

**UNTRR draft position**  
**with a view to be presented in the scope of audiences**  
**on the theme “occupation of road transport operator” organized by Commission**  
**on Transport and Tourism of the European Parliament**  
**on 22.10.2007, at Strasbourg**

In fact, the possibility to express an opinion based on the Proposal for a **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator**, represents an important opportunity to inform the Commission on Transport and Tourism about the perception and the possibilities of the road transport operators from Romania, a state not even one year old within the EU, concerning the provisions of the Regulation in discussion.

Considering present situation in the field of national regulations in the field of road transports concerning the access to the profession, we consider that the third political option – “harmonization” meets the best the necessities to reduce the present differences between the 27 EU member states.

Still, as representative of the Romanian industry in the field, may I express a certain preoccupation concerning the modality to reach this harmonization, taking into consideration that there is a serious difference between the practices of the eldest EU countries and the new-entered ones, considering that it is unlikely that the elder ones, having high standards, to lower their level, which is not particularly necessary anyway, as long as the Regulation gives national authorities the right to apply higher requirements than the ones provided in the scope of the Regulation – it occurs the problem of real and effective alignment of the new-entered states with the requirements of the Regulation (just so to reach the aim of its elaboration), which is extremely difficult to accomplish over night, without huge social and economic costs.

Thus, unless a step by step application is provided, on the basis of a reasonable calendar previously set, altogether with the fears expressed many times in the text of the document 2007/0098 (COD) on the cabotage, a possible interpretation of the purpose of this Regulation could be stressed: behind the mask of the best intentions of an united Europe, the purpose can be considered as a measure of economic segregation, by the concentration of the strong ones and the restriction of the access for the less prepared ones (last entered) both to the market, if we consider the cabotage, and also to the profession, if we look at the current modality to prove the financial standing. In brief: a legal instrument for distorting the competition at EU level. In extension, it can be considered that the terms of the point 3.6. from the above mentioned document can be affected by the opportunity costs, which are to be translated in huge indirect costs, in the future.

*3.6. Budgetary implication. For the Community, the proposal doesn't generate additional costs for the Community budget.*

May I remind that in Romania, due to administrative constraints (limited number of permits, access to ECMT permits, custom barriers, etc), the transport operators had to change their fleet every 4 years, in the conditions of some more expensive finances than the ones accessed by their branch colleagues from EU countries, and even so recording per vehicle an annual *distance covered by goods* with 20-25% lower than the one of the EU vehicles, all of these problems leading to the impossibility of company's capitalization in the same pace with the similar ones from EU.

The proposal is to revise Article 7 "*Conditions relating to the requirement as to financial standing*", taking into account that the provisions of the **point 2** are extremely tough (as a matter of fact, they are even tougher than asking the respective sums to be part of the subscribed and paid-up capital of the company):

*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 5000 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>1</sup>*

and the provisions of the **point 3** in the scope of the same article are by far too general and difficult to apply, taking into account the current bank's practice – bank guarantee is issued with a validity, in the favor of someone, being executable/lockable under certain conditions clearly stated and, on principle, direct by a direct commercial partner, harmed or affected by non-observance of a contractual commitment. I consider that introducing the playing arbitrator – competent authority which authorizes the performing of the occupation, invested with the right to retain and release the bank guarantee, although

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<sup>1</sup> OJ L 222, 14.8.1978, p. 11. Directive, as modified by Directive 2006/46/CE of European Parliament and Council (JO L 224, 16.8.2006, p.1)

extremely difficult, but not impossible, I still don't understand how it could serve the purpose for which the financial standing was chosen as one of the criteria of access to the profession.

*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.*

In the light of those above mentioned, we support IRU proposal concerning the way to prove the financial standing by considering investment efforts made by companies, particularly in a country where real-estate prices have a continuously increasing trend, and the exchange rate of the national currency is fluctuant (national currency has appreciated with 25% within 24-30 months and depreciated with 10% in 30 days, under the conditions of aligning all costs with those of the EU market, which are also having an increasing trend compared to EU reference level from the previous years), considering the present level of 9000 Euro for the first vehicle and 5000 Euro for each additional vehicle operated, as being satisfactory.

### **3. Financial Standing – IRU position**

*– Appropriate financial standing shall consist of having available sufficient resources to ensure proper launching and proper administration of the undertaking.*

*– For the purpose of assessing financial standing, national authorities shall have regard to annual accounts of the undertaking, if any; funds available, including cash at the bank, overdraft and loan facilities; any assets including property, which are available to provide security for the undertaking; costs, including purchase cost or initial payment for vehicles, premises, plant and equipment, and working capital.*

*– Undertakings must have available capital and reserves of at least EUR 7500 per vehicle.*

*– National authorities must accept a permanent bank guarantee as proof.*

*– Operators already active in the market should enjoy “grandfather rights”.*

(Development of national electronic registers should take into account also the institutional capacity of the member states which have to be supported, when necessary, in order to ensure a simultaneous implementation).

Concerning the provisions of Article 22, I consider that these should be totally removed, because they create a differentiation between EU 15 and EU 27.

## *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;*

And last but not least:

- for the frequency mentioned at Article 6, point 2 (a), it has to be defined the calculation mode – number of infringements of the same type recorded in a period of time which has to be well defined (accordingly, in 2007 some infringements have a higher frequency and in 2008 some other infringements could have a higher frequency, infringement which in 2007 where not serious, nor significantly numerous, so that a license can be withdrawn in 2008 for a reason which in 2007 hasn't caused any effect).
- For the adequacy mentioned at article 6, point 2 (c), there have to be defined adequate multipliers.

## *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;*

*(vii) safety in the carriage of dangerous goods by road;*

*(viii) the installation and use of speed-limiting devices on certain categories of vehicle;*

*(ix) the driving licence;*

*(x) 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.*