EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR ENERGY AND TRANSPORT DIRECTORATE E - Inland Transport

CONSULTATION PAPER

REVISION OF THE COMMUNITY LEGISLATION ON THE ACCESS TO THE ROAD TRANSPORTMARKET AND ON THE ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR

INTRODUCTION

The Community rules governing the access to road transport market and the admission to the occupation of road transport operators are laid down in various regulations and directives. Based on the Commission's commitment to "Better regulation" and to simplify the existing body of laws *("acquis")* DG TREN is considering whether and how to improve the current regime in order to

-enhance the clarity, readability and enforceability of these rules and
-better regulate certain aspects of the current regime by
-merging the current regulations and directives as far as possible; and
-reformulating certain provisions (e.g. on community licence, cabotage).

The purpose of this document is to outline these plans and to seek the opinion of the interested parties. Rules governing access to the market and admission to the occupation are historically divided into two distinct sets of legislation, although intrinsically linked: one on the access to the market and an earlier one on the admission to the occupation. The first part of this document concentrates on specific rules on the access to the Community road transport market and the second part on the conditions for the admission to the occupation, which is the basis for engaging in any transport operation.

Based on the feedback received in this initial consultation DG TREN will decide whether and how to proceed. The contributions received will be published by the Commission, unless requested otherwise by their author. The contributions should include the name, details, functions and main objectives of the organisations which send them.

Comments should reach the Commission's services no later than the **9 August 2006** at the following address:

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PART A

ACCESS TO THE ROAD TRANSPORT MARKET

1. THE COMMUNITY ACQUIS ON ROAD TRANSPORT

1.1. The legal acts in force

The market access rules for road transport can be found in these legal acts:

Carriage of goods

First Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road[1]; Council Regulation (EEC) N° 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States[2];

Council Regulation (EEC) N° 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State[3]; (Regulation (EC) N° 484/2002 of the European Parliament and of the Council of 1 March 2002 amending Council Regulations (EEC) N° 881/92 and (EEC) N° 3118/93 for the purposes of establishing a driver attestation[4].)

Carriage of passengers

Council Regulation (EEC) N° 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus[5]; Council Regulation (EC) N° 12/98 of 11 December 1997 laying down the conditions under which non-resident carriers may operate national road passenger

transport services within a Member State[6].

[1] OJ L 70, 6.8.1962, p. 2005, as last amended by Council Regulation (EEC) N° 881/92 (OJ L 95, 9.4.1992, p. 1)

[2] OJ L 95, 9.4.1992, p. 1, as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33)

[3] OJ L 279, 12.11.1993, p.1, as last amended by Regulation (EC) N° 484/2002 of the European Parliament and of the Council of 1 March 2002 (OJ L 76, 19.3.2002, p. 1)

[4] see footnote above; this regulation is only listed here for the sake of completeness. Since all its provisions are contained in Regulations 881/92 and 3118/93 it will not be referred to anymore in this paper.

[5] OJ L 74, 20.3.1992, p. 1), as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33)

[6] OJ L 4, 8.1.1998, p. 10

1.2. Merging of the current acts

At present the rules on goods transport and on passenger transport are formally separated even though they are quite similar in many areas, if not identical. It would be in principle possible to combine these rules in a single new piece of legislation. Common features of road transport would be regulated in the same provisions. This would make the market access rules more readable and coherent.

Three options can be envisaged:

OPTION 1 – Merge the market access rules on goods and passenger transport (including cabotage) contained in the four market access regulations (not counting Regulation 484/2002) and the one directive listed in 2.1. above.

OPTION 2 - Keep the rules on the transport of goods and passengers separate and only merge the respective acts (international transport + cabotage) into two new regulations, one for goods and one on passenger transport. This way the rules on international transport operations and cabotage operations would be regulated together in one act.

OPTION 3 – Keep the current set-up.

Question 1 – Is the merging of goods transport and passenger transport a real

simplification? Which option is the preferred one?

Passenger transport and goods transport are two different transport systems that have different scope and put different requirements on transport means, qualification of the entrepreneurs and drivers, etc. Therefore the merging of the regulations without a substantial change of their contents may not be regarded as a simplification. We prefer the Option 2.

