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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation in the period from 1 January 2013 until 31 December 2014 of
certain provisions of Regulation (EC) No 1071/2009 establishing common rules
concerning the conditions to be complied with to pursue the occupation of road
transport operator**

**(2nd report from the Commission on the implementation by Member States of certain
provisions concerning the access to the occupation of road transport operator)**

I. Introduction

This report refers to the pursuit of the occupation of road transport operators in Member States and its objective is to ensure the closer monitoring of the application of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC¹ (hereafter "Regulation (EC) No 1071/2009"). This Regulation applies to all undertakings established in the EU which are engaged in the occupation of road transport operator, as well as those which intend to engage in such an occupation. The occupation of road transport operator refers to both the occupation of road haulage operator² and the occupation of road passenger transport operator³. Certain categories of undertakings, such as those using motor vehicles of a laden mass of less than 3.5 tonnes, are exempted from the scope of the Regulation⁴. Regulation (EC) No 1071/2009 defines common rules governing the admission to the occupation of road haulage and road passenger transport operator.

In accordance with Article 3 of this Regulation, undertakings engaged in the occupation of road transport operator should have an effective and stable establishment in a Member State, be of good repute, have appropriate financial standing and the requisite professional competence. Furthermore, Article 4 of this Regulation imposes an obligation on road transport undertakings to designate a transport manager who holds a certificate of professional competence that confirms the possession of skills and knowledge necessary to manage transport operations in line with all legal and industrial requirements and in an effective and continuous manner. The responsibility to verify transport undertakings' compliance with the conditions laid down in Regulation (EC) No 1071/2009 lies with the Member States. Moreover, well organised administrative cooperation between Member States plays a key role in improving the effectiveness of monitoring of undertakings operating in the European Union.

Article 26(1) of Regulation (EC) No 1071/2009 sets deadlines for the reporting obligations of the Member States and of the Commission:

- Every two years from the date of application of the Regulation Member States should draw up a report on the activities of the competent authorities and forward it to the Commission, as required in Article 26 of the Regulation;

¹ OJ L 300, 14.11.2009, p. 51

² Under Article 2(1) of the Regulation, 'the occupation of road haulage operator' means the activity of any undertaking transporting goods for hire or reward by means either of motor vehicles or combinations of vehicles.

³ Under Article 2(2) of the Regulation, 'the occupation of road passenger transport operator' means the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users in return for payment by the person transported or by the transport organiser.

⁴ Under Article 1(4) of the Regulation, 'Member States may, however, lower this limit for all or some categories of road transport operations'.

- On the basis of the submissions from Member States, the Commission should draw up a report every two years to be communicated to the European Parliament and the Council.

National reports provided by Member States constitute a crucial input to the Commission report. Article 26 of the Regulation outlines what data should be included in national reports:

"(a) an overview of the sector with regard to good repute, financial standing and professional competence;

(b) the number of authorisations granted by year and by type, those suspended, those withdrawn, the number of declarations of unfitness and the reasons on which those decisions were based;

(c) the number of certificates of professional competence issued each year;

(d) core statistics relating to the national electronic registers and their use by the competent authorities; and

(e) an overview of exchanges of information with other Member States pursuant to Article 18(2), including in particular the annual number of established infringements notified to other Member States and the replies received, as well as the annual number of requests and replies received pursuant to Article 18(3)."

This report covers the quality and timeliness of national data submissions (Section II) and an analysis of the reports provided by Member States (Section III). Section IV presents the conclusions.

II. Data submission

This is the second report under Regulation (EC) No 1071/2009 and it covers the period from 1 January 2013 until 31 December 2014. The first report⁵ covered the period from 4 December 2011 (the date from which the Regulation started to apply) until 31 December 2012. The present reporting period is synchronised with the report on the implementation of the social legislation relating to road transport⁶, as required by Article 26(2) of Regulation (EC) No 1071/2009. This synchronisation allows Member States and stakeholders to have a coherent overview of the sector in relation to the internal market and social rules in the same reporting period.

Despite the obligation to report contained in Article 26 of this Regulation at the point in time when this report was drafted six Member States, namely Austria, Belgium, Cyprus, Hungary, the Netherlands and Portugal, did not submit their national reports. Some Member States had a serious delay in providing their data by the deadline of 30 September 2015, which

⁵ COM(2014)592 final, 25/9/2014.

⁶ Referred to in Article 17 of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

significantly affected the timing of preparation of this Commission report. In a number of reports certain necessary information was not provided, thus making it problematic to carry out a comprehensive analysis. There are also cases where the data provided covered a different timeframe than the one which was required.

For the purpose of consistency and in order to assist the national competent authorities with fulfilling their reporting obligation, a standard form was proposed by the Commission services to the Member States in 2015 to be used from the second reporting period onwards. Most Member States which submitted their national reports used the standard form.

Since the Member States which submitted reports during the present reporting period are not the same ones as those which submitted reports in the first reporting period and the duration of the reporting periods is different⁷, comparisons between the two reporting periods could not be made and would not, in any event, lead to meaningful conclusions. Therefore, no such comparisons are made in the present report.

The Commission has commissioned a study on the ex post evaluation of Regulations (EC) Nos 1071/2009 and 1072/2009⁸. Where relevant, the present report draws information from that study.

III. Analysis of data on pursuit of the occupation of road transport operator

1. Overview of the road transport sector with regard to good repute, financial standing and professional competence

This part of the report concerns the presentation of national requirements, organization of checks, level of compliance and difficulties encountered, on the basis of information submitted by Member States. Due to the fragmentary nature of the reports made by the Member States, this overview is not comprehensive in scope. Whenever needed, the reports from the Member States are complemented with data from the above-mentioned evaluation study.

As allowed by Article 3(2) of Regulation (EC) No 1071/2009 under certain conditions, several Member States impose national requirements that need to be satisfied in addition to the four requirements set out in the Regulation (stable and effective establishment, good repute, appropriate financial standing and requisite professional competence) in order to have access to the occupation of road transport operator. For example, Slovakia added a requirement defining the minimum age of a transport manager at 21 years. Austria included the condition that road transport operators must have the necessary off-road parking spaces in the municipality or in another municipality in the same or adjacent administrative district. In Spain there is an additional requirement that applicants must have three vehicles representing at least one payload of 60 tonnes⁹. France, Italy and Latvia decided to extend the obligation of

⁷ Around one year for the first reporting period and two years for the second reporting period.

⁸ <http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2015-12-ex-post-evaluation-regulations-2009r1071-and-2009r1072.pdf>

⁹ This national requirement is however not compliant with the conditions set out in the Regulation, which led the Commission to decide on 17 November 2016 to refer Spain to the European Court of Justice on the ground that this requirement is disproportionate and potentially discriminatory against very small undertakings.

compliance with the rules on access to occupation of road transport undertaking to road hauliers operating vehicles with a permissible laden mass not exceeding 3.5 tonnes.

There is great diversity in the way Member States check compliance with the four requirements on access to the occupation of road transport operator set out in the Regulation, as well as in the number of checks carried out.

Estonia reported that checks of compliance with the requirements of the Regulation are carried out according to a risk-based system targeting primarily undertakings which have an increased risk of committing serious or frequent infringements of road transport rules.

In Ireland checks of good repute, financial standing and professional competence are performed at least every five years in the framework of an authorisation renewal process for each undertaking. In addition, these checks might take place more frequently for some operators which are deemed to present a high risk or come to the attention of the competent authority. Good repute is checked by vetting the transport manager and any other relevant person with the National Vetting Service provided by the National Police Force. This vetting service provides the competent authority with a list of convictions that can be used to determine good repute. During the 5-year period of validity of an operator's licence, there will ordinarily be no need for an operator to furnish additional information to the licensing authority. This would only happen when the authority has detected a risk in respect of that operator.

