinks that “the Transport Management CPC requirements should accord with the requirements for the driver CPC with regard to periodic training”.

⁸ The IRU Member Association in Germany, BGL, thinks examination subject matters listed in Directive 96/26/EC (Annex) for CPC should not be further extended for the time being.

⁹ The IRU Member Association in Germany, BGL, sees no reason to extend access to the profession criteria to *pure* forwarding and logistics companies.

¹⁰ The IRU Member Association in Denmark, DTL, believes that there is no market over-supply but rather “under-supply”, in particular due to the driver shortage in the Danish labour market.

Some clarifications may be useful however, such as obliging the transport operator to have a permanently available CPC holder in management; or preventing managers from establishing new companies after a fraudulent bankruptcy; or including “drug abuse or drug trafficking” and “human trafficking / sexual offences” in the list of serious infringements (good reputation – see also further down). (Tbc by the IRU GA regarding “listing”.)¹¹ It is not possible to comprehensively list serious offences, therefore, in this respect, national legislation and best practices should prevail and / or duly be considered.

Capital mobility should be maintained in the EU. If there is an abuse in this respect to be resolved (e.g. “letter-box” enterprises set up abroad), this issue should be tackled at a general level by general legislation and not in the access-to-the-profession set of criteria in the road transport sector alone.¹² Such general measures may become so called “flanking measures” as part of the general economic regulation of road transport. Flanking measures of the same type could include: checking companies / undertakings (including self-employed operators) on applying all rules relating to pension and social insurance schemes or implementing criteria for defining “real” independent companies.

Any new arrangement should be introduced with an appropriate transition period accompanied with temporary exemptions for those already in the market.

These and other similar issues may become the subject of discussions of the proposed public-private Committee of Enquiry.

2.2. Exemptions and dispensations

Question 3: What exemptions and dispensations could be abolished?

IRU:

All exemptions should be lifted across the board, subject to a reasonable transition period of 5 years for example (see reply to Question 2).¹³

General rules should apply for all categories of undertakings using any vehicle of a weight above a very low weight limit (3.5 tonnes in goods transport) and operating over any transport distance; i.e. short distance transport operations should not be an exception if they are done by a transport company in the public transport market.^{14 15}

The access-to-the-profession criteria should be applicable to all undertakings previously exempted (e.g. those engaged in the profession before 1978) in the framework of the periodic review / control process to check if access criteria are still met by the undertaking.

EU-wide rules for access to the profession of taxi operators should also be introduced, similar to those applicable for bus, coach and road freight transport (See also answer to Q1 above).

¹¹ The IRU Member Association in Germany, BGL, opposes mentioning explicitly “drug abuse or drug and human trafficking / sexual offences”.

¹² The IRU Member Association in the NL, TLN, thinks that the requirement that a company must operate from the given address should become an access criterion to prevent letter-box companies.

¹³ The IRU Member Association in the UK, FTA, believes that “operators that were exempted CPC should continue to enjoy “Grandfather Rights” in respect of CPC for the duration of their career but should be included in any new requirement for periodic training”. TLN (NL) and BGL (D) share this view.

¹⁴ The IRU Member association in the UK, FTA, proposes that the operator licensing system should be extended to include own account operations (goods).

¹⁵ The IRU Member association in Belgium, FBAA, believes that access to the profession rules for entities carrying out passenger transport services by bus and coach for own account should be envisaged in order to increase the level of road safety.

2.3. Periodic checks and disqualification

Question 4: Do the requirements for admission to the occupation need to be checked more frequently? If so, should all or only some of them be checked? Which option do you prefer? If you prefer option A, what frequency do you propose?

IRU:

All requirements for access to the profession in the road transport industry should be checked at least at five-year intervals.

The direct and indirect costs of an increased checking frequency should be avoided.

Therefore, a blend of options A and B should be applied. All the access to profession criteria should be checked every five years. Targeted and intelligence-led inspections should only be conducted in case of a sound suspicion of a negative evolution, which is based on risk-rating of the undertaking's access to the profession criteria status.

There exist methods, which would allow competent authorities to improve checking without increasing the administrative burden on operators¹⁶.

