

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0151/2001

27 April 2001

*****I**

REPORT

on the proposal for a European Parliament and Council regulation amending Council Regulation (EEC) No 881/92 on access to the market in the carriage of goods by road within the Community to and from the territory of a Member State or passing across the territory of one or more Member States as regards a uniform driver attestation
(COM(2000) 751 – C5-0638/2000 – 2000/0297(COD))

Committee on Regional Policy, Transport and Tourism

Rapporteur: Rijk van Dam

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE	4
LEGISLATIVE PROPOSAL.....	Error! Bookmark not defined.
DRAFT LEGISLATIVE RESOLUTION.....	8
EXPLANATORY STATEMENT	9

PROCEDURAL PAGE

By letter of 23 November 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 71(1) of the EC Treaty, the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 881/92 on access to the market in the carriage of goods by road within the Community to and from the territory of a Member State or passing across the territory of one or more Member States as regards a uniform Driver Attestation (COM(2000) 751 - 2000/0297 (COD)).

At the sitting of 11 December 2000 the President of Parliament announced that she had referred this proposal to the Committee on Regional Policy, Transport and Tourism as the committee responsible and the Committee on Budgets and the Committee on Employment and Social Affairs for their opinions (C5-0638/2000).

The Committee on Regional Policy, Transport and Tourism appointed Rijk van Dam rapporteur at its meeting of 24 January 2001.

The committee considered the Commission proposal and draft report at its meeting(s) of 20 March 2001, 24 and 25 April 2001.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Emmanouil Mastorakis vice-chairman; Rijk van Dam, rapporteur; Pedro Aparicio Sánchez (for Carmen Cerdeira Morterero), Sir Robert Atkins, Emmanouil Bakopoulos, Carlos Bautista Ojeda (for Reinhold Messner pursuant to Rule 153(2)), Rolf Berend, Theodorus J.J. Bouwman, Philip Charles Bradbourn, Felipe Camisón Asensio, Gerard Collins, Francis Decourrière, Garrelt Duin, Alain Esclopé, Giovanni Claudio Fava, Jacqueline Foster, Jean-Claude Fruteau (for Danielle Darras), Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Mary Honeyball, Marie Anne Isler Béguin (for Camilo Nogueira Román), Juan de Dios Izquierdo Collado, Georg Jarzembowski, Dieter-Lebrecht Koch, Giorgio Lisi, Sérgio Marques, Manuel Medina Ortega (for Demetrio Volcic pursuant to Rule 153(2)), Erik Meijer, Emilio Menéndez del Valle (for John Hume), Rosa Miguélez Ramos, Francesco Musotto, Juan Ojeda Sanz, Josu Ortuondo Larrea, Wilhelm Ernst Piecyk, Giovanni Pittella (for Gilles Savary), Samuli Pohjamo, Alonso José Puerta, Reinhard Rack, Carlos Ripoll i Martínez Bedoya, Isidoro Sánchez García, Dana Rosemary Scallon, Brian Simpson, Renate Sommer, Per Stenmarck (for Karla M.H. Peijs), Dirk Sterckx, Hannes Swoboda (for Ulrich Stockmann), Johan Van Hecke (for Margie Sudre), Ari Vatanen, Christian Ulrik von Boetticher (for Ingo Schmitt) and Mark Francis Watts.

On 24 January 2001 the Committee on Budgets and on 18 January 2001 the Committee on Employment and Social Affairs decided not to deliver opinions.

The report was tabled on 27 April 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council regulation on amending Council Regulation (EEC) No 881/92 on access to the market in the carriage of goods by road within the Community to and from the territory of a Member State or passing across the territory of one or more Member States as regards a uniform driver attestation (COM(2000) 751 – C5-0638/2000 – 2000/0297(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1 Recital 5

(5) The impossibility to check the employment status of drivers outside the Member State of establishment has led to a market situation where drivers are engaged irregularly and solely for international carriage outside the haulier's Member State of establishment with an intent to breach the national legislation of the Member State of establishment having issued the haulier's Community authorization.

(5) The impossibility to check the employment status of drivers outside the Member State of establishment has led to a market situation where drivers, ***most of them from third countries***, are engaged irregularly and solely for international carriage outside the haulier's Member State of establishment with an intent to breach the national legislation of the Member State of establishment having issued the haulier's Community authorization.

