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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Executive summary

Proposal for a Regulation of the European Parliament and of the Council on common rules concerning the conditions to be complied with to pursue the occupation of road transport operator

Proposal for a Regulation of the European Parliament and of the Council on common rules for access to the international road haulage market (recast)

Proposal for a Regulation of the European Parliament and of the Council on common rules for access to the market in coach and bus services (recast)

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"An operator's licence has been held to constitute a possession for the purposes of Article 1 of the First Protocol, Human Rights Act 1998. A valuable possession when held, in the form of a standard licence, by a professional haulier or bus and coach operator, whose business is that of carrying goods of passengers for hire and reward; for without that licence, there is no substantive business. Consequently, we are entitled to expect that the holders of these precious licences will treat them with the appropriate degree of diligence and care"

Geoffrey Simms, Traffic Commissioner, Eastern Traffic Area.

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1. CONTEXT

Since the implementation of the internal road transport market, the shape of the road sector has undergone profound change. After the price deregulation in international transport achieved in the late 1980s, the Directive on admission to the occupation of road transport operator¹ and the four Regulations on access to the road transport market² adopted by the Community a few years later have been the stepping stone for these changes.

The Directive introduced minimum requirements as regards good repute, professional competence and financial standing to be satisfied by operators wishing to engage in road transport. The four Regulations liberalised international road haulage and occasional passenger services and established regulated competition for authorising regular passenger services and certain haulage operations in a Member State by non-resident carriers from other Member States ("cabotage").

Since then road transport services have increased and diversified their offer, responding more closely to customers' needs for just-in-time services. Prices of transport for end-users have even in some cases decreased. Shippers and the whole economy have gained. The road haulage market has expanded on average by 3.4% a year, creating new business opportunities.

But operators still face disparate national rules on access to the profession and the market. Licensing authorities do not monitor in an even way the good repute of road transport undertakings and their records of offences. The value of the certificate of professional competence required to get access to the market varies from one Member State to another (the rate of success of the corresponding examination varies from 10% to more than 90%). Cabotage rules are unequally applied and enforced. In the meantime, road transport undertakings increasingly operate outside the Member States where they are registered. International transport increases on average by 4.2% a year and cross-trade transport³ has even increased by more than 40% since 2004.

In such circumstances, these heterogeneous rules do not allow for a level playing field and lead to a higher propensity of non-resident undertakings to poorly comply with road safety and social rules. This also gives rise to a degree of opacity on the market and to a certain amount of mistrust vis-à-vis operators from other Member States. Customers and the economy in general are unable to reap the full benefits of a genuinely transparent and integrated road transport market.

The Community has already recently strengthened the common basic rules on working time⁴, driving times and rest periods⁵. This should help to reduce distortion of competition and improve the situation. But incompleteness and lack of clarity in the EU legal provisions on the admission to the occupation and access to the market and their resulting uneven application and enforcement keep creating problems in the following areas:

¹ Directive 96/26/EC on admission to the occupation of road transport operator.

² Regulations (EEC) No 881/92, (EEC) No 3118/93, (EEC) No 684/92 and (EC) No 12/98 on access to the road transport market.

³ Transport between country A and B by an operator established in country C

⁴ Directive 2002/15/EC on working time of certain mobile workers in road transport.

⁵ Regulation (EC) No 561/2006.