Indeed, a better coordination is needed between control and licensing authorities themselves, including among Member States, in order to better identify and target frequent and serious offenders (for e.g. in the case of good repute).

The link between controls, access to the profession and sanctions, including withdrawal of licences, must be studied and developed further within the framework of the public-private platform on controls in road transport, proposed by the IRU.

An undertaking which is disqualified as a result of a check should also be prevented from being able to obtain authorisation in another Member State. It is not right, for example, that an undertaking which has lost its good repute in one Member State should be able to establish itself in another. One solution could be to exchange information (e.g. electronically) within a European network of competent authorities. The competent authorities would thus notify each other of the granting of authorisations for access to the profession as well as of withdrawals of such authorisations.

The rapid progress of computerised information exchange and telecommunication opens up new horizons. Based on modern IT solutions, it would be possible in the medium term to establish an EU-wide central electronic register of transport operators, which

- would contain up-to-date information on every legally functioning company, in particular the information relating to the place of establishment, the validity of licences, the compliance with the three basic requirements; infringements committed and sanctions received;
- would ensure online and wireless access to the database for each competent organ and authority to the extent of its competencies;
- would be accessible, with *strict limits to certain parts* (for e.g. a simple list of legitimate / licensed operators), even to the public, without entering into conflict with data protection requirements;
- would facilitate contact between licensing authorities and those imposing penalties;
- would contain information on penalties and restrictions / prohibitions on the basis of which even officers at road-side checks could filter out the illegal operators using a pocket PC via satellite communications;

¹⁶ In the UK, targeting is based on compliance history and a risk rating system. In the USA, a simple pre-control questionnaire from control authorities to operators is being developed, which would permit the authorities to better select and target companies to check.

- would render feasible complex control systems with a significantly reduced level of corruption and human mistake.

Any developer of such systems, in particular regarding the digitalisation of paper documents and the efficiency of telecommunication systems should learn from the experience and reasons for the introduction problems of the digital tachograph as well as the motorway truck toll system in Germany.

However, it should be clearly understood that not even the most sophisticated electronic information exchange system could stop the owner / director of for e.g. "Stone Transport Ltd", who may have lost his / her good reputation in the UK, to install operations in France under the name "Transport Borec SARL" or in Germany as "Müller Transport GmbH". Unfortunately, straw-men can always do "good" services. To face such situations, other means than just those available in the system of access to the profession in the road transport industry are needed.

Question 5: Is it called for that Community legislation prevents that an undertaking which has been disqualified establishes in another Member State? If yes, what should the solution be? (See also question 10).

IRU:

Yes, a disqualified undertaking should be prevented, though not for ever but for a reasonable period to be defined, by legislation to establish in another Member State (see also reply to Question 2).

An electronic exchange of information among competent authorities should serve as a tool. Authorities should establish a list of companies which should also be subject to such an information exchange, and keep it updated.

The proposed on-line central register would help to solve this problem (see our reply to Question 4.)

2.4. Simplification

Question 6: Are there any administrative burdens associated with measures considered useful in this questionnaire that could be alleviated or abandoned? If so, by what means could that be achieved?

IRU:

Implementation of harmonised EU-wide rules, established at EU level and monitored by the European Commission, falls within the competencies of Member States.

Actual administrative harmonisation and simplification can be best advanced at Member State level. The European Commission must provide the means for a regular exchange of best practices among authorities and industry, so that they can learn from those that have found the simplest and most efficient ways of implementing EU rules in a harmonised way.

The tremendous possibilities offered by modern communication tools and the Internet should be thoroughly explored and best practices identified, if need be by a dedicated project financed by EU funds. Simplification and reducing administrative burdens today goes through the Internet, sharing best practices and exchange of information on-line. The proposed on-line central register would indeed help to solve this problem (see our reply to Question 4.)

3. GOOD REPUTE

3.1. Conditions to be met

Question 7: Should it be required that, to be deemed to be of good reputation and granted admission to the occupation, an applicant must not have committed any repeat offences?

