

**Amended proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 881/92 on access to the market in the carriage of goods by road within the Community to and from the territory of a Member State or passing across the territory of one or more Member States as regards a uniform Driver Attestation <sup>(1)</sup>**

(2001/C 270 E/27)

(Text with EEA relevance)

COM(2001) 373 final — 2000/0297(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 5 July 2001)*

<sup>(1)</sup> OJ C 96 E, 27.3.2001, p. 207.

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INITIAL PROPOSAL

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AMENDED PROPOSAL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF  
THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Pursuant to Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to and from the territory of a Member State or passing across the territory of one or more Member States <sup>(1)</sup> internal Community transport operations are liberated from quantitative restrictions amongst other things by the issue of a Community authorization as a uniform document.
- (2) The absence of a similar uniform document certifying the entitlement of drivers to drive the vehicles engaged in such international carriage subject to Community authorization has led to serious control difficulties for enforcement bodies.
- (3) National enforcement bodies in Member States find it (in the absence of a uniform Driver attestation) impossible to ascertain whether a driver of a vehicle engaged in international carriage subject to Community authorization, which has been issued in another Member State, is authorised to do so according to the national legislation of the latter Member State.

<sup>(1)</sup> OJ L 95, 9.4.1992, p. 1; Regulation amended by the Act of Accession of Austria, Finland and Sweden.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

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- (4) Given these control difficulties the employment status of drivers is normally only checked in the Member States where the employing haulier is established.
- (5) The impossibility to check the employment status of drivers outside the Member State of establishment has led to a market situation where drivers are engaged irregularly and solely for international carriage outside the haulier's Member State of establishment with an intent to breach the national legislation of the Member State of establishment having issued the haulier's Community authorization.
- (6) Where such irregularly used drivers are engaged they are often working under detrimental conditions and salaries leading to serious road safety concerns.
- (7) Such a systematic breach of national legislation has led to serious distortion of competition between hauliers engaged in such practices and those that are still using only drivers lawfully employed.
- (8) The authorised bodies of Member States find it impossible to control the working conditions of those irregularly used drivers.
- (9) Only an uniform document will give Member States the possibility to ascertain that drivers are lawfully engaged or put at the disposal of the haulier responsible for the transport operation.
- (10) This regulation leaves the legislation and provisions of Member States and the Community governing movement, residence and access to an activity as an employed person unaffected.
- (11) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed regulation, namely to introduce a single uniform Driver Attestation, cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the this regulation, be better achieved by the Community. This regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

(12) Member States need time to have the new driver attestation printed and distributed and this Regulation shall therefore apply only after sufficient time has been given to Member States to adopt the measures necessary for its implementation.

(12) Member States need time to have the new driver attestation printed and distributed and this Regulation shall therefore apply only after sufficient time has been given to Member States to adopt the measures necessary for its implementation. During the first two years of its application the scope of this Regulation should be limited to drivers who are nationals of non-member countries in order to ease the administrative burden of the introduction of the Driver Attestation. Subsequently the scope of application of this Regulation shall be extended to all drivers regardless of their nationality.

(13) It should be expressly confirmed that Member States have the possibility to require that a vehicle for which they issue a certified copy of the Community authorisation is registered in their territory.

Unchanged

(14) Regulation (EEC) No 881/92 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 881/92 is amended as follows:

1. in Article 2 the following indent is added:

— “driver”: shall mean the person who drives a vehicle, or who is carried in that vehicle in order to be available for driving if necessary;

2. Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

‘1. International carriage shall be carried out subject to Community authorization in conjunction with a Driver attestation unless the driver and the holder of the Community authorization are identical.’

(b) The following paragraph 3 is added:

‘3. Driver attestations shall be issued by a Member State, in accordance with Article 6, to any haulier who:

— is the holder of a Community authorization

— in that Member State lawfully employs drivers or uses drivers lawfully put at his disposal in accordance with the relevant legislation and provisions of that Member State.’

## INITIAL PROPOSAL

## AMENDED PROPOSAL

## 3. Article 4 is replaced by the following:

*'Article 4*

1. The Community authorization referred to in Article 3 shall replace the document issued by the competent authorities of the Member State of establishment, where such a document exists, certifying that the haulier has been granted access to the market in the international carriage of goods by road.

For carriage falling within the scope of this Regulation it shall also replace both the Community authorizations and the bilateral authorizations exchanged between Member States which are necessary until this Regulation comes into force.

