

4.11 As regards the Member States' setting-up of effective veterinary border controls, there should be an overall assessment of the concrete risk of a disease being introduced and the possible consequences, together with spot checks in order to deter illegal trading. There should also be better coordination between veterinary and customs authorities and a more flexible border control system, with a more risk-based approach so that attention can be turned rapidly to new risks.

4.12 In the interests of public acceptance, among other things, vaccination should be used in connection with combating disease outbreaks if it can advantageously replace or supplement the culling of healthy animals. However, as the Commission points out, vaccination should be carried out in the light of the concrete situation and be based on recognised

principles and factors, such as the accessibility and effectiveness of the vaccine, valid tests, international guidelines and possible trade barriers, cost-effectiveness and the possible risks related to the use of vaccines. There is also a need for further research and development in this regard.

Science etc.

4.13 Science, innovation and research are crucial to achieving the goal of the strategy. It is assumed that research can be incorporated into production, advice and controls, in which there should be more possibilities for transferring knowledge. This also applies to the Commission's Research Action Plan.

Brussels, 16 January 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

Opinion of the European Economic and Social Committee on 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

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(2008/C 151/06)

On 16 July 2007 the Council decided to consult the European Economic and Social Committee, under Article 71 of the Treaty establishing the European Community, on 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 Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 December 2007. The rapporteur was Mr Barbadillo.

At its 441st plenary session, held on 16 and 17 January 2008 (meeting of 16 January), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1 The EESC is pleased to note that the Commission is in favour of regulating access to the occupation of road transport operator by means of a regulation, thus avoiding differences in the transposal of legislation by the Member States. Adopting this regulation would mean repealing Directive 96/26/EC.

1.2 The Committee welcomes this proposal, as it will harmonise rules on access to the occupation of road transport operator and to the road transport market — for both passengers and goods — helping to achieve the aims of the Lisbon Strategy with clear, simple and enforceable rules, which will lead to fairer competition.

1.3 The new regulation falls in line with the Action Programme for Reducing Administrative Burdens in the European Union, updating the rules on access to the occupation of road transport operator by introducing electronic registers.

1.4 The regulation introduces the concept of the 'transport manager' who is the person who continuously and effectively runs the undertaking and who is required to be more highly trained. Stricter rules governing the transport manager's links with the company are also laid down. The EESC would like the practice of hiring qualifications to be eliminated in cases where a firm is headed by a natural person who is not suitably qualified.

1.5 The EESC considers that the regulation should contain the list of categories, types and degrees of seriousness of infringements and the frequency of minor infringements leading to the loss of the good repute required of road transport operators when these are committed in the pursuit of transport activities for which they are responsible.

1.6 With regard to the requirement for an operating centre set out in Article 5c) of the proposal for a regulation, the EESC calls for clarification of the features that this centre should have in the case of small and medium-sized enterprises.

1.7 The EESC wishes to draw attention to the requirement for the undertaking to have a sufficient number of vehicle parking places as a means of recognising the undertaking's stable establishment in a given Member State, because this could prove to be a very onerous requirement, especially for small and medium-sized enterprises and calls on local authorities to make a sufficient number of places and/or through the cooperation of those enterprises in managing joint parking areas.

1.8 The Committee considers that where self-employed persons are concerned, a system should be designed enabling them to prove their financial standing without having to provide a bank guarantee, because this would entail a considerable expense for companies that are not obliged to file simplified accounts in the States concerned.

1.9 The EESC welcomes the compulsory training of 140 hours to be undertaken prior to the examination to test professional competence, and the fact that Member States would have to accredit training centres, which will help to ensure that managers are more highly qualified.

1.10 The Committee calls on the Commission to establish a common system of penalties for all Member States, which would apply to infringements of the regulation's provisions.

1.11 The EESC welcomes the proposal to set up interconnected national electronic registers, which should improve administrative cooperation and make the monitoring of undertakings operating in more than one Member State more effective.

2. Introduction

2.1 The proposal for a regulation aims to update current rules on admission to the occupation of road transport operator to ensure a more uniform and effective application of the requirements for admission to this occupation, establishing minimum conditions relating to good repute, financial standing and professional competence.

2.2 The current regulations governing admission to the occupation of transport operator are set out in Council Directive 96/26/EC, of 29 April 1996, establishing minimum conditions relating to good repute, financial standing and professional competence which companies have to satisfy to be authorised to engage in the occupation of road transport operator, that is to say to carry out national or international goods or passenger transport operations. These conditions are the only common requirements imposed on companies for authorisation to carry out their activities on the Community road transport market.

The Directive also provides for the mutual recognition of some of the documents required in order to obtain authorisation.

2.3 The directive's implementation varies considerably between Member States, however. These disparities in implementation hamper the operation of the internal road transport market and damage fair competition, which is why the proposed amendment takes the form of a regulation.

2.4 The most significant new features to be introduced by the regulation are:

2.4.1 For individuals who lend their professional competence to a company, the regulation introduces the concept of 'transport managers', who should be those who continuously and effectively run the transport activities of road transport undertakings, and these individuals should be clearly identified and designated to the competent authorities. This will create stricter rules governing the transport manager's links with the company. In order to gain accreditation for professional competence, a compulsory minimum training of 140 hours must be undertaken prior to the examination which all applicant transport managers must sit, and training centres and examination centres will also have to be accredited.

2.4.2 The regulation considers that it should be the responsibility of the Member State of establishment to verify that an undertaking satisfies at all times the conditions laid down in this regulation and undertakings are therefore required to be stably and effectively established in that Member State.

2.4.3 New comparable financial indicators are introduced for measuring a company's financial standing. These indicators will be based on the company's annual accounts, using a formula that enables the company to meet its short-term debts, abandoning the current method based on capital and reserves. Furthermore, companies that so desire will be given the opportunity to demonstrate their financial standing by means of a bank guarantee.

2.4.4 The authorities will be obliged to verify that the requirements of good repute and financial standing and professional competence are met and, in the event of non-compliance, will have to warn the operator. If remedial action is not taken within a specified period, the authorities will have to impose administrative sanctions, ranging from withdrawing the company's authorisation to disqualifying its transport manager.

2.4.5 So as to facilitate freedom of establishment, a single model certificate issued in accordance with the provisions of this regulation should be regarded as sufficient proof by the Member State of establishment.

2.4.6 The regulation aims to ensure more organised administrative cooperation between Member States, which would help to make the monitoring of undertakings operating in several Member States more effective and to this end, interconnected electronic registers will be set up to improve the exchange of information between Member States. In order to ensure the efficient exchange of information between Member States, it is proposed that national contact points be designated and that certain common procedures concerning time limits and the nature of the minimum information to be forwarded be specified.

2.4.7 The Commission will be authorised a) to draw up a list of categories, types and degrees of seriousness of infringements leading to the loss of the requisite good repute of road transport operators; b) to amend the annex concerning the knowledge to be taken into consideration for the recognition of professional competence by the Member States and the annex concerning the model certificate of professional competence to take account of technical developments; and c) to draw up the list of maximum infringements entailing the suspension or withdrawal of the authorisation to pursue the occupation or a declaration of unsuitability. These measures should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5(a) of Decision 1999/468/EC.

3. General comments

3.1 The proposal for a regulation will help to achieve the aims of the Lisbon Strategy, since it will make for fairer competition within the sector and greater transparency for road transport customers. Given the dominant role of road transport in industry's production and distribution systems and where people's mobility is concerned, it will boost the EU's competitiveness.

3.2 The EESC welcomes the fact that the Commission is putting into practice the commitment it gave in the 'better lawmaking' programme, aimed at updating and simplifying the Community *acquis*, ensuring that regulations are more closely harmonised and are more straightforward, enforceable and effective.

3.3 By introducing electronic registers, the new regulation adheres to the philosophy underpinning the Action Programme for Reducing Administrative Burdens in the European Union.

3.4 The Committee is interested to note that the Commission wishes to regulate admission to the occupation of road transport operator by means of a regulation rather than a directive, which means that it will be directly applicable by the Member States, thus denying the Member States greater scope to adopt their own approach.

3.5 The new regulation introduces a single, generic concept of the 'occupation of road transport operator', including both the occupation of road passenger transport operator and that of road haulage transport operator.

3.6 Admission will turn on the new position of 'transport manager', a title that will be conferred on the person who has previously run the authorised undertaking and who has lent his or her professional competence to it. This will create stricter rules governing his or her links with the company.

3.7 There is a need to clarify a number of inconsistencies concerning the position of 'transport manager' with regard to the focus of his or her activities and the possibility of this person lending his or her competence to more than one company at the same time, in order to thwart the current practice of hiring qualifications. For the future, it would be useful to provide better training for self-employed businessmen and women wishing to access the profession, which will result in managers being better qualified and in companies' management being more independent.

3.8 In the EESC's view, it is in the regulation itself that the Commission should clarify and harmonise a list of categories, types and degrees of seriousness of infringements and the frequency of occurrence beyond which repeated minor infringements will lead to the loss of the good repute of the managers and consequently of the companies themselves.

3.9 The Committee welcomes making the requirement to attend courses before sitting competence exams compulsory, thus ensuring a higher level of training for applicants, and also approves of the requirement for training centres to be accredited.

4. Specific comments

4.1 The EESC welcomes the introduction of the position of 'transport manager', a term applying to individuals who have lent their competence to companies authorised to pursue the occupation of transport operators.

4.2 The Committee calls on the Commission to clarify whether there will be a single 'authorisation to pursue the occupation of road transport operator' or whether this definition is simply to be used in the regulation and there will subsequently be two separate certificates — one for passengers and one for freight.