IRU:

Yes, in principle, but not for "any" repeat offences. A common EU description / list / interpretation of substantial/serious offences is needed, whilst at the same time clearly defining the cases where

the manager can be held responsible for serious offences committed by his drivers. Such offences should be of substance and really repetitive as well as restricted to evident and proven cases. An automatic responsibility for managers, as is now regrettably the case under the new EU Driving and Rest Time Rules Regulation 561/2006/ EC, is not acceptable and must not be extended further.

An EU-wide classification of offences (and later on sanctions) should also be developed, in cooperation with the industry.

As a matter of fact, an initial list of serious infringements concerning EU driving and rest time rules has been detailed under annex 3 of the Enforcement Directive (EC/22/561). Moreover, the same Directive authorises the Commission together with Member States to give further guidance and weighting for additional infringements under the Driving and Rest time Rules. This work should be carried forward with input from industry stakeholders, whereby any schematic approach should be avoided and each infringement should be considered by authorities separately as to its extent and seriousness.

Question 8: Should the definitions of serious offences which constitute a barrier to admission to the profession be harmonised at European level?

IRU:

Yes. In addition, work should start on EU harmonisation of sanctions.

3.2. Person concerned

Question 9: Should European legislation include a list of persons to whom the requirement of good repute applies? If your answer is yes, should the list include categories other than managers, directors and persons who have interests in the undertaking?

IRU:

The EU legislation should define a limited list of persons who should have good repute (and a CPC) like managers and directors in charge of the undertaking's daily transport and logistics activities. The extension to "persons who have interests in the undertaking" is not advisable due to the vague term used to depict this category of persons.

3.3. Regulation by the competent authorities

Question 10: Should the licensing authorities be given easier access to information about judgments and penalties which bar an operator from being granted admission to the occupation?

IRU:

Yes, such an easy access to (a common pool of) judgments and penalties should be provided for by licensing authorities. It should be completed with an international exchange of information among authorities (see reply to Question 5 above).

Question 11: Is the current information exchange system on infringements and sanctions sufficient? If not, what improvements do you suggest?

IRU:

The current system is insufficient. Member States do not even inform the Commission of licences being withdrawn. The international information system should cover all types of infringements (to be harmonised and classified according to their seriousness), not only offences related to transport rules. If a reliable basis for international information exchange is really created, all infringements should be added up for offences committed anywhere on EU territory.

It may be useful to introduce a Black List of non-abiding operators from whom the licence has been withdrawn.

The proposed on-line central register would help to solve this problem (see our reply to Question 4).

4. FINANCIAL STANDING

4.1. Method for assessing financial standing

Question 12: Should the methods for assessing financial standing be further harmonised?

IRU:

Yes.

If your answer is yes, on the basis of what financial ratios should the assessment be made? What should the thresholds be? Who should evaluate them? At what intervals should this be done?

IRU:

There are many options¹⁷. The use of supplementary indicators like debt ratios may be advisable (optional).

Financial standing requirement thresholds should remain the same (Euro 9,000 and 5,000).

The evaluation on fulfilling the criteria should be made by the authorities (option: with the involvement of transport associations – depending on an agreement between the authorities and the associations in the Member States concerned). In case of “privatising” this state function, clear audit guidelines should be defined.

Regarding frequency of control, see reply given to Question 4.

Clearly, the issue needs further investigation (a study for e.g. on existing best practices) and a debate within the proposed public-private Committee of Enquiry.

4.2. New avenue to explore

Question 13: Should the option of compulsory professional liability insurance be considered in greater depth? If your answer is yes, should the system supplement or completely replace the current system? What risks should such insurance cover and what minimum guarantees should it provide?

IRU:

Any compulsory liability insurance should remain optional for the applicant transport undertaking if introduced and if chosen by the undertaking then it should be accepted by the licensing authority. In the present context, the scope of the insurance should by preference be limited to the function of meeting the “financial standing requirement” but exclusively in the sense of a bank guarantee taken out for the same purpose.¹⁸ Any additional coverage (such as for “professional liability”) would rather lift responsibility away from transport operators and its introduction in a compulsory way is not advisable.

