

# REMARKS CONCERNING THE CONSULTATION PAPER OF THE COMMISSION ON THE ACCESS TO THE ROAD TRANSPORT MARKET AND ON THE ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR

## *General remarks*

1. Modifications to the EU legal acts should leave as less doubt as possible as far as their interpretation is concerned, so it would be better:
  - to give them the form of regulations and not directives (if possible);
  - if regulations leave place for different interpretations, they should foresee an organ which will have the task to interpret the rules, as well as the procedure of appeal etc.;
2. The new versions of legal acts should be in a consolidated form, which includes all changes and modifications introduced earlier.

## PART A

### ACCESS TO THE ROAD TRANSPORT MARKET

- Ad. 1.1** Aquis concerning the carriage of goods by road includes also the Council Regulation (EEC) N<sup>o</sup> 3916/90 on the measures to be taken in case of crisis on the Community road transport market.
- Ad. 1.2** **Question 1:** The Option 2 is the preferred one. *The new Regulation on the road transport of goods* should include the legal acts which the Commission enumerates under the item 1.1. (carriage of goods) + the Regulation 3916/90; *the new Regulation on the road transport of passengers* should include two regulations enumerated under 1.1. (carriage of passengers). However it is also admissible to leave the current set-up, because the Regulation 684/92 is a very long one.
- Ad. 2.1** **Question 2:** In our opinion the local cross-border public transport services should be covered by the Regulation. However, it would be appropriate to shorten and simplify the procedure of delivering authorizations.
- Ad. 2.2** **Question 3:** it would be useful not only for the passenger/client but also for the carrier, to be covered by the professional liability insurance. Such a requirement should concern passenger transport, transport of live animals, transport of dangerous and perishable goods, high value goods, high risk goods etc. Such a requirement should also apply to carriers who transport goods in less secure countries or regions. However to establish the list of such types of transport and/or countries (regions) would be very difficult. Moreover, carriers transport different types of goods and in different directions.
- Ad. 2.3** **Questions 4 and 5.** The validity of the Community license should *not* be reduced, but the verification of the conditions should be more frequent. It may

be difficult to check them more frequently at regular basis, but the random checks should be done (according to the established plan) and the carriers shouldn't know when to expect checks. The license should be withdrawn in case the conditions are not met; the carrier should get it back after the irregularities are removed, according to dates established in the regulation. At least one CPC certificate should be kept in the premises of a company. If a license is withdrawn in one Member State, the rules should not allow to establish a company in another Member State. Therefore the on-line exchange of information between the Member States about licenses withdrawn and the reasons of withdrawal would be very useful and important. The Commission might consider to establish a "black" list of companies whose licence has been withdrawn or a "white" list of companies abiding by the law.

**Ad. 2.4**      **Question 6:** In our opinion a common model of a certified copy could be useful, as well as its size, colour and security features. Such a copy could mention the registration number of a vehicle concerned (we have it in Poland). The on line register of the Community licenses issued, withdrawn and suspended should be gradually created.

**Ad. 2.5**      **Questions 7 and 8:** The Regulation 484/2002 defines the colour, size and content of the driver attestation which seems sufficient. In our opinion the Regulation correctly defines also the validity of the attestation and the control procedure.

**Question 9:** The obligation to hold a driver attestation should **not** be, in our opinion, extended to drivers who are the EU nationals, but it should be extended to the non-EU drivers in the passenger transport.

**Ad. 2.6.**      **Question 10:** The harmonization of control documents for occasional services would be a simplification. As far as the confusion during an inspection is concerned, the problem could be solved by a requirement that the control services know different forms used in the passenger transport.

**Question 11:** A unified journey form for cabotage operations in goods transport seems useful.

**Question 12:** The authorization regime for international regular passenger services should be maintained.

**Question 13:** Authorisation processing periods should be shortened:

- to 1 – 1,5 months maximum for notifications by competent authorities of the Member States whose agreement is requested
- to max. 1 month for the Member States whose territories are crossed
- to max. 2,5 months (instead of 4 months) for the authorizing authority to take a decision on the application
- to max. 3 months the time limit for referring the matter to the Commission (instead of 5 months)

- to i.e. max 4 weeks – the time limit for the Commission to take a decision (instead of 10 weeks)
- the decision undertaken by the Commission should take effect within i.e. 10 – 15 days after the notification
- it should be determined within what time limit the Commission notifies the interested Member States (i.e. within 2 days).

#### **Question 14.**

**Question 15:** The compliance with safety, social, fiscal etc. requirements is necessary. In the Article 3 conditions of the access to the market are determined. The question arises why only the road safety standards concerning vehicles and drivers are to be met. A carrier should meet all the road safety requirements and also other requirements, i.e. he should pay taxes and salaries on time, apply mandatory pension and insurance schemes, have professional liability insurance, he shouldn't use drugs or traffic in them, he shouldn't traffic in people or commit sexual offences etc. This problem could be solved if the detailed list of good repute conditions was established (which however would be very difficult) or the list of cases where this requirement is not met or not any longer met.

**Ad. Art. 16 of the Regulation:** the paragraphs 2, 3 and 4 should be coherent and enumerate reasons for the withdrawal of the license and the authorization. The paragraph 3 enumerates reasons for the withdrawal of the license. These could also be reasons for the withdrawal of the authorization. The list of breaches enumerated in paragraphs 3 and 4 is not complete. There are also other breaches related to the road safety or which may threaten the road safety.

