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**SUMMARY OF CONTRIBUTIONS RECEIVED BY THE COMMISSION IN
RESPONSE TO THE CONSULTATION PAPER**

**"REVISION OF THE COMMUNITY LEGISLATION ON THE ACCESS TO THE
ROAD TRANSPORT MARKET AND ON THE ADMISSION TO THE OCCUPATION
OF ROAD TRANSPORT OPERATOR"**

DISCLAIMER

The summary of the contributions to the consultation does not express the position of the Commission, neither does it commit the Commission, nor should it be assumed that it will be the position taken by the Commission following this consultation process.

1. INTRODUCTION

In line with the Commission's commitment to better regulation and to simplification of the *acquis* the Commission services launched a review of the legislation governing the road transport market (mainly regulation 881/92, regulation 3118/93, regulation 884/92, regulation 12/98 and directive 96/26)¹.

To this end, the Commission initiated on 09 June 2006 a public consultation concerning the Community legislation on access to the market and admission to the occupation of road transport operator.

The paper presents the synthesis of the contributions received from stakeholders. In total the Commission received 67 responses from governments, road haulage associations, passenger transport associations, users associations, insurance federations and private parties from 19 countries: 15 from Member States, 1 from Norway, 36 from national associations, 10 from European associations and 5 from companies or self-employed².

The respondents generally share the view that there is a need for further simplification and clarification of the current regulatory framework for the road transport market. A repeatedly brought forward aspect was the need to render the current rules on the access to the market and admission to the occupation more easily and effectively enforceable.

¹ A list of the respective Community rules in force is at Annex II

² See list of respondents in Annex I

2. PART A – ACCESS TO THE ROAD TRANSPORT MARKET

2.1. Summary

The declared aim of this exercise to revise the Community rules on market access in road transport was to enhance the clarity, readability and enforceability of these rules and to better regulate certain aspects of the current regime. This aim is clearly supported by the stakeholders who have not only replied to all the questions raised by DG TREN but have also raised a number of interesting issues which merit to be examined further.

It emerges clearly from the consultation that goods transport and passenger transport by road should remain regulated in two separate sets of rules. These are two different types of transport and stakeholders feel that they do not have sufficient commonalities to treat them in one legal text.

Many contributions pointed out that better regulating meant to them first of all applying the existing rules correctly and have them enforced properly. Also, the view was held by several respondents that higher requirements would not necessarily lead to better compliance by the operators. This should be achieved by better enforcement.

Linked to enforcement is the issue of communication and cooperation between national authorities, an issue which appears time and again in the various contributions received. While almost all relevant legal texts in the road transport acquis contain provisions on Member States' cooperation, practice shows that this does not actually happen. Stakeholders therefore call for the setting-up of an effective system of cooperation and collaboration of national authorities across the EU (see also part B).

One way to improve cooperation and exchange of information between Member States could be the setting-up of an EU-wide register of licensed operators or database of Community licenses. Almost every single respondent has expressed support for such an idea in one form or another. This will certainly be a topic to explore.

Interesting contributions were received also as regards the question of road cabotage. Again, this is an issue to which most respondents contributed in the consultation. There is almost unanimity among them that a simple, clear and enforceable definition of cabotage needs to be found. As regards the actual solution, the replies are – not surprisingly – quite diverse. However, there seems to be large support for the approach to revert to the original idea of cabotage (avoid empty runs in international transport) and thus link it to an international journey.

As concerns other issues regarding the market access in road transport that stakeholders want to raise a variety of measures and issues is raised by the respondents. Some of these point to inconsistencies in the current legislation; others take up general suggestions already raised before in the replies to the various questions. Several suggestions are worth exploring.

In the field of passenger transport by road the picture evolves that most stakeholders prefer the *status quo*. Nevertheless, there is the general feeling that the several provisions rules can be improved, e.g. on the authorisation procedure for regular services.

In the following section the responses to each question of part A are summarised.

2.2. General questions

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

The majority of respondents favours the current situation where goods transport and passenger transport are regulated in two separate sets of rules. They argue that there are substantial differences in these regimes and that different national authorities are involved in applying them. Therefore, merging the rules for goods and passenger transport is not seen as a simplification. Only 5 respondents do not share this view.

As regards the question of keeping the set-up as it is or combining the rules for international transport and cabotage for each type of transport, Member States clearly prefer combining these rules in order to have one legal act for goods transport and one for passenger transport. Road haulage associations and other private sector representatives prefer to keep the current set-up.

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?*

Most of the stakeholders responding to this question (which concerns only passenger transport) wish to maintain the current regime where local services are covered by the Regulation. However, some changes were suggested such as excluding services within a certain range (50 km) or covering only urban local services. Also, one respondent suggested simplifying the authorisation procedure.

The main argument voiced against including local services in the Regulation was that these services would be covered by the future regulation on public passenger transport.

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

There were almost the same numbers of positive answers (25) and negative ones (29). Those arguing for higher qualitative requirements mention specific areas (passenger transport, transport of dangerous goods, removal & storage) or state the kind of requirement that should be made stricter (mainly financial standing). The idea of professional liability insurance was welcomed by a fifth of the respondents as worth exploring. However, the German and the European insurers' federations voiced scepticism as regards this idea: such insurance will not necessarily increase the level of professionalism in the sector and cannot serve as a substitute for sufficient financial standing. Road haulage associations claim that the question of whether or not to take out (additional) liability insurance must remain a voluntary choice of the undertakings.

For freight transport, the German insurers' federation proposed to introduce the requirement of knowledge of load securing.

The main argument against higher requirements was that the existing requirements would be sufficient provided they are correctly and sufficiently enforced. Higher qualitative requirements would not necessarily result in better compliance. Also, it was argued that certain sectors have already higher requirements and therefore a general raising of requirements is not necessary.

2.3. Community licence and certified copies

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?*

A slightly higher number of stakeholders is in favour of verifying at shorter intervals than 5 years. Some of them propose annual checks; some propose random checks, while others argue in favour of targeted checks based on the risk of the company for failure to comply. As main criteria to verify, stakeholders mention the financial standing.

Opponents to a general shorter interval for mandatory checks feel that this will lead to an extra administrative burden. They argue that Member States can already check more frequently and thus the current five years interval should be maintained as a minimum at EU-level.

One Member State stated that it checked operators based on the risk for failure to comply. This system was also the preferred one for the road haulage associations of that Member State thus showing the acceptance of such a system by the industry.

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 majority of respondents is clearly in favour of maintaining the current period of validity. One Member State even calls for a 10 years' validity of the Community licence in passenger transport; one association favours a longer period as regards goods transport arguing that investments are usually made for longer periods than five years.

Several respondents in favour of shortening the period of validity suggest making 5 years the maximum and leaving it up to the Member State to stipulate shorter periods.

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?*

There is a clear consensus among the respondents for the standardisation of the certified copies: they should be of the same colour, be clearly identifiable as "certified copy" and have security features built in. Some suggest mentioning the vehicle's licence plate number on the certified copy to enable enforcement officers to establish the link with the vehicle; however, several associations advise against this in order to allow the flexible utilisation of vehicles.

Stakeholders responded positively to the idea of establishing a Community wide registry of Community licences without making any further suggestions as to how such a system could look. One Member State stated that such a central registry existed already and was publicly accessible via the internet.

2.4. Driver attestation

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?*

Most stakeholders who have replied to this question consider it useful to further standardize the format of the driver attestation. Especially road haulage associations favour a more uniform driver attestation. Two stakeholders are in favour of extending the obligation to hold a driver attestation also to passenger transport. Respondents who are opposing a more uniform driver attestation across the Community state that there are already enough uniform aspects or express the fear that changes to the current format will entail additional administrative burdens. It is interesting to note, however, that several of those opposing standardisation of the driver attestation nevertheless expressed the wish to make the attestation electronically readable.

About one half of the respondents advocate an electronically readable driver attestation, yet make no suggestion how this could be done. In the consultation document the idea of combining the driver attestation with the driver card to be used with the digital tachograph was raised. This idea was received positively by about a quarter of the respondents. Five stakeholders, however, strongly advised against such a combination stating that this would be too complicated to achieve in practice. Also, it was argued, the driver card is linked to the driver whereas the driver attestation is linked to the undertaking employing the driver.

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

The majority of respondents does not see the need to shorten the period of validity. Several respondents state that in some Member States a shorter period is already being applied. Those in favour of shortening the validity either wish to see a fixed time period of 1 to 3 years or suggest to link the period of validity of the driver attestation to the validity of the employment contract. One stakeholder proposed to modify the current provision in the Regulation to set a maximum period of 5 years (validity "up to 5 years").

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

The great majority of respondents hold the view that the obligation to hold a driver attestation should not be extended to drivers who are EU-nationals. The main reason is that the risk of illegal employment is much lower among EU-drivers and does not justify the additional administrative burden caused by such an extension. Two Member States expressed the view that the driver attestation should be mandatory only for EU-drivers who are employed outside their country of residency. One haulier association suggested limiting the extension to drivers from the new Member States.

2.5. Journey forms

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?*

Replacing the currently three different journey forms used in international passenger transport by one harmonized document finds large support among the stakeholders. Only five out of 36 respondents do not see such a need. However, views differ on how to achieve harmonisation. Some respondents wish to see the EU-waybill used also for the purposes of the Interbus and the ASOR agreements; others want to create one document for national and international services. One association proposes to abolish the passenger

list. The opponents of a harmonized control document argue that the Community licence should suffice as control document for intra-EU transport; for transport with third countries the Interbus-document should be used.

Very few respondents comment on the level of detail that the harmonised journey form should have. One Member States suggests that the contents of the form should be coordinated with international organisations such as UNECE, IRU and ASOR.

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?*

There seems to be a slight majority in favour of a Community-wide journey form in goods transport. However, several stakeholders make their agreement to such a form under the condition that it does help the enforcement of the road transport rules and that the form is easier to handle and/or kept in electronic form.

The opponents of such a form argue that it would not bring any additional advantage compared to the CMR (consignment note) which is widely used in international transport and even mandatory in some Member States, e.g. Belgium and Austria. Introducing a journey form would only add to the paperwork of hauliers. Instead, many road haulage associations suggest using the CMR as journey form.

2.6. Authorisation procedure in passenger transport

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

Most respondents prefer maintaining the current authorisation regime. It is regarded as necessary in order to ensure quality of service as well as safety. However, several of these stakeholders advocate at the same time a simplification of the procedure, e.g. by shortening the delivery time, abolishing certain grounds for refusal, removing the hearing of transit countries and generally improving the communication between the Member States. None of the respondents advocates the complete abolition of the system.

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?*

Since a shorter processing period is certainly of advantage to the industry it does not come as a surprise that most industry representations argue in its favour. However, also several Member States see scope for improvement stating that the period could be shortened, e.g. by not consulting transit countries. The other group of (mainly larger) Member States argue that the time frame is already tight and could not be shortened especially in countries where regional or local authorities have to be consulted.

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

About half of the respondents affirm that appeals processes are clear and effective; among those are both Member States and industry associations. The other respondents state various elements that could be improved: the conditions under which an appeal is

admitted; setting of deadlines and modalities for appeals; and clarifying reasons for refusal of a regular service.

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?*

Many respondents appeal for better communications between Member States. National authorities should improve their channels and possibly set up an on-line communication system.

Another point mentioned by several stakeholders is the possibility to refuse an authorisation if the viability of an existing rail service is affected. In their opinion this ground must be deleted.

Other comments and suggestions include:

- If the operator does not start the service within 6 months, the authorisation should be cancelled.
- Not only road safety standards should be taken into account, but also social and fiscal requirements.
- Legislation should be made clearer on the fact that Member States must reply to the concerns of other Member States before they issue their authorisation.
- The number of reasons for refusal should be reduced. In the case of the ground that the service would only provide the most lucrative services, the person making this claim should be the one who has to prove it.

2.7. Road cabotage

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

Most respondents do not consider it desirable or feasible to authorize urban and suburban cabotage operations. It is the general observation that in many Member States urban transport is still protected and at best a closed market. This issue should be tackled first before beginning to consider urban cabotage.

There is the concern that allowing cabotage could lead to “cherry picking” and that the public interest is not served by it. A second concern is the lacking of a harmonized definition of urban and suburban services.

Several stakeholders remark that the proposed regulation for public transport (COM (2005) 319), if adopted, will cover urban cabotage.

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?*

Stakeholders almost unanimously agree to the usefulness and need of a clearer and more precise definition of road cabotage. Member States and industry associations call for a simple, clear and enforceable definition which must enable the haulier to prove that a

transport is legal cabotage. Also, the need was clearly expressed to have one set of rules throughout the Community; the current situation of several national regimes in force was judged as highly unsatisfactory.

The few critical voices basically say that instead of searching for a new definition of cabotage the social, fiscal and technical aspects of road transport should be harmonized; once these disparities have been overcome cabotage could be completely liberalized.

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?*

Not surprisingly, the replies to this question are quite diverse. As regards the two approaches offered in the consultation document as the two extremes of on a scale of numerous definitions, the stakeholders by and large seem to favour the second approach, i.e. allowing cabotage for a limited number of consecutive transport operations within a short period of time and following an international transport. There also seems to be support for the idea to return to the original concept of cabotage and place it in connection with international transport. There is no clear indication whether the supporters of approach 2 favour linking cabotage to an incoming or outgoing international transport; both cases are cited.

Nine out of eleven respondents, who would like to consider other options, are in favour of abolishing all restrictions on cabotage. This group mostly consists of road haulage associations.

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

While most of the responding Member States do not see the need to change the list, stakeholders suggested mainly deleting the items rates and conditions governing the transport contract, weights and dimensions, as well as driving times and rest periods. They argue that since these rules are already harmonized at European level they apply EU-wide and thus need not be included again in the Regulation.

Two Member States propose to add the rules of the posting of workers Directive to Article 6. This idea is also supported by one stakeholder.

Question 20 - *What is the stakeholders' experience with the application of Directive 96/71 to cabotage transport operations? What is their opinion on exempting cabotage operations from the scope of that Directive provided that cabotage is limited to a period shorter than one month?*

As to the experience with the application of the posting of workers Directive most stakeholders, including Member States, point out the difficulties to apply and enforce these rules to cabotage operations. One stakeholder even speaks of the impossibility to apply this Directive; another says that applying these rules renders cabotage practically impossible.

As regards the second question, the same number of stakeholders is for exempting road cabotage from the scope of the Directive as for including it. Member States seem to favour the current situation where cabotage is not explicitly exempted from the Directive, even if some of them point out that the application gives rise to problems. Two

respondents suggest excluding cabotage if it is carried out for a period shorter than one month.

2.8. Other issues to review

***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.*

A variety of measures and issues is raised by the respondents. Several stakeholders advocate a harmonisation of penalties/fines across the EU. Stakeholders also feel strongly about improve communications between national authorities: Member States should be obliged to respond to queries from other Member States within a given deadline; there should be more transparency and statistical information made available on action taken by Member States related to infringements committed in another Member State; and infringements committed abroad should be sanctioned in the haulier's home country.

One UK road haulage organisation proposes to introduce licensing for own account operations obliging operators to fulfil the same requirements for good repute and professional qualification as those for hire-and-reward operators but setting much lower levels for financial standing.

This association also pointed out that in the UK, the application of Directive 92/106/EEC on combined transport leads to the situation where non-resident vehicles stay in the country without time limit transporting containers to and from the ports.

Member States have made the following suggestions/comments:

France and Denmark propose to eliminate the discrepancy between Regulation 881/92 (in combination with First Council Directive of 1962), which covers only goods transport with vehicles as from 6 tons and EU social rules, which apply to drivers of vehicles as from 3.5 tons.

Belgium proposes to include in the existing Community rules provisions on safety of cargo, speed limits and restrictions for lorries to takeover.

Germany is in favour of allowing the use of rented vehicles also in passenger transport.

Estonia would like to see third country transport included in Regulation 881/92.

Sweden proposes to extend the obligation to provide statistical data under Regulation 1172/98 to cover cabotage transports more in detail. Italy sees a need to provide a calendar for driving bans across the EU; it also proposes to raise the weight limit in combined transport to 44 tons for all types of vehicles.

Finally the Netherlands comment that the Commission should concentrate legislative efforts on enforcement while the setting of higher standards should be left to the market.

3. PART B – ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR

3.1. Summary

It has been generally considered that the conditions to be authorized to engage in road transport should be more harmonised, effectively implemented and controlled. For several respondents, such harmonisation is in fact a prerequisite to a smooth running of the internal market where access to the market is liberalised, thus making a link between the rules on the access to the market and the rules on the access to the occupation.

A large majority considered that rather than higher and new standards, there is strong need for a further harmonisation of the rules on the admission to the occupation. Current rules are perceived as leaving too much room for diverging interpretation and implementation practices and more uniform rules should be proposed. It raises the question, as several respondents explicitly did, of whether the Directive should be replaced by a Regulation.

Most of the respondents also stressed the need for more efficient enforcement policies. They called for both more frequent targeted inspections in all Member States and an effective cooperation between enforcement agencies from different Member States. In practice, when assessing the good repute, financial standing and professional competence of an operator, Member States should be able or even obliged to take into account information from other Member States.

It was repeatedly suggested that in practice such efficient enforcement policies would require centralised registers of operators and their managers. In a second step, the exchange of information between Member States would require a Community-wide on-line register of companies with data on their transport managers and compliance records. Such database would be updated and accessible to all enforcement agencies, in a first step to those authorizing operators to engage in the occupation (licencing authorities) and in a later steps to officers which carry checks on the roads (see also part A).

A slight majority of respondents also considered that the rules should grant admission to the occupation only to company effectively established in a country so that to prevent "letter box companies". For instance the company authorized to engage in the road transport occupation should have an office which manages the company with staff, vehicles registered in the country and/or a genuine and substantive activity in the country.

A large majority agreed that further harmonisation of financial standing assessment is required. Verification by banks or accredited audit companies, as it is already the case in several countries, is seen as the most cost-effective approach. Views diverge however as to which financial indicators should be used (equity capital, assets, liquidity or even debt ratio).

The link between the operator and the person whom the good repute and the professional competence has been seen as a key and delicate issue which needs clarification. Almost all respondent agreed that this person should be employed (work contract) or own the company (in the case of one-person company). Opinions diverge as to whether to authorize or not the possibility for natural persons to designate another person acting as a manager. The majority has however recognized that an abusive use of this possibility should be avoided.

Other interesting conclusions are a clear support to abolish most of the existing exemptions and to take into account repeated offences when assessing the good repute. Several respondents suggested that the reliability of the verification of the professional competence could be improved, for instance by accrediting the test centres. Finally, several respondents suggested that the rules should be extended to adjacent markets, notably the freight forwarder. Alternatively, it was suggested to introduce a co-liability for freight forwarder which contract to road operator which do not meet the requirements on admission to the occupation.

3.2. Level of standards

Question 1: Is there a need, and for what reasons, for higher minimum requirements for admission to the occupation? If so, should they apply to all road transport professions or only to certain categories? Which ones?

A large majority of stakeholders agree that the priority should be that the present standards be more harmonised and closely enforced, before considering higher standards. A majority also considers that increasing the level of the current standards for road haulage is not necessary. In contrast, few Member States and passenger transport associations considered that higher standards could be envisaged for passenger transport. The movers association also advocated for higher standards in their sector. Out of the respondents supporting higher standards, most agree that the financial standards should in particular be increased.

Almost all the respondents consider that the standards should apply to all categories of road transport. Generally, there is a tendency for a total harmonisation of requirements for all transport actors, regardless of particularities and details. Some respondents even asked that adjacent markets like freight forwarder ("contractual operators"), logistics companies, taxi and hire with drivers be equally regulated. It was even suggested that own-account transport should also be subject of the same rules.

Creating different set of standards for different types of transport would not only distort competition but would also complicate the enforcement. This dismissed for instance the idea that higher standards could be envisaged for international transport ('only applying high standards for international transport would cause confusion').

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?

More replies feel that there is no need for new criteria but rather to adjust and precise the three existing criteria. However, a majority of respondent feel that the future revised rules on the admission to the occupation should contain new provisions to prevent "letter box" companies.

To do so, Member States authorities should grant admission to the occupation only to companies really and effectively established on their territory. Several concrete suggestions were made to qualify the notion of effective establishment. For instance a

company should have an office which manages the company with staff, vehicles registered in the country and/or a genuine and substantive activity in the country.

However, several respondents argue that such criteria would create obstacles to the freedom of capital and entrepreneurial mobility or that it would prove to be ineffective without a wider harmonisation of company establishment laws and economic policy, beyond the scope of the transport policy.

3.3. Exemptions and dispensations

Question 3: What exemptions and dispensations could be abolished?

Generally, most of the stakeholder asked for the suppression of all existing exemptions. More precisely:

- A very large majority of stakeholders feel that the exemptions for transport of certain products and for short distance transport, which exist only in certain Member States, are not justified. It was felt that the current mechanism for a prior consultation of the Commission before granting such exemptions is ineffective and that these exemptions should be abolished.
- Nearly all respondents consider that the rules should apply to all vehicles over 3.5 tonnes without possible exemptions (and that the scope of regulations 881/92 and 3118/93 should be aligned accordingly). Several respondents even think that vehicles under 3.5 tonnes should apply the same rules on the access to the occupation, and that therefore the exemption could be totally abolished.
- “Grandfather rights” are usually perceived as not justified anymore and as a source of competition distortion. Several stakeholders, in particular road haulage associations, felt that they should not be totally abolished, in particular if the financial capacity requirement is made higher. It was suggested that companies benefiting from current “grandfather rights” could be checked for the good repute and financial capacity but take a light professional competence test, or be checked only if in breach of safety rules. In any case, should the current criteria be changed or the existing exemptions abolished, transition periods will be required.
- Several passengers transport associations also asked to delete the current provisions allowing Member States to exempt passengers transport services for non-commercial purpose or having a main occupation other than of road transport operators.

3.4. Periodic checks and disqualification

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?

Most respondents agreed that requirements should be checked more frequently. A number of respondents recalled that the conditions of access to the occupation should actually be met permanently to perform transport operations. The admission to the occupation and the enforcement policy should therefore aim at ensuring ‘a continuous

safe operation of road fleets.³ Other respondents indicated that the financial capacity requirements in particular should continuously be ensured and checked, as is the case already in some countries.

A slight majority seems however to prefer to maintain the current provisions requesting compulsory regular checks of all operators at least every five years since it would avoid additional administrative burdens while leaving freedom for Member States to apply more frequent checks. Proposals were made to reduce the frequency to three years, one year or even suppressed it. The criterion for which a more regular systematic check is considered potentially cost-effective is the financial capacity.

The very large majority consider that the most cost-effective way to improve checks is by means of targeted inspection plans. These plans would target operators that make infringements and cause problems (option B proposed in the consultation paper), using for instance compliance history of operators and risk rating systems, and the operators with changes in the management structure (with a new manager whom the professional competence and good repute should be checked).

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).

Almost all stakeholders agree that the rules should include provisions to prevent a company disqualified in a Member State from establishing in another Member State.

Several proposals were made to implement in practice such provisions. When instructing an application, the competent authorities should for instance be obliged to consult other Member States (see also question 11).

The most commonly suggestion is however to set up an electronic register (database) at Community level which would allow exchange of information between the competent authorities granting admission to the occupation. Such a database would include the list of operators and transport managers (person subject to the good repute and professional competence requirements) and those which have been disqualified and the reasons ("black list"). It would build upon the registers which already exist at national level. As recalled by several respondents, such a system should accommodate the rules on the protection of the privacy data.

Several respondents however recall that disqualification is yet dependent on offences to criminal laws defined at Member States level and far from being harmonised at European level. An operator could therefore be good enough for one country, even though he was disqualified in another one.

³ UK reply

3.5. Simplification

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?

Although only few respondents commented on this question, several suggestions were made. The above mentioned electronic registers would reduce the administrative burden inherent to all enforcements. A wider use of on-line documents submission for establishing companies could be encouraged.

Several respondents also mentioned that the use of a Regulation instead of a Directive would reduce the administrative burdens associated with national transposition and contribute to a greater transparency of the actual rules on the admission to the occupation.

3.6. Good repute

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?

The majority of respondents agreed that repeated offences should in principle be taken into account. They however stressed that in practice, such a system, to be fair and acceptable, could be difficult and take sometime before to implement.

Only offences of a certain seriousness level should indeed be considered (excluding for instance violation by drivers of rest and drive rules), and only those which clearly engage the responsibility of the managers. All the concerned offences should therefore be clearly defined at EU level.

The notion of repetition should also be defined in a way which does not penalise large companies. Large companies with many drivers on the roads are by nature more exposed to infringements. “Infringement/vehicles” ratio would therefore need to be fixed at EU level.

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

Most stakeholders agree that the definitions of serious offences should be harmonised. Stakeholders however draw the attention of the likely difficulties in the harmonisation of the definition of serious offences in matter related to criminal laws. Such harmonisation may be beyond the scope of transport policy. It may however be feasible to uniformly define the infringements to transport regulations and then call for uniform penalties.

It was also suggested, mainly by road transport association, that the revised rules should explicitly mention a number of violation which should be in the list of serious offences (violation to environmental and safety rules, trafficking).

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?

The majority felt that the good repute requirements should apply to the person that “continuously and effectively manages transport operations” as provided in the current legislation. Most considered that in practices, such a requirement should apply to directors and managers, but that applying it to shareholders would unnecessarily increase the administrative burden. Some suggested however that all persons involved in the management (including the collaborators of the directors) should be of good repute.

Several respondents stressed that establishing a detailed list of the titles of the persons concerned would be desirable but would be difficult given the differences of company laws between Member States. They suggested instead a functional definition of the person subjects to good repute, although making any concrete proposals.

Question 10: Should the licensing authorities be given easier access to information about judgments and penalties which bar an operator from being granted admission to the occupation?

Most of the respondents agreed that the licensing authorities should be given easier access to information on infringements and sanctions, which requires both adequate rights and facilities. A number of respondents considered for instance that a better coordination between licensing authorities and enforcement authorities (carrying out on-road checks) is needed. Several Member States however recalled that central records of judgements were already accessible and that overall the current information exchange within their country was satisfactory.

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

A large majority of stakeholders feel that the current exchange of information between competent authorities of different Member States is not working properly and should be improved. It would require both more precise legal provisions in the future rules (give feedback on the use of the information, deadline for transmission of data etc.) and a new Community, on-line, database.

Such database should primarily contain data on operators and transport managers so that competent authorities could check that a company has not been disqualified in another Member States (see question 5). In a second step such a database should include infringement records so that the competent authorities can have a more comprehensive knowledge of the company when e.g. checking its good repute.

The database could also – some elements only and under conditions to be defined – be accessible to the public. The database would in practice allow easier and faster access to licensing authorities (question 10) and may contribute to reduce the inherent administrative burden associated with checks.

3.7. Financial standing

3.7.1. Method for assessing financial standing

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?

A large majority agreed that the current legislative provisions leave too much room for diverging interpretations and implementation practices. Further harmonisation of financial standing assessment would therefore be required. A small minority argued that it is better to leave Member States to decide their own system or even to suppress this requirement.

A slight majority favoured a check by the banks or accredited audit companies, as it is already the case in several countries. Verification by such third parties would reduce the administrative costs for the enforcement authorities and could be more reliable. Views diverge as to which financial indicators should be used (debt ratio, assets, etc.). Respondents usually considered that the issue is very technical and that a more detailed assessment would be needed before to introduce a particular uniform set of indicators. Public transport companies also drew the attention to the possible cost of increasing the threshold for operators with large vehicles fleets

It is noticeable that opinions still diverge on whether such a requirement is simply to check the capacity of a company to maintain in safe conditions its fleet or whether such requirement should have wider goals somehow linked to market regulation.

3.7.2. Insurances

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?

All respondents groups are divided on this issue. Some feel that if a new insurance is introduced, it should somehow be merged with all the old ones into a new one. Others feel that it might be applied complementarily to the current insurance schemes. And of course there are those who argue that no more insurance is necessary. Most agree that the insurance should not be implicated in the financial standing assessment.

In any case, the matter was considered as an issue highly technical which would require detailed investigations before any initiatives.

3.8. Professional competence

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

More stakeholders agree that a more uniform procedure for the examination and a further harmonisation of the exemptions would improve the mutual confidence in the level of professional qualification.

Respondents made a number of suggestions in particular to suppress the current exemptions for holder of advanced or technical diplomas or experienced managers, or alternatively to harmonised the list of concerned diplomas and the exams for experienced managers.

Suggestions were also made for accreditations systems of test and training centres. Refresher exams and/or training were also suggested by some transport associations.

Question 15: Should the holder of the certificate of competence be an employee of the company concerned and a permanent resident of the Member State in which the company is established?

The majority of stakeholders feel that the holder of a certificate of professional competence should be permanently employed by the company using it. There is however various understanding of the term "permanently employed". The majority feels that the holder should be employed (work contract) or own the company (in the case of one man company).

Opinions diverge as to how to make sure that the holders external to a company but acting through legal contracts manage permanently and effectively manage the company. Suppressing this possibility could penalise small companies since managing a company with one or two vehicles may not be a full time job. To avoid an abusive use of the possibility to designate an external manager, it was suggested to introduce a maximum number of companies and vehicles that a holder of certificate of professional competence could manage. An alternative could also be to introduce a minimum weekly time that this holder should spend in the company.

The majority of stakeholders also consider that the place of residence should not be taken into account.

3.9. 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? ?

In addition to suggestions already mentioned in this document, respondents used this question to propose a number of other measures like:

- Rules should also include provisions for when a company has to exit the market. The competent authorities should be obliged to withdraw or revoke the licence when necessary and should be independent.
- Freight forwarder subcontracting transport operations to companies (possibly also the shippers) should be held co-liaible when this company infringe the rules on the admission to the occupation.

ANNEX I LIST OF MEMBER STATES AND OTHER STAKEHOLDERS HAVING SUBMITTED CONTRIBUTIONS

European organisations

CEA - Comité européen des assurances
CLECAT - European association for forwarding, transport, logistic and customs services
CORTE - Confederation of organisations in road transport enforcement
ECR - Euro Contrôle Route
ETF - European transport workers' federation
EUROCOMMERCE
FEDEMAC - Federation of European movers associations
IRU - International road transport union
OTRE - Organisation des transporteurs routiers européens centre routier
UITP - International association of public transport

Member States and EFTA

EE Ministry of economics and communications of the Republic of Estonia
ES Ministerio de Fomento - Direccion general de transportes
FI Ministry of transport and communications
NL Ministry of transport, public works and water management
PL Rzeczpospolita Polska - Ministerstwo transportu
SE Ministry of industry, employment and communications
DK Ministry of transport and energy
NO Ministry of transport and communications Norway (department of transport)
DE Ständige Vertretung der Bundesrepublik Deutschland bei der EU Brüssel
BE Service public fédéral de la mobilité et des transports
FR Représentation permanente de la France auprès de l'UE
IT Rappresentanza permanente d'Italia presso l'Unione Europea
LU Ministère du Transport
MT Permanent Representation of Malta to the European Union
SK Permanent Representation of Slovakia to the European Union
UK Department of Transport

Associations of road operators, users or enforcement authorities

FR AFTRI - Association française du Transport Routier International
IT ANAV - Associazione nazionale autotrasporto viaggiatori
IT ANITA - Associazione nazionale imprese trasporti automobilistici
ES ASTIC/FENEBUS - Asociación del transporte internacional por carretera
HU ATRH - Hungarian road transport association
FR AUTF - Association des utilisateurs de transport de fret
DE BDO - Bundesverband deutscher Omnibusunternehmer

DE	BGL - Bundesverband Güterkraftverkehr, Logistik und Entsorgung
ES	CETM - Confederación española de transporte de mercancías
IT	CONFETRA - Confederazione generale italiana dei trasporti e della logistica
UK	CPT - Confederation of passenger transport
DA	DBCOA - Danish Bus and Coach Owners' Association
NL	EVO - Dutch organisation for transport for own account
BE	FBAA - Federation of the Belgian bus and coach operators
BE	FEBETRA - Fédération royale belge des transporteurs et des prestataires de services logistiques
ES	FENADISMER - Federacion nacional de asociaciones de transportistas de España
FR	FNTR - Fédération nationale des transports routiers
FR	FNTR LOIRE - Fédération nationale des transports routiers Région Loire
FR	FNTV - Fédération nationale des transports de voyageurs
UK	FTA - Freight transport association
DE	GDV - Gesamtverband der Deutschen Versicherungswirtschaft
DK	HTSI - Danish Chamber of Commerce - International transport Danmark
IR	IRHA - Irish road haulage associations
NL	KNV - Koninklijk nederlands vervoer
FI	LINJA-AUTOLIITO - Finnish bus and coach associations
FR	MOT - Mission opérationnelle transfrontalière
UK	RHA - The road haulage association
BE	SAV- Koninklijke Beroepsvereniging Goederenvervoerders Vlaams Gewest en Brusselse Hoofdstedelijk Gewest
FI	SKAL- Finnish transport and logistics
FR	TLF - Fédération des entreprises de transport et logistique de France
NL	TLN - Transport en logistiek Nederland
BE	UPTR
FR	UTP - Union des transports publics
DE	VDV - Verband deutscher Verkehrsunternehmen
AT	WKO - Wirtschaftskammer Österreich
PL	ZMPD - Association of the international road transport carriers in Poland

Others

UK	TIMEBUS TRAVEL (psv operator)
NL	VALLENDUUK ADVOCATEN
DE	Deutsche Bahn AG
DE	Deutsche Post World Net
EU	Eurolines Organisation

Market access rules for road transport

Carriage of goods

First Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road⁴;

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 States⁵;

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 State⁶;

(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 attestation⁷.)

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 bus⁸;

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 State⁹.

Rules on the admission to the occupation of road transport operator

Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations¹⁰

⁴ 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)

⁵ 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)

⁶ 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)

⁷ 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.

⁸ 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)

⁹ OJ L 4, 8.1.1998, p. 10

¹⁰ OJ L 124, 23.5.1996, p. 1, as amended by Council Directive 98/76/EC of 1 October 1998 (OJ L 277, 14.10.1998, p. 17)