A positive by-product of using freely professional liability insurance would be the creation of a market driven financial instrument for raising standards in all aspects of road transport operations as companies strive to reduce their premiums.

It is recalled that in goods transport, cargo insurance, whether based on national law or on the CMR, is a widespread practice and worthy of consideration for becoming part of the EU acquis.

Indeed, one should note that as far as the bus and coach sector is concerned, operators are subject to liability in case of personal injuries, deaths and damage to property within the framework of the EU insurance legislation (and therefore, outside the access to market/profession regime). Operators face unlimited liability in the vast majority of the EU Member States. As a result, it is

¹⁷ A possible mix / options of means to satisfy the financial criterion: own assets and reserves (definition needed), deposit / bank or insurance guarantee, etc.

¹⁸ The IRU Member Association in the NL, TLN, thinks that professional liability insurance “should replace the existing financial standing requirement since it seems to have many advantages. The introduction of this professional liability insurance, its scope and its consequences should be studied thoroughly”. ZMPD (PL) thinks it should become the fourth access-to-the-profession criterion.

becoming increasingly difficult for operators to insure the risk. Many are underinsured and get into serious problems when an accident occurs. The negative impact on the entire sector is enormous. In some cases, the involvement of the trade association establishing mutual funds to provide additional cover for companies has helped to solve the problem. Indeed, the motor vehicle insurance directives lay down what the minimum amounts to be insured are (on the basis of the CVR Convention which applies in few EU countries).

Obviously, the issue needs further investigation, possibly within the framework of a public-private Committee of Enquiry as suggested by the IRU.

5. PROFESSIONAL COMPETENCE

5.1. Harmonisation of examination level

Question 14: Is further harmonisation of examinations necessary? What dispensations could be abolished?

IRU:

A further harmonisation of examinations is necessary in order to achieve a solid standard of examinations EU-wide. Test centres should be certified at EU level together with training centres which "prepare applicants for the examinations". Concerning the latter, industry initiatives (like the IRU Academy) should be supported and recognised.

A common pool of questionnaires can also be developed, for e.g. with the help of Community funds.

All exemptions should be abolished with the possible exception of a limited number of advanced university diplomas.

5.2. Person concerned

Question 15: Should the holder of the certificate of competence be an employee of the company concerned and a permanent resident of the Member State in which the company is established?

IRU:

The CPC holder should be permanently working for or employed by and / or the owner (in case of owner-driver) of the undertaking. The place of residence is a secondary issue. The category of persons holders of CPC should be carefully extended to managers and directors in charge of the undertaking's transport and logistics activities (see reply to Question 9).¹⁹

6. OTHER QUESTIONS

Question 16: Do you have any other comments or suggestions which you consider should be taken into account during the revision of the European legislation on admission to the occupation of road haulage operator?

IRU:

Rules of access to the profession cannot solve all problems alone like for e.g. periodic and structural market over-supply.

They should be completed with flanking measures. A few of these measures have been mentioned above (see reply to Question 1).

Further consideration should be given to reviewing EU legislation which may distort (sub) contractual relations such as for e.g. working time rules applied only in respect of employed drivers.

¹⁹ The IRU Member Association in Denmark, DTL believes that making rules tougher, as supported above by the IRU, "would limit the opportunities for bona fide companies to act efficiently in the market... as our companies become more and more globalised".

Furthermore, awareness should be raised to and strict rules applied for shared and transparent responsibility and legal liability relations between operators and shippers. PPP platforms should be set up to reinforce control and enforcement in the road transport sector in general and regarding access-to-the-profession rules in particular.

Question 17: Would you like to propose other measures to avoid administrative burdens associated with measures considered useful in this questionnaire?

IRU MEMORANDUM

TOWARDS AN EFFICIENT AND BUSINESS-FRIENDLY FRAMEWORK FOR ENFORCEMENT AND CONTROLS IN ROAD TRANSPORT IN EUROPE AND BEYOND

I. POLITICAL, MARKET AND LEGAL FRAMEWORK

With successive European Union (EU) enlargements and the recently launched complementary EU Neighbourhood Policy, the EU Internal market and its main rules are already covering or are expected to cover in the foreseeable future, the whole European continent and its immediate neighbouring regions and countries.