In Latvia checks of compliance with financial standing are performed by means of information from the annual reports provided by the Register of Enterprises. Moreover, all four requirements are checked before granting an authorisation for transport operations. The majority of authorisations suspended originate in requests from the State Tax Inspectorate, when it has decided to suspend the economic activity of the transport company. Since in Latvia certified true copies of Community licences and licences for national transport are issued for each particular vehicle and only for a period of up to twelve months, in case of noncompliance with the four requirements, the certified true copies of the Community licences and the licences for national transport are not renewed. Good repute is checked for the transport manager, the undertaking and its members of the board. When the transport manager or members of the board of the undertaking are replaced, the good repute of each of the new members is checked.

In Spain two methods are used to control compliance with the criteria on access to the profession. The first method consists of requesting undertakings to submit documentation proving that they comply with the four requirements. The second method involves inspectors going to the premises of the undertakings for on-site checks. In Spain road transport undertakings must apply for a renewal of their authorisation every two years and therefore compliance with the four requirements is controlled every two years. Moreover, every year a series of inspections are carried out to verify that the undertakings whose authorisation has not been renewed do not carry out any transport activity. In 2013, 354 undertakings were checked for this purpose and 3 were sanctioned for having carried out transport activities without being authorised to do so, while 1,184 undertakings were checked and 36 infringements were detected in 2014.

In Poland there are 400 inspectors responsible for checks at the roadside and at the premises of road hauliers. The information collected by the inspectors is forwarded to the International Transport Office and to local authorities issuing the Community licenses and checking the

four requirements set out in Regulation (EC) No 1071/2009. In Poland a stable and effective establishment is considered to be a place with technical equipment and devices appropriate to carry out transport activities in a structured and continuous manner, which includes at least one of the following elements: a parking place; an unloading area; equipment for maintenance of vehicles.

In Germany there was only a risk rating system at the regional level, but as from July 2014 there is a country-wide risk rating system. Infringements are rated with either 5 points (most serious infringements), 3 points (more serious/serious infringements) or 1 point (other infringements). An undertaking is then rated as having an increased risk if it has accumulated either 5 points (for undertakings with up to 10 vehicles), 8 points (up to 50 vehicles) or 11 points (more than 50 vehicles).

The UK's Driver and Vehicle Standards Agency has had a system known as OCRS (Operator Compliance Risk Score) since 2006. This system was refined in 2012 so as to improve its predictive ability. The OCRS integrates information on roadworthiness infringements, which are correlated with other infringements.

In Denmark all new applicants for a national or Community licence are checked for appropriate financial standing, professional competence, debt and stable establishment. Checks of good repute are only conducted if the police have reported a problem or if there is any other indication that there might be a problem. Infringements are registered for 5 years and comprise the infringements that are detected by the police during roadside checks. The Danish authority typically checks all new applicants as well as around 250 existing operators. The latter are selected on the basis of the risk rating system. Operators must meet an initial financial standing requirement of DKK 150,000 (around €20,000) in order to obtain the first two licences, whereas Regulation (EC) No 1071/2009 only requires reserves of €9,000 for the first vehicle and €5,000 for each additional vehicle¹⁰. In Denmark, for each additional vehicle DKK 40,000 (around €5,400) is required. Further, the company must not have arrears to the government exceeding 50,000 DKK (around €6,700). The Danish Transport Authority makes an enquiry with the Danish Tax Authorities on this matter when verifying the appropriate financial standing of the undertaking.

Romania has a risk rating system to target checks of infringements reflecting all offences in road transport for each transport company. If a company opens a branch, checks are done on its stable and effective establishment.

In the Netherlands, the Dutch Road Haulage Organisation for National and International Transport has developed a method to detect transport operators that are in risk of no longer fulfilling the requirement of appropriate financial standing. Transport operators that are at risk will be closely monitored. In the event that a high risk transport operator is not able to satisfy the requirement of appropriate financial standing within the given time limits laid down in Article 13 of Regulation (EC) No 1071/2009, the Community license is withdrawn. With this method, transport operators are obliged to satisfy the requirement of appropriate financial standing during the whole period of validity of the Community license and not only during the application period. Risk rating also applies to requisite professional competence.

