



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.3.2007
COM(2007) 90 final

2007/0037 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community and Regulation (EC) No 852/2004 of the European Parliament and the Council on the hygiene of foodstuffs

{SEC(2007) 301}

{SEC(2007) 302}

{SEC(2007) 303}

{SEC(2007) 304}

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

A large part of EC legislation was introduced to correct market failures and ensure a level playing field. These goals could often only be achieved by imposing obligations on businesses to provide information and report on the application of the legislation.

With time, some of these procedures have become needlessly time-consuming or obsolete. These unnecessary administrative burdens hamper economic activity and have a negative impact on the competitiveness of European enterprises.

The Commission is committed to reducing these unnecessary burdens to the maximum extent possible. This is a part of the Better Regulation strategy and it is of vital importance for achieving our "Lisbon" targets of more growth and jobs.

• General context

On 14 November 2006, the Commission presented a Strategic Review of Better Regulation in the European Union (COM(2006) 689), including a proposal for a target to reduce the administrative burdens on businesses by 25% by 2012.

Ten concrete proposals for "fast track action" were thereupon identified the Action Programme for reducing administrative burdens in the EU (COM(2007) 23), based on broad stakeholder consultation and suggestions from Member States and Commission experts. The "fast track actions" aim at significantly reducing administrative burdens on businesses through minor legislative changes without challenging the level of protection or the original purpose of the legislation.

One of these "fast track action" proposals concerns Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community. It is envisaged to delete outdated requirements and to modify certain requirements in order to minimise the administrative burdens on businesses. Article 5 notably requested transport undertakings (as well as Member States' governments) to provide information on transport tariffs, rates and conditions before 1 July 1961. This Article can be deleted since the information requirements imposed on transport undertakings are outdated. Article 6(1) of the Regulation requires a transport document containing several information elements concerning the consignor, the nature of the goods carried, the place of origin and destination of the goods as well as the route to be taken or distance to be travelled, including frontier crossing points where appropriate. Since these latter elements i.e. the route to be taken or distance to be travelled and frontier crossing points where appropriate are no longer indispensable to achieve the objectives of the Regulation, they can be deleted. The third sentence of Article 6(2) of the Regulation requires the carrier to retain a copy showing the full and final transport charges and any other charges and any rebates or other factors affecting the transport rates and conditions. This sentence can be deleted as nowadays, this information is available in the carriers' accounting systems anyway, so there is no need for the carriers to fill out and keep a separate document anymore. Article 6(3) shall contain an explicit reference to consignment notes, which are very well-

known and often used in the inland transport sector. This reference improves legal certainty for transport undertakings as it clarifies that these consignment notes, if containing all details required by paragraph 1 of Article 6, suffice.

Another "fast track action" relates to Regulation (EC) No 852/2004 of the European Parliament and the Council on the hygiene of foodstuffs. The purpose is to exempt small food businesses able to control food hygiene simply by implementing the other requirements of Regulation (EC) 852/2004 from the requirement to putting in place, implementing and maintaining a permanent procedure or procedures based on the hazard analysis and critical control points ("HACCP") principles. This exemption applies to micro-enterprises¹ that are predominantly selling food directly to the final consumer. These enterprises have less than ten employees and have an annual turnover or annual balance sheet total that does not exceed 2 million EUR. The exemption would therefore not apply to large surface supermarkets and franchisers of supermarket chains.

- **Existing provisions in the area of the proposal**

The existing provisions that this proposal seeks to modify are Articles 5 and 6 of Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community and Article 5 of Regulation (EC) No 852/2004 of the European Parliament and the Council on the hygiene of foodstuffs.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods

In the Action Programme of 24 January 2007, the Commission presented ten concrete proposals for "fast track actions". These proposals were based on consultations with experts and in particular on a pilot project comparing the baseline measurements of administrative burdens in the Czech Republic, Denmark, The Netherlands and the United Kingdom in 2006.

One of these "fast-track actions" concerned the transport sector and proposed to "ease certain obligations to provide transport statistics". Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community requires transporters to carry a transport document stating inter alia distances, routes and frontier crossing points.

Another "fast track action" concerned food hygiene, proposing to "exempt small businesses from certain HACCP (hazard analysis and critical control points) requirements". Article 5 of Regulation (EC) No 852/2004 requires that all food business operators put in place, implement and maintain a procedure based on the HACCP (Hazard Analysis Critical Control Point) principles.

¹ As within the meaning of Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises of 6 May 2003, C(2003) 1422 OJ L 124/36.

Summary of responses

Experts and industry have expressed concern that these requirements from 1960 in Regulation No 11 are outdated in the highly liberalised transport sector. Certain articles are found to be obsolete while others impose unnecessary burdens on businesses.

Representatives of small businesses have expressed worries with regard to the general implementation of the HACCP system in all food businesses. In spite of the flexibility that was introduced in the Regulation, clarification was requested. The Commission has held a series of meetings with experts from the Member States. In addition, and in the interest of transparency, the Commission has promoted discussion with stakeholders so as to allow different socio-economic interests to express an opinion. To this end, a meeting with representatives from producers, industry, commerce and consumers was organised to discuss issues related to the implementation of HACCP based procedures and to HACCP flexibility. The results of these discussions are laid down in a guidance document that was endorsed by the Standing Committee of the Food Chain and Animal Health and published at:

http://ec.europa.eu/food/food/biosafety/hygienelaw/guidance_doc_haccp_en.pdf

Due to the significant impact on SMEs that a strict application of the HACCP requirements would lead to and the fact that some businesses can provide the same level of hygienic protection by implementing all the other requirements of Regulation (EC) No 853/2004, without there being a need to implement fully fledged HACCP procedures and despite a guidance document explaining the extent to which flexibility can be applied with regard to HACCP, there is a need for an exemption for some enterprises from all the HACCP requirements. It must be considered however that an exemption should not apply to businesses reaching a wide public. The exemption should therefore be limited to businesses with fewer than 10 employees which can be classified as micro-enterprises within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

• Impact assessment

The impact assessment concerning Regulation No 11 considered two options:

Option 1 No-Policy Change.

Option 2 Abolishing the obligation to provide information on routes, distances, rates and other transport conditions, and allowing the use of consignment notes to provide information on the remaining requirements related to the current transport document.

Option 2 was the preferred option because it provides for a reduction of unnecessary administrative burdens while the same level of essential information continues to be available.

The impact assessment concerning Regulation (EC) No 853/2004 considered three options:

Option 1 No-Policy Change.

Option 2 Exempting certain businesses from the HACCP requirements.

Option 3 Abolition of HACCP procedures for all businesses.

Option 2 was the preferred option because it provided a sound balance between reducing administrative burdens on businesses while maintaining a high level of consumer protection.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The aim of the action regarding Regulation No 11 is to reduce administrative burdens for transport enterprises by removing outdated documentation requirements regarding the route to be taken, distance to be travelled, frontier crossing points etc.

The actions concerning HACCP requirements aims at introducing an amendment to Regulation (EC) No 852/2004 excluding micro-enterprises from the requirement to putting in place, implementing and maintaining a permanent procedure or procedures based on the HACCP principles. This exemption applies to businesses with less than ten employees that are predominantly selling food directly to the final consumer.

- **Legal basis**

The legal base of Community action in the area of Transport is laid down in Article 75 EC Treaty, and the legal base of Community action in the area of Food hygiene is laid down in Article 95 and 152 (4) (b) EC Treaty.

- **Subsidiarity principle**

Action by the Member States would not suffice to reduce administrative burdens in these areas as the information requirements were imposed for transport enterprises and food businesses by way of EC Regulations. A reduction can therefore only be achieved by way of modifications of the Regulations concerned at European Union level.

EU action will ensure that all European transport enterprises and food businesses concerned can benefit from these administrative burdens reductions.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The goal of reducing administrative burdens caused by the information requirements imposed by Regulation No 11 and Regulation (EC) No 852/2004 can only be reached by modifying these Regulations, which can only be done by way of a binding EC legal instrument of the same level, a Regulation. This is in line with the proportionality principle contained in Article 5 EC Treaty.

This proposal ensures that the administrative burdens falling upon transport enterprises and small food businesses caused by the information requirements contained in Regulations No 11 and (EC) No 852/2004 are minimized.

- **Choice of instruments**

Proposed instruments: Regulation.

Other means would not be adequate for the following reason(s).

The objective of reducing administrative burdens caused by the information requirements imposed by Regulation No 11 and Regulation (EC) No 852/2004 can only be reached by modifying these Regulations, which can only be done by way of a binding EC legal instrument of the same type and level, a Regulation.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of administrative procedures for private parties.

The administrative procedure to be followed by transport enterprises will be simplified in the sense that some documentation requirements that are not absolutely indispensable regarding the route to be taken, distance to be travelled, and frontier crossing points will be removed. The administrative procedures for small food businesses able to control food hygiene simply by implementing the other requirements of Regulation (EC) No 852/2004 will be simplified as micro-enterprises predominantly selling food directly to consumers will be exempted from the requirement to put in place, implement and maintain a permanent procedure or procedures based on the HACCP principles.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 75(3), Article 95 and Article 152(4)(b) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵,

Whereas:

- (1) Community policies on Better Regulation, in particular the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "A strategic review of Better Regulation in the European Union"⁶ and the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Action Programme for Reducing Administrative Burdens in the European Union"⁷, stress the importance of reducing the administrative burdens imposed on enterprises by existing legislation as a crucial element for improving their competitiveness and for achieving the objectives of the Lisbon agenda.

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ COM(2006) 689.

⁷ COM(2007) 23.

- (2) The Community rules required under Article 75 of the EC Treaty in order to abolish certain forms of discrimination, as regards inland transport within the Community, have been laid down in Regulation No 11⁸. In the interest of reducing administrative burdens on businesses that Regulation should be simplified by removing outdated and unnecessary requirements in particular, the requirement to retain on paper certain information which, on account of technical progress, is now available in the carriers' accounting systems.
- (3) Article 5(1) of Regulation (EC) No 852/2004⁹ requires that all food business operators put in place, implement and maintain a procedure based on the Hazard Analysis Critical Control Point (HACCP) principles.
- (4) Experience has shown that in certain food businesses, food hygiene can be ensured by the correct implementation of the food hygiene requirements laid down in Regulation (EC) No 852/2004 without having recourse to the HACCP system. The businesses concerned are in particular small businesses predominantly selling their products directly to the final consumer, such as bakeries, butchers, grocery shops, market stalls, restaurants, and bars, , which are micro-enterprises within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹⁰.
- (5) It is appropriate therefore to provide an exemption to those businesses from the requirement of Article 5(1) of Regulation (EC) No 852/2004, it being understood that they must comply with all the other requirements of that Regulation.
- (6) As the amendment of Regulation (EC) No 852/2004 and that of Regulation No 11 have the common aim of reducing administrative burdens on businesses, without changing the underlying purpose of those Regulations, it is appropriate to combine these amendments in a single Regulation

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation No 11 is amended as follows:

- (1) Article 5 is deleted.
- (2) Article 6 is amended as follows:
 - (a) In paragraph 1 the fifth and sixth indents are deleted;
 - (b) In paragraph 2, the third sentence is deleted.

⁸ OJ P 52, 16.8.1960, p. 1121. Regulation as last amended by Regulation (EEC) No 3626/84 (OJ L 335, 22.12.1984, p. 4).

⁹ OJ L 139, 30.4.2004, p. 1; corrected version in OJ L 226, 25.6.2004, p. 3.

¹⁰ OJ L 124, 20.5.2003, p. 36.

(c) Paragraph 3 is replaced by the following:

"3. Where existing documents such as consignment notes or any other transport document give all the details specified in paragraph 1 and, in conjunction with carriers' recording and accounting systems, enable a full check to be made of transport rates and conditions, so that the forms of discrimination referred to in Article 75(1) of the Treaty may be thereby abolished or avoided, carriers shall not be required to introduce new documents."

Article 2

In Article 5(3) of Regulation (EC) No 852/2004, the following sentence is added:

"Without prejudice to the other requirements of this Regulation, paragraph 1 shall not apply to businesses which are micro-enterprises within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003¹¹ and the activities of which consist predominantly in the direct sale of food to the final consumer."

Article 3

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹¹ OJ L 124, 20.5.2003, p. 36.