As a result, a fair and efficient functioning market and rules, offering equal chances to all, become essential ingredients for the European transport and travel area, where transport and travel are key contributors to cultural understanding and economic prosperity, with more than 50% of the international exchange of services.

The bulk of the EU road transport market has been liberalised in both goods and passenger transport, with the partial exception of cabotage, where some specific rules should be observed. Coach tourism in the EU has been fully liberalised, whilst international regular services by bus and coach still need authorisations but without quantitative restrictions.

The process of establishing common EU rules to regulate key international road transport activities has made considerable progress over the years in such areas as access to the profession, market access, social and technical rules.

The same process has also been launched at the pan-European scale with the ECMT quota of multilateral licences in freight transport, as well as the ASOR Agreement and the entry into force of its successor, the Interbus agreement on occasional passenger transport services by bus and coach. The idea of a similar agreement to cover international regular services by bus and coach has also been launched.

Remarkable progress has been achieved over the years in further creating and implementing wider international road transport related facilitation and cooperation instruments in the framework of the UNECE and the ECMT.

Notwithstanding the progress in establishing a common regulatory framework for road transport in Europe and in particular the EU, enforcement and controls have largely remained outside this facilitation and harmonisation mainstream, mainly because of the prevailing national competence in this area. Typically, interpretation of legislation, enforcement, controls and sanctions are issues that are dealt with almost exclusively at national and sometimes even at regional level. Cooperation and information exchange between authorities is at its beginning even within the EU, whilst other stakeholders, such as the road transport industry, are only occasionally recognised as having a stake in the area of enforcement and control (MoU in preparation with CORTE, partnership with TISPOL and EUROCONTROL ROUTE).

As a result, even the most advanced EU transport and travel market is segmented in many country-specific enforcement and control areas, thus undermining the efficiency of the market and the legislation, whilst placing a disproportionate burden on the shoulders of road transport operators to respect the rules and control authorities to enforce them.

The market is underperforming, the legislation is underachieving, drivers' productivity is reduced, and operators and authorities are experiencing increasing costs and lower return on invested private and public resources: businesses, authorities, customers and society are all losing out.

The situation is further worsened by:

- a) the regulatory framework itself, which, in many cases, is still overlapping (multilateral and bilateral, EU and national), overcomplicated, segmented (national sanctions/infringements, bilateral agreements) or, as in the case of international regular lines on the pan-European scale, simply missing,
- b) the inadequate system of fines where a driver is heavily sanctioned for purely administrative mistakes (for e.g. not indicating the number of passengers on the waybill), which do not pose any risks to road safety,
- c) in particular, the lack of political recognition of the role of collective passenger transport by bus and coach (the dominant collective mode of transport) and the benefits it brings to society, the environment, safety and mobility, which, in many cases, also reflects into improper controls and behaviour of control officers on the spot.

II. WHERE DO WE STAND IN INTERNATIONAL BUS AND COACH TRANSPORT AND POSSIBLE NEXT STEPS?

(a) Multiple market access regimes, different formalities and control documents

Currently, operators established in the EU and offering international services have to operate under several regulatory regimes depending on their destination: EU rules, ASOR, the Interbus Agreement and bilateral agreements, each with a different degree of liberalization and different control documents and journey forms.

IRU requests:

- Reducing the number of regulatory regimes.
- Simplifying and harmonising the different control documents leading to one single model of international regular service authorization and one journey form for occasional services.
- Extending the coverage of the Interbus Agreement to include other potential Contracting Parties in Europe and, possibly, beyond.
- Studying the possibility of creating a similar international instrument for international regular services by bus and coach in Europe and beyond, to facilitate and harmonise procedures, including authorizations and their issuing.
- Focusing on the elimination of illegal services in international regular lines by bus and coach, including by better control on authorizations.
- Optimising the use of information technologies to facilitate the administration of documents.

(b) Community licence & certified true copies

The current system applicable in the EU has led to over 100 different models of certified copies carried on board of vehicles. This creates an impossible situation for operators, drivers and control officers.

