Access to the occupation of road transport operator and to the international road haulage market

Review of Regulations 1071/2009 and 1072/2009

This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission’s annual work programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date – drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

EP committee responsible at time of adoption of the EU legislation: Committee on Transport and Tourism (TRAN).


Date of application: 4 December 2011 (Article 30) for Regulation 1071/2009. Regulation 1072/2009 has the same date of application (Article 19) except for Articles 8 and 9 that are applicable as of 14 May 2010.

Planned date for review of legislation: Article 26 of regulation 1071/2009 requires the Commission to report to the co-legislators ‘on the pursuit of the occupation of road transport operator’ every two years. Article 17 of Regulation 1072/2009 sets out specific reporting obligation for the Member States and requires the Commission to ‘draw up a report on the state of the Community road transport market by the end of 2013’.


1. Background

The principle of a common transport policy was set out in the founding treaties of the European Union, however the policy only became effective in 1985, when the Court of Justice of the European Union (CJEU) ruled in the case brought by Parliament against the Council for its failure to act in this area.¹ The Court’s judgment of May 1985 ramped up the first concrete steps towards a common policy through the European Commission’s white paper on promoting the internal market, with specific references to transport and certain goals to be reached by 1992.

The policy addresses the major challenges of the European transport sector, regardless of its type (road, air, rail, maritime), considering technological, social, tax and environmental issues. It aims to promote transport policies that are efficient, safe, secure and sustainable, to encourage a competitive industry, to create jobs and prosperity. The principles and objectives of the common transport policy, as well as its concrete measures and tools are detailed in various guidelines and common legislation.²

Road transport is an important part of common transport policy, and one of the most dynamic sectors of the European economy and the internal market. In 2014, road transport accounted for 49% of total goods transport activities, of 3 524 billion tonnes per km/tonne km (estimated amount for the EU-28).

This briefing highlights the development of a specific road transport sector – the freight market – and focuses on the review of two European regulations: Regulation (EC) No 1071/2009 on access to the occupation of road transport operator and Regulation (EC) No 1072/2009 on access to the international road haulage market.

**Regulation (EC) No 1071/2009 on access to the occupation of road transport operator** establishes common rules for admission to the road transport operator business and repeals the Council Directive 96/26/EC of 29 April 1996. It applies to both road haulage and passenger transport and to all companies established in the EU, engaged (or ready to engage) in transporting goods and people. The main elements covered by the regulation are:

- standards that the companies must comply with ('have an effective and stable establishment in a Member State, be of good repute, have appropriate financial standing and the requisite professional competence', Article 3 of the regulation);

² For more information on the EU transport policy landmarks, see also The EU explained: Transport, European Commission, Directorate-General for Communication, November 2014.
• definition of some key terms, such as: transport manager, road transport operator, competent authorities, national electronic register;

• increased cooperation between Member States (notably via the interconnection of national registries of road transport undertakings (the European Register of Road Transport Undertakings)).

In 2014, the European Commission presented a report to the Parliament and the Council on the implementation of some provisions of the regulation by the Member States between 4 December 2011 and 31 December 2012. This first report highlighted difficulties in collecting data from the Member States, differences in the consistency of national submissions, timeliness problems, and failure to set-up a system of administrative cooperation between Member States.

In the report from the Commission to the European Parliament and Council on the State of the Union Road Transport Market, the Commission said that even if the changes introduced by Regulation 1071/2009 ‘have contributed to further harmonisation …, work remains to be done to complete the implementation of this Regulation.

Regulation (EC) No 1072/2009 on access to the international road haulage market sets out common rules with regard to access to the international road transport of goods within the European Union. The regulation focuses on two different issues: on the one hand, a liberalised European market for international road transport operations and, on the other hand, the cabotage market, which is still subject to restrictions.