2. BETTER REGULATING CERTAIN ASPECTS OF THE CURRENT REGIME

2.1. Geographical scope of Regulation 684/92

Regulation 684/92, modified by 11/98 provides the regulatory regime for international passenger transport services. It establishes a single "community licence" for the international carriage of passengers by coach and bus within the territory of the Community.

Cross-border public transport services, although local by nature, are also subject to this regulation. The regulatory regime established by Regulation 684/92, particularly the authorisation of regular services, may impose an unnecessary burden on this type of transport. It may be appropriate to exempt local services from part of the regulation.

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?

The suburban bus transport should be exempt from the scope of the Regulation 684/92 because it usually represents services subject to public service obligation that are regulated by internal regulations of the individual Member States and the carriers receive a financial compensation.

2.2. Requirements for access to the market

Under Regulations 684/92 and 881/92, in order to be authorized to carry out international journeys, a haulier or carrier needs (a) to be established in a Member State and (b) to be admitted to the occupation of road haulage operator or road passenger transport operator. The conditions to be fulfilled for obtaining admission to the occupation are contained in the Community by Directive 96/26/EC. The Directive applies to all kinds of hauliers or carriers regardless of the type of activity.
qualitative requirements should be stipulated before a haulier/carrier is admitted to certain types of road transport. This should be seen as a way to maintain a high level of professionalism in road transport within the EU. For example, an additional requirement could be the obligation to be covered by professional liability insurance, protecting clients/passengers and third parties from any malpractice of the haulier or carrier and his employees.

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

To achieve a higher reliability and quality of provided services we propose to impose higher requirements for the operation of regular bus services, particularly the financial standing.

2.3. Community licence

For both goods transport and passenger transport the Community licence is the single document used giving hauliers and operators the right to carry out international transport. In both cases the licence is issued for a period of five years. This period is renewable. Where the holder of a licence no longer satisfies the conditions required for maintaining the licence, the national authorities shall withdraw the Community licence.

Under the current rules Member States are obliged to verify at least every five years whether the haulier/operator still satisfies the conditions for maintaining the licence, including the access to the occupation. If the 5 years validity of the licence is kept, the questions arises whether national authorities should nevertheless be required to check at shorter intervals whether hauliers/operators are still conforming with the requirements

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?

There are indications that in practice it can be difficult for Member States' authorities to invalidate licences that should be withdrawn but are not returned by the holder. One way to remedy this problem could be to issue licences for a shorter period than 5 years as is the case with the driver attestation.

The existing regulation is sufficient.

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 existing regulation allows to the Member States carry on controls also in a period shorter than five years, therefore it is not necessary to reduce the period for which the Community licence is issued.

2.4. Certified copies

Each haulier/operator receives one original of his Community licence which he keeps on his premises. For each vehicle used by a haulier/operator the authorities issue a certified copy which needs to be kept in the vehicle. Problems have arisen regarding the authenticity of the certified copies. The current regulations only specify the format of the original licence (A4 size, colour blue) but leave open whether certified copies should have the same colour and whether they must be signed and/or stamped. Some countries have issued copies with "certified copy" printed on them; these copies have raised problems in some other Member States. Some Member States mention the licence plate number of the vehicle on the certified copy.

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?

A certified copy of the Community licence should have the same colour as the original, it should be protected against counterfeiting e.g. by a watermark and hologram. The regulation should specify in detail what a Member State may determine and indicate in the remark, e.g. the registration number of the vehicle, number of the hiring/lease contract of the hired vehicle, etc. We agree with the

gradual shift to an on-line registry.

2.5. Driver attestation

2.5.1. General considerations

A driver attestation must be held by drivers of goods vehicles who are nationals of a non-EU Member State employed by a haulier from a Member State and who drive vehicles engaged in the international carriage of goods subject to a Community licence. The driver attestation serves as a uniform document to certify that the driver is lawfully employed in the Member State in which the haulier is established.

A recent study on the application of the driver attestation carried out for the European Commission has revealed that, by and large, Member States and stakeholders are satisfied with the overall functioning of the system of driver attestations. However, several aspects of the driver attestation were seen to merit improvement. The *current format* is seen to lack uniformity and has caused confusion during inspections. The question was raised whether a driver attestation should be made electronically readable; it was suggested that the format of the driver attestation be standardised or even combined with the driver card for the digital tachograph. Changes in the current system that may entail considerable upfront investments will have to be assessed as to whether they can be justified by any future cost savings.

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?