¹⁰ See Article 7(1) thereof.

In Finland the risk rating system is linked to checks of good repute. Systematic checking of good repute concerning all the relevant persons is considered to be a demanding task, which is precisely why risk rating is needed.

As for the difficulties encountered concerning checks of stable and effective establishment, which are considered to be more resource-consuming than other checks, several enforcement authorities stress the demanding nature of the checks and the lack of administrative capacity to control all road transport undertakings registered in a given Member State.

The number of checks carried out in each Member State with regard to the four requirements on access to the occupation of road transport operator varies widely. For example, in Bulgaria 5,640 undertakings were checked for stable and effective establishment in 2014, whereas in Estonia 120 checks were carried out in the period 2013-2014. In Estonia, 50 checks of good repute and 50 checks of professional competence were carried out in the period 2013-2014. In Romania, 2,543 checks of good repute were carried out in 2013 and 2,760 in 2014. In Spain, 12,415 investigations were carried out regarding the four criteria on access to the occupation of road transport operator during the period 2013-2014 (10,495 regarding freight operators and 1,920 regarding passenger transport operators).

Finally, as regards the level of compliance with the requirements on access to the occupation of road haulier, the available data indicates that this level is relatively high. For example, out of the 5,640 undertakings checked for stable and effective establishment in 2014 in Romania, only 49 were found not to have a stable and effective establishment. Ireland also reports a high compliance level, without specifying the number of infringements.

2. Authorisations

Article 2 of Regulation (EC) No 1071/2009 defines the authorisation to pursue the occupation of road transport operator as “an administrative decision which authorises an undertaking which satisfies the conditions laid down in that Regulation to pursue the occupation of road transport operator”.

The legal nature of "administrative decision" varies between Member States. This might be a prerequisite to obtain a licence for national transportation and/or a Community licence in order to carry out international carriage, it might be the equivalent of a licence for national transportation only or it might mean a licence for national and international transport granted by means of one single authorisation.

For example, in Bulgaria and Lithuania there are four types of licences (national passenger, national freight, Community licence for passenger and Community licence for freight). However, in Bulgaria only one document (i.e. authorisation) is granted for national and international transport.

From 2012 undertakings established in Estonia are obliged to apply for a Community licence, which is the only type of authorisation existing in that Member State.

In Luxembourg there are only two types of licences: one for the national transport and the other one for international transport.

In Romania only Community licences are granted as authorisations either for passenger transport or freight transport.

In the UK there are two main types of authorisation that apply to passenger and freight transport undertakings. They are Standard National Licences and International Licences. The International licence is for those undertaking which carry out international transport and this corresponds to holders of Community Licences. In addition, the UK has further categories outside of the scope of Regulation (EC) No 1071/2009 for own account operators. There is a further classification for passenger carrying organisations which are not businesses and these are not considered as operating for hire and reward, such as schools, charities and community groups.

Due to the different meanings of "authorisation" for undertakings to pursue the occupation of road transport operator, quantitative data submitted by Member States cannot be directly comparable. However, most Member States submitted a global number of authorised operators on 31 December 2014, which constitutes a point of reference for data on numbers of authorisations granted, suspended or withdrawn. Italy has 111,677 authorised operators (freight and passenger), Spain has 93,997, the UK has 90,418, France has 68,658, Germany has 59,671, Poland has 32,676, Sweden has 18,092, Finland has 16,285, Greece has 13,115 (freight only), Bulgaria has 11,294, Croatia has 10,852, Ireland has 5,655, Denmark has 5,618, Slovenia has 5,617, Lithuania has 5,341, Latvia has 4,702, Estonia has 3,126, Malta has 663 and Luxembourg has 427 authorised operators.

On the basis of the available data, it appears that the vast majority of authorised undertakings are road hauliers. The percentage of authorised road hauliers compared to the overall number of authorised operators in the Member States having reported was 88% as of 31 December 2014, whereas only 12% were passenger transport operators¹¹. The only exception was Malta, where the number of passenger transport operators (578) exceeded by far the number of road hauliers (85), whereas in France the percentage of passenger transport operators was significantly above the EU average (38%).

