

**Comments on the 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**

By the Ministry of Transport, Public Works and Water Management in the Netherlands

PART A
ACCESS TO THE ROAD TRANSPORT MARKET

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

The preferred option is to keep the current set-up (option 3).

Arguments:

- 1. To make a single new piece of legislation sounds good, but there is a big risk that the outcome is not more readable and coherent than the current acts are now, and that in the end what is gained is not a real simplification. It could be considered to consolidate the First Council Directive into Council Regulation 881/92. Regulation 881/92 still retains a double threshold, simplify it to 3.5 maximum authorised weight as in Directive 96/26/EC.**
- 2. The market of goods transport and the market of passenger transport are very much separate markets; a simplification by merging is not needed from the viewpoints of the actors in these markets.**

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?

Local services should be covered by regulation 684/92 and should not be excluded, either from the regulation nor from the authorisation regime.

Arguments:

- 1. The Netherlands prefer a European system of licensing (access to the profession) by which an entrepreneur must satisfy European rules when providing local services in public transport**
- 2. In the Netherlands entrepreneurs in public transport have to obtain a concession to operate on the Dutch market. An authorisation is additional.**

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

No, higher qualitative requirements should not be imposed on carriers engaged in certain types of road transport. Effective implementation and enforcement is preferred.

Arguments:

- 1. A high level of professionalism is in the interest of the carriers themselves, to be able to operate in the European market and keep their customers happy.**
- 2. Governments should facilitate not regulate a higher standard of professionalism than at present is legally required for access to the profession.**
- 3. Professional liability could be an option as additional requirement (see question 13 Part B).**

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?

No. Verification of all license holders once in 5 years keeps the data of the registers up to date. In case of doubt in the Netherlands the licensing authority NIWO has the option to check at any time whether the Dutch operator still satisfies the conditions for maintaining the licence.

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?

No. Reducing the validity period would lead to higher administrative costs and offers no advantages with regard to a qualitative better market. For passenger transport it could be considered to lengthen the validity of the Community licence to 10 years to reduce the administrative costs.

The problem of the actual returning of the withdrawn Community license is familiar in the Netherlands. The authority for road haulage licences NIWO will have new legislative tools for this purpose in the new Road Haulage Act, that is expected to come in force in the middle of 2007.

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?

Yes, it is needed to standardize specifications for certified copies and to publicize the issued licences in order to have a transparent market. Incorporating more security elements in certified copies is desired. In the Netherlands for instance parts of the text disappear or get another colour when photocopied. Yes, it would be helpful to reduce costs by digitalising the registry of the issued Community licences in the long run.

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?

In line with answer on question 6 above also the driver attestation should be made more uniform across the Community.

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

No (also see answer to question 4 and 5)

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

No. The reason to introduce the driver attestation was unfair competition by differences in wages and labour conditions between EU countries and non-EU countries. Within the EU this would result in a limitation of the principle of free movement of workers.

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?

If 'journey forms' or 'passengers waybills' are maintained and not abolished, the answer is yes of course.

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 effectiveness of a Community wide journey form is doubted. Should it be used next to the CMR and or the ECMT trip registration? Will it really replace most of the national documents? The use of this form will cause administrative costs. The certainty that the forms are filled in correctly can only be reached with a huge (unrealistic) enforcement effort.

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

The authorisation regime for international regular passenger services within the EU by EU-carriers should be simplified.

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?

Yes, if possible it would be desirable to shorten the time needed for the authorization procedure.

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

Comments on this question may be expected from the operators. The authorities are not aware of complaints.

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?

Digitalising the authorisation regime would improve the administrative procedures.

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

Yes, urban and suburban cabotage operations in the course of international services should be authorized by the national authorities.

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?

To have legal certainty and effective enforcement harmonisation of rules is necessary, however the principle of liberalised goods transport markets should be taken into account and minimizing restrictions should be pursued. A more precise definition would be useful if it does not lead to protection of markets.

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?

The basic assumption is improving transport efficiency without causing unfair competition. The examples as shown in the consultation paper could both be workable, but choosing for one would exclude the other kind of cabotage. The examples form the extremes of the scale of possibilities thereby restricting forms of cabotage that are more towards the middle of the scale with possibilities.

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

In principal no addition to the list. Tariffs and contractual conditions etc. (art. 6.1.a.) can be deleted and should be left to the market parties.

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 operations from the scope of that Directive provided that cabotage is limited to a period shorter than one month?

No experience yet because it is not applied in practice due to practical implications in the field of enforcement. Employment requirements of the country where the operator is registered should be applied, even if cabotage is done longer than one month. This means that if the company is not established in that country and the driver is not posted there both remain falling under the regime of the country of registration.

Question 21 - Are there any other issues regarding the market access in road transport that stakeholders would like to raise? The Commission services are particularly interested in any proposal for augmenting the quality standards and optimisation of road transport operations while avoiding any additional administrative cost.

The authorities should restrict themselves to checking the actual standards for the access to the market and enforcing the level playing field. Augmenting the quality standards and optimisation of road transport operations above the standards for the access to the market should be left to the market parties.

PART B

ADMISSION TO THE OCCUPATION OF ROAD HAULAGE OPERATOR

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?

No higher minimum standards, but effective implementation and enforcement are needed. Exception of certain categories should be possible.

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?

No other criteria have to be introduced. On the basis of an application it is not possible to judge whether or not the applicant will establish a letter-box company. Letter-box companies can only be assessed in day to day practice of the company after the company has received a licence and has become operational. Also see answer to question 15.

Question 3: What exemptions and dispensations could be abolished?

Consolidate the First Council Directive into Council Regulation 881/92. Regulation 881/92 still retains a double threshold, simplify it to 3.5 maximum authorised weight. as in Directive 96/26/EC.

It could be considered to drop the quoted dispensation because it is hard to give a good interpretation: "The competent authorities in the Member States may, by way of exception and in certain special cases, definitively authorize a person not fulfilling the requirement of professional competence referred to in Article 3 (1) (c) to operate the transport undertaking provided that such person possesses at least three years' practical experience in the day-to-day management of the undertaking."

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?

Not more frequently. Check once every five years with the possibility to do an interim check in case of doubt is sufficient.

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)

Yes. When a licence is applied for by an operator from another Member State the trustworthiness should be verified in that Member State. Only the authorities of that Member State can assess the seriousness and prescription of the offences. Often a straw man is involved so that it is not clear that the actual manager has lost his good repute. Exchanging information with competent authorities in this field is therefore important.

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?

Also see answer to question 12. It could be considered to examine to abolish the periodical 5 yearly assessment of the financial standing and leave that to the financial and market parties.

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?

That depends on the seriousness of the offence which is difficult to classify in Community rules.

Operators who repeatedly commit offences disqualify for the profession. Describing the offences and the seriousness is of importance to judge case by case in which situations a licence should be withdrawn.

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

Definitions should be left to the discretion of the Member State, but certain harmonisation is welcomed to promote the level playing field.

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?

No.

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?

The licensing authorities need cooperation with the Ministry of Justice that can provide a statement on the trustworthiness and provide information on relevant sentences. The profile of a trustworthy operator should be determined together with the stakeholders but the screening should be in the hands of the administrative bodies of the Ministry of Justice.

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

The current information exchange system on infringements and sanctions is not always sufficient. There is no structural exchange of enforcement related information between the relevant enforcement bodies in the Member States. Over the last 6 years the ECR is gaining some experience with this kind of information exchange.

The data exchange between the enforcement bodies should cover the broad scope of passenger and goods transport by road and should not be limited to infringement/sanctions related information.

Legal

Although the legal bases of exchanging enforcement related information on a Community level is in place, there are still problems on Member State level due to the different national legal regimes. To improve the exchange member states should endeavour in using the legal possibilities.

Technical

An European wide secured data exchange network should be realised. Or, already existing systems should be adapted for this kind of data transmission (e.g. TESTA).

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?

Also see question 6. It could be considered to examine to abolish the periodical 5 yearly assessment of the financial standing and leave that to the financial and market parties. The financial standing is checked in differing ways in the member States. Harmonisation would be appropriate if the requirement is maintained. The minimum requirement of 9000 euro

respectively 5000 euro for each successive truck is acceptable. The way of assessing that the capital is actually available must be effective. In the Netherlands a statement on the minimum available risk-bearing capital must be provided by a register accountant (RA) must be handed in.

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?

Yes it should be considered in greater depth. If the requirement is maintained for smaller companies the present requirements for credit worthiness could remain the same. For larger companies professional liability insurance could be a possibility.

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

On paper harmonisation of examinations is in order, however if “CPC tourism” is observed in cases when it is easier to get the certificate in another Member State. Diverging to the lowest point should be prevented.

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?

The CPC holder does not necessarily have to be an employee, but there has to be a management contract in which the competences of the manager are described. It is difficult to assess that management has an actual and permanent character when the manager is resident in another Member State. It would therefore be welcomed to add that the manager should manage the company where it is established and also have a place of residence in the same Member State.

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?

No further comments

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

None