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The European Commissions Consultation Paper on revision of the Community Legislation on the Access to the Road Transport Market and on the Admission to the occupation of the Road Transport Operator

Reference is made to the above mentioned consultation paper from the European Commission.

The Ministry of Transport and Communications (the Ministry) will on behalf of the Norwegian Public Roads Administration (the Administration), the Norwegian Haulier's Association (the Association) and the Federation of Norwegian Transport Companies (the Federation) give their views on the issues raised in the consultation paper. The Association and the Federation has given very similar contributions and will be referred to as the Organisations, where this is useful.

This letter refers to the comments given to the Consultation Paper by the Administration and the organisations. The Ministry will assess the questions more closely, and come back to the Commission with its view at a later stage.

The questions raised in the consultation paper will be answered separately.

Access to the market

Q: 1

There are arguments both pro and con a merging of the acts regulating access to the goods and passenger transport market. In the view of the Administration a merger will in the areas with similar or identical rules contribute to a better readability and clarity. Option 2 is in their view the best option.

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The Organisations on the other hand, are of the opinion that a merger of the rules will result in a more complex and difficult set of rules for the operators and drivers. They argue that future changes in the rules concerning only one of the transport forms will become more difficult to implement. They prefer option 3, subsidiary option 2.

Q: 2

The geographical scope of Regulation 684/92 should according to the Administration be covered by a set of rules; this is due to the need for local governing on both sides of the border.

Q: 3

The Administration states that rules requiring higher qualitative requirements within certain types of goods transport are already established, e.g. the rules regarding carriage of dangerous goods.

The Organisations are not in favour of stricter rules within certain types of transport. The Association does not favour an obligation to be covered by professional liability insurance. They argue that the transport will become more expensive and therefore weaken the EU/EEA competitiveness. If the goods are not covered substantially by the Geneva Convention on International transport of Goods by Road of May 19th 1956 (CMR), additional goods insurance should be purchased by the merchant/owner of the goods.

Q: 4 and 5

The length of the Community licence is a question of economical and administrative burden. The Administration considers the 5 year period to be too long. They suggest that the period either is shortened to 2-3 years or that national enforcement bodies checks the requirements more often. This is already being done in Norway, regarding the requirement of financial standing.

The Organisations are satisfied with the current 5 year renewal period. It is in their opinion appropriate, and an acceptable administrative burden on the operators. The need for inspection is sufficiently weighted in their opinion.

Q: 6

The certified copies should have a higher level of security. The Administration suggests that centrally printed documents should be used by all member states for the certified copies, e.g. similar the CEMT/ECMT permits. Alternatively, the specifications should be defined more stringent. Otherwise an electronic system could replace the system of certified documents. In Norway we already have a common database where the inspectors can check the information given by the operators.

The Organisations supports a standardisation of the certified copies in order to achieve a more efficient and rapid inspection at the borders. They emphasize that the possible change of the documents must be done without costs to the haulier/carrier. An electronic system can also be supported, but only after the individuals' legal protection is examined.

Q: 7 and 8

The driver attestation should become more uniform throughout the Community, it should change format and be made electronically readable according to the Administration wishes.

The organisations support this, but focus on the economical burdens of additional electronically readable cards. They argue that the driver attestation must be seen in connection with the driver licence and the digital tachograph.

The length of the driver attestation should not be as long as 5 year due to the rapid change in the employment. A length of 1-2 years is more suitable according to both the Administration and the Organisations.

Q: 9

The Administration has two objections on expanding the driver attestation to apply to all EU/EEA nationals; there is no need for this and the working conditions are best controlled by the authorities for working conditions because the driver attestation is in reality a control of the working environment. This inspection can be carried out in cooperation with the Road Administrations.

Q: 11

Both the Administration and the Association are sceptical to journey form in goods transport. In CEMT/ECMT the log books are an extra burden on the drivers, which take their focus of their main task; driving.

The Association fear tricks/cheating which will make the journey form unfit for efficient and fair control.

Q: 12, 13, 14 and 15

The authorization regime for international regular passenger transport should be maintained as today according to the Administration. The application takes time to handle because local administrations/governments have to be involved in the process. The length of the authorisation period should stay the same. Furthermore the Administration is satisfied with the clarity and effectiveness of the appeal system. The Federation has not made any comments on this point.

Q: 17, 18, 19 and 21

The different definitions and the different practising of the cabotage rules between different states cause problems. The Association and the Administration support the making of clear rules and a precise definition on this subject.

The Association has argued that the German "Anschluss-cabotage" is a manner to define cabotage; they therefore favour example 2 in item 2.7.4 of the consultation paper as the best alternative. The Administration agrees because this is the only way the controllers can carry out an efficient and fair inspection.

According to the Association, there will be little need for rules on wages and other social conditions if the duration of cabotage is being limited to 7 days. The Administration is of the opinion that the rules in Directive 96/71 are difficult to control.

Q: 21

The Association would like to emphasize that there is a need for more efficient control and a will to enforce the current rules.