The text deals with several aspects regarding access to the European road haulage market. In particular, the regulation:

• specifies the scope of application (the international carriage of goods by road for hire or reward for journeys carried out within the EU; the national carriage of goods by road carried out temporarily by a non-resident haulier; the part of the journey that takes place in the territory of any EU country in transit, where the carriage takes place between an EU country and a non-EU country);

• sets out mandatory criteria for the hauliers that carry out international carriage (possession of a Community licence as well as of a driver attestation for non-EU national drivers);

• clarifies some key words (Community licence, driver attestation);

• imposes strict rules on cabotage operations, defines their scope, and lists the national rules in the host EU country to which cabotage operations are subject;

• defines the competent authorities when hauliers infringe European common road transport legislation.

In the report on the State of the Union Road Transport Market of April 2014, the Commission pointed out, with regard to Regulation 1072/2009, that ‘despite attempts to clarify the terms, differences remain in the implementation of certain provisions’ and ‘certain Member States have displayed a tendency towards restricting the conditions under which hauliers can perform international transport and cabotage operations through regulatory means and enforcement practices’.

---

5 Report on the State of the Union Road Transport Market, p.16.
6 Report on the State of the Union Road Transport Market, p.16 and p.17.
Both regulations ‘are understood, interpreted and applied differently in different Member States. As a result, the operators are faced with a costly and confusing patchwork, which the 2009 package was intended to do away with in the first place’, the Commission says in its report.\(^7\)

In 2015, the Commission therefore announced its intention to review the functioning of the two regulations in the context of its regulatory fitness and performance (REFIT) programme and is expected to put forward a proposal to revise and simplify existing rules in the first half of 2017.

2. EU-level reports, evaluations and studies

European Commission

According to the road transport strategy portal, the Commission’s vision focuses on clarifying the rules and improving their uniform application, as well as creating a more cost-efficient road transport network. Three key areas are highlighted:

- access to the profession and access to the haulage market;
- use of hired vehicles in road transport;
- access to the coach and bus market.

The European Commission has launched an evaluation process for all these areas.\(^8\) For the first one, the consultation of public stakeholders took place in 2016 (more details under point 4 of this briefing).

Report on the State of the Union Road Transport Market (2014)

According to Regulation (EC) No 1072/2009 the Commission had to present a report on the state of the Community road transport market to the co-legislators by the end of 2013 (Article 17(3)).

Modal split in inland freight transport in the EU-27 (2012)

Source: Report on the State of the Union Road Transport Market

The report gave an overview of the evolution of road freight transport (data up to 2012), ‘which accounts for over 70 % of all inland transport activity’. It confirmed the sector’s capacity to adapt to changes, described the benefits of a liberalised and integrated European market and the significant differences between

\(^7\) Report on the State of the Union Road Transport Market, p.17.

\(^8\) At the time of drafting this briefing, each evaluation had reached different stages.
Member States, and highlighted a number of challenges to address in the near future. The analysis focused on:

- general overview of the road haulage market;
- company structure and employment;
- developments in productivity;
- evolution of cost structures in the road haulage sector;
- access to road haulage;
- social dimension;
- other regulatory developments.

The report indicated that the impact of the two regulations was mixed: ‘the adoption of the 2009 road package contributed to providing hauliers and enforcers with common standards and criteria for access to the occupation and to the international road haulage market. However, certain provisions of Regulation (EC) No 1072/2009 are difficult to apply, in particular those relating to stable establishment of road haulage undertakings and to cabotage. Furthermore, the patchwork of national legislations that the 2009 recast intended to do away with is re-emerging, with detrimental consequences for the internal market for road transport’.9

The report estimated that several obstacles have to be addressed in the future: elaborating clear provisions to ensure the uniform application of market access rules; reviewing (relaxing) the restrictions regarding the conditions to the operation of cabotage; restoring the attractiveness of the profession and improving the working environment for drivers.


