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## **ETF comments and responses for the public consultation on the revision of the community legislation on the access to the road transport market and on the admission to the occupation of road transport operator**

### *What is ETF?*

ETF (the European Transport Workers' Federation) represents more than 2,5 million transport workers from 222 transport unions and 40 European countries, in the following sectors: railways, road transport, maritime transport, inland navigation, civil aviation, ports & docks, tourism and fisheries.

### *General considerations*

ETF supports the objectives of the Commission and especially those referring to 'enhancing the clarity, readability and enforceability of the rules governing access to the market'.

This being said, ETF suggests that, in order to enhance "enforceability" - which ETF also believes to be of paramount importance to enhance road safety and **to fight against illegal practices in the areas of employment and working conditions** - the Commission could take guidance from "Directive 2006/22/EC of the European Parliament and the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) Nos 3820/85 and 3821/85 concerning social legislation relating to road transport activities and repealing Directive 88/599/EEC".

In this Directive, the Commission demands, for example, that Member States apply a national coherent enforcement strategy. For this purpose, they may designate a body to coordinate such activities.

So why should the Commission not use this opportunity and adopt an approach to counter a "fragmented" enforcement? For ETF, this coherent enforcement strategy must involve all aspects of European legislation in relation to market access and the admission to the occupation as well as the social legislation in the sector, and it must also promote a harmonised definition of serious offences and sanctions.

The Directive foresees an exchange of data, experiences and information between Member States and the establishment of systems for electronic data exchange. The Commission can define a common method for an efficient exchange of information as well as guidelines for better enforcement practices.



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ETF demands higher minimum standards (or, as it is stated in the text of the consultation: higher qualitative requirements) regarding access to the market and admission to the occupation. This may be a contribution to the fight against illegal practices with respect to employment and working conditions.

On this issue, ETF demands the extension of the Regulation for driver attestation to all EU nationals involved in international traffic. The trade union organisations affiliated to ETF **are strictly against the statements by Member States claiming that illegal employment of EU nationals in the road haulage sector does not constitute a problem**<sup>1</sup>. On the contrary, trade union organisations frequently lodge complaints with the authorities as well as the employers (and in certain cases such as in Germany the social partners and the enforcement authorities make joint commitments) regarding illegal employment and remuneration practices.<sup>2</sup>

Furthermore, ETF demands that standards shall also be applicable to vehicles of less than 3.5 tonnes and particularly in the courier and express delivery sectors.

For ETF, it is critical to have a European definition of road cabotage, if one wants to fight against illegal employment practices including the non-implementation of the Directive on ‘the posting of workers in the framework of service provision’.

Finally, ETF believes that the public consultation cannot replace the Sectoral Social Dialogue. In its communication on the “European Social Dialogue, a power for modernisation and change” (COM/2002/0341 final), the Commission stipulates that “**the Commission** intends to consult the social partners on major initiatives having social implications”.

In the text of the public consultation there are questions regarding the attestation of professional drivers and the posting of workers with respect to cabotage. There can be no doubt that this is an initiative of the Commission with social implications.<sup>3</sup>

### *Specific considerations*

Answers to questions:

#### Part A Access to the market

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

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<sup>1</sup> Page 6 of the English text.

<sup>2</sup> To illustrate our point, we quote the campaign of FNV Bondgenoten for ‘Equal work, equal pay’ and the published report entitled ‘Offered for sale’. We also quote the commitment of the social partners in Germany, who want to fight against illegal practices together with the authorities.

<sup>3</sup> ETF is also surprised to learn that a study on the implementation of driver attestations has recently been conducted by the Commission. This fact has never been communicated in the Sectoral Social Dialogue committee, even though the social partners were the initiators of that Regulation.



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The Commission proposes three options. We are in favour of the first one which refers to merging the market access rules on goods and passenger transport (including cabotage).

**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?

At any rate, there must be a definition for ‘public cross-border services’. In Regulation 684/92, the category of “specialised regular services” also includes “public cross border transport. Does this transport constitute ‘public cross border services’? And specialised regular services are exempted from the authorisation, when they are covered by a contract concluded between the organiser and the transport operator (Article 3 Para. 2 of this Regulation).

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

A high level of professionalism does not only depend on professional liability insurance. The same statement is true for the protection of customers/passengers and third parties. This protection depends primarily on the correct application of traffic rules and the social legislation regarding the driving and rest periods as well as the working hours of professional drivers. Having said this, stricter requirements regarding the financial standing of international transport operators, for example, by demanding professional liability insurance may also contribute to a high level of professionalism in the sector.

**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?

**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?

In its general considerations, ETF pronounced itself in favour of better enforceability. Therefore we also advocate checks at shorter intervals and a reduction of the validity period for the community licence (three years).

**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?

The Regulation should standardise the certified copies, as this would facilitate checks.

**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?

It is in the interest of the national authorities in charge of enforcing the application of the legislation on driver attestation that these attestations should be made more uniform. Electronic readability might be a method of achieving this.



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For the future, it should perhaps be envisaged to link the drivers' ID card issued in connection with the digital tachograph with this driver attestation.

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

Yes, for example to a maximum validity period of three years.

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

It is in the interest of the national authorities in charge of enforcing the application of the legislation on driver attestation that these attestations should be made more uniform. Electronic readability might be a method of achieving this.

**Nonetheless it is of critical significance for ETF to extend the scope of this attestation to all EU nationals. This might facilitate the 'disclosure' of illegal employment practices.**

The trade union organisations affiliated to ETF are strictly against the statements by Member States claiming that illegal employment of EU nationals in the road haulage sector does not constitute a problem. On the contrary, trade union organisations frequently lodge complaints with the authorities as well as the employers regarding illegal employment and remuneration practices<sup>4</sup>.

**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?  
This seems to be self-evident to us.

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

The rules applying to cabotage must be thoroughly reviewed from bottom to top. There are means of communicating the scheduled journey by fax or electronic mail to the competent authorities together with its duration.

#### *Passenger transport*

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

During previous consultations it became clear that the sector believes that the periods granted to process such requests are too long (it is necessary to wait five months before an appeal to the Commission).

The authorisation regimes must be maintained, but they could be speeded up.

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<sup>4</sup> For illustrative purposes we quote the campaign of FNV Bondgenoten for 'equal work, equal pay and the published report entitled 'offered for sale'. We also quote the commitment of the social partners in Germany, who want to fight against illegal practices together with the authorities.



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**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?

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

**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?

The authorisation regimes must be maintained, but they could be speeded up.

### *Cabotage*

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

Firstly, it would be suitable to define in the revised Directive (relative to Directive 96/26) the concept of cross-border urban transport and/or to repeat the definition of urban and suburban services in Regulation 122/98.

Furthermore, ETF does not see any benefits in allowing cabotage for regular services in an urban centre or a cross-border conurbation.

**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?

**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?

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

**Question 20** - What is the stakeholders' experience with the application of Directive 96/71/EC to cabotage transport operations? What is their opinion on exempting cabotage operations from the scope of that Directive provided that cabotage is limited to a period shorter than one month?

For ETF, it is critical to have a European definition of 'road cabotage', if one wants to fight illegal employment practices including the non-implementation of the Directive on 'posting of workers' in the framework of provision of services. It cannot be measured just in terms of time. It has also to be measured in terms of frequency and on which frequent basis the same assigner is involved. It may not be possible that a foreign haulage company performs domestic transport operations on a regular basis for the same customer on every journey to, for example Sweden, without being established in Sweden.

ETF wishes to draw the attention of the services of DG TREN to the fact that Article 3 (3) of Directive 96/71/EC states that: "Member States may, (our bold print), **after consulting employers and labour**, in accordance with the traditions and practices of each Member State, decide not to apply the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) when the length of the posting does not exceed one month.

### Part B



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**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?

**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?

**Question 3:** What exemptions and dispensations could be abolished?

The ideal solution would provide for - in the interest of enforceability, road safety and the fight against illegal employment and working practices - a recourse to "core legislation" with high standards for admission to the occupation for all categories of transport operators. Nonetheless and for international transport (including cabotage), it may be possible to demand additional criteria such as the requirement to realise a substantial business volume in the country of registration.

**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?

**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).

**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?

**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?

We refer again to our general reflections, which also mentioned the need for a coherent and enforcement strategy in relation to market access and admission to the occupation as well as European social legislation (working hours, driving and rest periods, occupational training, driver attestation, non-discrimination of drivers and application of the 'posting of workers' Directive).

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

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

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

There can be no doubt that a lack of repeat offences must be a condition establishing good repute when granting admission to the occupation, as it is the case in the current Directive. We reiterate that, in our general considerations, we mentioned the need to establish a coherent enforcement strategy and to harmonise the definition of serious offences and sanctions. It will also have to include offences against rules governing the working hours of drivers as well as their vocational training.



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**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?

It is indeed necessary to establish, on the European level, a list of categories of persons, to whom the requirement of good repute applies.

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

**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?

Compulsory professional liability insurance is an option, which should be studied in greater detail. In any case, it is necessary to increase the minimum threshold to be complied with and to review the financial standing every year.

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

**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?

A coherent enforcement strategy requires harmonised tests, which are differentiated according to experience or diplomas. Such a strategy also requires that a person holding a certificate of competence should be permanently employed and be a permanent resident of a Member State.

#### *Other comments*

ETF demands that Article 3 Para. 2 Item c) in Directive 96/26/EC, i.e. the requirements for good standing, should also take into account the rules governing the working hours and the vocational training of drivers.



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