We think that in the paragraph 4 not only serious repeated breaches should be taken under consideration, but **serious or repeated minor breaches**. The road traffic safety consists not only of the safety of a vehicle and a driver; other breaches should be also considered, i.e.: breaches of the condition of the good repute of drivers, other unlawful behaviour of drivers (for example a theft, sexual offences, drugs, drug trafficking). Additionally we think that the UE definition of serious as well as minor breaches is very important.

#### **Ad. 2.7**

**Question 16:** suburban cabotage operations in the course of international services could be authorized.

**Question 17:** Yes, the clearer and more precise definition of road cabotage would be useful.

**Question 18:** this is the question of compromise between the Member States. In case it is difficult to achieve this compromise, the Regulation should even then be more precise, but should leave more place for choice of the Member States. The Regulation could for ex. fix admissible solutions and the Member States could choose the most suitable solution. The Commission should be informed about national choices, it should further inform other

Member States, in a way that each Member State has the knowledge about other Member States' solutions.

The uniform journey form for the cabotage operations performed by a haulier in different Member States should be introduced.

**Question 19:** In our opinion the list should not be changed.

**Question 20:** As you know Poland hasn't yet the experience on the matter. However in our opinion the Commission should reconsider the application of the Directive 96/71 to cabotage operations, as its application here seems contradictory to the concept of the cabotage. In any case, the Directive should explicitly foresee the period of time (the number of consecutive days or the number of days in a year) in which the Directive is *not* applicable. This has to be fixed on the Community level.

**Question 21:** The regulations on the market access (and also other EU regulations, i.e. on the access to the occupation, tachographs etc.) should also concern in passenger transport smaller vehicles, not only those which can carry more than 9 people including a driver.

## **PART B**

### **ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR**

#### **Ad. 2.1.**

**Question 1:** There is the need to fix the criteria for the admission to the occupation in a more detailed manner. This will also mean that they will be stricter and harmonized. This should concern all road transport operators.

Some criteria should be stricter, for example the professional competence requirement should contain additional items such as safe, economical and ecological driving, ways of fixing loads on vehicles, security measures applied in a company etc.

Additional requirements within three criteria are needed for some types of activities, for ex. in case of the carriage of live animals the good repute requirement should demand also that a haulier and drivers were not accused of the acts of cruelty concerning animals. The professional competence criterion should also be enlarged, because a haulier and his drivers should know how to treat animals and not to expose them to stress and suffering.

National legislations should be periodically checked if they incorporate the directive in a proper way.

**Question 2:** Additional criteria could be useful, for example:

- proof of the professional liability insurance (however one must consider the costs of such a requirement for the road transport operators).
- proves that an operator meets his fiscal obligations

The problem of “letter-box” companies is not an easy one, for example how to assess that a company doesn’t undertake any substantial amount of business in the country of establishment? *However we think that the EU legislation should prevent companies from establishing themselves in a Member State with the sole aim of benefiting from more favorable tax and social rules or offering lower rates of pay.*

#### **Ad. 2.2.**

- Question 3:**
- in passenger transport operators with vehicles of 9 and less people including a driver should also be included;
  - The following exemptions should be abolished:
    - for goods transport operators in domestic transport on longer distances;
    - for passenger transport operators;
    - for the undertakings which were authorized to operate before the directive entered into force, before 1978 or before their country acceded to the Community.

#### **Ad. 2.3**

**Question 4:** Yes, the requirements for admission to the occupation need to be checked more frequently. The way of checking each quality criterion should be defined. The Member States could be given a possibility to choose the Option A or B.

**Question 5:** Yes, the Community legislation should prevent such a possibility. The Community network for the exchange of information should be established.

#### **Ad. 2.4**

**Question 6:** The random checks on the fulfillment of the access to the occupation criteria cause less administrative burdens.

#### **Ad. 3.1.**

**Question 7:** In our opinion repeat offences should also be taken under consideration.

**Question 8:** The harmonization of definitions of serious offences would be useful.

#### **Ad. 3.2**

**Question 9:** Yes, the list of persons who should meet the good repute requirement should be enlarged and should include people managing transport operations, people of lower positions who deal with transport activities of an undertaking, directors, owners, members of the board.

#### **Ad. 3.3**

**Questions 10 and 11:** It is obvious that the licensing authorities should have easy access to the information mentioned. This concerns also local authorities who (in Poland) deliver licenses for domestic transport.

#### **Ad. 4**

**Question 12:** The methods for assessing financial standing should be further harmonized. The present thresholds should be kept. The checks should be carried more frequently, together with checks of the other criteria for the access to the occupation. It is to be considered if these checks should be carried on regular basis, each i.e. 3 years or they should be done at random (each year but not in all undertakings).

**Question 13:** Yes, this option should be considered more deeply.

#### **Ad. 5**

**5.1, Question 14:** The exemptions should be standardized, i.e. it should be stated in the directive that people with 5 years' professional experience or holders of certain diplomas (types of diplomas should also be harmonized) are exempted from the exams but have to pass a test. The content of a test should be described in the directive in such a way as it is done for an exam.

#### **Ad. 5.2**

**Question 15:** In our opinion each company and each of its branches should employ at least 1 CPC holder. A CPC holder should have his normal residence in the Member State concerned.