IRU requests:

- Reducing the flexibility allowed to EU Member States to produce certified true copies.
- Studying the possibility to adapt the EU Community licence model for use by third countries.
- Putting to good use information technology to facilitate the handling of control documents.

(c) Varying national technical and safety rules

Many national rules still exist even in the EU in the field of technical and road safety, such as different maximum authorised axle and total weights for touring coaches, different maximum speed limits, as well as the wide variety of rules relating to the installation and wearing of safety belts in touring coaches.

IRU requests:

- Further international harmonisation and simplification of the rules to facilitate business and controls, including harmonisation of maximum authorized speed limits for buses and coaches in Europe at 100 km/h, and international standardization of rules on the use of vehicle traffic lanes by commercial vehicles.
- The fight against the multiplication, in certain countries and regions, of specific road signs and traffic signals, not harmonised at the International level.
- Promotion of best practices, including those developed by the industry, such as the IRU Bus and Coach Safety Programme of 20 points.

(d) Awareness and transparency of rules, their enforcement and modification

The EU has made substantial progress in establishing a system of consulting and informing the industry about the legislative process and its outcome. Yet, many things remain to be done in specific areas, such as the interpretation of rules, national particularities in enforcement, categorisation of infringements and sanctions, information on traffic bans etc.

Beyond the EU, with some minor exceptions at bilateral, intergovernmental and industry level, there does not exist an established international system and culture of consultation, information exchange and alerting the industry about enforcement, modification or entry into force of new rules in individual countries.

As a result, lengthy road-side checks, under-informed operators, drivers and enforcement agents without minimum foreign language skills, divergent infringement/sanction regimes and unjustified penalties are everyday realities.

IRU requests:

- More transparency in the implementation and enforcement process in the different EU Member States. Information on transposition dates, entry into force and national particularities, with Internet links to national laws, should be made readily available, including on the websites of the EU and other relevant intergovernmental bodies and institutions. Control officers should also be informed and aware of the entry into force of new EU rules in the various EU countries, in cases of different transposition dates.
- The creation of a European system of information exchange on new and/or country-specific rules.
- The reinforcement of the competence and knowledge of control officers, to allow effective and fast controls.
- The potential for raising the awareness and knowledge of rules both of operators, drivers and control officers is practically unlimited and should be tackled in a genuine public private partnership, through training, including with the support of the IRU Academy, joint awareness campaigns, public-private MoUs and codes of conducts, common methodologies (checks, sanctions) and classifications of infringements (heavy, medium, low) etc. In an improved political environment and perception of bus and coach transport, the attitude of control officers should also change.

(e) Road-side checks

Road-side checks are indeed of great concern in road transport. This is particularly the case in collective passenger transport by bus and coach, where road-side checks are typically carried out at the backdrop of several dozens of passengers waiting for the check to be completed.

IRU requests:

- Shorter and better targeted controls (focus on an agreed selection of main items²⁰) and improved exchange of information between relevant control authorities inside and outside the country (avoid superposition of identical controls *en route*, e.g. by creating an international/European control form), including with licence-issuing authorities.
- The duration of controls should not exceed a reasonable time, e.g. comparable to that of controls on a private car.
- The post-control situation should also be clarified, in particular, in cases where a coach with passengers on board is immobilized.
- A dedicated code of best practice for control officers should also be developed to address the practical aspects of issues, such as information to be given to drivers/operators, the duration of controls etc., in order to guarantee the welfare of passengers.
- Priority should be given to identifying and addressing the small minority of frequent and serious offenders rather than penalizing honest operators.
- The place and role of controls at premises may also need to be redefined, in order to better target frequent/serious offenders.
- The creation and promotion of a European network of bus and coach terminals. It should link the main European destinations to support an effective and high quality system of international regular lines. An international regular line should not exist if it does not have at departure and destination the support of a bus and coach terminal. This would also facilitate controls by focusing most controls at terminals, thus better targeting and reducing controls at the roadside, which constitute a major problem for the service.
- Based on their outstanding safety performances, buses and coaches should enjoy equal treatment with private cars, in particular in case of (temporary) traffic restrictions due to difficult traffic or weather conditions.

