



Brussels, 27 November 2007

## **HEARING OF STAKEHOLDERS**

### **ACCESS TO THE ROAD TRANSPORT MARKET AND ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATORS**

#### **Summary**

The meeting, with the participation of Vice-President Barrot, was held on 7 November and aimed at hearing the views of stakeholders about the planned recast of the Directive and the four Regulations on the access to the profession/market in road transport. It gathered 80 participants including representatives of road transport undertakings, freight forwarders, insurance industry, public transport and employee organisations and observers from Member States, Norway and Switzerland. Each of the following themes was introduced by Professor Bayliss, former co-chairman of the 1993 Committee of Enquiry on Road Freight Transport in the Single European Market.

#### **Cabotage:**

It was acknowledged that the long-term perspective of creating for road transport a real internal market is today still hampered by market distortions, mainly by national rules in the fields of taxation and social legislation. Subsequently, there was a common understanding that a full liberalisation of road cabotage is currently not an option. If undertakings wish to operate in domestic markets of other Member States, they are free to establish themselves in these Member States. However, stakeholders clearly confirmed that there is a need for a clear, simple and easily enforceable definition of the cabotage which is allowed. Legal certainty would provide for better use of capacity and improved efficiency in route planning.

#### **Establishment:**

Views were more diverse as to whether minimum Community provisions to ensure real and effective establishment were needed. Several participants called upon a minimum harmonisation to avoid diverging national rules and distortion of competition by 'number plates of convenience'. Others however believed that market forces would eventually drive inefficient 'letter box' companies out. Establishment and freedom of services in the field of transport should anyway remain covered by Common Transport Policy rules and not horizontal general rules.

#### **Monitoring of compliance:**

The participants plead for harmonised enforcement and better exchange of information between Member States (including compliance with drivers hours and roadworthiness). A greater use of modern technologies (electronic database) could make it possible and would reduce administrative and compliance costs.

Financial standing and professional capacity:

Most participants agreed that minimum requirements on financial standing and professional competence are of key importance in an open efficient internal market. Whilst some representatives requested higher requirements, most of the participants suggested to better define and to clarify the existing financial standing requirements. Several participants recommended harmonising training, including continuous re-training.

Transport managers:

Nearly all speakers agreed that all undertakings should have at least one person with a certificate of professional competence, regardless the size of the company. Solutions should be examined for very small and one-person undertakings for whom getting the certificate can be more demanding. It was also suggested to hold the certificate-owner directly liable for professional misconduct of the undertaking.

Simplification of administration:

The question of streamlining the authorisation procedure for regular international passenger services did not give rise to a lot of interventions. One passenger transport association advocated strongly to eliminate the taking into account of parallel railway services. As regards occasional services, the idea was welcomed to do away with the currently three different waybills by replacing them with the Community waybill, in order to facilitate roadside checks and to avoid heavy fines due to errors in the use of the various waybills. For the same reasons, there was a clear plea for standardizing the technical features of the Community licenses.

## **1. OPENING**

The meeting was held on 7 November. The meeting, with the participation of Vice-President Jacques Barrot, aimed at hearing the views of stakeholders on the planned recast of the Directive and the four Regulations on the access to the profession/market in road transport. It gathered the delegates from the organisations who contributed to the public consultation held on the matter in June and July. The organisations represented transport industry, forwarders, logistic service providers, insurance industry, public transport and employee. Delegates from Member States, Norway and Switzerland also participated as observers (see list of participants in annex).

Vice-President Jacques Barrot opened the meeting by thanking all participants for their written contributions. He stressed the important role of road transport in the transport system and recalled that an efficient internal market requires fair competition, effective enforcement of the existing rules in all Member States and legal certainty. Given the

evolution of the sector, it appears necessary to simplify and recast the five legal acts dealing with the admission to the occupation and the access to the market. Mr Barrot then explained the main problems areas which have been identified at the light of the written contributions received after the public consultation:

- Cabotage in road transport of goods
- Effective establishment of undertakings
- Improved monitoring of compliance
- Relationship between the 'transport manager' and the operator
- Financial standing and professional competence
- Simplification of the authorisation procedure for regular passenger services

## **2. MORNING WORKING SESSION CHAIRED BY MR RUETE, DIRECTOR GENERAL, DGTREN**

Mr Ruete reminded that this hearing is an integral part of the stakeholders consultation process and that speakers should only address issues directly related to access to the market and admission to the occupation. He pointed out that the recast takes place in the framework of the "better regulation" exercise. The aim is to simplify and modernize the current rules rather than to modify the balance achieved initially between competition, road safety and quality.