The driver attestation should be uniform. To simplify the road checks it should be protected against counterfeiting, e.g. by a watermark or hologram. The format of the paper is suitable and need not to be changed. The attestation could be electronically readable.

The *period of validity* was also raised: currently Member States issue the driver attestation for a maximum validity of five years. However, the driver attestation shall only be valid as long as the conditions under which it was issued are still satisfied. This raises the question of control and of whether a shorter maximum validity should be fixed.

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

It is not necessary to change the maximum period of validity of the attestation.

2.5.2. Extension to all EU nationals

In its initial proposal the Commission had foreseen that the obligation to hold a driver attestation should also apply to nationals from EU Member States. During the discussion of the proposal in the Council and the European Parliament, the view emerged that the Regulation should only cover non-EU nationals. However, Article 11a of the Regulation as finally adopted, obliges the Commission to examine whether the obligation should be extended to also include EU nationals.

The study on the application of the driver attestation has not resulted in any indication which would advocate the extension of the scope of application of the Regulation to EU nationals. In

fact, none of the Member States interviewed on this issue claimed in a substantiated manner that illegal employment of EU nationals in the road haulage sector was a problem. However, for the sake of completeness the question should be raised here again to all stakeholders.

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

Based on the experiences of the Slovak Republic, it is not necessary to extend the obligation to hold a driver attestation to drivers who are EU nationals.

2.6. Other control documents

2.6.1. Journey forms for passenger transport

Regulation 684/92, modified by 11/98 establishes a single ”community licence” with which an operator can immediately prove that he has the right to provide an international passenger service anywhere in the Union. Own account operations are permitted everywhere in the Union with a simple certification procedure and international occasional services are permitted, following the completion of standardised ”journey forms”. However this ”journey form” differs from the ”passenger waybill” created by the Interbus agreement (for occasional services to third countries), which is different again from the ASOR agreement control documents. This variety of forms can cause confusion during the inspection of services.

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?

For the simplification of road inspections it is desirable to harmonise the control documents within the meaning of the Agreement INTERBUS and within the meaning of the Commission Regulation (EC) no 2121/98. The lack of uniformity also causes higher costs to the operators.

2.6.2. A journey form for goods transport?

A ”journey form” is required of coach operators when undertaking international occasional services and cabotage. It is a simple, uniform document which allows the verification of the number and scheduling of journeys. In goods transport, however, a variety of different documents is used depending on the respective national legislation. Given the difficulties encountered in the enforcement of the cabotage regime for goods transport, a solution could be the requirement to carry a simple control document, a journey form, which lists all trips of a heavy goods vehicle. All transport operations carried out with a given vehicle would be clearly documented. This in turn would facilitate controls, especially road side checks. Rendering the latter less time consuming would represent a considerable benefit for hauliers and the enforcement authorities. The document could have a uniform format in all Member States.

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?

It is necessary to bear in mind that within three years cabotage will cease to be a problem in the 10 EU countries. Therefore we regard the introduction of a ”journey form” that exists in the passenger transport as a redundant document increasing the amount of paperwork. The definition of cabotage should be reviewed and harmonised.

2.6.3. Processing the application for passenger service authorisations

For international regular passenger services, regulation 684/92 creates an authorisation regime whereby the consent is required of the governments of the Member States affected by the service. The grounds for refusing authorisation of a service are strictly limited to six; when no decision has been made within five months the case can be referred to the Commission; and the opportunity for appeals against refusals is ensured.

In former consultations the majority of Member States has been in favour of maintaining the authorisation regime. Nevertheless, stakeholders are invited to express their opinion in light of the Communities commitment to foster economic growth by administrative simplification and cutting red tape.

Question 12 - Should the authorisation regime for international regular passenger services be maintained, simplified or abolished?
From former consultations it has emerged that Industry finds the time allowed for processing applications (5 months before referral to the Commission is required) too long.

The issue of licences for international regular bus services should be maintained. However this legislation should be formulated more precisely at the same time.

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?

The Regulation also requires that applicants have the right to make representations in the event of the refusal of an authorisation.

We propose to reduce the whole authorisation processing period to three.

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

It is necessary to specify in more detail the provision on reasons for which the authorisation for the operation of regular bus service may be refused.

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?

2.7. Road cabotage

2.7.1. Passenger transport

To improve the efficiency of the sector (e.g. to cut down on empty journeys), national road passenger services by non-resident operators (cabotage) is permitted under regulation 12/98. This means that operators may offer occasional services and special regular services in a Member State without registering their company with the same controls (journey forms) as required in their own Member State. Operators may also provide regular services in another

Member State when it is part of an authorised international journey (e.g. Berlin-Cologne-Brussels).

The current rules permit cabotage in the course of international regular services except for regular urban or suburban, i.e. local services. It is not clear that this restriction is necessary or useful. Is this a problem?

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

Otherwise, the market is quite minor and no enforcement problems appear to have arisen.

We consider the exclusion of the carry out of cabotage operations in suburban and urban sections in the course of international regular services as correct because this cabotage operations directly impact on the financing of services in scope public service obligation at the regional level.

2.7.2. Road cabotage for goods

Council Regulation 3118/93 allows the provision of a road haulage service within a Member State by a haulier established in another Member States under the condition that this service is provided *on a temporary basis*.

The initial idea of authorising cabotage operations was to achieve a higher utilisation of vehicles engaged in international, i.e. intracommunity road transport by allowing their use in domestic transport following the international journey. Without cabotage, vehicles might have to return home empty. Cabotage is thus viewed as an auxiliary activity of a haulier which is ancillary to his international transport operations.

In practice it is difficult to assess the temporary character of a transport operation and thus whether this transport is legal or not. In its interpretative communication of 26 January 2005[7] the Commission tried to define the temporary character of cabotage basing itself on the general definition of the temporary character of the cross-border provision of a service.

2.7.3. Better definition of road cabotage

Despite the Commission's effort to clarify the definition of the notion "on a temporary basis" a recent study[8] carried out on behalf of the Commission has shown that difficulties still persist in applying and enforcing the Cabotage Regulation. As main reason for this the study identified the lack of a clear, precise and enforceable definition of cabotage.

In the absence of a more precise definition of cabotage some Member States have adopted guidelines (UK and GR) and national regulations on road cabotage (FR, IT, AT). France, Italy and Austria have set a time limit for cabotage operations: hauliers may carry out cabotage operations for 30 days consecutively over a maximum period of 60 days (Austria) and 45 days (France) per year. Italy allows 30 days of cabotage every two months. Austria and Italy also require a driver's logbook in which every cabotage operation has to be entered. Germany, too, is in the process of preparing its own set of rules.

This situation of divergent national rules may raise a number of problems both for hauliers and enforcement authorities. Having a more precise definition could help hauliers since it would give them legal security that the kind of national transport they are carrying out in another Member State than their own is lawful. It would help national authorities as well that have to

enforce the Regulation and have to assess whether or not such a transport is compliant with the rules.

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?

We consider the different regulation of cabotage in the Member States as a problem that requires our immediate attention. The same applies to the definition that should be more precise.

2.7.4. Options to be considered

If stakeholders favour clear and easily enforceable rules on cabotage, there are many ways to achieve better regulation of cabotage. The Commission is most interested in stakeholders' views and suggestions on this.

In order to stimulate the discussion, breaking cabotage down into the following approaches, which reflect current approaches in Member States, can serve as a point of departure for the discussion: 1) Allowing cabotage for a rather long consecutive period, but limited to a few months per year. 2) Authorising cabotage for a short period of time only (e.g. one week), but with no limitation over the calendar year.

[7] OJ C 21 of 26.1.2005, p.2

[8] Study on road cabotage in the freight transport market (see http://europa.eu.int/comm/transport/road/policy/marketaccess/roadhaulage/cabotage_en.htm)

EXAMPLE 1 - Cabotage is allowed for up to 30 days consecutively, but only within a period of 60 days within one year. An obligation to carry a logbook (book of records sheets), issued by the host Member State, would apply.

This scenario allows for longer stays in the host Member State to carry out cabotage transport; this concession is counterbalanced by the rather short overall period of two months out of 12 months. This approach is suited, for example, for seasonal cabotage but less adequate for hauliers wishing to make short cabotage journeys (1 to 3 days) on a repeated and forecasted schedule throughout the year. The obligation to carry a special logbook for the specific host member State could be seen as a burden for drivers, hauliers and national authorities.

EXAMPLE 2 - Cabotage is allowed for a limited number (2 or 3) of consecutive transport operations following an international transport to the host Member State. No logbook would be required but all journeys - starting with the incoming transport operation - would have to be clearly documented (CMR, international forwarders receipt or a unified journey form), including proof of delivery of the cargo. The vehicle would have to leave the host Member State for instance within 7 days.

This approach would be easy to enforce without additional administrative burden and could contribute to a reduction of empty returns. However, under this approach longer stays in another Member State would not be possible.

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?

We prefer the Option 2.

2.7.5. National rules applicable to cabotage

Article 6 of Regulation 3118/93 provides that cabotage operations shall be subject, save as otherwise provided by Community law, to the national rules of the host Member State in certain areas (rates and conditions governing the transport contract; weights and dimensions of vehicles; requirements relating to the carriage of certain types of goods; driving times and rest periods; VAT). The Regulation also provides for the possibility to adapt this list of areas if considered necessary in the light of experience.

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

We propose to delete from the list the rates and conditions governing the transport contract, dimensions and weights, as well as driving times and rest periods. In the goods transport the principle of free pricing should apply; the dimensions and weights as well as rest periods and driving times should be (are) uniform in the European Union.

In addition to these national rules above Directive 96/71/EC concerning the posting of workers in the framework of the provision of services[9] 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 not longer than a month or the amount of work to be done is not significant.

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

[9] 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?

The cabotage operations should be exempted from the scope of the Directive 96/71.

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? 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.

PART B

ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR

1. INTRODUCTION

Europe-wide harmonisation of the conditions for admission to the occupation of road haulage operator has developed in parallel with the opening up of access to the market. In a liberalised market, regulating admission to the occupation contributes to healthy and fair competition by eliminating unscrupulous operators from the market. While ensuring a high level of professionalism, regulation serves to prepare operators to apply the extensive body of road transport rules in the most effective manner, in particular those relating to safety.

The principles of the current Directive (96/26/EC) are based on legal provisions which date back to 1974 and were last amended by Directive 98/76/EC. The Directive establishes minimum standards to be met to gain admission to the occupation of road haulage operator as regards good repute, financial standing and professional competence. It also puts in place a system for the mutual recognition of the corresponding certificates.

Europe-wide harmonisation is necessary in order to ensure effective freedom to provide services. The Community licence, which gives access to the international transport and cabotage markets, may only be granted to hauliers who satisfy the minimum requirements for admission to the occupation.[10] Furthermore, mutual recognition by the Member States of certificates granting admission to the occupation makes it easier for road hauliers to exercise their right to freedom of establishment.

According to a study carried out by the Commission in 2005,[11] the wording and ambiguity of the current legislation have resulted in national implementing rules on admission to the occupation, which differ considerably from one Member State to another. This has led to a certain amount of mistrust, within national administrations and undertakings, of foreign operators wishing to enter a market or establish themselves. In the framework of the consultations which took place as part of the preparation for the mid-term review of the White Paper on European transport policy, the main road haulage associations moreover suggested strengthening and harmonising these rules.

In its legislative programme for 2006, the Commission therefore announced its intention to examine these rules in greater depth with a view, where appropriate, to amending them to make their application more uniform, simple, easier to monitor and more efficient. The aim of this document is to outline the options available and to gather the views of hauliers, the administrations in the Member States concerned and potentially interested parties such as consignors and insurers.

10 See Part B.

11 See http://europa.eu.int/comm/transport/road/policy/marketaccess/index_en.htm.

2. GENERAL QUESTIONS

2.1. Level of standards

The Directive lays down relatively open minimum standards. The profession is calling for higher requirements for admission to the occupation. These would improve the general level of professionalism and help to make the market, which is characterised by overcapacity, healthier and more efficient. These would thus help applicants to prepare themselves more thoroughly to take on the competition. These standards, which would also apply to operators already admitted to the occupation, since checks are carried out regularly, would not disadvantage new entrants.

The Directive in force covers all kind of road transport activities. Therefore, if higher requirements were envisaged, they could apply for transport operators at local level as for those engaged in totally different trans-European operations. To avoid unnecessary stricter standards where not appropriate, a solution could be to maintain the current legislation which already allows Member States to exempt transport of certain goods or at local level.[12] Another solution would be to establish higher European standards for only certain categories of activities.

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?

To achieve a higher reliability and quality of provided services we propose to impose higher requirements for the operation of regular passenger services, particularly the financial standing. The financial standing for vehicles with total weight not exceeding 6 tones should be determined at a lower level.

The Directive lays down only three criteria for admission to the occupation: good repute, financial standing and professional competence. Stricter standards for admission to the occupation would include these three criteria (see sections 3, 4 and 5), but other criteria could also be added, as is the case in some Member States.

The most common additional criteria are those intended to stop companies from establishing themselves in a Member State with the sole aim of benefiting from more favourable tax and social rules or offering lower rates of pay. They then offer their transport services between other Member States without undertaking any substantial amount of business in the country of establishment, thus without taking part in the real economic life of the country of establishment (‘letter-box’ companies).

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?

We do not recommend including other criteria. In the first place it is necessary to harmonise the application of existing criteria that are differently applied by the Member States.

2.2. Exemptions and dispensations

The current legislation provides for a number of different exemptions and dispensations which lead to non-uniform application of the rules and may no longer be justified:

– The Member States may exempt the transportation of certain products over short distances, which seems reasonable enough. Vehicles under 6 tonnes may also be

[12] Article 2 paragraph 2 of Directive 96/26

exempted, which seems to be less justified given that most other European rules apply to all vehicles with a maximum authorised weight of over 3.5 tonnes.

– Undertakings which were authorised to operate before the Directive entered into force are exempt from the requirement to provide proof that they satisfy the requirements for admission to the occupation. Undertakings which were authorised to engage in their profession before 1978 or before their country acceded to the Community also enjoy such exemptions (the Member States which acceded in 2004 were not granted these rights).

Question 3: What exemptions and dispensations could be abolished?

The same conditions for the issue of the authorisation to operate should apply to all undertakings without difference, regardless of the year of their foundation.

2.3. Periodic checks and disqualification

The authorities responsible for authorising admission to the occupation must check every five years that undertakings still satisfy the requirements of good repute, financial standing and professional competence and, if necessary, must withdraw the authorisation to engage in the profession (disqualification). This frequency of inspection seems too long to be sure that an operator continues to meet the requirements of good repute or financial standing since these can change quickly. Two options could therefore be considered:

– Option A: making these checks more frequent. This option, which is already applied by some Member States, would ensure more reliable monitoring of the requirements regarding good repute and financial standing, but would also impose an additional cost on the authorities and undertakings.

– Option B: supplementing the periodic and systematic checks carried out every five years by targeted, random inspections. Such inspections, which are already carried out by some Member States, could be combined with those carried out on the premises of undertakings that are already required by Community legislation to check driving and rest periods and drivers' certificates.[13]

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?

We propose carry out checks according to the Option B.

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) in a European network of competent authorities. The competent authorities would thus notify authorisations for admission to the occupation and withdrawals of authorisations to this network.

13 Article 7(2) of Regulation (EEC) No 881/92 requires at least 20% of drivers' certificates to be checked every year.

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).

We agree with the gradual introduction of an information system providing the list of companies that have lost the authorisation to operate. However the continued establishment of undertakings under other names and with other agents in another Member State cannot be prevented.

2.4. Simplification

The checking of whether the conditions for access to the profession are still fulfilled entails a certain administrative burden. The undertakings have to enquire regularly from authorities, financial institutions or other organisations about the various documents required for access to the profession proofing good repute, financial standing and professional competence. The authorities have to process the undertakings applications, to conduct investigations on a regular basis, to obtain information from other authorities and organisations, sometimes also from other Member States, which could be pertinent to thoroughly evaluate the applicant's file.

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?

XXXXXX

3. GOOD REPUTE

3.1. Conditions to be met

Article 3(2) of the Directive states that to be deemed to have satisfied the requirement of being of good repute persons must:

- not have been convicted of a serious offence, including offences of a commercial nature;
- not have been convicted of a serious offence against the rules in force concerning the pay and employment conditions in the road transport sector, in particular the rules relating to drivers' driving and rest periods, the weights and dimensions of commercial vehicles, road safety and vehicle safety, the protection of the environment, and the other rules regarding professional liability.

The current system ignores the possibility of some undertakings repeatedly committing more minor offences. Repeat offences suggest that an operator is behaving in a deliberately predatory manner on the road transport market. Transport managers, who are normally deemed to satisfy the requirement of being of good repute, are now also held responsible for offences committed by drivers with regard to driving and rest periods.[14] It makes sense that undertakings managed by persons who commit offences should no longer be allowed to engage in the profession. The European legislator has already provided for this in the international transport sector.[15]

14 Directive on roadside checks adopted in 2006

15 Article 8(3) of Regulation (EEC) No 881/92 on access to the market also expressly states that a Member State may partially

suspend the Community authorisation in the event of repeated infringements. However, this is simply an option which is applied in a very uneven manner from one Member State to another and it is not a requirement.

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?

We do not recommend that the criterion of repeated offences, without a prior uniform definition within the European Union, becomes a condition for refuse granting admission to the occupation.

The Member States have very different concepts of what constitutes a serious offence. This prejudices the uniform application of the requirements which must be met. The Committee set up by Regulation (EC) No 3821/85 is going to harmonise the concept of serious offences as far as driving and rest periods are concerned. What is not clear is whether the concept of serious offences should be harmonised at least in the other areas covered by European legislation (weights and dimensions of vehicles, safety, working hours) as well.

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

We recommend to adopt this definition at the level of EU, because the individual Member States apply different procedures in relation to the national legislation.

3.2. Person concerned

Article 3(1) states that the person who is effectively and permanently in charge of an undertaking's transport activity must be of good repute. The Member States may decide to apply this to other persons and some have opted to publish a detailed list of the persons covered by this requirement: the owner of the undertaking or persons with interests in the undertaking, the managers, and the directors. To ensure more uniform application of the legislation, it would therefore be necessary to draw up this type of list.

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?

We recommend including such list in European legislation, in the interest of the harmonisation.

3.3. Regulation by the competent authorities

The effective application of the rules regarding good repute often seems to come up against the difficulty for the competent authority of obtaining the necessary information from the various authorities (Ministry of Justice, tax authorities, transport authorities). In some countries, laws regarding the protection of privacy make it even more difficult to obtain this information.

One option might be for each Member State to keep a central register of haulage operators who have convictions or have incurred penalties which might bar them from the profession. A less costly option would be for authorities and courts which impose penalties on haulage operators to provide an automatic and systematic notification of this to the authorities which grant the authorisation that provides admission to the occupation so that, if necessary, the latter can withdraw authorisation without waiting for the next five-year check to be carried out.

Question 10: Should the licensing authorities be given easier access to information about judgements and penalties which bar an operator from being granted admission to the occupation? Furthermore, the licensing authorities in Member States generally do not have information about convictions handed down in other Member States. An undertaking which is unfit to exercise the profession in one Member State is therefore able to establish itself in another Member State to engage in the profession. Undertakings established in one Member State could commit serious or repeat offences in other Member States with no fear of losing their licence.

We recommend the establishment of a central register and the imposition of the obligation on courts, offices and administrative bodies to inform about taken measures the authorities granting the authorisation that provides admission to the occupation in road transport.

If a European network of licensing authorities was established as discussed in question 5, the problem would not exist anymore as regards serious sanctions which entail the immediate withdrawal of the authorisation to exercise the profession. Using this network the authorities would see that a candidate had his license revoked in another Member State for whatever reason. If, however, the Community legislation evolved in a way that takes into account also the repeated infringements and not only the serious ones, it would be normal in international transport to add up all infringements wherever committed in the EU instead of just taking into account the ones committed on national territory. This would require arrangements needed for a viable information exchange at European level on penalties which could lead to the withdrawal of the haulier's authorisation if inflicted repeatedly. Article 7 of the Directive provides already that offences committed in a Member State by a non-resident operator be notified to the authorities in the Member State of residence, but this requirement is limited to offences concerning the road transport rules.

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

The information exchange system on companies that have lost the authorisation to operate alone may not prevent them from establishing undertakings under other name and with other agents in another Member State.

4. FINANCIAL STANDING

Article 3(3) of the Directive states that appropriate financial standing consists in having available sufficient resources to ensure proper launching and proper administration of the undertaking and that the undertaking must have available capital and reserves of at least 9 000 euros if a single vehicle is used and 5 000 euros for every additional vehicle.

4.1. Method for assessing financial standing

While conforming to these principles, the Member States in practice use very different methods to assess financial standing:

– Some Member States count all assets, including movable assets, among capital and reserves, while others include only cash, or use supplementary indicators (debt ratio).

– The minimum threshold to be observed also varies. Some Member States have opted to require an amount of capital well above the Community minimum[16] with the explicit aim of rationalising the market. However, the number of undertakings in those States continues to rise, making it doubtful whether an approach based on a simple financial indicator is effective.