2.1 Authorisations granted

Twenty Member States¹² provided data on authorisations granted. On the basis of this data, it can be noted that in these Member States 261,156¹³ authorisations were granted to pursue an occupation of road transport operator in passenger (29,749) and goods (231,407) transport.

The number of authorisations granted ranged from 44 in Malta to 81,719 in Spain. A detailed table with the information submitted is presented in Annex I to this report.

Similarly to the number of authorised undertakings as of 31 December 2014 (see section 2 above), most of the authorisations granted in 2013 and 2014 also concern road hauliers (89% overall) and only a small share of authorisations concern passenger transport operators (11%).

2.2 Authorisations withdrawn and suspended

On the basis of data reported by twenty Member States concerned, the total number of authorisations withdrawn or suspended during the period 2013-2014 was 161,289. It can be

¹¹ Greece reported only the number of freight operators.

¹² Bulgaria, Czech Republic, Denmark, Germany, Greece, Spain, Estonia, Finland, France, Croatia, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, Poland, Slovenia, Sweden and United Kingdom.

¹³ For the Czech Republic this number covers authorisations granted in 2015.

observed that the highest number of withdrawals and suspensions of authorisations was reported in Spain and amounted to 123,758 for passenger and goods transport. At the other end of the scale, very few withdrawals and suspensions were recorded in Croatia (4), Ireland (6) and Romania (16).

Detailed information on withdrawals and suspended authorisations is included in Annex II to this report.

Withdrawals and suspensions of authorisations were mainly due to the expiry of the authorisation / Community licence, winding up of the company or on request by the operators in most of the Member States which reported on the reasons for such withdrawals and suspensions.

However, it is noteworthy that in two Member States the main reason for withdrawal or suspension of authorisations was different. In Sweden the main reason for withdrawals was non-compliance with the requirement of effective and stable establishment (1,793 withdrawals on this basis) and in the United Kingdom the main reason for withdrawals was lack of the requisite professional competence (1,263 withdrawals and suspensions on this basis).

3. Certificates of professional competence

Certificates of professional competence attesting the written and oral examinations successfully passed by the candidate drivers are issued by the competent authorities and constitute proof of professional competence, as provided for in Article 8 of Regulation (EC) No 1071/2009.

On the basis of information provided by twenty one Member States¹⁴, 483,544 certificates of professional competence were issued during the reporting period¹⁵. This number includes certificates granted on the basis of examination as provided by Article 8 of Regulation EC (No) 1071/2009 and through recognition of experience, following an exemption specified in Article 9 of this Regulation.

The biggest share of certificates granted in the European Union during this reporting period belonged to Spain (410,700), followed by Romania (25,597), Poland (6,891), France (6,679) and Germany (6,226¹⁶). Detailed information is presented in Annex III to this report.

4. Transport managers declared unfit

In accordance with Article 14 of Regulation (EC) No 1071/2009, when a transport manager loses its good repute, the competent authority should declare the transport manager unfit to manage the transport activities of an undertaking.

Most Member States¹⁷ which submitted data on number of declarations of unfitness, stated that there was not a single case recorded during the reporting period for both passenger and

¹⁴ Bulgaria, Czech Republic, Denmark, Germany, Greece, Spain, Estonia, Finland, France, Croatia, Ireland, Italy, Lithuania, Latvia, Malta, Poland, Romania, Slovakia, Slovenia, Sweden and United Kingdom.

¹⁵ In the case of the Czech Republic and Slovakia, the figures relate to 2015, rather than to the reporting period.

¹⁶ Germany reported only the number of certificates of professional competence issued to road hauliers.

goods transport. Declarations of unfitness were issued in seven of the reporting Member States: Italy (680)¹⁸, United Kingdom (493), Germany (62), Sweden (52), Estonia (7), Finland (5) and France (1). The data provided by Member States can be found in Annex II.