He then introduced Professor Brian Bayliss who would introduce each theme. Professor Bayliss had been the co-chairman of a "wise men" committee of enquiry which produced in 1994 a detailed review of "Road Freight Transport in the Single European Market".

### **2.1. Cabotage in road transport of goods**

Professor Bayliss introduced this first point by recalling that cabotage in road transport, i.e. the temporary carrying out of a transport operation solely within a Member State by a haulier resident in another Member State, accounts only for a very small part of overall road transport in the EU; however, in some Member States it takes a much larger share of the market. The stakeholder consultation has confirmed the need for a better definition of cabotage. At present operators operate under different conditions (e.g. fiscal regime, labour law incl. collective agreements) according to their home Member State. Because of these differences, access to the national transport markets for non-resident hauliers is limited to "temporary" cabotage operations. If hauliers wish to carry out domestic transport in another Member State on a continuous or regular basis, they have to establish themselves in this Member State. Professor Bayliss thus introduced the discussion by reminding that the issue was not to open up domestic markets but to find a better definition of cabotage. He stressed that one must seek to capitalize on the benefits of these national differences but restrict practices that would result in a bad allocation of resources: it is important not to incite inefficient operators to the detriment

of the efficient ones. The key question thus is to find a definition of cabotage that would allow the EU to benefit from efficient operators.

Mr Kramer (TLN, NL) started the "tour de table" stating that if Member States had the ambition to create a real single market in road transport, cabotage rules were only a burden.

Mr Eriksson (CORTE) called for a definition of cabotage that is easily enforceable pointing out that any rule is only as good as its enforcement. His organisation favours the idea to limit cabotage to a few transport operations within seven days consecutive to an international transport into the host country.

Mr Schindler (BGL, DE) mentioned the fact that several Member States have already or are in the process of regulating cabotage on a national level. This runs contrary to the Single Market. He thus called upon the Commission to find a new definition of cabotage.

Representing an operator and shipper Mrs Corduant (Deutsche Post World Net, DE) stressed the importance for transport companies of having a clear definition.

Mr Hovbrender from the Norwegian Ministry of Transport proposed to allow cabotage only in connection with an in-coming international transport. He proposed not to talk of "empty runs" but rather of "repositioning" of vehicles when speaking of journeys without a load.

Mr Richman (FEDEMAC) on behalf of the movers sector raised the distortion of competition introduced by different VAT regimes given that the clients of movers are individuals not registered.

Mr Sestieri (ANITA, IT) raised the difficulty for enforcement bodies to identify the actual place of establishment of the operator carrying out cabotage. He voiced the need of clearly specifying which rules of the host country need to be observed by the cabotage operator, including rules on VAT and rules on invoicing).

Mr Larsen (DTL, DK) draw the attention to the special case of hauliers located in border regions for which cabotage operations in the neighbouring Member State are an important part of their business. A future definition of cabotage should take that into account.

Mrs Williams (FTA, UK) recalled that cabotage operators compete with national operators, which raises the question of fair competition and equal treatment.

Mr Kamberski (IRU) wanted to see a discussion on how to regulate the market in the long run based on past experience and future perspectives.

Representing the transport workers Mrs Hertogs (ETF) recalled the importance of clear rules for the drivers. She advocated strongly a new definition of cabotage saying that today there was practically no definition at all.

Mr Rose (AUTF, FR) stated that when looking at cabotage one should have a qualitative approach and not a quantitative. He thus proposed to allow cabotage without timely restrictions provided that the rules of the host country are observed.

Mr Mannaerts (FBAA, BE) raised the specificities of cabotage in passenger transport, namely in international regular services; these need to be addressed as well.

Mr Verdière (UNOSTRA, FR) pointed out that when regulating cabotage provisions need to be made for situations when the market is being disturbed.

Mr Wilk (ZMPD, PL) stressed that the unlevel playing field created by different fiscal and social legislation could only be addressed in the long term while cabotage is a short term problem.

