

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

2007/0098(COD) - 21/05/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by 614 votes to 28 with 45 abstentions, a legislative resolution amending 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 report had been tabled for consideration in plenary by Silvia-Adriana **TICĂU** (PES, RO) on behalf of the Committee on Transport and Tourism.

The main amendments - adopted in first reading of the codecision procedure - 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.

The Regulation will not apply to undertakings engaged in the occupation of road transport operator solely by means of motor vehicles with a maximum authorised speed not exceeding 40 km/h.

Transport manager: according to the Commission's proposal, the transport manager should be employed and remunerated by the undertaking. 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 competent authority may decide on the maximum number of vehicles to be managed by the transport manager, which will not be higher than 50 for each transport manager. Parliament deleted the clause in the Commission's proposal stating that the transport manager shall lose his or her good reputation within the meaning of the Regulation if serious infringements or repeated infringements above a certain threshold among the infringements referred to in the text are committed in the context of the transport activities which he or she manages.

Establishment requirement: the undertaking have an establishment, situated in that Member State with premises in which it keeps its business documents in line with the periods of time laid down by law and in particular all its accounting documents, personnel management documents and any other document on secure data supports, to which the authority competent to authorise the pursuit of the occupation 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. It must be able to prove on request where in the Member State of establishment the vehicles are parked when they are not in use.

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

there are no compelling grounds for doubting the good reputation 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.

Serious infringement: Parliament inserted a list of serious infringements in Annex IIa. The transport manager or the transport undertaking must not have incurred convictions in one or more of the Member States for serious infringements of Community rules. A conviction or penalties incurred by the transport manager or the transport undertaking in one or more of the Member States for the most serious infringements of Community rules, set out in the new Annex IIa, shall lead to the loss of good repute after a duly completed administrative procedure and, if appropriate, after a check at the premises of the undertaking unless the competent authority, under exceptional and for duly justified reasons, establishes that this constitutes a disproportionate response. In such a case, the exceptional and duly justified reasons shall be recorded in the national register and indicated in the report referred to in the Regulation. The measures relating to the adaptation of Annex IIa to take account of the development of the Community acquis in the field of road transport shall be adopted in accordance with the regulatory procedure with scrutiny.

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. Member States shall take into account information on those infringements, including information received from other Member States, when setting the priorities for checks. The measures designed to amend 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. The persons concerned shall sit the examination in their Member State of residence. Member States 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 may promote training as described in Annex I and an examination, as described, for transport managers at 10 year intervals to ensure that managers are aware of developments in the sector. Transport managers with practical experience returning to the profession after a five-year period of absence shall undertake the retraining and updating that are necessary to prove their continuous professional competence and their knowledge regarding the current developments of the legislation applicable to this profession.

Authorisation and monitoring: the competent authority shall be responsible for updating and maintaining the electronic register. From 1 January 2012 a competent authority shall verify in case of doubt, when assessing the good repute of an undertaking, that the transport manager(s) designated is not (are not) - at the time of the application - declared, in one of the Member States, unfit to manage the transport activity of an undertaking. The Commission shall adapt the periodicity of regular checks to technical progress, notably the national electronic registers. These measures shall be adopted in accordance with the regulatory procedure with scrutiny.

National electronic registers: 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. In such a case, the relevant data shall be available upon request or directly accessible to all the competent authorities of the Member State in question. The requested information shall be provided within 10 working days after receiving the request.

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

Lastly, by 1 June 2009 the Commission shall report on the likely impact of extending the scope of this Regulation to include commercial transport with vehicles whose design and equipment are appropriate and which are intended to carry up to nine persons including the driver. The Commission shall if necessary take the relevant initiatives.