Justification

In order to achieve the desired effect, the regulation should be aimed mainly (but not exclusively) at drivers from third countries.

Amendment 2 Recital 6

(6) Where such irregularly used drivers are engaged they are often working under detrimental conditions and salaries leading

(6) Where such irregularly used drivers, ***most of them from third countries***, are engaged they are often working under

¹ OJ C 96, 27.3.2001, p. 207

to serious road safety concerns.

detrimental conditions and salaries leading to serious road safety concerns.

Justification

In order to achieve the desired effect, the regulation should be aimed mainly (but not exclusively) at drivers from third countries.

Amendment 3

Recital 8

(8) The authorised bodies of Member States find it impossible to control the working conditions of those irregularly used drivers.

(8) The authorised bodies of Member States find it impossible to control the working conditions of those irregularly used drivers, ***most of them from third countries.***

Justification

In order to achieve the desired effect, the regulation should be aimed mainly (but not exclusively) at drivers from third countries.

Amendment 4

Recital 9

(9) Only an uniform document will give Member States the possibility to ascertain that drivers are lawfully engaged or put at the disposal of the haulier responsible for the transport operation.

(9) Only *a*uniform document will give Member States the possibility of *ascertaining* that drivers, ***most of them from third countries,*** are lawfully engaged or put at the disposal of the haulier responsible for the transport operation.

Justification

In order to achieve the desired effect, the regulation should be aimed mainly (but not exclusively) at drivers from third countries.

Amendment 5
ARTICLE 1 (1)
Article 2 (Regulation 881/92)

"-'driver' shall mean the person who drives a vehicle, or who is carried in that vehicle in order to be available for driving if necessary;"

"-'driver' shall mean:

the person who *is not a national of an EU Member State and who* drives a vehicle, or who is carried in that vehicle in order to be available for driving if necessary;

the person who is a national of an EU Member State and who drives a vehicle, or who is carried in that vehicle in order to be available for driving if necessary; "

Justification

In order to solve as quickly as possible the problem of illegally employed drivers from third countries, it is important to expand the definition of the 'driver', since in this way the date of entry into force of the Regulation can also be staggered.

Amendment 6
ARTICLE 3, second paragraph

It shall apply from *[one year]* after its entry into force.

It shall apply *as of* its entry into force *in the case of drivers who are not nationals of an EU Member State.*

It shall apply from two years after its entry into force in the case of drivers who are nationals of an EU Member State.

Justification

The transport labour market is distorted mainly by the illegal employment of people from third countries, giving rise to unfair competition. In order to counteract this and to combat

social dumping, it is important that the measures provided for in the Regulation are applied immediately in the case of third-country nationals. However, the measures provided for by the Regulation are also intended to prevent drivers from EU Member States from circumventing the legal requirements. Since drivers from EU Member States make up the bulk of the workers to whom the Regulation applies, these businesses and the authorities responsible for them should be allowed a longer transition period. This temporary distinction between third-country nationals and nationals of EU Member States must therefore be accepted in order to eliminate the distortions of competition as quickly as possible while avoiding a situation where an excessively high administrative burden would adversely affect the implementation of the measures.

Amendment 7
Annex III, Footnote 2

(2) Personal data of driver: last name, first names, birth date and place, Nationality, Passport number

(2) Personal data of driver: last name, first names, birth date and place, Nationality, Passport ***and driving licence*** number, ***social security number***

Justification

Inclusion of the driving licence and social security number is a tried and tested method of reducing misuse of driver attestations to a minimum.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on amending Council Regulation (EEC) No 881/92 on access to the market in the carriage of goods by road within the Community to and from the territory of a Member State or passing across the territory of one or more Member States as regards a uniform driver attestation (COM(2000) 751 – C5-0638/2000 – 2000/0297(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 751¹),
 - having regard to Article 251(2) of the EC Treaty and Article 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0638/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Regional Policy, Transport and Tourism (A5-0151/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 96, 27.3.2001, p. 207.

EXPLANATORY STATEMENT

Introduction

The economic development of the EU is heavily dependent on the potential for the physical transport of goods. Goods transport by road accounts for a substantial proportion of all goods transport.

Road transport in the EU can be divided into national and international transport. This report relates to the latter category. Access to this market is possible in different ways.

In the first place it is possible via a CEMT authorisation¹. This was introduced in 1974 as a practical step towards gradual liberalisation of international goods transport by road. Every year each participating country receives a limited number of authorisations, each allowing an unlimited number of trips between the participating countries. However, in some countries the number of licences does not reflect the share in foreign trade with the EU, and hence the demand for transport. The number of CEMT authorisations is very limited in relation to the total number of trips within the CEMT territory². With the advent of the Community authorisation pursuant to Regulation (EEC) 881/92, and hence the opening up of the internal transport to EU companies, the value of the CEMT authorisations to the companies in question has virtually disappeared because the major share of turnover is achieved in the internal market.

Secondly, access to the market for international transport of goods can be obtained on the basis of a bilateral authorisation between a EU Member State and a third country. Such authorisations have given transport companies in one state defined access to the infrastructure of another state.

Thirdly, transport companies established within the EU are required to have a Community authorisation pursuant to Regulation (EEC) 881/92. This is issued only if a company satisfies the requirements of the EU and the Member State with regard to access to the occupation of road haulage operator.

The EU seeks to create an entirely free (internal) transport market from which factors distorting competition are banned. To a certain extent it has succeeded in doing so. Within the EU anyone in possession of the Community authorisation can engage in international transport. In addition, cabotage has been liberalised in the EU.

Despite this ideal, practice has proved more stubborn than theory. The freedoms within the EU are sometimes abused in combination with the other systems to distort conditions of competition.

¹ CEMT = Conference of Ministers of Transport; 38 countries, including the EU Member States, are represented in CEMT.

² Roughly 5% of trips within the CEMT territory are performed on the basis of CEMT authorisations. It should be pointed out that companies from non-EU countries make more use than companies from EU countries of CEMT authorisations

Parliament's Directorate-General for Research recently published a report¹ on abuses in the transport of goods by road within the EU. The report shows that a number of EU transport firms use a variety of underhand means for using cheap vehicles and staff from third countries. The costs of both equipment and staff are significantly lower than in the EU. This produces a significant cost advantage² which curtails fair competition³.

Part of these activities are illegal: in particular, the use of third-country drivers without the requisite authorisation in vehicles registered in the EU.

A number of countries have already been obliged to take action to curb the illegal use of cheap drivers⁴. France has adopted legislation whereby drivers on French territory can be obliged to furnish proof of their contract of employment with the transport firm whose vehicles they drive. This applies not only to residents of France. The Netherlands requires a driver of a vehicle with a Dutch registration plate to submit an employer's declaration demonstrating the contractual relationship between employer and employee. In Germany proposals for obliging third-country drivers working for EU firms to carry with them their work permit are at an advanced stage. The employer and the shipper will be given the task of monitoring this.

In practice it appears to be difficult for foreign inspection bodies to establish whether the papers which drivers carry are a proof of a contract of employment between the employer and the employee. A uniform document for the entire EU could resolve this lack of clarity.

Proposal

To counteract the practice of distortion of competition the Commission proposes making a driver's attestation obligatory for all drivers of EU companies engaged in international transport within the EU. This attestation is official confirmation that the driver of a vehicle with which he engages in international transport under a Community authorisation is lawfully entitled to drive the vehicle, in accordance with the relevant rules and regulations of the Member State of establishment, in the Member State in question.

A company is obliged to request an attestation for each employee who carries out international transport within the EU on its behalf. For international transport within the EU by Community companies this requires an (authenticated copy of the) Community authorisation for the vehicle and a driver's attestation for the driver. The attestation does not refer to the terms of employment but makes clear that the social conditions of the Member

¹ *Die Auswirkung des Sozialdumpings auf das Straßengütertransportgewerbe durch Unternehmen aus Drittländern* [The effect of social dumping on the transport of goods by road by third country companies]; Directorate-General for Research, Division for Agriculture, Regional Policy, Transport and Development, 12 February 2001

² The French Fédération Nationale pour le Transport Routier arrived at a difference of FRF 19 000 per driver per month for a normal wage of FRF 25 000. The costs of equipment can be 30% lower. Cf footnote 3.

³ The best-known example in this instance is the firm of Betz from Reutlingen (Germany). It has to be stressed that part of Betz' activities are entirely legal. As a result of buying up companies outside the EU and the relevant CEMT authorisations, it is quite simple for Betz to use vehicles not registered in the EU and drivers who are not from the EU - and at substantially lower costs than if this had been done via the 'official' channels. What is impermissible in this firm's activities is the fact that the non-EU drivers are also illegally used for vehicles registered in the Community. The same is true of other firms.

⁴ In this context 'illegal' means working without a labour permit.

State of establishment have been complied with. The uniform nature of the document, by analogy with the Community authorisation, makes it easier for foreign officials to check. Introduction of the driver's attestation can offset the use of illegal drivers in vehicles owned by EU companies.

Two categories of drivers are excluded from the regulation: 'owner drivers'¹ and drivers within 'own transport'²: owner drivers because they are both employers and employees and must therefore be in possession of a Community authorisation incorporating the requisite guarantees; own transport because it is overwhelmingly national in nature, the companies themselves are regularly inspected and their staff are monitored by the trade unions.

Remarks

Although your rapporteur acknowledges the importance of the attestation, he would like to make a number of remarks on the proposal.

Firstly, one should be under no illusion that introduction of the attestation will solve the problem of the use of cheap drivers. Given that the CEMT system of authorisation will remain in force alongside the Community system, it will continue to be possible for firms - albeit on a limited scale - to carry out trips with cheap vehicles and cheap drivers via a third country. This problem cannot be solved by the EU alone. It would be advisable to review the CEMT system of authorisations, with particular regard to the quantitative aspects.

Within the EU the tendency to reduce costs will have to take a different form. Now that the social conditions in the Member State have to be satisfied for each driver, the conditions (in particular, wages) as such will come under pressure in collective bargaining.

Thirdly, this proposal will have an impact on the share of EU companies in East-West trade. Since the use of cheap labour will no longer be permitted on EU territory, but thanks to bilateral or CEMT authorisations cheap firms will be able to operate in the EU, it may be expected that - in the absence of any other measures - a significant proportion of this transport will be lost by EU firms. It is therefore very important for the Member States to take account of this problem in their bilateral agreements.

Fourthly, this proposal will have an adverse effect on the efficiency of the activities of companies. Since a certain category of drivers will be less flexible, planning will become more complex and less efficient. In addition, there may be problems with the 'postillion system' whereby, in North-South transport in particular, there are regular changes of driver on the same trip. If this proposal goes ahead, an attestation will be required for each of the drivers in question.

In the fifth place implementation of this proposal will place a considerable burden on Member States' civil services. It is not clear exactly how many attestations will have to be produced, but in view of the number of authenticated copies of the Community authorisation issued in 1998 (564 421), it could be several hundred thousand. This will place obstacles in the way of

¹ Drivers who are both employer and employee.

² Transport between different locations of the same company carried out by staff of the same company.

rapid handling of requests, which is what is needed in practice.

Successful implementation of this proposal depends largely on efforts by the Member states and their competent authorities to transpose its provisions. If 'legal loopholes' are created as a result of failure to introduce the attestation simultaneously there is a risk of companies seeking refuge in the Member States where the loophole is created. It goes without saying that this would mean a continuation of the distortion of competition.

Proposed amendments

As mentioned above, your rapporteur can accept the proposal in general. The problems are obvious and need to be addressed. The Commission's proposal is at least a step in the right direction.

However, the proposed method of introduction is something that needs to be queried. By making the attestation compulsory for all drivers, a number of transport operations will be made considerably more inefficient and an administrative burden will be created which in turn will encourage fraud. In view of the objective of this proposal - keeping illegal drivers from third countries away from vehicles of EU firms - this general obligation is unnecessary. Restricting the obligation to drivers from third countries driving vehicles of EU companies suffices. This will reduce the disadvantages referred to above and produce the same result.

Accordingly, your rapporteur proposes including in the text a restriction on the scope of the directive.

The minutes of the Council of Transport Ministers of 20 and 21 December 2000 show that the Council, too, has opted for this restriction.

Inclusion of these amendments will considerably reduce the restrictions of the 'postillion system' since the majority of drivers working in that system are nationals of one of the Member States and are therefore not obliged to carry an attestation.

In addition, there will be a drastic reduction in the number of attestations to be delivered. This means a reduction in the administrative burden and hence more rapid handling. This will benefit flexibility.

To summarise, the amended regulation is the first step towards counteracting the distortion of competition as a result of the improper use of cheap labour. As indicated above, Member States themselves will have to make an effort towards completing a properly functioning internal transport market.