The Administration agrees with this, but is also concerned with the large number of empty runs, and is keen on decreasing this number. A suggestion is to establish a common “pool” where free capacity can be reported.

Admission to the occupation

Q: 1 and 12

The Administration and the Organisations in Norway have stressed that there is no need for stricter and higher minimum standards, as long as the rules are enforced equally in all Member States and that the control can be conducted more efficiently and fair.

The Association emphasize that Norway has chosen a more expensive alternative in implementing the requirement of appropriate financial standing; we require an economical guarantee from a bank or other financial institution. The solution of financial guarantee is a good approach for the authorities to enforce and control the criterion efficiently. This is the safest solution in respect to fraud from undertakings, as the banks constantly control the existence of the guarantee. For the debtors and third parties with claims against the operator the chance of a refund is far greater than with the other options available. The costs for the operators do not constitute a high sum and therefore this approach can be recommended. The Association stresses that a harmonisation of the criterion of financial standing is necessary in order to avoid distortion of competition.

Q: 2

Problems with “letter-box” companies could, according to the Association, become regulated by other rules than the rules on admission to the occupation as road haulage operator, e.g. rules on rights of establishment.

Q: 3

Regarding exemptions and dispensations the Association is of the opinion that the Directive 96/26/EC should apply to all vehicles with a maximum authorised weight of more than 3,5 tonnes. They points out that there will be an increase in transport with smaller vehicles in modern city transport, and that rules on admission to the occupation should apply to these operators. The Ministry would like to point out that the weight limit in Norway is 3,5 tonnes, we have not used the competence given in article 2 paragraph 2 letter b) of the said Directive.

Q: 4

The Organisations are in favour of option B in item 2.3 in the consultation paper regarding periodic checks and disqualification.

The Administration points out that in Norway we already have continuous checks of the financial standing criterion through the bank guarantee system. The Administration is in favour of having this arrangement in all Member States.

Q: 5 and 10 (11?)

On the subject of a European Network of competent authorities, the Administration has signalled that they are positive to such a network where information can be exchanged. Since Norway is member of the EFTA and is bound only by the EEA Agreement, it must be

considered if exchange of information of criminal records will have to go through a different kind of legal case handling nationally than changes directly linked to the EEA Agreement.

The organisations suggest an alternative where the operators have to obtain information from their country of origin or the Member State they have lived in the last 3-4 years on criminal and financial reputation and show this in the Member State in which they wish to establish themselves as a road haulage operator. The current system of exchange of information seems insufficient to prevent operators barred from the profession in one Member State to establish themselves in another state.

Q: 7 and 8

The Administration favours a requirement of not having committed repeated offences in order to be deemed to be of good reputation.

The organisations on the other hand are opposed to this suggestion. They argue that there are many rules in this area of law and that minor offences should not have such serious consequences as unemployment/loss of licence. The severity, number and nature of the offence must still be weighted in a discretionary/total evaluation.

Both the Administration and the organisations are positive to a harmonised and clear definition of what constitutes a serious offence.

Q: 9 and 15

The Norwegian authorities have chosen a strict approach on who is the relevant person in an undertaking to fulfil the criteria of good reputation and professional competence. The manager of the undertaking is the relevant person. An exemption can be made for the person responsible for the transport operations, and this person can fulfil the criterion of good reputation/professional competence instead of the manager of the undertaking.

The Organisations are satisfied with this solution, as it prevents undertakings from using a diploma/certification from a person not employed in the firm. The certificate holder is therefore not able to officially represent several undertakings without actually being employed in these firms. The level of competence and good reputation will remain at the level the Directive requires as a result of this strict approach. The Organisations consider the relevant person to be an employee of the undertaking concerned and be a permanent resident in the Member State in which the undertaking/branch office is located.

The Administration points out that in Norway there are possibilities to give an undertaking as such a penalty (fine). The undertaking is therefore a punishable legal subject. They stress that in addition to the manager the undertaking should also have good reputation. This should be an additional requirement. Furthermore; in large undertakings the manager is not part of driving operations and is therefore less exposed to losing his good reputation. In smaller businesses this is opposite. This creates a difference in the basis for the assessment of the manager's good reputation.

Q: 13

The Association is against a system of professional liability insurance, see Q: 3 on access to the market.

Q: 14

The Administration supports harmonisation of this area.

It should, however be noted that there will be large organisational and economical expenses if there were to be changes and further harmonisations in the field of examination level.

The Organisations are in favour of fewer dispensations and exemptions concerning the level of competence. They do not comment on which exemptions should be abolished.

Q16

The Association suggests that the employer, freight forwarder and other participants in the transport operations should have a responsibility to check whether or not a hired haulier/carrier fulfils the criteria on admission to the occupation. They should have a share the liability for offences. This will help excluding "pirate" hauliers/carriers from the market. In this regard the Association refers to Directive 2002/15/EC where such a liability expansion has been made regarding working time of persons performing mobile road transport activities.

Yours sincerely,

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