5. Exchange of information

According to Article 16 of Regulation (EC) No 1071/2009 each Member State should keep a national register of road transport undertakings that have been authorised to engage in the occupation of road transport operator. Minimum requirements for the data to be entered in these registers and common rules on their interconnection through the European Register of Road Transport Undertakings (ERRU) are defined in Commission Decision (EU) 2016/480¹⁹. Notably, this data covers the good repute of the transport undertakings, serious infringements committed and data on the Community licences.

The establishment of the ERRU was envisaged as a next step to facilitate cooperation between the national authorities for the purpose of further enhancement of cross-border enforcement of the European road transport legislation in accordance with Article 16(5) of Regulation (EC) No 1071/2009. The ERRU register should simplify cross-border enforcement, making it more cost-effective, provided that all Member States are connected and that they effectively use the system exchanging quality data contained in their databases. The interconnection of national registers was to be achieved by 31 December 2012.

At the point in time when this report was drafted three Member States²⁰ had still not interconnected their national electronic registers of road transport undertakings. Several Member States use ERRU regularly in order to exchange information with other Member States, in particular on good repute and serious infringements. It is generally considered that ERRU is a useful tool, but the lack of interconnection by all Member States still constitutes a major handicap for its effective and efficient use.

Only twelve Member States reported on data exchanges with other Member States²¹. On the basis of data provided, it can be noted that the system of administrative cooperation between Member States has not been fully accomplished yet, although some progress has been made since the last reporting period in this area notably linked to improved interconnection to and use of ERRU. A significant amount of information exchanges regarding serious infringements and good repute has been registered in Bulgaria, Denmark, Spain, Estonia, Latvia, Poland, Slovenia, Sweden and the United Kingdom. Most of these exchanges concern requests for checks of good repute sent to and received from other Member States. The data provided by Member States can be found in Annex IV to this report.

¹⁷ Bulgaria, Czech Republic, Denmark, Greece, Spain, Croatia, Lithuania, Luxembourg, Latvia, Poland, Romania and Slovenia.

¹⁸ This number refers to the global amount of declarations of unfitness issued until 8 September 2015, rather than those issued during the reporting period.

¹⁹ Commission Implementing Regulation (EU) 2016/480 of 1 April 2016 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings and repealing Regulation (EU) No 1213/2010; OJ L 87, 2.4.2016, p. 4.

²⁰ Poland, Luxembourg and Portugal.

²¹ Bulgaria, Denmark, Spain, Estonia, France, Croatia, Latvia, Poland, Romania, Slovenia, Sweden and United Kingdom.

IV. Conclusions

This report provides an overview of information submitted by Member States under Article 26 of Regulation (EC) No 1071/2009 on access to the occupation of road transport operator. This information covers the aspects of the implementation by Member States of Regulation (EC) No 1071/2009 listed in Article 26(1) of that Regulation during the period from 1 January 2013 until 31 December 2014.

The quality and timeliness of submissions from Member States was highly variable, affecting the overall quality of this report. Due to a significant amount of missing data, this report could not provide for a full analysis of implementation of the provisions of Regulation (EC) No 1071/2009. Also, the completion of the inter-connection of national registers to ERRU, which is not yet achieved, is indispensable to improve the quality of data provided.

It is worth underlining that the system of administrative cooperation between Member States has not been accomplished yet, even though significant progress has been made since the last reporting period. The Commission supports its further enhancement, which would strengthen consistent and effective implementation of Regulation (EC) No 1071/2009 across all EU Member States.

The Commission reminds Member States of their obligation to provide the complete report containing all the elements of data listed in Article 26(1) of Regulation (EC) No 1071/2009 within the required timeframe in order to allow for a fully-fledged report and to avoid infringement procedures under Article 258 of the Treaty on the Functioning of the European Union. The Commission also urges Member States to use the standard reporting form for the purpose of consistency of national submissions.

As required by Article 26(2) of Regulation (EC) No 1071/2009, this report is published at the same time as the report referred to in Article 17 of Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport.