



COMMISSION OF THE EUROPEAN COMMUNITIES

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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**

(presented by the Commission)

{SEC(2007) 635}  
{SEC(2007) 636}

## EXPLANATORY MEMORANDUM

### **1. BACKGROUND TO THE PROPOSAL**

#### **1.1. Grounds and objectives**

Directive 96/26/EC on admission to the occupation of road transport operator, the four Regulations on access to the road transport market,<sup>1</sup> together with the deregulation of international transport prices which took place a few years earlier, shaped the internal market in road transport.

The common requirements for admission to the occupation, as laid down in the Directive, have ensured minimum quality standards for road transport, while the opening-up of the market as a result of the Regulations has made for greater competition. Generally speaking, this legislative framework has proved successful, in so far as road transport companies are charging more favourable rates, offering diversified services and responding more closely to customers' needs for just-in-time services.

However, experience shows that some of the measures of this legislative framework are not applied and enforced uniformly, as a result of legal provisions that are unclear, incomplete or not in keeping with the development of the sector. This is the case with the Directive on admission to the occupation, which applies to all road transport companies, whatever their size (owner-operators, small and medium-sized enterprises or large companies). The different ways in which the Directive is being applied are detrimental to fair competition. Companies remain subject to monitoring and checks which vary from one Member State to another, with very different levels of professional qualification and financial soundness. This prevents full benefit from being taken of all the advantages of the internal market in road transport.

The proposal for a Regulation is intended to replace the Directive and rectify these shortcomings.

#### **1.2. Issue addressed**

Directive 96/26/EC establishes 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 to be authorised to carry out their activities on the Community road transport market. The Directive also establishes mutual recognition of some of the documents required in order to obtain an authorisation.

In its legislative programme for 2006<sup>2</sup> the Commission announced that it intended to examine in detail the rules deriving from this Directive and, where appropriate, to take steps to ensure that they are applied in a more harmonised, simpler, more enforceable and more effective fashion. Its examination was based on an extensive stakeholder consultation and an impact assessment, and revealed that Member States had had difficulty in transposing the Directive

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<sup>1</sup> Regulation (EEC) No 881/92, Regulation (EEC) No 3118/93, Regulation (EEC) No 684/92, and Regulation (EEC) No 12/98.

<sup>2</sup> Reference 2006/TREN/01.

and were applying it in a very disparate manner. By way of illustration, the success rates in the examinations to test professional competence vary between the Member States from 10% to over 90%. This has several drawbacks, including:

- the risk of distortion of competition between, on the one hand, transport operators with a real establishment that is accessible to the authorities responsible for checking their compliance with the minimum standards for admission to the occupation and, on the other, "letter-box" companies which can avoid proper monitoring;
- a lack of market transparency on account of the disparities between the minimum standards of financial and professional competence and, as a corollary, "the subcontracts in series"; road transport customers have no guarantee as to the quality offered by road transport companies;
- the continuing presence of negligent companies with low levels of professional qualification and financial standing, entailing risks for road safety and jeopardising the socio-economic efficiency of road transport (better qualified companies cannot compete);
- monitoring that is not uniform and is not coordinated between the national authorities which are supposed to withdraw authorisations from companies committing offences which tarnish their good repute. This lack of coordination creates unnecessary administrative costs and undermines the credibility and dissuasiveness of the withdrawal of licences.

### **1.3. Consistency with other EU policies and objectives**

The proposal for a Regulation will contribute to the achievement of the objectives of the Lisbon Strategy, since it will make for fairer competition within the sector and greater transparency for road transport customers. In the final analysis, it will contribute towards the provision of more efficient and better transport services. Given the dominant role of road transport in industry's production and distribution systems, it will contribute to boost the EU's competitiveness.

The new Regulation will indirectly improve road safety as a result of stricter monitoring of negligent companies, which are more likely to be involved in accidents than others. It will improve the working conditions of road transport workers by raising the standards of professional qualification. It will also strengthen the independence of certain owner-operators vis-à-vis their customers and protect them from practices tantamount to employing them in a disguised or indirect way.

Lastly, this proposal follows on from the Commission's commitment to simplify the content of the "acquis" and to update it. It is part of the "better regulation" programme for the updating and simplification of the Community acquis. The legislative simplification achieved consists in greater legal clarity, by means of provisions that are easier to monitor, can be enforced in practice and ensure greater overall consistency with the provisions of the Regulations on access to the transport market<sup>3</sup>. It also gives the Member States the possibility of reducing certain unnecessary administrative burdens relating to checks.

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<sup>3</sup> See above.

Modernisation of the rules governing admission to the occupation of road transport operator, in particular by introducing electronic registers, is one of the immediate measures to be taken in the context of the "Action Programme for Reducing Administrative Burdens in the European Union" proposed by the Commission on 24 January 2007.<sup>4</sup> The conclusions of the European Council meeting of 8 and 9 March call upon Parliament and the Council to give special priority to these immediate measures and therefore to the examination and adoption of this proposal.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **2.1. Consultation of interested parties**

Before this proposal was drafted, a public consultation exercise was conducted in order to gather as many comments as possible from stakeholders. This consultation, organised jointly with that carried out in connection with the parallel recasting of the four Regulations on market access, was based on a questionnaire which was published on the Internet and sent by mail to all organisations which represent the road transport sector.

The Commission received 67 written contributions from national authorities, national and European organisations representing road freight and passenger transport operators, users and various other economic interest groups. On 7 November 2006 the Commission held a hearing for stakeholders who had replied to the public consultation in writing or had expressed their interest in the meantime. This hearing was attended by 42 delegations representing the industry plus 37 observers from national administrations.

The stakeholders generally considered that the conditions to be complied with to pursue the occupation of road transport operator needed to be more harmonised, and better enforced and monitored. With the exception of passenger transport operators, who thought that higher standards should be required, they recommended giving priority to the harmonisation of the existing national rules. Generally, they advocate:

- improving monitoring by means of checks targeting high-risk companies (rather than more frequent systematic checks), an operational exchange of information between the authorities in the various Member States which are supposed to monitor the companies' conduct, and the use of electronic registers which would reduce administrative costs;
- introducing common provisions to ensure that companies have a real, stable establishment, so as to reduce distortion of competition by "letter-box" companies;
- harmonising the indicators used to measure a company's financial standing and the standard of examinations to test professional competence;
- ensuring that the holder of a certificate of professional competence does actually run the transport business and is not just a "front" for obtaining an authorisation.

All the comments made during this process have been taken into consideration. Several of them enabled improvements to be made to the attached proposal and the impact assessment.

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<sup>4</sup> COM(2007) 23 final.

In this way, the Commission broadened the range of options that needed to be assessed in order to reflect the various points of view expressed. Accordingly, it did not act on the idea of replacing the financial standing condition by compulsory professional liability insurance, since several stakeholders considered that this idea was not sufficiently well-developed.

A summary of the replies received to the public consultation, the text of the individual replies and the record of the hearing of 7 November 2006 are available at: [http://ec.europa.eu/transport/road/consultations/road\\_market\\_en.htm](http://ec.europa.eu/transport/road/consultations/road_market_en.htm)

## **2.2. Collection and use of expertise**

The Commission's public consultation benefited from the independent expertise provided by Professor Brian Bayliss, who in 1994 was Co-Chairman of the Committee of Enquiry on Road Transport which produced a comprehensive report on the state of completion of the internal market and the work that still needed to be accomplished at that time.

## **2.3. Impact assessment**

The impact assessment carried out to prepare this proposal covered the recasting of both the rules on admission to the occupation and those on access to the market, in view of their close links and their overlaps. It was based on various studies carried out during 2004, 2005 and 2006. Special care was taken to ensure that the scope of the assessment was adjusted to take account of the stakeholders' reactions and to adapt the attached proposal to take account of the conclusions of the assessment.

Five policy options were assessed:

- (1) The "no change" option: this would leave the existing road legislation unaltered. The problems outlined at the beginning of this document would persist or even become worse as cabotage is opened up to all Member States.
- (2) The "technical simplification and non-regulatory" option: this would entail merging and consolidating the five EC legislative instruments into three. It would provide the Member States and the industry with non-binding guidelines for implementing these instruments. This option would be easy to implement, but it would be unlikely to reduce the differences between the national rules, and hence solve the main problems identified at the outset.
- (3) The "harmonisation" option: this would turn the current Directive and the four Regulations into three Regulations and, in so doing, harmonise admission to the occupation to a greater extent, increase legal clarity concerning cabotage and improve its application. This option would contribute to fair competition, improve compliance with road transport rules, in particular concerning safety, and increase the average level of professional standards in the sector.
- (4) The "higher quality standards" option: this would gradually introduce higher financial standing requirements and compulsory continuous training for transport managers in companies. In the short term, this option would make entry proportionally more difficult for small companies. In the long run, it would encourage operators to be more efficient, bringing benefits for society as a whole.

- (5) The "liberalisation" option: this would open up cabotage to competition to a greater extent and would liberalise regular international coach services. This option would reduce certain transport rates, but without necessarily improving the socio-economic effectiveness of road transport unless accompanied by prior further harmonisation, including in the taxation and social field. This option would entail the risk of job losses in some countries. At all events, given the likely scale of its impact, a more thorough analysis would need to be undertaken, and this option would go beyond the framework of simplification of which this proposal is part.

This proposal therefore reflects option No 3, the "harmonisation" option. An executive summary of the impact assessment and the full text of the impact assessment accompany this proposal. The impact assessment estimates that the proposal for a Regulation, in combination with the other two market access Regulations proposed at the same time, will reduce distortions of competition, improve the compliance of transport operators with social and road safety rules, and enable the Member States to reduce administrative costs by around €190 million per annum.<sup>5</sup>

### **3. LEGAL ASPECTS**

#### **3.1. Summary of the measures proposed**

The proposal for a Regulation lays down the conditions with which all companies must comply to be authorised to pursue the occupation of road transport operator. It clarifies the existing legal provisions and supplements them so as to strengthen overall consistency and to guarantee effective and uniform application. It introduces:

- the concept of the responsibility of the transport manager who lends his or her professional competence certificate to a company to enable it to obtain an authorisation, and stricter rules governing his or her links with the company;
- criteria to be met to ensure that a company is actually stably established in a Member State and that its conduct can be properly monitored by the national authority which authorised it to pursue the occupation;
- comparable financial indicators to measure a company's financial standing, compulsory minimum training of 140 hours prior to the examination to test professional competence which all applicants must sit, and the accreditation of training centres and examination centres;
- the obligation for authorities which discover that a transport operator no longer satisfies the good repute, financial standing or professional competence conditions to warn the operator and, if remedial action is not taken within a specified period, to impose administrative sanctions ranging from withdrawing its authorisation to disqualifying its transport manager;
- mutual recognition between Member States of infringements of EC road transport rules. This will result in the totalling-up of serious repeated infringements wherever

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<sup>5</sup> Total for EU27.

they are committed which, above a certain threshold, are likely to tarnish a transport operator's good repute and lay it open to the sanctions referred to above;

- electronic registers interconnected between all Member States so as to reduce the administrative cost of monitoring companies and facilitate the exchange of information between Member States;
- the gradual elimination of certain exceptions which, since they are left to the discretion of Member States, are not granted to companies in a uniform manner. These exceptions are no longer justified and distort competition to the detriment of the vast majority of companies which do not benefit from them.

### **3.2. Legal basis**

The proposal for a Regulation, which repeals Directive 96/26/EC, is based on Article 71 of the Treaty establishing the European Community.

### **3.3. Subsidiarity principle**

The aim of this proposal is essentially to harmonise the national rules imposed on companies regarding admission to the occupation, and in so doing to make the internal market more effective. This harmonisation cannot be brought about by the Member States acting alone. Moreover, the proposal seeks to improve the exchange of information between the Member States' authorities which monitor compliance with the rules governing admission to the occupation, which can only be done in piecemeal fashion on a bilateral basis by the Member States. Community action is therefore necessary since it is impossible for a single Member State or group of Member States to satisfactorily solve the problems identified.

### **3.4. Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

- the proposal lays down common conditions but does not prevent Member States from adding their own conditions concerning admission to the occupation;
- the only limit to this possibility derives from the principle of freedom of establishment and the need to ensure the mutual recognition of certain certificates, but the proposal does not introduce any substantial change compared with the provisions already in force;
- the proposal offers the Member States a choice between two methods whereby a company can provide evidence of its financial standing (financial indicators or bank guarantees);
- the obligations imposed on the national authorities which authorise the pursuit of the occupation take due account of their discretionary powers, in particular with regard to establishing and ruling on infringements. Based on the ruling of the Court in its

judgment of 13 September 2005,<sup>6</sup> it establishes a common approach to the imposition of administrative sanctions such as the withdrawal of authorisations. Given the fact that such sanctions are already very dissuasive, the Regulation does not, however, make provision for other sanctions of a criminal or financial nature and leaves the Member States free to decide on this matter.

Lastly, the harmonisation of the conditions governing the pursuit of the occupation cannot be limited solely to companies authorised to carry out international transport operations, given that, since the completion of the internal market, the national markets are no longer separate for the following reasons:

- several Member States make no distinction between authorisations issued for an international transport operation and those issued for a purely national transport operation;
- in other Member States, companies authorised to carry out transport operations only within a Member State are in competition with companies from other Member States carrying out cabotage;
- companies authorised to carry out international transport operations fall back on their national market when, because of the economic situation, they can no longer find customers wanting them to carry goods to other Member States.

The proposal for a Regulation, like the current Directive, therefore covers all transport operations, including national ones.

### **3.5. Choice of instrument**

The main objective of revising the rules governing admission to the occupation of road transport operator is to ensure that these rules are applied more effectively and in a less disparate way. A Regulation, which is directly applicable and will ensure more uniform application, would therefore appear to be the most appropriate instrument. It will make for greater transparency, and help to reduce certain administrative costs. This choice seems all the more appropriate considering that admission to the occupation is the basic condition for gaining access to the market, and a Regulation has been the instrument used since 1992 in that area.

### **3.6. Budgetary implications**

The proposal will not entail any additional cost for the Community budget.

### **3.7. European Economic Area**

The proposal for a Regulation is of relevance to the EEA and should therefore be extended to it.

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<sup>6</sup> Case C-176/03. In that judgment, the Court explains that the Community legislature may take measures in relation to Member States' criminal law where the application of criminal sanctions constitutes an indispensable measure to combat serious damage to the environment.



## **4. PROVISIONS PROPOSED**

### **4.1. Taking-over of existing provisions**

This proposal supplements and revises the existing rules on admission to the occupation of road transport operator. It therefore takes over several principles and provisions from Directive 96/26/EC:

- the three conditions to be satisfied by a company wishing to gain admission to the occupation (good repute, professional competence and financial standing) (Article 3);
- mutual recognition of diplomas, certificates and other evidence of formal qualification to facilitate freedom of establishment (Articles 18 to 20);
- the model certificate of professional competence (Annex II) and the list of subjects of which knowledge is required in order to obtain that certificate (Annex I).

However, a recasting on the basis of the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts would not have made it possible to achieve the requisite degree of legal clarity. The principles and provisions in question constitute an "acquis" that cannot be called into question. The Commission therefore calls upon the European Parliament and the Council to take the greatest possible account of this, and to exercise their prerogatives with regard to the new provisions, as described below.

### **4.2. New provisions**

#### *4.2.1. Clarification of the definitions and updating of the scope*

Article 1 adds to the list of definitions to facilitate more uniform application. Article 2 defines the new scope which is consistent with the other road transport legislation by including all vehicles over 3.5 tonnes and limiting the exemptions to certain transport operations clearly identified in other Community acts.

#### *4.2.2. Requirement as to establishment*

Articles 3 and 5 lay down common rules to ensure that only companies that are genuinely and stably established can be authorised to engage in the occupation. The aim is to ensure that all companies are subject to the same level of monitoring and to avoid situations where some are not monitored by the authorities in the Member States in which they are established. Under Article 5, companies are genuinely and stably established if they have an office, registered vehicles and an operating centre.

#### *4.2.3. Making the transport manager responsible*

Article 4 specifies the links that the person with the required professional competence ("the transport manager") must have with the company for which he or she is supposed to run the transport business. That person must be employed and remunerated by the company. Since that person is supposed to actually run the company's transport business on a permanent basis, he or she must bear the consequences of his or her decisions and consequently assume responsibility for infringements committed in connection with activities which he or she directs. This

responsibility is defined for the purposes of this Regulation, but is without prejudice to any criminal or financial responsibility defined in the national legislation of a Member State. The possibility for owner-operators to use another transport manager for qualification purposes is regulated, in particular to increase their independence with regard to bigger transport operators which entrust them with consignments, and thus protect them from the practice of disguised employment.

Clarification of the conditions to be satisfied with regard to good repute

Article 6 lists the Community rules serious infringements of which may lead to the loss of good repute even if committed in other Member States. It also indicates that repeated minor infringements may be regarded as serious. It grants the Commission implementing powers to draw up a common list of infringements. This list is a precondition for any organised exchange of information between Member States and the definition of common thresholds for the withdrawal of authorisations.

#### 4.2.4. *New indicators for measuring a company's financial standing*

Article 7 introduces more precise indicators for measuring a company's financial standing. Companies or Member States can choose between two options: either the current assets and the "quick ratio" (according to the terminology of the fourth accounting directive)<sup>7</sup> established on the basis of the company's annual accounts have to comply with certain thresholds or the company has to provide proof of its financial standing by means of a bank guarantee. The financial indicators proposed are those commonly used in financial analysis to assess a company's ability to meet its short-term debts.

#### 4.2.5. *Improving professional competence*

Article 8 introduces a common approach combining training and a compulsory examination to test professional competence applicable to all applicants, including those with professional experience and those holding a diploma. It also provides for a minimum system of accreditation for examination centres and training centres, and calls for the promotion of exchanges of experience between Member States in this area. Lastly, the possibility for Member States to make a distinction between the level of qualification according to whether or not international transport is involved is removed. The reasoning behind this is that those whose job it is to manage transport activities will most certainly have had occasion to manage transport operations between different Member States in the course of their careers.

#### 4.2.6. *Improving monitoring*

Articles 9, 10, 11 and 13 clarify and strengthen the role of the authorities designated by the Member States to check that companies meet the conditions laid down in the Regulation. These Articles introduce common principles designed to ensure greater transparency, comparability and, ultimately, credibility for the rules governing admission to the occupation. Articles 10 and 12 indicate the time limits to be complied with by those authorities when examining dossiers, and the time limits that may be granted to companies to rectify their situation before incurring a sanction.

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<sup>7</sup> Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain forms of companies.

Article 12 requires the competent authorities to warn companies which run the risk of no longer satisfying the conditions set out in the Regulation. Article 21 sets out a gradual range of sanctions going from partial withdrawal of the authorisation to disqualification of the transport operator. Where checks are concerned, Article 11 provides for targeted checks which Member States can carry out instead of systematic checks more frequently than the existing five-year checks. The targeted checks method has proved to be an effective way of detecting infringements and reducing administrative costs, since only companies identified as being at risk are checked.

#### 4.2.7. *Administrative simplification and cooperation*

Article 15 calls for the introduction in each Member State of an electronic register of companies which should be interconnected throughout the Community by the end of 2010 in compliance with the rules on the protection of personal data. Such registers already exist in many Member States, and have proved to be effective in reducing the administrative costs of monitoring companies. Article 16 indicates the essential rules applicable to the protection of personal data, in accordance with Directive 95/46/EC. Article 17 provides for the designation of national contact points to be used for the exchange of information, and certain procedures to be followed (detailed in the proposals for Regulations adopted in parallel with this proposal).

#### 4.2.8. *Other amendments*

The other substantive amendments concern general provisions resulting from the amendments indicated above, in particular to specify the applicable transitional period and gradually eliminate unjustified prior rights, the committee procedure rules which apply, and the reports to be compiled to ensure more rigorous monitoring at national and Community level.

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**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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 European Economic and Social Committee,<sup>8</sup>

Having regard to the opinion of the Committee of the Regions,<sup>9</sup>

Having consulted the European Data Protection Supervisor,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,<sup>10</sup>

Whereas:

- (1) The completion of an internal market in road transport with fair conditions of competition requires the uniform application of common rules on admission to the occupation of road haulage operator or road passenger transport operator, hereinafter referred to as "occupation of road transport operator". Such common rules will help to contribute towards achieving a higher level of professional qualification for transport operators, the rationalisation of the market, and an improved quality of service rendered, in the interests of transport operators, their customers and the economy as a whole, together with improvements in road safety. They will also facilitate the effective exercise of the right of establishment for transport operators.
- (2) Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations<sup>11</sup> laid down minimum conditions governing admission to the occupation of road transport operator and the mutual recognition of the documents

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<sup>8</sup> OJ C ..., ..., p. ....

<sup>9</sup> OJ C ..., ..., p. ....

<sup>10</sup> OJ C ..., ..., p. ....

<sup>11</sup> OJ L 124, 23.5.1996, p. 1. Directive last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

required in this connection. However, experience, the impact assessment carried out, and various studies show that the Directive is being applied in a very disparate fashion from one Member State to another. The disparities in question have several adverse consequences, in particular distortion of competition, a lack of market transparency, a lack of uniformity with regard to monitoring, and the risk that undertakings with a low level of professional qualification may be negligent or less compliant with road safety rules and social welfare rules, which may harm the image of the sector.

- (3) These consequences are all the more detrimental in that they are liable to disturb the smooth functioning of the internal market in road transport, since access to the market in international goods transport and certain cabotage operations is open to undertakings throughout the Community. The only condition imposed on such undertakings is that they have a Community licence, which they can obtain provided that they satisfy the conditions governing admission to the occupation, in accordance with Regulation (EC) No.../... as regards the carriage of goods by road and Regulation (EC) No.../... as regards the carriage of passengers.
- (4) It is therefore appropriate to modernise the existing rules on admission to the occupation of road transport operator, in order to ensure that they are applied more uniformly and more effectively. Since compliance with these rules constitutes the main condition governing access to the Community market, and the applicable Community instruments in this field are Regulations, a Regulation would appear to be the most appropriate instrument to govern admission to the occupation.
- (5) In the interests of fair competition, the common rules governing the exercise of the occupation should apply as widely as possible to all undertakings. However, it is unnecessary to include in this Regulation undertakings which only perform transport operations with a very small impact on the transport market.
- (6) 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 so that the Member State in question can, if necessary, decide to suspend or withdraw the authorisations which allow that undertaking to operate on the market. Proper compliance with and reliable monitoring of the conditions governing admission to the occupation presuppose that undertakings are stably and effectively established.
- (7) The natural persons with the requisite good repute and professional competence should be clearly identified and designated to the competent authorities. Such persons, referred to as "transport managers", should be those who continuously and effectively run the transport activities of road transport undertakings. It is appropriate to specify the conditions under which a person is considered to manage, continuously and effectively, a transport activity in an undertaking.
- (8) The good repute of transport managers is conditional on their not having incurred serious criminal convictions or serious sanctions, in particular for infringing Community rules relating to road transport. It is necessary to define jointly, in the areas covered by Community rules, the types of infringements and the corresponding degrees of seriousness liable to detract from the good repute of an undertaking.
- (9) A road transport undertaking must have a minimum financial standing to ensure proper launching and proper administration of the undertaking. The current method

based on a minimum threshold for capital and reserves leaves a great deal of uncertainty about the financial resources to be taken into account, and does not guarantee that an undertaking has the ability to meet its short-term commitments. It is appropriate to use other, better defined and more relevant financial indicators which can be established on the basis of the annual accounts. Undertakings which so wish should be afforded the possibility of demonstrating their financial standing with a bank guarantee, which may constitute a simpler and less expensive method for them.

- (10) A high level of professional qualification should increase the socio-economic efficiency of the road transport sector. It is therefore appropriate that applicants for the post of transport manager should undergo high-quality training. To ensure greater uniformity of training and examination and transparency vis-à-vis applicants, it is appropriate to provide that the Member States accredit examination and training centres according to criteria to be defined by them. On the grounds of fairness and transparency, it is also appropriate that all applicants, including those who, because they have experience or a diploma, may be exempted from compulsory initial training, should pass an examination. Since the completion of the internal market, the national markets are no longer separate. Consequently, those responsible for managing transport activities should possess the requisite knowledge for managing both national and international transport operations. The list of subjects of which knowledge is required in order to obtain a certificate of professional competence and the procedures for the organisation of examinations are likely to evolve with technical progress, and provision should be made for updating them.
- (11) Fair competition and road transport that is fully compliant with the rules call for a uniform level of monitoring by Member States. The national authorities responsible for monitoring undertakings and the validity of their authorisations have a crucial role to play in this respect, and it is appropriate to ensure that they take suitable measures if necessary, in particular by suspending or withdrawing authorisations, or declaring as unsuitable transport managers who are negligent or act in bad faith. An undertaking should, however, be warned in advance and should have a reasonable period of time within which to rectify the situation before incurring such sanctions.
- (12) More organised administrative cooperation between Member States would improve the effectiveness of the monitoring of undertakings operating in several Member States and reduce administrative costs. Electronic registers of undertakings interconnected throughout the Community, in compliance with the Community rules on the protection of personal data, would facilitate such cooperation and reduce the cost involved in checks for both undertakings and administrations. There are already national registers in most Member States. There is also already infrastructure in existence for interconnection between Member States. More systematic use could therefore be made of these national registers of undertakings and their interconnection throughout the Community at a lower cost, thus contributing to a significant reduction in the administrative costs of checks and an improvement in their effectiveness.
- (13) Some of the data contained in these registers concerning infringements and sanctions are personal. Member States must therefore take the measures necessary to ensure that Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on

the free movement of such data<sup>12</sup> is complied with, in particular with regard to the monitoring of the processing of such data by a public authority, the right of data subjects to be provided with information, their right of access, and their right to object. For the purposes of this Regulation, it would appear to be necessary to keep this type of data for at least two years to ensure that disqualified undertakings do not establish themselves in other Member States.

- (14) It is essential to interconnect the national registers so as to enable information to be exchanged rapidly and efficiently between Member States and guarantee that transport operators are not tempted to commit, or take the risk of committing, serious infringements in Member States other than their country of establishment. Interconnection of this kind entails the joint definition of the precise format for the data to be exchanged and the technical procedures for the exchange of data.
- (15) In order to ensure the efficient exchange of information between Member States, national contact points should be designated and certain common procedures in terms of time limits and the nature of the information to be forwarded as a minimum should be specified.
- (16) To facilitate freedom of establishment, the production of appropriate documents issued by a competent authority in the country of origin of the road transport operator should be accepted as sufficient proof of good repute for admission to the activities in question in a host Member State, providing that it can be ascertained that the persons concerned have not been declared unfit to pursue the occupation in the other Member States from which they come.
- (17) With regard to professional competence, a single model certificate issued in accordance with the Community provisions of this Regulation should be regarded as sufficient proof by the Member State of establishment, so as to facilitate freedom of establishment.
- (18) Closer monitoring of the application of the provisions of this Regulation is required at Community level, which presupposes the forwarding of regular reports on the good repute, financial standing and professional competence of undertakings in the road transport sector drawn up on the basis of the national registers.
- (19) Member States should provide for sanctions applicable to infringements of the provisions of this Directive. Such sanctions shall be effective, proportionate and dissuasive.
- (20) Given that the objectives of the action proposed, namely modernisation of the rules governing admission to the occupation of road transport operator in order to ensure that they are applied more uniformly and comparably in the Member States cannot be achieved adequately by the Member States themselves and can therefore be better attained at Community level, the Community may take measures, in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, the Regulation does not go beyond what is necessary to achieve those objectives.

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<sup>12</sup> OJ L 281, 23.11.1995, p. 31.

- (21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.<sup>13</sup>
- (22) The Commission should, in particular, be authorised 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, to adapt to technical progress the Annex to this Regulation 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, and 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. Since the measures in question are of general scope and are designed to amend non-essential elements of this Regulation or to supplement it by the addition of new non-essential elements, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. On the grounds of efficiency, the time limits normally applicable in the context of the regulatory procedure with scrutiny should be shortened for the updating of the model certificate of professional competence.
- (23) Directive 96/26/EC should be repealed.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### General provisions

#### *Article 1*

#### *Subject matter and definitions*

1. This Regulation governs admission to the occupation of road transport operator and the pursuit of that occupation.
2. For the purposes of this Regulation:
  - (a) "the occupation of road transport operator" shall mean the occupation of road passenger transport operator or the occupation of road haulage operator;
  - (b) "the occupation of road haulage operator" shall mean the activity of any undertaking transporting goods for hire or reward by means of either a motor vehicle or a combination of vehicles;
  - (c) "the occupation of road passenger transport operator" shall mean the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the

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<sup>13</sup> OJ L 184, 17.7.1999, p. 23. Decision amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).



driver, and intended for that purpose, passenger transport services for the public or for specific categories of users against payment by the person transported or by the transport organiser,

- (d) "undertaking" shall mean any natural person, any legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality;
- (e) "transport manager" shall mean a natural person employed by an undertaking or, if that undertaking is a natural person, that same person or, where appropriate, another natural person designated by it by means of a contract, who effectively and continuously manages the transport activities of that undertaking;
- (f) "authorisation to pursue the occupation of road transport operator" shall mean an administrative decision which authorises an undertaking which satisfies the conditions provided for in this Regulation to pursue the occupation of road transport operator;
- (g) "competent authority for the purpose of authorising the pursuit of the occupation" shall mean a national, regional or local authority in a Member State which verifies whether an undertaking satisfies the conditions provided for in this Regulation, and which is empowered to award, suspend or withdraw the authorisation to pursue the occupation of road transport operator;
- (h) "Member State of establishment" shall mean the Member State in which an undertaking wishes to establish itself, regardless of whether its transport manager originates in another country ;
- (i) "Member State of origin" shall mean the Member State in which the transport manager of an undertaking which wishes to establish itself in another Member State used to reside or work.

## *Article 2*

### *Scope*

1. This 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 wish to engage in the occupation of road transport operator.
2. By way of derogation from paragraph 1, this Regulation shall not apply:
  - (a) to undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the maximum authorised weight of which does not exceed 3.5 tonnes. Member States may, however, lower this limit for all or some categories of transport operations.
  - (b) to undertakings which are engaged exclusively in certain road passenger transport services for non-commercial purposes, which have a main occupation

other than that of road passenger transport operator, and which use vehicles driven by their own employees.

### *Article 3*

#### *Requirements for engaging in the occupation of road transport operator*

Undertakings engaged in the occupation of road transport operator and those wishing to engage in the occupation of road transport operator must satisfy the following requirements:

- (a) be effectively and stably established in one of the Member States;
- (b) be of good repute;
- (c) be of appropriate financial standing;
- (d) have the requisite professional competence.

The conditions to be met in order to satisfy each of these requirements are set out in Chapter II. Notwithstanding this Regulation, Member States may decide to impose additional conditions that undertakings must meet in order to be allowed to engage in the occupation of road transport operator.

### *Article 4*

#### *Transport manager*

1. An undertaking which wishes to engage in the occupation of road transport operator shall designate to the competent authority referred to in Article 9 at least one natural person who satisfies the requirements set out in Article 3(b) and (d). That person, the transport manager, must meet the following conditions:
  - (a) he or she must effectively and continuously manage the transport activity of the undertaking, and
  - (b) be employed and remunerated by the undertaking or, if the undertaking is a natural person, be that same person.
2. By way of derogation from paragraph 1, if an undertaking is a natural person who does not satisfy the requirement as to professional competence provided for in Article 3(d), the competent authorities may authorise it to engage in the occupation of road transport operator, provided that:
  - (a) it designates to those authorities another person who satisfies the requirements provided for in Article 3(b) and (d), and is empowered by means of a contract to carry out duties as transport manager on behalf of the undertaking;
  - (b) the contract linking the undertaking with the transport manager specifies the duties to be performed on a permanent basis by the party concerned, and indicates his or her responsibilities as transport manager; the duties to be specified shall comprise in particular those relating to vehicle maintenance,

verification of transport contracts and documents, accounting, the assignment of loads to drivers and vehicles, and the verification of safety procedures;

- (c) the person designated does not manage, in the capacity of transport manager, the transport activities of more than four different undertakings carried out with a maximum total fleet of twelve vehicles;
  - (d) the person designated is independent of the other undertakings which call upon him or her to carry out transport operations or which carry out transport operations on his or her behalf.
3. The transport manager shall lose his or her good repute within the meaning of this Regulation if serious infringements or repeated infringements above a certain threshold among the infringements referred to in Article 6(1) are committed in the context of the transport activities which he or she manages.

## CHAPTER II

### Conditions to be met

#### *Article 5*

Conditions relating to the requirement as to establishment

To satisfy the requirement provided for in Article 3(a), an undertaking must be effectively and stably established in the Member State which, through a competent authority, authorises it to engage in the occupation. To that end, the undertaking must;

- (a) have an establishment, situated in that Member State with premises in which it keeps its business documents, and in particular all its accounting documents, personnel management documents and any other document 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 this Regulation;
- (b) have at its disposal vehicles, whether wholly owned or, for example, under a hire purchase, hire or leasing contract or under a purchase contract, which are registered in and which it uses in that Member State;
- (c) have an operating centre, situated in that Member State, with the necessary equipment, and in particular a sufficient number of vehicle parking places for regular use by its vehicles.

#### *Article 6*

Conditions relating to the requirement as to good repute

1. For the purposes of Article 3(b), the requirement as to the good repute of an undertaking shall mean that its managers have not been convicted of any serious criminal offence or offences under commercial law or bankruptcy law and that they

carry out their activity in good faith and in compliance with the rules applicable to road transport and in accordance with professional ethics.

Member States shall determine the special conditions which an undertaking must meet pursuant to this Regulation in order to satisfy the requirement as to good repute. Member States shall provide that an undertaking satisfies that requirement if:

- (a) there are no compelling grounds for doubting its good repute;
- (b) the natural person(s) whom it has designated as transport manager pursuant to Article 4 has not (have not) incurred convictions or sanctions in one of the Member States for serious infringements or repeated minor infringements of Community rules concerning in particular:
  - (i) the driving time and rest periods of drivers, working time, and the installation and use of recording equipment;
  - (ii) the maximum weights and dimensions of commercial vehicles used in international traffic;
  - (iii) the initial qualification and continuous training of drivers;
  - (iv) the roadworthiness testing of commercial vehicles and the compulsory annual technical inspection of motor vehicles;
  - (v) access to the market in international road haulage or, as appropriate, access to the market in passenger transport;
  - (vi) safety in the carriage of dangerous goods by road;
  - (vii) the installation and use of speed-limiting devices on certain categories of vehicle;
  - (viii) the driving licence;
  - (ix) admission to the occupation.
- (c) the undertaking has not been convicted of serious infringements of the national rules in force concerning the pay and employment conditions in the profession, road traffic, road safety or professional liability.

2. For the purposes of point (b) of the second subparagraph of paragraph 1, the Commission shall adopt the list of categories, types and degrees of seriousness of infringements and the frequency of occurrence beyond which repeated minor infringements shall lead to the loss of the requisite good repute. Since these measures are designed to amend non-essential elements of this Regulation and to supplement it, they shall be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 25(3).

To this end, the Commission shall apply the following principles:

- (a) the categories and types of infringement are those most frequently encountered;

- (b) the most serious degree of seriousness concerns infringements which create a serious risk of fatalities or serious injuries;
  - (c) the frequency of occurrence beyond which repeated minor infringements shall be regarded as serious shall increase according to the number of drivers used for the transport activities managed by the natural person concerned.
3. The requirement as to good repute shall not be satisfied until rehabilitation or any other measure having an equivalent effect has taken place pursuant to the relevant existing national provisions.

#### *Article 7*

#### *Conditions relating to the requirement as to financial standing*

1. For the purposes of Article 3(c), the requirement as to financial standing shall consist in having available sufficient resources to ensure proper launching and proper administration of the undertaking.
2. The requirement as to financial standing shall be satisfied where an undertaking can at all times meet its actual and potential commitments in the course of the annual accounting year. To this end, the undertaking must prove, on the basis of annual accounts certified by an auditor or a duly accredited person, that it has at its disposal each year:
- (a) current assets totalling at least EUR 9 000 for a single vehicle used and EUR 5 000 for each additional vehicle used;
  - (b) debt claims, securities and cash at bank and in hand totalling more than 80% of debts of which the residual duration is no greater than one year ("*quick ratio*"  $\geq 80\%$ ).

For the purposes of this Regulation, the value of the euro in those national currencies which are non-participants in the third stage of Monetary Union shall be fixed every five years. The rates to be applied shall be those obtained on the first working day of October and published in the *Official Journal of the European Union*. They shall have effect from 1 January of the following calendar year.'

The accounting items referred to in points (a) et (b) of the first subparagraph shall be understood as meaning those defined in Council Directive 78/660/EEC.<sup>14</sup>

3. By way of derogation from paragraph 2, the competent authority may agree that an undertaking may give proof of its financial standing by means of a certificate from one or more banks or other financial institutions providing a joint and several guarantee for the undertaking in the form of a bank surety, or any other similar means, in respect of the amounts specified in point (a) of paragraph 2. The bank surety may be called in by the competent authority which authorises the pursuit of the occupation and cannot be released without the agreement of the latter.

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<sup>14</sup> OJ L 222, 14.8.1978, p. 11.

4. The annual accounts referred to in paragraph 2, and the surety referred to in paragraph 3, which are to be verified, are those of the economic entity established in the territory of the Member State in which an authorisation is applied for and not those of any other entities established in the territory of any other Member State.

#### *Article 8*

##### *Conditions relating to the requirement as to professional competence*

1. For the purposes of Article 3(d), the requirement as to professional competence shall be satisfied if the person(s) who is (are) deemed to satisfy it pursuant to Article 4 possesses (possess) knowledge corresponding to the level of training provided for in Section 1 of Annex I in the subjects listed therein. It shall be established, following training involving compulsory attendance at courses of a total duration of at least 140 hours, by means of a compulsory written examination which may be supplemented by an oral examination. These examinations shall be organised in accordance with Section 2 of Annex I.
2. Only the authorities and bodies accredited for this purpose by a Member State in accordance with criteria defined by it may organise the written and oral examinations whereby professional competence can be established. Member States shall regularly verify that the conditions under which the authorities and bodies which they have accredited organise the examinations are in accordance with Annex I.
3. Member States shall accredit, in accordance with criteria defined by them, the bodies capable of offering applicants high-quality training to prepare them efficiently for the examination, and continuous training so that transport managers who so wish can update their knowledge. Member States shall regularly verify that these bodies at all times fulfil the criteria on the basis of which they were accredited.
4. Member States may exempt from compulsory training applicants who provide proof of at least five years' practical experience in a transport undertaking at management level.
5. A Member State may exempt the holders of certain higher education diplomas or technical education diplomas issued in that Member State and which entail attendance at courses in the subjects listed in Annex I and which they specifically designate to this end from compulsory training in the subjects covered by the diplomas.
6. A certificate issued by the authority or body referred to in paragraph 2 must be produced as proof of professional competence. That certificate shall not be transferable. It shall be drawn up in accordance with the model certificate set out in Annex II and bear the engraved stamp or seal of the accredited authority or body which issued it.
7. The Commission shall adapt Annex I and Annex II to technical progress. Since these measures are designed to amend non-essential elements of this Regulation, they shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3), as regards Annex I, and in accordance with the regulatory procedure with scrutiny referred to in Article 25(4), as regards Annex II.

8. Exchanges of experience and information between Member States concerning training, examinations and accreditation shall be actively encouraged, mainly but not exclusively, by the Committee referred to in Article 25 and by any other body that the Commission may designate.

## **CHAPTER III**

### **Authorisation and monitoring**

#### *Article 9 Competent authorities*

1. Each Member State shall designate one or more competent authorities to ensure that the Regulation is implemented correctly. Those competent authorities shall be empowered to:
  - (a) examine applications made by undertakings;
  - (b) grant authorisations to engage in the occupation, and suspend or withdraw such authorisations;
  - (c) declare a natural person to be unfit to manage the transport activity of an undertaking in the capacity of transport manager;
  - (d) carry out the requisite checks to verify whether an undertaking satisfies the requirements provided for in Article 3.
2. The competent authorities shall publish all the conditions laid down pursuant to this Regulation, any other national provisions, the procedures to be followed by interested applicants and the corresponding explanations.

#### *Article 10 Examination and registration of applications*

1. The competent authority shall authorise undertakings which submit an application and satisfy the requirements provided for in Article 3 to engage in the occupation of road transport operator.
2. The competent authority shall record in the electronic register referred to in Article 15 the name of the transport manager designated by the undertaking, the address of the establishment, the number of vehicles used and, if the authorisation is valid for international transport, the serial number of the Community licence and that of the certified copies.
3. The time limit for the examination of an application for authorisations by a competent authority shall be as short as possible and shall not exceed three months.
4. From the date of the interconnection of the national electronic registers referred in Article 15(4), a competent authority shall verify, when assessing the good repute of

an undertaking, that the transport manager(s) designated has not (have not) in the last two years been declared, in one of the Member States, unfit to manage the transport activity of an undertaking pursuant to Article 13.

5. Undertakings with an authorisation to engage in the occupation of road transport operator shall, within 28 days, notify the competent authority which granted the authorisation of any changes in the data referred to in paragraph 2.

#### *Article 11* *Checks*

1. The competent authorities shall verify that undertakings which they have authorised to engage in the occupation continue to fulfil the requirements provided for in Article 3. To that end, they shall check every five years that undertakings still fulfil each of those requirements
2. In addition to the verifications provided for in paragraph 1, the competent authorities shall carry out checks targeting undertakings classed as being at risk under the system established by the Member States pursuant to Article 9 of Directive 2006/22/EC of the European Parliament and of the Council.<sup>15</sup> Member States shall extend this risk classification system to cover all the infringements specified in Article 6 of this Regulation.
3. A Member State shall carry out the requisite checks to verify whether an undertaking still meets the conditions governing admission to the occupation whenever the Commission so requests. It shall inform the Commission of the results of the checks carried out at the Commission's request and of the measures taken if it is established that the undertaking no longer meets the conditions provided for in this Regulation.

#### *Article 12* *Warning procedure and procedure for the withdrawal of authorisations*

1. The competent authority shall withdraw or partially suspend the authorisation to engage in the occupation of road transport operator granted to an undertaking if it establishes that the undertaking no longer satisfies the requirements provided for in Article 3 and after having sent a warning.
2. A warning shall be sent to an undertaking if the competent authority establishes that an undertaking runs the risk of no longer satisfying the requirements provided for in Article 3. If it is established that one of those requirements is no longer satisfied, the warning shall grant a time limit for the undertaking to rectify the situation within the following limits:
  - (a) a time limit not exceeding six months for the recruitment of a replacement for the transport manager if the latter no longer satisfies the requirements as to good repute or professional competence, which may be extended by six months in the event of the death or physical incapacity of the transport manager

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<sup>15</sup> OJ L 102, 11.4.2006, p. 35.



- (b) a time limit not exceeding six months where the undertaking has to rectify the situation by demonstrating that it has an effective and stable establishment;
  - (c) a time limit not exceeding six months if the requirement as to financial standing is not satisfied, in order to demonstrate, on the basis of a financial plan with realistic assumptions, that the requirement as to financial standing will once again be satisfied on a permanent basis as from the next accounting year.
3. The competent authority may require undertakings whose authorisation has been partially or provisionally suspended or withdrawn to ensure that its transport managers follow the training course and pass the examination referred to in Article 8 prior to any rehabilitation measure.

### *Article 13*

#### *Declaration of unfitness of the transport manager*

1. In the event of infringements the seriousness of which is well established by dint of their systematic, premeditated nature and by attempts to hide the facts, the competent authority shall declare the transport manager of an undertaking whose authorisation has been withdrawn unfit to manage the transport activity of an undertaking.
2. Unless and until a rehabilitation measure has been taken, the certificate of professional competence referred to in Article 8(6) of the person declared to be unfit to manage transport activities shall no longer be valid in any Member State.

### *Article 14*

#### *Decisions of the competent authorities and appeals*

1. Decisions taken by the competent authorities in the Member States pursuant to this Regulation entailing the rejection of an application for admission to the occupation of road transport operator or the suspension or withdrawal of an existing authorisation or a declaration of unfitness shall state the reasons on which they are based.

Such decisions shall take into account the information available concerning infringements committed by the undertaking or one of the transport managers which are such as to detract from the good repute of the undertaking, and any other information at the disposal of the competent authority.

They shall specify the rehabilitation measures applicable in the event of the suspension of an authorisation or a declaration of unfitness.

2. Member States shall take steps to ensure that the undertakings to which this Regulation applies have the possibility of appealing to independent organisations or bodies, and then to a court, with regard to the decisions referred to in paragraph 1. The submission of an appeal, including an appeal before a court, shall not have suspensory effect.

## CHAPTER IV

### Simplification and administrative cooperation

#### *Article 15*

#### *National electronic registers*

1. For the purposes of implementing this Regulation, and in particular Articles 10, 11, 12, 13 and 26, each Member State shall keep a national electronic register of road transport undertakings which have been authorised by a competent authority designated by it to engage in the occupation of road transport operator. The data contained in that register shall be processed under the supervision of a public authority designated for that purpose. The electronic register shall be accessible on line to all the competent authorities of the Member State in question, as referred to in Article 9. It shall be accessible to other authorities only if they are sworn and duly endowed with powers relating to supervision and the imposition of sanctions in the road transport sphere.

The national electronic register of a Member State shall contain the following data:

- (a) the name and legal form of the undertaking;
  - (b) the address of its establishment;
  - (c) the names of the transport managers designated to meet the conditions as to good repute and professional competence or, as appropriate, the name of the legal representative
  - (d) the type of authorisation, the number of vehicles which it covers and, where appropriate, the serial number of the Community licence and that of the certified copies;
  - (e) the number, the category and the type of serious infringements and repeated minor infringements, as referred to in Article 6(1)(b), which have resulted in a sanction in the last two years;
  - (f) the names of any persons declared to be unfit to manage the transport activity of an undertaking in the last two years, and the rehabilitation measures applicable.
2. Data concerning an undertaking the authorisation of which has been partially or provisionally suspended or withdrawn or concerning any person declared to be unfit for the occupation shall remain in the register for two years. Such data shall specify the reasons for the suspension or withdrawal of the authorisations or the declaration of unfitness.
3. Member States shall take all necessary measures to ensure that all the data contained in the electronic register are kept up to date and are accurate, in particular those referred to in paragraph 2(e) and (f).

4. Member States shall take all necessary measures to ensure that the national electronic registers are interconnected throughout the Community no later than 31 December 2010. Interconnection shall be implemented in such a way that a competent authority in any Member State can consult the electronic registers of all the Member States.
5. For the purposes of paragraph 5, the common rules concerning the format of the data exchanged, concerning the technical procedures for automatic consultation of the electronic registers of the other Member States shall be adopted by the Commission in accordance with the consultation procedure referred to in Article 25(2).
6. The Commission may take any initiative necessary in order to facilitate the implementation of paragraph 5. It may decide to postpone the time limit referred to therein. Since a decision to postpone would be designed to amend non-essential elements of this Regulation, it shall be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 25(4).

*Article 16*  
*Protection of personal data*

With regard to the application of Directive 95/46/EC, Member States shall ensure in particular that:

- (a) all persons are informed when data relating to them are recorded or it is planned to forward such data to third parties. The information provided shall specify the identity of the authority responsible for processing the data, the type of data processed and the reasons;
- (b) all persons have the right of access to data relating to them with the authority responsible for processing the data. This right shall be ensured without constraint, at reasonable intervals and without excessive delay or cost for the authority responsible for processing the data or for the applicant;
- (c) all persons have the right to obtain the rectification, erasure or blocking of incomplete or inaccurate data relating to them;
- (d) all persons have the right to oppose on compelling legitimate grounds the processing of data relating to them. Where there is justified opposition, the processing may no longer involve those data.

*Article 17*  
*Administrative cooperation between Member States*

1. Where a Member State detects an infringement committed by an undertaking the authorisation of which has been issued by a competent authority in another Member State, and the seriousness of the infringement could result in the suspension or withdrawal of the authorisation pursuant to this Regulation, the Member State shall communicate to the other Member State all the information in its possession concerning the infringement and any sanctions which it has imposed.

2. Member States shall designate a national contact point responsible for the exchange of information with the other Member States with regard to the application of this Regulation. Member States shall forward to Commission the names and addresses of their national contact points by ... at the latest. The Commission shall draw up a list of all the contact points and forward it to the Member States.
3. Member States which exchange information in the framework of this Regulation shall use the national contact points designated pursuant to paragraph 2.
4. Member States which exchange information concerning the infringements referred to in Article 6(2) or concerning any transport managers declared to be unfit shall comply with the procedure and time limits referred to in Article 12(1) of Regulation (EC) No .../... or, as appropriate, Article 23(1) of Regulation (EC) No .../.... A Member State which receives notification of an infringement from another Member State shall record that infringement in its national electronic register.

## **CHAPTER V**

### **Mutual recognition of diplomas, certificates and other evidence of formal qualifications**

#### *Article 18*

#### *Certificates of good repute and equivalent documents*

1. Without prejudice to Article 10(4), the new Member State of establishment shall accept as sufficient proof of good repute for admission to the occupation of road transport operator the production of an extract from a judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority in the transport operator's Member State(s) of origin showing that this requirement is satisfied.
2. Where a Member State imposes on its own nationals certain conditions relating to good repute, and proof that these conditions are met cannot be provided by means of the document referred to in paragraph 1, that State shall accept as sufficient proof for nationals of other Member States a certificate issued by a competent judicial or administrative authority in the Member State(s) of origin stating that these conditions have been met. Such certificate shall relate to the specific facts taken into consideration in the new Member State of establishment.
3. If a document required in accordance with paragraphs 1 and 2 has not been issued by the country (countries) of origin, it may be replaced by a declaration on oath or by a solemn declaration made by the person concerned before a competent judicial or administrative authority or, where appropriate, a notary in the Member State of origin; such authority or notary shall issue a certificate authenticating the declaration on oath or the solemn declaration.

4. Documents issued in accordance with paragraphs 2 and 3 shall not be accepted if produced more than three months after their date of issue. This condition shall apply also to declarations made in accordance with paragraph 3.

#### *Article 19*

#### *Certificates of standing*

Where a Member State imposes on undertakings established on its territory certain conditions relating to financial standing in addition to those provided for in Article 7, that State shall accept as sufficient proof a certificate issued by a competent authority in the Member State(s) of origin stating that these conditions have been met. Such certificate shall relate to the specific facts taken into consideration in the new Member State of establishment.

#### *Article 20*

#### *Certificates of professional competence*

1. Member States shall recognise as sufficient proof of professional competence certificates complying with the model certificate set out in Annex II which are issued by the authorities or bodies accredited for that purpose.
2. Certificates issued before ... as proof of professional competence pursuant to the provisions in force until that date shall be deemed equivalent to the certificate the model for which is set out in Annex II and shall be recognised as proof of professional competence in all Member States. Member States may, however, request an additional document which provides proof of the effective exercise of the activity in question in a Member State during a period of at least three years. This activity must not have ceased more than five years before the date of submission of the certificate.

## **CHAPTER VI**

### **Final provisions**

#### *Article 21*

#### *Sanctions*

1. Member States shall determine the system of sanctions for infringements of the provisions of this Regulation and shall take all the measures necessary to ensure that those sanctions are applied. The sanctions thus provided for must be effective, proportionate and dissuasive. Member States shall give notification of the provisions in question not later than ..... and shall give notification of any subsequent amendment concerning them as soon as possible.
2. The sanctions referred to in paragraph 1 shall comprise in particular the provisional or partial suspension of the authorisation to engage in the occupation, the withdrawal of such authorisation, and the declaration of the unfitness of the transport managers involved. They shall also comprise the confiscation of any vehicle used by any

undertaking which carries out transport operations without having an authorisation as provided for in this Regulation.

3. The Commission shall draw up a list of maximum infringements of this Regulation entailing at least the provisional or partial suspension of the authorisation to engage in the occupation, the withdrawal of such authorisation or the declaration of the unfitness of the transport managers involved. Since that measure is designed to amend non-essential elements of this Regulation and to supplement it, it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(3).
4. The infringements referred to in Article 6(2) shall be mutually recognised for the purposes of applying the sanctions referred to in paragraph 2 of this Article.

#### *Article 22* *Prior rights*

Undertakings which can provide proof that, before certain dates, they were authorised in a Member State to engage in the occupation of road haulage operator or road passenger transport operator in national or international transport shall be exempted from providing proof that they have the professional competence referred to in Article 3(d) until 1 January 2012. Those dates are as follows:

- (a) 1 January 1975 for Belgium, Denmark, Germany, France, Ireland, Italy, Luxembourg, Netherlands and the United Kingdom,
- (b) 1 January 1981 for Greece,
- (c) 1 January 1983 for Spain and Portugal,
- (d) 3 October 1989 for the territory of the former German Democratic Republic,
- (e) 1 January 1995 for Austria, Finland and Sweden;

#### *Article 23* *Transitional provisions*

Undertakings which, before the date of entry into force of this Regulation, have an authorisation to engage in the occupation of road transport operator shall comply with the provisions of this Regulation no later than two years after that date.

#### *Article 24* *Mutual assistance*

1. The competent authorities in the Member States shall cooperate closely and shall grant each other mutual assistance for the purposes of applying this Regulation. They shall ensure the confidentiality of the information which they exchange.
2. The competent authorities shall exchange information on serious criminal convictions, and serious infringements committed and serious and specific facts

liable to have consequences for the pursuit of the occupation of road transport operator, in compliance with the provisions applicable to the protection of private data.

*Article 25*  
*Committee procedure*

1. The Commission shall be assisted by the Committee set up by Article 18(1) of Regulation (EC) No 3821/85.<sup>16</sup>
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Article 5a(1-4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
4. Where reference is made to this paragraph, Articles 5a(1-4) and 5(b) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The periods laid down in of Article 5a(3)(c), (4)(b) and (4)(e) of Decision 1999/468/EC shall be set at one month.

*Article 26*  
*Reports on the pursuit of the occupation*

1. Every two years the Member States shall draw up a report on the activities of the competent authorities and shall forward it to the Commission. This report shall comprise
  - (a) an analysis of the sector with regard to good repute, financial standing and professional competence;
  - (b) the number of authorisations granted by year and by type, those suspended, those withdrawn, the number of warnings, the number of declarations of unfitness and the reasons;
  - (c) the number of certificates of professional competence issued each year;
  - (d) statistics relating to updates of the national electronic registers, and
  - (e) an analysis of the exchanges of information with the other Member States, including in particular the annual number of established infringements notified to other Member States and the replies received pursuant to Article 17(3), and the annual number of requests and replies received pursuant Article 17(4).

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<sup>16</sup> OJ L 370, 31.12.1985, p. 8. Regulation last amended by Commission Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1.)

2. The Commission shall draw up every two years, on the basis of these national reports, a report for the attention of the European Parliament and the Council on the pursuit of the occupation of road transport operator. That report shall contain in particular an assessment of the operation of the exchange of information between Member States. It shall be published at the same time as the report referred to in Article 17 of Regulation (EC) No 561/2006.<sup>17</sup>

*Article 27*  
*List of competent authorities*

Each Member State shall forward to the Commission a list of competent authorities which it has designated to authorise the pursuit of the occupation of road transport operator and a list of the accredited authorities or bodies responsible for organising the examinations. A consolidated list of those authorities and bodies throughout the Community shall be published by the Commission in the *Official Journal of the European Union*.

*Article 28*  
*Communication of national measures*

Member States shall communicate to the Commission as soon as possible the text of the laws, regulations or administrative provisions of national law which they adopt in the field governed by this Regulation.

*Article 29*  
*Repeal*

Directive 96/26/EC is hereby repealed.

References to the repealed Directive shall be construed as references to this Regulation.

*Article 30*  
*Entry into force*

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

It shall apply with effect from...

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

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<sup>17</sup> OJ L 102, 11.4.2006, p.1.



Done at Brussels, [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]

## ANNEX I

### I. LIST OF SUBJECTS REFERRED TO IN ARTICLE 8

The knowledge to be taken into consideration for the official recognition of professional competence by the Member States must cover at least the subjects listed below for road haulage and road passenger transport respectively. In relation to these subjects, applicant road haulage and road passenger transport operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.

The minimum level of knowledge, as indicated below, may not be below level 3 of the training-level structure laid down in the Annex to Council Decision 85/368/EEC,<sup>18</sup> that is the level achieved in training acquired in the course of compulsory education supplemented either by vocational training and supplementary technical training or by secondary school or other technical training.

#### A. A. Civil law

##### *Road haulage and passenger transport*

The applicant must, in particular:

- (1) be familiar with the main types of contract used in road transport and with the rights and obligations arising therefrom;
- (2) be capable of negotiating a legally valid transport contract, notably with regard to conditions of carriage.

##### *Road haulage*

- (3) be able to consider a claim by his principal regarding compensation for loss of or damage to goods during transportation or for their late delivery, and to understand how such a claim affects his contractual liability;
- (4) be familiar with the rules and obligations arising from the CMR Convention on the Contract for the International Carriage of Goods by Road.

##### *Road passenger transport*

- (5) be able to consider a claim by his principal regarding compensation for injury to passengers or damage to their baggage caused by an accident during transportation, or regarding compensation for delays, and to understand how such a claim affects his contractual liability.

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<sup>18</sup> OJ L 199, 31.7.1985, p. 56.

## **B. Commercial law**

### *Road haulage and passenger transport*

The applicant must, in particular:

- (1) be familiar with the conditions and formalities laid down for plying the trade, the general obligations incumbent upon transport operators (registration, keeping records, etc.) and the consequences of bankruptcy;
- (2) have appropriate knowledge of the various forms of commercial company and the rules governing their constitution and operation.

## **C. Social law**

### *Road haulage and passenger transport*

The applicant must, in particular:

- (1) be familiar with the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);
- (2) be familiar with the employers' social security obligations;
- (3) be familiar with the rules governing work contracts for the various categories of worker employed by road transport undertakings (form of the contracts, obligations of the parties, working conditions and working hours, paid leave, remuneration, breach of contract, etc.);
- (4) be familiar with the rules applicable to driving time, rest periods and working time, and in particular the provisions of Council Regulation No 561/2006,<sup>19</sup> Council Regulation No 3821/85,<sup>20</sup> Directive 2002/15/EC and Directive 2006/22/EC, and the practical measures for applying those provisions;
- (5) be familiar with the rules applicable to the initial qualification and continuous training of drivers, and in particular those deriving from Directive 2003/59/EC.

## **D. Fiscal law**

### *Road haulage and passenger transport*

The applicant must, in particular, be familiar with the rules governing:

- (1) VAT on transport services;
- (2) motor-vehicle tax;

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<sup>19</sup> OJ L 102, 11.4.2006, p. 1.

<sup>20</sup> OJ L 370, 31.12.1985, p. 8.

- (3) the taxes on certain road haulage vehicles and tolls and infrastructure user charges;
- (4) income tax.

**E. Business and financial management of the undertaking**

*Road haulage and passenger transport*

The applicant must, in particular:

- (1) be familiar with the laws and practices regarding the use of cheques, bills of exchange, promissory notes, credit cards and other means or methods of payment;
- (2) be familiar with the various forms of credit (bank credit, documentary credit, guarantee deposits, mortgages, leasing, renting, factoring, etc.) and with the charges and obligations arising therefrom;
- (3) know what a balance sheet is, how it is set out and how to interpret it;
- (4) be able to read and interpret a profit and loss account;
- (5) be able to assess the undertaking's profitability and financial position, in particular on the basis of financial ratios;
- (6) be able to prepare a budget;
- (7) be familiar with his undertaking's cost elements (fixed costs, variable costs, working capital, depreciation, etc.), and be able to calculate costs per vehicle, per kilometre, per journey or per tonne;
- (8) be able to draw up an organisation chart relating to the undertaking's personnel as a whole and to organise work plans, etc.;
- (9) be familiar with the principles of marketing, publicity and public relations, including transport services, sales promotion and the preparation of customer files, etc.;
- (10) be familiar with the different types of insurance relating to road transport (liability, accidental injury/life insurance, non-life and luggage insurance) and with the guarantees and obligations arising therefrom;
- (11) be familiar with the applications of electronic data transmission in road transport.

*Road haulage*

- (12) be able to apply the rules governing the invoicing of road haulage services and know the meaning and implications of Incoterms;
- (13) be familiar with the different categories of transport auxiliaries, their role, their functions and, where appropriate, their status;

*Road passenger transport*

- (14) be able to apply the rules governing fares and pricing in public and private passenger transport;
- (15) be able to apply the rules governing the invoicing of road passenger transport services.

**F. Access to the market**

*Road haulage and passenger transport*

The applicant must, in particular:

- (1) be familiar with the occupational regulations governing road transport for hire or reward, industrial vehicle rental and subcontracting, and in particular the rules governing the official organisation of the occupation, admission to the occupation, authorisations for intra-Community and extra-Community road transport operations, inspections and sanctions;
- (2) be familiar with the rules for setting up a road transport undertaking;
- (3) be familiar with the various documents required for operating road transport services and be able to introduce checking procedures for ensuring that the approved documents relating to each transport operation, and in particular those relating to the vehicle, the driver, the goods and luggage are kept both in the vehicle and on the premises of the undertaking.

*Road haulage*

- (4) be familiar with the rules on the organisation of the market in road haulage services, on freight handling and logistics;
- (5) be familiar with border formalities, the role and scope of T documents and TIR carnets, and the obligations and responsibilities arising from their use.

*Road passenger transport*

- (6) be familiar with the rules on the organisation of the market in road passenger transport;
- (7) be familiar with the rules for introducing road passenger transport services and be able to draw up transport plans.

**G. Technical standards and technical aspects of operation**

*Road haulage and passenger transport*

The applicant must, in particular:

- (1) be familiar with the rules concerning the weights and dimensions of vehicles in the Member States and the procedures to be followed in the case of abnormal loads which constitute an exception to these rules;

- (2) be able to choose vehicles and their components (chassis, engine, transmission system, braking system, etc.) in accordance with the needs of the undertaking;
- (3) be familiar with the formalities relating to the type approval, registration and technical inspection of these vehicles;
- (4) understand what measures must be taken to reduce noise and to combat air pollution by motor vehicle exhaust emissions;
- (5) be able to draw up periodic maintenance plans for the vehicles and their equipment.

#### *Road haulage*

- (6) be familiar with the different types of cargo-handling and loading devices (tailboards, containers, pallets, etc.) and be able to introduce procedures and issue instructions for loading and unloading goods (load distribution, stacking, stowing, blocking and chocking, etc.);
- (7) be familiar with the various techniques of "piggy-back" and roll-on roll-off combined transport;
- (8) be able to implement procedures for complying with the rules on the carriage of dangerous goods and waste, notably those arising from Council Directive 94/55/EC,<sup>21</sup> Council Directive 96/35/EC,<sup>22</sup> and Council Regulation (EEC) No 259/93;<sup>23</sup>
- (9) be able to implement procedures for complying with the rules on the carriage of perishable foodstuffs, notably those arising from the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (ATP);
- (10) be able to implement procedures for complying with the rules on the transport of live animals.

## **H. Road safety**

### *Road haulage and passenger transport*

The applicant must, in particular:

- (1) know what qualifications are required for drivers (driving licence, medical certificates, certificates of fitness, etc.);
- (2) be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in different Member States (speed limits, priorities, waiting and parking restrictions, use of lights, road signs, etc.);

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<sup>21</sup> OJ L 319, 12.12.1994, p. 7.

<sup>22</sup> OJ L 145, 19.6.1996, p. 10.

<sup>23</sup> OJ L 30, 6.2.1993, p. 1.

- (3) be able to draw up drivers' instructions for checking their compliance with the safety requirements concerning the condition of the vehicles, their equipment and cargo, and concerning preventive measures to be taken;
- (4) be able to lay down procedures to be followed in the event of an accident and to implement appropriate procedures for preventing the recurrence of accidents or serious traffic offences;
- (5) be able to implement procedures for securing goods properly and be familiar with the corresponding techniques.

*Road passenger transport*

- (6) have elementary knowledge of the layout of the road network in the Member States.

## II. ORGANISATION OF THE EXAMINATION

1. Member States shall organise a compulsory written examination which they may supplement by an optional oral examination to establish whether applicant road transport operators have achieved the required level of knowledge in the subjects listed in part I, in particular, their capacity to use the instruments and techniques relating thereto and to fulfil the corresponding executive and coordination duties.
  - (a) The compulsory written examination shall involve two tests, namely:
    - written questions consisting of either multiple choice questions (each with four possible answers), questions requiring direct answers or a combination of both systems,
    - written exercises/case studies.

The minimum duration of each test is two hours.
  - (b) Where an oral examination is organised, Member States may stipulate that participation is subject to successful completion of the written examination.
2. Where Member States also organise an oral examination, they must provide, in respect of each of the three tests, for a weighting of marks of a minimum of 25 % and a maximum of 40 % of the total number of marks to be given.
 

Where Member States organise only a written examination they must provide, in respect of each test, for a weighting of marks of a minimum of 40 % and a maximum of 60 % of the total number of marks to be given.
3. With regard to all the tests, applicants must obtain an average of at least 60 % of the total number of marks to be given, achieving in any given test not less than 50 % of the total number of marks possible. In one test only, a Member State may reduce that mark from 50 % to 40 %.

ANNEX II  
**EUROPEAN COMMUNITY**



(Stout fawn paper – Format DIN A4 synthetic paper 150g/m2 or more)

(Text in the official language(s) or one of the official languages of the Member State issuing the certificate)

Distinctive symbol of the Member State concerned<sup>24</sup>

Designation of the accredited authority or body<sup>25</sup>

**CERTIFICATE OF PROFESSIONAL COMPETENCE  
IN ROAD HAULAGE [PASSENGER TRANSPORT<sup>26</sup>]**

No.....

We  
.....  
hereby certify that<sup>27</sup> born  
on.....in.....

has successfully completed the training and passed the tests for the examination (year:.....; session:.....) organised for the award of the certificate of professional competence in road haulage [passenger transport]<sup>28</sup> road haulage [passenger transport]<sup>29</sup> in accordance with Regulation (EC) No...../.....of.....

This certificate constitutes the sufficient proof of professional competence referred to in Article 20(1) of Regulation (EC) No...../.....of.....establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator.

Issued at.....,on.....<sup>30</sup>

<sup>24</sup> Distinctive symbol of the State: (B) Belgium, (BG) Bulgaria, (CZ) Czech Republic, (DK) Denmark, (D) Germany, (EST) Estonia, (GR) Greece, (E) Spain, (F) France, (IRL) Ireland, (I) Italy, (CY) Cyprus, (LV) Latvia, (LT) Lithuania, (L) Luxembourg, (H) Hungary, (NL) Netherlands, (A) Austria, (PL) Poland, (P) Portugal, (RO) Romania, (SLO) Slovenia, (SK) Slovakia, (FIN) Finland, (S) Sweden, (UK) United Kingdom.  
<sup>25</sup> Authority or body designated in advance for this purpose by each Member State of the European Community to issue this certificate.  
<sup>26</sup> Delete as appropriate.  
<sup>27</sup> Surname and forename; place and date of birth  
<sup>28</sup> Delete as appropriate.  
<sup>29</sup> Identification of the examination  
<sup>30</sup> Stamp and signature of the accredited body issuing the certificate.