(f) Border and passenger's identity control

The EU external borders moved further East but the problem of excessive waiting times at these borders remains up to now unresolved. In the meantime, security-related controls have intensified, leading to vehicles and passengers' identity checked not only at the external EU borders but also at some internal borders inside the Schengen area.

A touring coach with 50 or more passengers also takes time to check, causing significant delays on the time schedule. This again has a particularly negative impact, in particular on international regular services which run according to a fixed timetable.

In addition, the Schengen Acquis places responsibility for the control of travel documents on the driver. This may facilitate the task of control authorities, but it should be noted that the driver is not legally competent to check travel documents and operational circumstances do not allow him to do so either. Drivers are also not properly trained to carry out identity checks. In addition, the physical and legal circumstances in which international bus and coach drivers and operators work make it more often than not impossible to check a passenger's travel document.

IRU requests:

- Controlling identity documents should remain the ultimate responsibility of authorities.
- Border controls of buses and coaches should not exceed 20-30 minutes.

²⁰ As a matter of fact, to avoid lengthy controls of brakes at the road side, some countries (D) have worked out a « safety certificate » for brakes, carried on board of the vehicle and proving that adequate controls have been performed; the certificate exempts the vehicle from such checks at the road side.

- Controlling valid travel documents to enter or leave the Schengen area must be carried out solely at the borders of the Schengen area. No systematic controls should be carried out inside the Schengen area. Bus and coach operators should not be penalised for passengers who do not possess the necessary travel document for transports inside the Schengen area. In case an improperly documented passenger is found on board of a bus/coach, s/he should be taken in charge by authorities and the bus/coach should be allowed to continue its journey.
- Control authorities and operators should work more closely together to try to find solutions to minimise the impact of intensified security related controls on bus and coach journeys.
- The role of jointly elaborated and agreed public-private MoUs and best practices, such as the IRU voluntary security guidelines for bus and coach operators and drivers, should be recognized and enhanced.

III. RECOGNISING THE ROLE OF BUS AND COACH TRANSPORT AND THE NEED FOR A EUROPEAN PUBLIC-PRIVATE PARTNERSHIP AND APPROACH IN ENFORCEMENT, CONTROLS AND PREVENTION

To change this situation, top priority must be given to a change in the political perception of the role and place of collective passenger transport by bus and coach, and, consequently, the related problems of enforcement, control and prevention.

A simple and transparent regulatory framework, applied in a harmonised way across Europe and, where appropriate, its neighbouring countries and regions, is a necessary pre-condition to achieve better understanding, higher compliance and efficient enforcement.

It should also be recognized that the large majority of operators are honest and law-abiding and this should be reflected in the general approach to controls adopted by control officers, as well as in an adequate system of fines that targets the failures which pose a risk to road safety and the functioning of the market.

The lack of EU and intergovernmental competence in the field of controls and infringements/sanctions should not be a barrier to start progressively developing a European approach on enforcement, controls and prevention in a joint public-private partnership. This should involve all relevant stakeholders, such as national governments and control authorities (including bodies such as EUROCONTROL ROUTE, TISPOL and CORTE), the European Commission, UNECE, ECMT, the road transport industry, manufacturers and possibly other bodies having a stake in enforcement and controls.

The aim should be to come to a more efficient and fairer enforcement and control of existing rules, whilst at the same time targeting those that commit serious and repeated infringements of rules. Better exchange of information, including between licence-issuing authorities, who solely have the right to withdraw licences of frequent/serious offenders, as well as the exchange of best practices, experience in training, joint awareness campaigns and better use of IT should be given priority, with the support, where necessary, of EU funding.

A multi-stakeholder Europe-wide Forum on issues related to enforcement, control and prevention can certainly prepare the ground and accompany such European strategy. The feasibility of the creation of a European Road Transport and Control Agency should also be considered.

The current mid-term review of the White Paper on EU Transport Policy provides an excellent opportunity to launch the idea and establish the framework of such a partnership.