1. The road transport undertakings without real and stable establishment ("letter-box" companies) can avoid proper monitoring by their licensing authorities and hardly fear any administrative sanctions like withdrawals of licence. While some Member States have developed comprehensive requirements to make sure that undertakings are effectively established, others require only basic registration with a chamber of commerce. This creates incentives for negligent, or even rogue, behaviour and an unfair competition to the detriment of the vast majority of the sector.
2. The professional capacity and financial standing required by national rules in accordance with Directive 96/26/EC are usually hardly comparable between Member States. This patchwork of rules within the EU also distorts competition. Undertakings with low professional and/or financial standing are able to stay on the market even though they tend to be more negligent and poor at complying with road safety and driving time rules. Consumers have no comparable reference enabling them to know in advance the standing of the undertakings which will perform for them transport activities.
3. The differences are particularly striking for minimum professional competence. Several derogatory regimes allow that the holder of the certificate of professional competence (transport manager) is not involved directly in management of the actual transport operations and can even be working for other undertakings at the same time. These regimes could be used excessively or even improperly. Consequently, there is no guarantee of a uniform minimum level of professional competence. This leaves unarmed very small operators which turn often to so-called false independent workers.
4. Regulation (EC) No 3118/93 allows a haulier established in one Member State to provide a road haulage service within another Member State on condition that the service is provided *on a temporary basis*. In practice it is difficult to assess the temporary nature of a transport service and thus whether the service is lawful or not. The Commission adopted an interpretative communication on the temporary nature of road cabotage⁶, which sought to clarify the concept on the basis of the Court of Justice's definition of "temporary" in connection with the provision of services. Despite this clarification, several Member States have introduced their own national rules on road cabotage, creating a risk of more divergent rules, higher compliance costs and legal uncertainty for the industry.
5. For regular international passenger services, Regulation (EC) No 684/92 created a scheme by which each new individual service needs to be authorised by the national authorities. For each application national authorities must seek the agreement of the other Member States affected by the service, assess the consequences of introduction of the service and notify the applicant whether they accept or reject the application. The procedure is perceived, especially by the industry, as creating high barriers for new entrants and unnecessary red tape.
6. The lack of uniformity of certain control documents such as certified copies of Community licences and driver attestations creates problems during inspections and often leads to considerable time losses for operators.

⁶ Communication 2005/C 21/02 of 26 January 2005.

7. The procedures leading to administrative sanctions, like withdrawal of undertakings' licences and disqualification of the transport managers, are applied very unevenly by the Member States and take hardly any account of the behaviour of undertakings outside the Member State in which they are established. This is detrimental to the overall credibility and efficiency of the monitoring that Member States are supposed to put in place. This also creates legal uncertainties for undertakings.

2 PROCEDURAL ISSUES

The impact assessment built on various studies carried out during 2004, 2005 and 2006 and a public consultation. Its scope has been adjusted to reflect as accurately as possible the main stakeholders' comments. As recommended in the *Impact Assessment Guidelines*⁷, the assessment has taken into account the principle of proportionate analysis and has focused on the most significant forms of impact and distributive effects. Whenever possible, quantified estimates have been provided.

The public consultation complied with the Commission's standards⁸ and took place through an open internet-based consultation between 9 June and 9 August 2006. The consultation paper, the contributions received and a summary of the contributions are available on the website "Your voice in Europe" and at the following internet address:

http://ec.europa.eu/transport/road/consultations/road_market_en.htm.

The Commission received 67 contributions, breaking down into the following groups: national authorities: 16; international associations of road operators, employees or various interest groups: 10; national associations: 36; companies or self-employed: 5.

The Commission's services discussed the key issues addressed in this review in the framework of the social dialogue with the social partners on 5 September 2006. On 7 November 2006 a consultation meeting with stakeholders and Commissioner Jacques Barrot was held in Brussels.

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

3 OBJECTIVES

The objectives are to simplify and clarify the legal provisions, contained in the current Directive on the admission to the occupation and the four Regulations on the access to the market, making them more enforceable and completing them when needed. The more operational objectives are to:

- contribute to a level playing field and reduce distortion of competition;

⁷ SEC (2005) 791.

⁸ COM (2002) 704

- raise the level of professional qualifications of road transport managers;
- reduce the administrative burden;
- enhance compliance with safety, social and technical rules;
- contain the environmental impact of road, notably empty returns of vehicles.

4 POLICY OPTIONS

The consultation process has shown that, overall, stakeholders suggest that the corresponding rules should be revised, at least to simplify them and make them more enforceable and comparable. In order to accurately reflect the diversity of individual views expressed during the consultation, five policy options have been considered:

Option 1

A "no change" option: this would leave unaltered the present four Regulations and the Directive which, together, make up the legislation on the internal road transport market.

Option 2

A "technical simplification and non-regulatory" option: the Directive on admission to the occupation would be merely codified and the four Regulations on access to the market would be merged into two, one dealing with freight transport and the other with passenger transport. The option would include by way of technical simplification the standardisation of Community licences, of their certified copies, and of the driver attestations. It would also phase out current derogatory regimes for small vehicles and grandfather rights. In addition, the Commission would:

- publish guidelines to encourage Member States to implement provisions related to financial standing in a more harmonised way;
- publish an interpretative communication on cabotage. The communication would replace the one already adopted in 2005.

Option 3

A "harmonisation" option: the option would include the technical simplification proposed in Option 2 plus the following changes:

- Common criteria would be drawn up to ensure that companies admitted to the occupation have a stable and effective establishment;
- Professional capacity would be harmonised through compulsory accredited training. The links between the undertaking and the holder of the certificate of professional competence would be tightened up. Financial standing requirements would be harmonised through standard indicators or an optional bank guarantee;

- Three cabotage operations consecutive to an international goods transport operation would be allowed within seven days, which could easily be monitored through existing consignment letters. The procedure for authorising international regular coach services would be simplified;
- Evidence of serious offences against EC road transport rules would be mutually recognised between Member States. Rules would provide for a common approach to monitor the repute of operators and to impose administrative sanctions such as withdrawal of authorisation or the disqualification of transport managers.

Option 4

A "higher quality standards" option, which would include all the measures in Option 3 ("harmonisation"), except that:

- The financial capacity requirements would be 50% higher and an additional requirement of regular periodic training would be added;
- Stricter provisions would be added so that the person lending his certificate of professional capacity is actually full time employed by the undertaking.

Option 5

A "liberalisation" option, which would include all the measures in Option 3, except that:

- Cabotage operations consecutive to an international transport operation would be unlimited and the vehicle carrying out cabotage would only have to leave the caboted Member State after one month;
- The authorisations for regular passenger services would be totally abolished.

5 COMPARISON OF THE OPTIONS AND CONCLUSIONS

The impact assessment has analysed the economic impact, the impact on road safety, the social impact and the impact on the environment. The key conclusions are summed up below:

Option 1

In the "no change" option, the problems described in section 1 would remain and would even increase given the strong growth of international transport.

Option 2

The "technical simplification and non-regulatory" option would be easy to implement and would reduce administrative costs slightly. While this option would bring greater clarity to the legal texts and facilitate enforcement to some extent, it is unlikely to narrow the gaps between the national rules. It could even contribute to more divergent national rules since Member States would be allowed to develop their

own policy, for instance imposing tighter restrictions on cabotage. The main problems identified at the start of this document would remain.

Option 3

The "harmonisation" option would make the rules on admission to the occupation and the rules on access to the market more comparable, consistent and enforceable. Although in the short term, in some countries, it would increase slightly the compliance cost and the entry cost for small companies, it would contribute to fairer competition and raise the average level of professional qualifications in the EU road transport internal market. It would improve compliance with road safety and social rules by discouraging negligent or rogue operators. It would contribute to reducing the environmental impact of transport by encouraging better optimisation of vehicle loads in regular international trips. After an initial investment to install electronic registers so that control authorities can target checks instead of frequently checking all undertakings, it would offer to Member States the possibility to reduce the administrative burden by around € 190 million per annum.

Option 4

The "higher quality standards" option would be more effective in raising the average level of professional qualifications of road transport operators in all the Member States. It would also improve the rate of compliance with road safety and social rules. Like Option 3, it would reduce the administrative burden by the same level. In the short run, this option would result in higher compliance and entry costs for the industry and could make entry proportionately more difficult for small undertakings. In the long run, it would encourage road transport with greater socio-economic benefits and could re-establish mutual trust on the part of domestic undertakings and customers vis-à-vis foreign hauliers.

Option 5

The "liberalisation" option would introduce more competition on several domestic markets and would reduce transport costs in the countries concerned. But in turn it would increase the volume of road transport, possibly its overall negative impacts on the environment and would shift jobs from these countries to countries with lower labour costs. The reduction of the administrative burden achieved in Option 3 might be offset by increased legal complexities as regard the national rules applicable to carriers performing cabotage. Road safety problems could possibly appear in the case of coach services. Without effectively enforced high quality standards (i.e implementing Option 4) the incentives for negligent or rogue behaviour would increase rather than diminish. All in all, this option could have substantial impacts which would need a deeper analysis and therefore goes beyond the scope of this simplification exercise.

Given the possible drawbacks of Option 4 for very small undertakings, the attached legislative proposals follow Option 3 ("harmonisation"). Implementing such proposals will contribute to effective enforcement of high professional and safety standards and will reduce distortion of competition in the road transport sector.