4.3 The EESC welcomes the fact that the regulation will apply not only to companies established in the Community already engaged in the occupation of road transport operator but also to any other undertaking that wishes to pursue this occupation.

4.4 The Committee wishes to draw attention to the exclusion from the scope of the regulation — this aspect was previously a responsibility of the State — of undertakings engaged exclusively in certain road passenger transport services for non-commercial purposes and which have a main occupation other than that of road passenger transport operator and which use vehicles driven by their own employees, because a knowledge of road transport legislation and of the organisation of the relevant services is needed in order to undertake this activity effectively.

4.5 The regulation should introduce a new requirement in addition to those already in place for pursuing the occupation of road transport operator, to the effect that undertakings must be effectively and stably established in a Member State, thus thwarting the phenomenon of 'letter-box' companies.

4.6 The fact that the regulation does not prevent Member States from choosing to impose additional conditions with which all companies must comply in order to be authorised to pursue the occupation of road transport operator does not appear to match the Commission's desire for harmonisation, with regard to the conditions for meeting the requirement as to good repute set out in Article 6 of the proposal for a regulation.

4.7 The EESC calls on the Commission to clarify how transport operators should continuously and effectively run the transport activities of road transport undertakings and at the same time be allowed to run up to four different undertakings, with a maximum total fleet of twelve vehicles. This measure would make it hard to eliminate the current practice of trafficking in documents.

4.8 The Committee considers that the most useful approach would be for the regulation to include the list of categories, types and degrees of seriousness of infringements and the frequency of occurrence beyond which repeated minor infringements will lead to the loss of the transport manager's requisite good repute and not to leave regulation of these aspects to a later date.

4.9 The EESC welcomes the proposal that undertakings should be stably and effectively established in the Member State granting them authorisation, as set out in Article 5(a), which requires undertakings to have an establishment situated in that Member State with premises in which it keeps its business documents, but wishes to draw attention to the requirement for the undertaking to have an operating centre in that Member State with a sufficient number of vehicle parking places. This requirement could prove to be particularly onerous for small and medium-sized enterprises. The problem could be solved by local authorities providing a sufficient number of such places and/or through the cooperation of those enterprises in managing joint parking areas.

4.10 The Committee sees a contradiction in the fact that on the one hand the regulation states that Member States will decide on the conditions for a company's good repute but on the other states that Member States will decide that a company meets these conditions if it complies with a range of requirements that are set out in the regulation.

4.11 The EESC fails to understand why, in order to meet the requirement for financial standing, an undertaking should have to be able at all times to meet its actual and potential commitments in the course of the annual accounting year and considers the previous requirement for capital and reserves to be more appropriate. A company will now have to prove its current assets and to have a quick ratio of 80 % or greater on 31 December.

4.12 The Committee considers that where self-employed persons are concerned, a system should be designed enabling them to prove their financial standing without having to provide a bank guarantee, because this would entail a considerable expense for companies that are not obliged to file simplified accounts in the States concerned.

4.13 In any event, the aim of the financial standing requirement should be that companies authorised to operate provide

certain market guarantees, but should not be to protect suppliers and creditors, because this would distort the concept of risk, which is an integral part of any business activity.

4.14 The EESC welcomes the new approach of compulsory training of 140 hours prior to the examination to test professional competence and the proposal that the Member States should accredit the bodies qualified to offer training, because this will improve business training for the sector.

4.15 The EESC considers the period of five years (previously at least every 5 years) in which the competent authorities check that undertakings still fulfil each of the requirements for admission to the profession to be too long. Nevertheless it welcomes the fact that in addition to the standard checks, checks will be carried out on undertakings classed as being at risk.

4.16 The Committee considers it appropriate that, where an undertaking is deemed to run the risk of no longer satisfying the requirements for admission, a time limit should be granted for the undertaking to rectify the situation within a time-limit not exceeding six months (previously one year).

4.17 The EESC welcomes the proposal for each Member State to create a national electronic register of road transport undertakings and that all necessary steps will be taken to ensure that these are interconnected throughout the Community by no later than 31 December 2010 and that administrative cooperation between Member States will be regulated. The Committee also agrees with the proposal to regulate the protection of personal data that are held in the register or which might be forwarded to third parties.

4.18 The EESC welcomes the creation of a system for the mutual recognition of qualifications gained by individuals prior to this regulation's entry into force.

4.19 A common system of sanctions applying to all Member States for infringements of the provisions of this regulation needs to be put in place and the sanctions thus provided for must be effective, proportionate and dissuasive.

4.20 The EESC is interested to note that every two years the Commission will, on the basis of national reports, draw up a report for the attention of the European Parliament and the Council on the pursuit of the occupation of road transport operator.

Brussels, 16 January 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS