

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

2007/0098(COD) - 09/01/2009 - Council position

The Council's common position, adopted by qualified majority, has taken full account of the proposal of the Commission and the European Parliament's opinion at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a considerable number of amendments have - in spirit, partially or fully - already been included in its common position.

The key policy issues are as follows:

Subject matter, scope and definitions: the Council followed largely the Commission proposal to clarify and streamline legal provisions. However, the Council specified that this Regulation shall not apply to road passenger transport services exclusively for non-commercial purposes or free of charge as well as to undertakings engaged in the occupation of road transport operator solely by means of motor vehicles which cannot exceed 40 km/h. The latter exemption was also proposed by the European Parliament.

Furthermore, the common position foresees that Member States may exempt from the application of this Regulation road transport operators engaged exclusively in national transport operations having only a minor impact on the transport market because of the nature of the goods carried or the short distance involved.

The European Parliament followed largely the Commission proposal.

Transport manager: the common position clarifies the differences between an "internal" and an "external" transport manager, notably in establishing different requirements to become a transport manager such as being a resident in the Community. The European Parliament also followed closely the Commission proposal. However, like the Council, it clarified the genuine link between transport undertaking and (internal) transport manager. As regards the external transport manager the European Parliament proposed that the national competent authority shall decide on the maximum number of vehicles to be managed by the transport manager.

Conditions relating to the requirement as to establishment: the Commission proposal lays down common rules to ensure that only companies that are genuinely and stably established can be authorised to engage in the occupation of a transport manager. Companies are genuinely and stably established if they have an office, registered vehicles and an operating centre. The Council followed the Commission proposal, except for the requirement to have a sufficient number of vehicle parking places for regular use by its vehicles, which was deleted.

The European Parliament followed largely the Commission's approach.

Conditions relating to the requirement as to good repute: the Council deleted the reference to repeated minor infringements and added animal transport as one of the requirements which a transport manager or an undertaking has to respect. Furthermore, the Council clarifies the procedure consecutive to the most serious infringements as set out in Annex III, for which the Council deleted the possibility to be adapted

by the comitology procedure. The European Parliament followed largely the Commission proposal. However, like the Council, the European Parliament deleted the reference to repeated minor infringements.

New indicators for measuring a company's financial standing: the Council deleted the reference to the "quick ratio" (proposed by the Commission), but in return gave the operator the possibility to demonstrate its financial standing by means of a certificate such as a professional liability insurance from one or more banks or other financial institutions including insurance companies. The European Parliament also decided to delete the reference to the "quick ratio" and to allow that an insurance can be considered as proof for the company's financial standing.

Conditions relating to the requirement as to professional competence: the Council deleted the provision related to compulsory training prior to becoming a transport manager. Furthermore, the Council's common position foresees that Member States may exempt the holders of certain higher education or technical education qualifications, issued in that Member State, from certain parts of the examination as well as holders of certificates of professional competence valid for national transport operations in that Member State. Finally, the Council introduced the possibility for Member States to exempt from the examination persons who have been continuously managing a road haulage undertaking or a road passenger transport undertaking in a Member State for the last 15 years. The European Parliament also decided to delete the provision on compulsory training, but in return provided Member States with the possibility to promote regular training for transport managers.

Authorisation and monitoring: the Council decided to introduce some provisions in order to streamline and simplify the governing principles. Member States may issue different authorisations for undertakings only performing national transport services. Member States may shorten the delay within which the undertaking has to inform about changes concerning the data used for the application of the authorisation. Furthermore, Member States have the possibility to extend the time limit for the examination of the application of an authorisation. Until 31 December 2012, the competent authority shall verify, in the case of any doubt, that the transport manager is not declared, in one of the Member States, unfit to manage the transport activity of an undertaking, whereas from 1 January 2013 the competent authority shall do this by accessing the national electronic registers. The common position also integrates the approach to adapt the periodicity of checks of undertakings to technical progress. Before 2015, Member States are obliged to carry out checks at least every five years, whereas from 2015 onwards checks will be performed according to a risk classification system.

National electronic register: the Council agreed in principle with the Commission proposal in establishing national electronic registers. However, some additional provisions were introduced. Until 1 June 2009, the Commission has to issue guidelines on the structure of the register. Member States need to establish their national register 24 months after the date of entry into force of the Regulation, i.e. 20 days after its publication. The national registers have to be interconnected until 31 December 2012. Member States have to include serious infringements into the national register only from 2016 onwards. Furthermore, all stipulated time limits can be modified and (if necessary) postponed by the comitology procedure.

While the Parliament requests the inclusion of the vehicle registration mark of vehicles operating outside the Member State of establishment in the register, the Council common position foresees that the Commission may make, in 2009, a recommendation on the inclusion of the vehicle registration marks.

Further amendments not included in the common position concern the:

- reference to secure data supports as a condition relating to the requirement for the establishment;
- obligation that Member States inform the Commission about the certificates they recognise as proof of professional competence;
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- reference to archiving of data and data protection as Community rules whose non-respect could put into question the good repute of a transport manager;
- reference to an interdiction to transfer the certificate on the professional competence to legal persons;
- shortening of the time limits for an undertaking to replace a transport manager;
- deletion of the possibility to postpone via the regulatory procedure with scrutiny the interconnection of the national registers;
- shortening of the time limits for an undertaking to demonstrate that it has an effective and stable establishment;
- demand for a study on the possible inclusion of taxis into the scope of the Regulation;

- proposed date of 1 June 2009 for the application of the Regulation.