

# Road transport: conditions to be complied with to pursue the occupation of road transport operator

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The Committee on Transport and Tourism adopted the own initiative report by Silvia-Adriana TICĂU (PES, RO), amending, under the first reading of the codecision procedure, the proposal for a Regulation of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator.

The main amendments adopted by the committee are as follows:

**Scope:** the Regulation shall apply to all undertakings established in the Community which are engaged in the occupation of road transport operator. It shall also apply to undertakings which intend to engage in the occupation of road transport operator and references to undertakings engaged in the occupation of road transport operator shall, as appropriate, be considered to include a reference to undertakings intending to engage in such operations.

Vehicles involved in agricultural or forestry activity (motor vehicles which cannot exceed 40km/h) shall be excluded from the application of the Regulation.

Furthermore, MEPs consider that, so long as infringements are interpreted and dealt with in such different ways in different Member States, repeated minor infringements should not form part of this Regulation. Therefore, the Regulation will only refer to serious infringements.

**Transport manager:** according to the Commission's proposal, the transport manager can only be a paid employee of the undertaking or its owner. MEPs believe that the transport manager should have a genuine link to the undertaking, i.e. be an employee, partner, director, shareholder or have a similar contractual relationship with the undertaking, or manage it, or, if the undertaking is a natural person, be that same person, or, if the undertaking is a partnership, be entitled to legally represent and make binding decisions on behalf of the partnership. Furthermore, the transport manager must be a resident in a Member State. The undertaking shall notify the competent authority of the transport manager or managers designated. The competent authority may decide on the maximum number of vehicles to be managed by the transport manager.

**Establishment requirement:** the undertaking shall have an establishment situated in the Member State that gives it authorisation to pursue the occupation, with premises in which it keeps its business documents in line with the periods laid down by law, on secure data supports, to which the competent authority must have access in order to verify compliance with the conditions provided for in the Regulation while complying with all relevant standards for the protection of personal data.

**Good repute:** Member States shall determine the conditions which an undertaking and a transport manager must meet in order for either to satisfy the requirement regarding good repute. MEPs list these conditions, which must include at least the following requirements:

- there are no compelling grounds for doubting the good repute of the transport undertaking, its transport managers or any relevant person, such as conviction or penalties for any serious infringement of national rules in force in the field of: (i) commercial law; (ii) insolvency law; (iii)

the pay and employment conditions in the profession; (iv) road traffic; (v) professional liability; and (vi) human or drugs trafficking;

- the transport manager or the transport undertaking has not incurred convictions in one or more of the Member States for serious infringements.

The Commission shall adopt, not later than 1 January 2010, a list of categories, types and degrees of seriousness of infringements which may lead to the loss of good repute. The measures relating to this list shall be adopted in accordance with the regulatory procedure with scrutiny. To this end and not later than 1 January 2010, the Commission shall: (i) lay down the categories and types of infringement which are most frequently encountered; (ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and (iii) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

**The requirement regarding financial standing:** the undertaking must demonstrate, on the basis of annual accounts, that it has at its disposal each year capital and reserves totalling at least EUR 9 000 for a single vehicle used and EUR 5 000 for each additional vehicle used. Capital resources shall be demonstrated by means of a certified trading balance sheet or a balance sheet for tax purposes. Persons applying for access to the profession of road transport operator for the first time must submit a certified opening balance sheet. MEPs consider that insurance should also be allowed as proof of financial standing. However, the 'quick ratio' of assets to debts (80% or above) is not an indicator for a business's financial stability. Lastly, MEPs propose that the competent authority should determine the conditions under which the bank guarantee may be called in and released for the benefit of other creditors.

**The requirement regarding professional competence:** the requirement regarding professional competence shall be established, by means of a compulsory written examination which, if a Member State so decides, may be supplemented by an oral examination. Member States shall accredit, in accordance with mutually compatible criteria defined by them, the bodies capable of offering applicants high-quality training. They may exempt from the examination persons who provide proof of at least 10 years' continuous practical experience in a transport undertaking at management level before publication of this Regulation. Lastly, Member States can promote the training as described in Annex I, every ten years, in order to update the knowledge of transport managers.

**Authorisation and monitoring:** MEPs consider that the competent authorities should be made explicitly responsible for the national electronic registers. They should make regular checks, at least every five years, to ensure that undertakings authorised to pursue the occupation of road transport operator continue to satisfy the necessary criteria. The Commission can change the period of five years for regular checks in accordance with the regulatory procedure with scrutiny.

**National electronic registers:** MEPs believe that the national electronic register should contain one public section and one confidential section. The confidential section of the electronic register shall be accessible to the authorities other than the competent authorities only if they are duly endowed with powers relating to supervision and the imposition of sanctions in the road transport sphere and whose officials are sworn. Not later than 1 January 2010, the Commission shall define, together with Member States the minimal structure of the data which have to be entered in the national electronic register.

Member States may choose to keep the information concerning serious infringements, which have resulted in a sanction in the last two years, as well as the names of any persons declared to be unfit to manage the transport activity of an undertaking, in separate registers.

Data concerning an undertaking the authorisation of which has been suspended or withdrawn shall remain in the register for two years as from the expiry of the suspension or withdrawal of the licence and shall thereafter be immediately removed. Data concerning any person declared to be unfit for the occupation

shall remain in the register as long as the good repute of this person is not re-established. After rehabilitation or equivalent measures have been taken, the data shall be immediately removed.

**Prior rights:** MEPs deleted from the proposal Article 22 which dealt with priority rights for those states which joined the European Union before 1 January 1995.