2. The Driver attestation referred to in Article 3 shall certify that the driver of a vehicle engaged in international carriage under the cover of a Community authorization is legally entitled, in accordance with the relevant provisions and rules of the Member State of establishment, to drive that vehicle in that Member State.'

## 4. Article 5 is amended as follows:

(a) The following paragraph 5 is added:

'5. The Community authorization shall be issued for a renewable period of five years.'

## 5. Article 6 is replaced by the following:

*'Article 6*

1. The Driver attestation referred to in Article 3 shall be issued by the competent authorities of the Member State of establishment of the haulage undertaking.

2. The Member States shall issue the holder of the Community authorization, on request, with a Driver attestation for each driver lawfully employed or lawfully put at the disposal of the holder of the Community authorization in accordance with the relevant national provisions and rules of that Member State. Each Driver attestation certifies that the driver named therein is entitled in the issuing Member State to drive a vehicle on behalf of the holder of the Community authorization to whom the Driver attestation is issued.

3. The Driver attestation shall correspond to the model set out in Annex III, which also lays down the conditions governing its use. Member States shall take all necessary steps to avoid any risk of forgery of Driver attestations.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

4. The Driver attestation shall belong to the haulier who puts it at the disposal of the driver described therein when this driver drives a vehicle engaged in international carriage using a Community authorization issued to that haulier. A certified copy of the Driver attestation shall be kept at the premises of the haulier. The Driver attestation must be produced whenever required by an authorized inspecting officer.

5. The Driver attestation shall be issued for a period to be determined by the issuing Member State, with a maximum validity of five years. The Driver attestation shall only be valid as long as the conditions under which it was issued are satisfied. Member States shall take appropriate measures to ensure that these attestations are returned immediately by the haulier to the issuing authorities if these conditions are no longer met.'

6. Article 7 is replaced by the following:

*'Article 7*

1. Whenever an application for a Community authorization is lodged, not more than five years after issue and subsequently at least every five years, the competent authorities of the Member State of establishment shall verify whether the haulier satisfies or still satisfies the conditions laid down in Article 3(2).

2. The competent authorities of the Member State of establishment shall verify regularly whether the conditions referred to in Article 3(3) under which a Driver attestation has been issued are still satisfied.'

7. Article 8 is replaced by the following:

*'Article 8*

1. If the conditions laid down in Article 3(2), respectively referred to in Article 3(3) are not satisfied, the competent authorities of the Member State of establishment shall reject an application for the issue or renewal of a Community authorization, respectively a Driver attestation, by means of a reasoned decision.

2. The competent authorities shall withdraw a Community authorization, respectively a Driver attestation where the holder:

- no longer satisfies the conditions laid down in Article 3(2), respectively referred to in Article 3(3),
- has supplied incorrect information in relation to the data required for the issue of a Community authorization, respectively a Driver attestation.

## INITIAL PROPOSAL

3. In the event of serious infringements or repeated minor infringements of carriage regulations, the competent authorities of the Member State of establishment of the haulier who has committed such infringements may *inter alia* temporarily or partially suspend the certified true copies of the Community authorization and may suspend Driver attestations. These sanctions shall be determined having regard to the seriousness of the infringement committed by the holder of the Community authorization and having regard to the total number of certified copies that he holds in respect of international traffic.

4. In the event of serious infringements or repeated minor infringements regarding any misuse whatsoever of Driver attestations, the competent authorities of the Member State of establishment of the haulier who has committed such infringements shall take appropriate sanctions, for instance:

- suspend the issue of Driver attestations,
- withdraw Driver attestations,
- make the issue of Driver attestations subject to additional conditions in order to prevent any misuse,
- temporarily or partially suspend the certified true copies of the Community authorization.

These sanctions shall be determined having regard to the seriousness of the infringement committed by the holder of the Community authorization.'

8. Article 9 is replaced by the following:

*'Article 9*

1. The Member States shall guarantee that the applicant or the holder of a Community authorization is able to appeal against any decision by the competent authorities of the Member State of establishment to refuse or withdraw an authorization.

2. The Member States shall guarantee that the holder of a Community authorization is able to appeal against any decision by the competent authorities of the Member State of establishment to refuse or withdraw a Driver attestation or to make the issue of Driver attestations subject to additional conditions.'

9. The text appearing in Annex to this Regulation shall be added as Annex III.

## AMENDED PROPOSAL

## INITIAL PROPOSAL

## AMENDED PROPOSAL

*Article 2*

The Member States shall communicate to the Commission the measures they take to implement this Regulation.

*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from after its entry into force

It shall apply from six months after its entry into force to nationals of non-member countries.

It shall apply from thirty months after its entry into force to all drivers regardless of their nationality.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Unchanged

INITIAL PROPOSAL

ANNEX

'ANNEX III

**EUROPEAN COMMUNITY**

(a)

(Colour Pink - DIN A4)

(First page of the attestation)

(Text in (one of) the official language(s) of the Member State issuing the attestation)

State issuing the attestation Distinguishing sign <sup>(1)</sup>
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Name of the competent authority or body
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**DRIVER ATTESTATION No ...**

**for the international carriage of goods by road for hire or reward**

This attestation certifies that the following driver <sup>(2)</sup>: .....

.....

is entitled in the Member State issuing the attestation to drive for <sup>(3)</sup>.....

.....

a vehicle engaged in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys effected for hire or reward within the territory of the Community, as laid down in Council Regulation (EEC) No 881/92 of 26 March 1992.

Particular remarks: .....

.....

This attestation shall be valid from ..... to .....

Issued in ....., on .....

.....  
(4)

(1) The distinguishing signs are: (A) Austria, (B) Belgium, (DK) Denmark, (D) Germany, (GR) Greece, (E) Spain, (F) France, (FIN) Finland, (IRL) Ireland, (I) Italy, (L) Luxembourg, (NL) Netherlands, (P) Portugal, (S) Sweden, (UK) United Kingdom.  
 (2) Personal data of driver: last name, first names, birth date and place, nationality, passport.  
 (3) Name or business name and full address of the haulier.  
 (4) Signature and stamp of the issuing competent authority or body.



INITIAL PROPOSAL

(Second page of the attestation)

(Text in (one of) the official language(s) of the Member State issuing the attestation)

**GENERAL PROVISIONS**

This attestation is issued under Council Regulation (EEC) No 881/92 of 26 March 1992 as modified, on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States.

It certifies that the driver named therein is entitled in the Member State issuing the attestation to drive a vehicle <sup>(1)</sup> engaged in international carriage on behalf of the haulier to whom the Community authorization is issued under Council Regulation (EEC) No 881/92 of 26 March 1992.

The Driver attestation shall belong to the haulier who puts it at the disposal of the driver described therein when this driver drives a vehicle engaged in international carriage using a Community authorization issued to that haulier. The Driver attestation is not transferable. The Driver attestation shall only be valid as long as the conditions under which it was issued are still satisfied and must be returned immediately by the haulier to the issuing authorities if these conditions are no longer met.

It may be withdrawn by the competent authority of the Member State which issued it, notably where the haulier has:

- not complied with all the conditions for using the attestation,
- supplied incorrect information with regard to the data needed for the issue or extension of the attestation.

A certified copy of the attestation must be kept by the haulage undertaking.

The original attestation must be kept in the vehicle and must be produced by the driver whenever required by an authorised inspecting officer.

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<sup>(1)</sup> "Vehicle" means a motor vehicle registered in a Member State or a coupled combination of vehicles, the motor vehicle of which at least is registered in a Member State, used exclusively for the carriage of goods.

AMENDED PROPOSAL

ANNEX

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a vehicle engaged in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys effected for hire or reward within the territory of the Community, as laid down in Council Regulation (EEC) No 881/92 of 26 March 1992.

Particular remarks: .....

This attestation shall be valid from ..... to .....

Issued in ....., on .....

.....  
<sup>(4)</sup>

<sup>(1)</sup> The distinguishing signs are: (A) Austria, (B) Belgium, (DK) Denmark, (D) Germany, (GR) Greece, (E) Spain, (F) France, (FIN) Finland, (IRL) Ireland, (I) Italy, (L) Luxembourg, (NL) Netherlands, (P) Portugal, (S) Sweden, (UK) United Kingdom.

<sup>(2)</sup> Personal data of driver: last name, first names, birth date and place, nationality, passport and driving licence number, social security number.

<sup>(3)</sup> Name or business name and full address of the haulier.

<sup>(4)</sup> Signature and stamp of the issuing competent authority or body.

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(Second page of the attestation)

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