– In some Member States, proof of financial standing also takes the form of a deposit or bank guarantee. While this provides safe guarantees for debtors, it may

16 Up to 50 000 euros for the first vehicle.

slow down an undertaking's investment or growth capacity. Some Member States require certification by a particular body. Others call on the services of haulage associations to assess an applicant's financial standing. The frequency of the periodic checks also varies, some Member States checking the financial standing on a yearly basis.

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?

We regard the criterion of financial standing as one of the most important criteria and underline the need of the harmonisation of the assessment within the territory of EU. In case of legal persons the financial standing should be assessed on the basis of opening balances or annual closing balances (financial statements) verified by an auditor. In case of physical persons the statements of assets and liabilities of an undertaking might be used as the basis. We do not recommend changing the amount of financial standing, as currently determined. We propose to impose higher requirements for operation of regular passenger services, particularly the financial standing. The financial standing for vehicles with total weight not exceeding 6 tones should be determined at a lower level.

4.2. New avenue to explore

The main reason for checking financial standing is to provide customers, passengers and third parties as well as society in general with guarantees in the event of default by the haulage operator, whether or not the latter is at fault. Other regulated professions such as auditing, finance and engineering offer this type of guarantee in the form of insurance covering professional liability. Such insurance is very common in large companies. In the road transport sector, the general requirement of professional liability insurance could be added to the types of insurance which are already used and/or are compulsory (insurance of load, vehicle insurance, third-party insurance).

For the undertakings concerned, this system would be more flexible than an assessment of financial standing on the basis of pre-defined ratios. It might also be more cost-efficient since insurance companies could adjust their annual premiums according to the business's risk profile and bear the costs of assessing financial standing. This system would also allow for simple and continuous monitoring since, during a roadside inspection, a driver would only have to produce a copy of the professional liability insurance certificate.

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?

We consider the proof of financial standing provided in the form of compulsory professional liability insurance (liability insurance) only as a supplementary form. In some member countries this insurance is not regulated by law and insurance companies provide it as a product very sporadically.

5. PROFESSIONAL COMPETENCE

Article 3(4) of the Directive provides that the person effectively and permanently in charge of an undertaking's transport activity must be in possession of proof of professional competence equivalent to a minimum level of training. The Annex to the Directive specifies the list of subjects of which knowledge is required,[17] the arrangements for organising the examinations concerned, and the model certificate to be used.

17 A distinction should be made between the requirements for admission to the occupation and the requirements for drivers. The latter are already covered by a Community directive. The capabilities required for admission to occupation are chiefly management-related.

5.1. Harmonisation of examination level

In practice, the real level of examinations varies considerably from one Member State to another. In addition, the Member States may exempt applicants who provide proof of professional experience, the holders of certain advanced diplomas, and certain national haulage operators, which increases the differences between levels of professional competence. Greater harmonisation of professional ability could lead to these exemptions being replaced by common tests which vary according to an applicant's experience or diplomas. A further option would be to certify the test centres which prepare applicants for the examinations, which would ensure that applicants benefit from internationally recognised training standards.

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

The Slovak Republic executes the examinations of professional competence on the basis of recommendations of IRU. We regard further harmonisation as useful and beneficial.

5.2. Person concerned

The current legislation enables use to be made of certificates issued to a person who is not part of a company. According to the profession, this option is abused, which makes the requirement of professional competence somewhat ineffective. In some Member States, a certificate holder may also officially represent several companies. This reduces costs for all small undertakings, but the risk is that the holder of the certificate used by an undertaking to gain admission to the occupation is only very indirectly involved in the actual management of the company. One simple solution would be that the person concerned would have to be employed by the company.

Furthermore, under the current system, a large company (e.g. 1 000 persons) which is established in several different Member States only needs one certificate holder. In some Member States, however, that same person might not be allowed to represent *two* different companies of just two people each. One option might be for these persons to have their normal residence in the Member State concerned. This would mean that groups with subsidiaries in different countries would have to have a competent manager working in each subsidiary.

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?

In our opinion the holder of the certificate of professional competence should be

required to be an employee of the company concerned and a permanent resident of the State in which the company is established. The solution of arising problems often requires the knowledge of local conditions and national law.

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?

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

Thank you for your cooperation