## **2.2. Effective establishment of undertakings**

Professor Bayliss recalled that the freedom of establishment is granted in the internal market. The latter is however currently not truly harmonised and integrated. It has led to disparate national rules on establishment, which in turn have encouraged the development of "number plates of convenience". Although possibly cheaper, these undertakings may not be the most efficient and licensing authorities of the establishment country have difficulties in monitoring their compliance with the various transport rules. Given these possible distortion of competition, the question is whether a common concept is needed on establishment rules and if yes which one.

According to Mr Cullum (RHA, UK), establishment criteria should not relate to ownership of assets but to capacities to manage contracts.

Mr Kramer (TLN, NL) remarked that the "number plates of convenience" would be forced out of the market if they were less efficient. Provided that the exchange of information between Member States is reliable enough, they would also fail to meet the good repute requirements if they do not comply with the rules.

Mr Sestieri (ANITA, IT) considered that an efficient undertaking should not decide its location upon consideration of strict or loose establishment rules. All undertakings should be easily controllable by the country where it is deemed to be established. Provisions should be planned in the future rules.

Mr Verdière (UNOSTRA, FR) also emphasized that in current circumstances letter box companies can not be easily identified and properly monitored by the licensing authorities of their country of establishment. It should be corrected to ensure equal treatment of undertakings between Member States.

Mr Vallenduuk (Lawyer representing individual Dutch undertakings) warned that initiatives in this area should be compatible with the Court jurisprudence on freedom of establishment.

Mr Ruete reminded that the debate on the 'service' directive has shown a strong consensus to address freedom of establishment/services in the field of

transport through rules taken within the Common Transport Policy and not horizontal rules.

### **2.3. Improved monitoring of compliance**

In introducing this point Professor Bayliss recalled what has also been voiced before, namely that legislation is only as good as its enforcement. Given that the licensing of road transport operators is done at national level it is difficult, if not impossible, for national authorities to take into account how an operator complies with the transport rules in the other Member States and therefore if he is really of good repute. Fact is that there are certain reasons for not transmitting information between Member States.

Mr Kambersky (IRU) advocated for more harmonised enforcements. An EU wide electronic register of operators should be established. Lastly, financial support should be given by the Community for measures to improve enforcement.

Mrs Williams (FTA, UK) pointed to the wide differences in control and enforcement throughout the Union. One drawback was that the EC Directive on checks only targets driving times and rest periods. What is also needed is the harmonization of controls and enforcement of all other rules such as technical requirements or traffic offences.

Mr Cullum (RHA, UK) wanted to recall that most of the operators operated legally and observed the rules. This needs to be taken into account when regulating in this field.

Mr Anghern (Swiss transport administration) welcomed the idea of an electronic exchange of the relevant data between national authorities.

Mr Sorgetti (CLECAT) remarked that the emphasis should be on enforcement of simple rules. However, the Commission should not be tempted to tackle lacking compliance or enforcement by creating new rules.

Mr Richman (FEDEMAC) expressed the hope that the scope of road transport rules will be extended across the board to also cover vehicles between 3.5 and 6 tonnes.

Mrs Corduant (Deutsche Post World Net) called for a standardization of control forms. She also was in favour of establishing an EU-wide database on road transport related infringements, which should also be accessible to interested parties.

Professor Bayliss summed up the discussion saying that there was a whole host of interrelated factors. Thus views on appropriate action in relation to any particular issue were dependent upon proposed actions in relation to other issues. If there were clear, harmonized rules across the EU, one would resolve so many of the current problems; but this is a lengthy process to which there is no quick solution.

## **2.4. Preliminary conclusions of the morning**

Mr Ruete concluded by referring to a clear call for less but better defined rules and better enforcement. He stressed that the priority is to find rapid solutions for immediate problems although the long term vision of a truly harmonised, liberalised and integrated market should be kept in mind. The recast of the rules should therefore aim at improving them without changing their balance. A better and more enforceable of definition of the allowed cabotage appears necessary. National establishment rules should also be brought closely together. Effective enforcement and exchange of information between national enforcement authorities certainly need to be enhanced and the use of modern technologies should be encouraged. The Commission will carry out an assessment of the economic, social and environmental impact of its proposals, including an assessment of the administrative costs prior to their adoption.

