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**COMMISSION STAFF WORKING DOCUMENT**

**REFIT EX-POST EVALUATION**

**of**

**Regulation (EC) No 1071/2009 on access to the occupation of road transport operator  
and Regulation (EC) No 1072/2009 on access to the international road haulage market**

**EXECUTIVE SUMMARY**

## EXECUTIVE SUMMARY

Regulation (EC) No 1071/2009 sets the provisions that undertakings must comply with in order to access the occupation of road transport operator (passenger and freight). It also lays down certain provisions to regulate and facilitate enforcement by Member States, including by establishing a European Register of Road Transport Undertakings (ERRU).

Regulation (EC) No 1072/2009 lays down the provisions to be complied with by undertakings that wish to operate on the international road haulage market and on national markets other than their own (cabotage). It includes provisions related to the documents to be issued to such undertakings by the Member State of registration (Community License), as well as to drivers from third countries (driver attestation). It also sets down provisions regarding the sanctioning of infringements and cooperation between Member States in that context.

Regulations (EC) No 1071/2009 and No 1072/2009 ("the Regulations") were adopted as part of the package of measures aimed at modernising the rules governing admission to the occupation of road transport operator and access to the road transport market. As a global objective, they aimed to support the completion of the internal market in road transport, its efficiency and competitiveness.

The Regulations have been subject to a broad review of the road freight market which the Commission has undertaken in 2012-2014. This culminated in the adoption of the Report on the State of the Union Road Transport Market in April 2014. In that Report, the Commission came to the conclusion that "a balanced reform, including provisions to ensure the uniform application of market access rules, would bring clarity to the legal provisions that Member States and the industry understand and apply differently. Clearer rules would provide the basis for an enhanced culture of compliance and limit the possibilities for fraud (both in the fiscal or social sphere). This is a *sine qua non* condition to improving the coherence of enforcement that is expected of a Single European Transport Area."

In 2015 it was deemed appropriate to assess whether the two Regulations are still fit for purpose and they were hence subject to a Regulatory Fitness and Performance (REFIT<sup>1</sup>) evaluation. The current evaluation analyses whether the two Regulations have been effective and efficient in attaining their objectives, whether it is still relevant to have EU level instruments in this area, as well as if the Regulations are coherent with other EU policies. The evaluation covers the whole EU and the period from 2011 to 2015. It is supported by an external study carried out for the Commission in 2014-2015<sup>2</sup> and regular contacts with stakeholders, as well as policy documents of the Commission and other relevant literature.

Overall, the adoption of the Regulations provided an appropriate theoretical framework for operation in the EU road freight transport market. Whereas common EU rules on access to the profession and to the market should provide for more harmonisation across Member States and prevent unilateral measures taken by Member States, in practice they failed to achieve a level playing field due to enforcement and implementation problems.

Significant problems were encountered. The main difficulties were linked to the practical application and enforcement of the principles laid down in the Regulations. Differences in interpretation of their provisions by Member States and hauliers, inconsistencies in enforcement practices and lack of cooperation between Member States substantially hinder

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<sup>1</sup> COM(2012) 746, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Regulatory Fitness, 12.12.2012.

<sup>2</sup> <http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2015-12-ex-post-evaluation-regulations-2009r1071-and-2009r1072.pdf>

the effective enforcement of the Regulations and bring about legal uncertainty for the operators.

There are very different levels of control exercised by Member States. For example, some Member States put a lot of weight (in terms of budgetary and resource allocation) in the control of illegal cabotage, while other Member States practically do not control cabotage operations.

Another major identified shortcoming is linked to the lack of cooperation between (at least some) Member States, notably as regards compliance with the stable and effective establishment criterion.

The cabotage provisions are unclear and hardly enforceable. Some Member States accept several loading and/or unloading operations within the same cabotage operation, while others do not.

There is an unclear definition of stable and effective establishment, notably as regards the definition of operating centre. Some countries require, for example, parking facilities, while others do not.

There is also a lack of clarity as to which infringements should lead to loss of good repute. Notably, the current categorisation of the seriousness of infringements which may lead to loss of good repute issued by the Commission covers only safety-related infringements. Rehabilitation procedures differ widely between Member States.

Some Member States impose additional conditions on access to the occupation of road haulier, for example linked to the minimum number of vehicles or to the minimum age of the transport manager, leading to divergent conditions for access to the profession.

In terms of the penalties in place for infringements of the Regulations, the major variations of financial penalties between Member States are often at a level that cannot be justified on grounds solely of socio-economic differences.

Despite the fact that the EU Regulations are directly applicable at the national level, several Member States complemented these with national guidance on the application of the EU rules. In some instances, the national regulatory systems contained illegalities and the Commission started infringement procedures against the Member States concerned. Infringement procedures were also initiated whenever Member States failed to implement provisions of the Regulations.

As regards the efficiency of the Regulations, overall the benefits experienced to date in terms of reduced administrative costs are much lower than the amount originally anticipated. The shortfall is mainly due to the fact that the ERRU system is not fully functional. This is due both to the fact that not all of the Member States' national electronic registers are interconnected yet and to the insufficient use of ERRU by Member States which are already connected.

The Regulations cover most of the key issues which are relevant to the objectives of reducing competitive distortion and establishing more harmonised conditions for access to the profession and to the international road transport market. The remaining problems are mainly due to issues of interpretation and/or enforcement, rather than from the targeting of the rules themselves.

There are no major inconsistencies between the Regulations and other legislation with which it interacts, even though certain difficulties have been identified in their joint enforcement

with the Combined Transport Directive 92/106/EEC and the Posting of Workers Directive 96/71/EC.

Based on the analysis above, the current REFIT evaluation concludes that the Regulations have only to a very limited extent met their original objectives. Some of their provisions have significant shortcomings, are ambiguous and do not provide sufficient guidance, leading to their ineffective and inconsistent enforcement and contributing to persistent problems in the road freight transport market.