## **3. AFTERNOON WORKING SESSION CHAIRED BY MR GRILLO PASQUARELLI, DIRECTOR FOR LAND TRANSPORT, DGTREN**

### **3.1. Financial standing and professional competence**

Professor Bayliss explained that road transport is one of the rare professions which are regulated through entry requirements on financial standing and to a less extent on professional competence. The reason usually put forward is that training improves efficiency and that road transport undertakings operate in the public domain. Moreover, common minimum qualitative standards contribute to greater information and transparency for customers, who otherwise may hesitate to choose undertakings established in Member States other than theirs. If financial standing and professional competence is demanded, at least customers know there is a certain level of quality, hence it reduces asymmetry of information.

Mrs Ben Azzouz (CEA) indicated that compulsory professional liability insurance would be counter productive. A deeper analysis before any action in this direction is taken is needed. A clear distinction should be made between third party liability and guarantees for customers and creditors in case of bankruptcies. She explained that it is planned to revise the current Motor Insurance Directives in 2007-2008.

Mr Levesque (TLF, F) stressed the difference between ensuring minimal quality given that road transport operates on public infrastructure and the consumer protection. There are doubts whether insurance companies should be given the power to accept or not that an undertaking enters the business.

Mr Kramer (TLN, NL) observed that professional liability insurance exist for several other professions like lawyer or accountants and wondered why a similar approach could not be used for road transport.

Mrs Becker (GDV, DE) draws the attention on the important negative impacts of unsafe loading. The list of subjects covered by the professional competence examination should include secure loading.

Mr Schindler (BGL, DE) stressed that the sector is highly fragmented. Rules on financial standing and professional competence are therefore needed.

Mr Sorgetti (CLECAT) considered that quality can not be imposed and called for simple rules on the admission to the occupation.

According to Mr Verdière (UNOSTRA, FR) statistics show a strong correlation between rate of compliance to transport rules and financial standing. It confirms the importance of rules on financial standing. The latter should be checked by public authorities and not by the private sector.

Mr Kamberski (IRU) stressed the key role of information and transparency to promote quality. The quality certification system developed by its organisation for coach services is an example.

Mr Sestieri (ANITA, IT) supported the importance of rules on the admission of the occupation. He also took the view that they should also apply to freight forwarders and shippers. To avoid diverging implementing rules, the current Directive on the admission to the occupation should become a Regulation.

Mr Wilk (ZMPD, PL) explained that the current rules on the admission to the occupations are too weak and the minimum requirements too low. Too many small and unprepared undertakings are entering the market. Best solutions would be to raise the level of training and examination for international transport and to introduce a compulsory professional insurance.

Mrs Williams (FTA, UK) reminded that undertakings should be permanently aware of the latest legislative development in road transport. The professional competence examination should be to check that candidates are able to find these legislations without necessarily knowing them in details. Stricter requirements would not improve compliance.

Mr Waara (UITP) considered that financial standing rules are needed to avoid too low cost entry and to raise the quality standards. The current rules should be completed to include guidelines on how to define financial standing and when to withdraw a licence after a loss of financial standing. Some form of self regulation could also be introduced.

Mrs Grimule (Latvian Road Transport administration) suggested compulsory retraining of professional competence, and that financial standing should be ensured by bank guarantees. She also recommended to set up a European database of holders of certificate of professional competence.

According to Mr Schindler (BGL, DE), the financial standing should be certified by private companies or banks. In fact, public enforcement authorities do not usually have the right staff to perform financial analysis. The concept of "reserve" in the current rules should be clarified. Insurance for loss and damages of cargo is compulsory in Germany. It reduces the risk for undertakings to go bankrupt.

Mrs de Maegt (FEBETRA, BE) suggested that freight forwarders and shippers should be held coliable when contracting to an undertaking which does not comply with the requirements.



Mr Rose (AUTF, FR) considered that it would be difficult to achieve the right balance between several policy objectives (freedom of entrepreneurship, protection of small enterprises, reduction of overcapacities, quality for customers). At European level, a Directive would be more flexible than a Regulation. A European database of operators should also be made available to the shippers and the customers. No actions should be undertaken in the field of insurance before a clearer analysis is made.

Mr Wronski (Polish Transport Ministry) stressed the key role of common minimal rules on the admission to the occupation in an open internal market, allowing cabotage. The current requirements should be more harmonised. The definition of good repute and financial standing should in particular be better harmonised. The information and documents proving that they are met should also be harmonised. Enforcement authorities have in practice no reliable means to check whether the candidates requesting a licence comply with the requirements. Common requirements should also apply to own-account transport.

Mr Grillo Pasquarelli observed that there were a number of arguments for maintaining and improving requirements related to financial standing and professional competence. Common requirements appear particularly important in an internal market to provide minimal guarantees to the customers. These are however useful only if measured with the same approach, which is not the case for the time being. The recast of the Directive should attempt at introducing more harmonisation, provided it makes competition more equitable.

### **3.2. Relationship between the 'transport manager' and the operator**

Professor Bayliss pointed out that under the current regime all undertakings should prove that a person who manage effectively and continuously its transport operation hold a certificate of professional competence (CPC). Separation between transport manager and CPC holder can exist where the CPC holder does not hold a managerial position within the firm and also where in a large organisation the CPC holder , although a full-time employee, is not responsible for day to day operations. A big variety of contractual arrangements exist for small undertakings who wish to hire he services of a CPC holder. Several questions arise for instance whether large undertakings need several CPC holders or whether they need it at all. The most important issue is however to ensure that small undertakings whom the CPC holder is an external person are operated with the same minimal level of professional competence.

Mr Verdière (UNOSTRA, FR) and Mr Sorgetti (ANOTA, IT) stated that even in large undertakings at least one person should hold a CPC.

Mr Vallenduuk suggested that one man operators should be allowed to concentrate on driving by outsourcing the administration burden to larger undertakings through franchise.

According to Mrs Wiliam (FTA, UK) and Mr Cullum (RHA, UK) an output based approach is preferable and what counts is compliance and enforcement. It is up to the enforcement authorities to assess whether an undertaking is

operated with the required level of competence, hence to meet the requirements of the admission to the occupation, based on the record of compliance.

Mr Parmentier (Belgian Transport administration) suggested that the CPC holder should be held liable to the public authorities. Mr Verdière drew the attention that liability and level of professional competence is linked.

Mr Sestieri (ANITA, IT) pointed out that a distinction should be done between directors and managers at lower level. Large undertakings could in fact hold several CPC. Small undertakings should also have a permanent CPC holder. According to the Italian law, the CPC holder had to manage exclusively the transport operation of one undertaking. An exception has been finally agreed for small undertakings grouped within cooperative.

Mr Mannaerts (FBAA, BE) was of the opinion that professional competence should be ensured along the entire transport chain and therefore be required from all operators. The rules should prevent 'diploma tourism' and managers getting certificate of professional competence in countries with lower requirements.

Professor Bayliss recalled that in other regulated profession, the professional standing requirements apply to everyone. Considerations should also be given to training in order to update the professional qualification. Since many road undertakings are under limited liability partnership, the transport managers could be held liable like it is the case for scientific laboratories, in which the licence holder is held responsible for errors.

As a concluding remark, Mr Grillo Pasquarelli stressed that all road transport undertakings should give an insurance of professional competence when performing transport operations. While recognizing the diversity of national situations, the person holding the certificate of professional competence should be directly and really involved with the transport operations.

### **3.3. Simplification of the authorisation procedure for regular passenger services**

Professor Bayliss first recalled that harmonized and thus more user-friendly control documents (certified copies of Community licence and waybill for occasional services) would simplify the work of both operators and control bodies and thus increase productivity through time and cost savings.

Mr Mannaerts (FBAA, BE) advocated strongly to eliminate the taking into account of parallel railway services (that corresponds to a de-facto veto right) when assessing whether to authorize a regular service.

Mr Billiet of IRU welcomed the idea of doing away with the currently three different waybills by replacing them with the Community waybill, in order to facilitate roadside checks and to avoid heavy fines due to errors in the use of the various waybills. As regards the authorisation of regular services he proposed to set up a network centralising the information on regular services throughout the EU.

#### **4. CONCLUSIONS**

Mr Grillo Pasquarelli concluded by recalling that the Commission's objectives are to simplify and clarify the existing rules and not to change the balance decided in 1992. The legislative proposals will undergo an impact assessment before to be submitted to the College in spring 2007.

A report of the meeting will be distributed to all participants and published. He thanked Professor Bayliss for his support in the moderation of the hearing and thanked all participants for their valuable comments and their written contribution.

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