The evaluation analyses the two regulations in all the aspects they deal with: societal, economic and environmental issues. Five main elements are evaluated:

- **Effectiveness**: The impact of the two regulations is found to be negligible and no objective (improved level of road safety and social conditions; a level playing field between resident and non-resident hauliers; better transport market efficiency through reducing empty runs; reduced administrative burden; higher standard of professional qualifications; better definition of the temporary nature of cabotage; improved compliance with the cabotage provisions), was fully accomplished. Three possible factors are proposed as an explanation for this failure: the existence of letterbox companies; different interpretation of cabotage rules across the EU; and a lack of effective enforcement.

- **Efficiency**: The efficiency gains are said to be rather limited and benefit-cost ratio is seen as lower than anticipated. It is pointed out that at the time of the ex-post evaluation, the ERRU system was not fully functional, therefore all expected benefits could not have been achieved. At the same time, the report highlights a possible solution in terms of efficiency gains, based on best practice examples from the Netherlands and the United Kingdom. These show that ‘a higher use of the risk rating system to target checks could result in greater cost-effectiveness – the risk rating systems in both these countries go beyond the minimum requirements of the regulation by including factors other than good repute’ 10

- **Relevance**: Regulations are seen as appropriate tools to achieve the objectives. The problems are related mainly to interpretation issues and/or enforcement of the provisions in the regulations.

- **Coherence**: The European approach in the two regulations could have some inconsistencies with other EU legal provisions, according to the evaluation these mainly refer to:
  - Regulation 561/2006 and Directive 2002/15/EC on driving, rest and working time for road transport operators (Regulation 1071/2009 does not contain any reference to the two other

---

European legislative acts when dealing with infringements and the two regulations have no provision regarding co-liability);

- Directive 2006/22/EC (differences in the list of infringements and concerning the requirements on good repute and driving time and rest periods);
- Regulation 165/2014 (not consistent with the exemption established in this regulation);
- Directive 92/106/EEC (possible disparities between the documentation requirements for cabotage and combined transport);
- Posted Workers Directive (Directive 96/71/EC) (difficult to check whether minimum conditions for workers are fulfilled for drivers performing cabotage in the country where they perform the service, and for the corresponding part of their trip).

- EU added value: The EU added value of the two regulations is evaluated as certain. The regulations had ‘positive effects compared to the situation prior to when they entered into force’, this type of legislative tool (regulation) seems to be the most ‘appropriate, effective and relevant’ to reach the goals.

The evaluation made four recommendations for the future:

- measures to combat letterbox companies;
- clarification of the cabotage rules;
- guidance and sharing of best practice;
- longer-term considerations.

Regulatory Fitness and Performance (REFIT).

In the Annex to the 2013 REFIT communication, the Commission referred to the need to simplify the road transport cabotage rules.


The objectives of the proposal, according to the Commission, would be to reduce the administrative burden for public authorities and private operators. Better use of existing control tools should reduce the duration of checks and increase detection levels and operations would gain increased predictability due to the application of uniform control provisions throughout the EU.


The assessment reviewed the main problems pointed out by other studies and public consultations (see above). It aimed to inform stakeholders about the Commission's work to allow them to provide feedback on the intended initiative. The assessment identified two main drivers behind the problems: inconsistent and ineffective enforcement of existing rules; and differences in Member States' interpretation and implementation of the rules.

---

11 REFIT, 2015, p.45.
12 REFIT, 2015, p.45
The REFIT ex-post evaluation (2016) concluded that Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 failed in reaching their objectives and the problems identified in the evaluation are an obstacle to the achievement of a single European transport area in road transport. The assessment considered five criteria: effectiveness, efficiency, relevance, coherence, and EU added value.

The analysis concluded that, beyond the failures and practical limitations, the overall outcome of the two Regulations was positive. Even though, for all five criteria, the evaluation identified that the objectives were only partially achieved, the ‘intervention at the EU-level was justified on the grounds that it would be impossible for Member States acting alone to satisfactorily solve the identified problems’.

The Commission noted in the report that ‘It was anticipated, absent an appropriate revision of the rules, that problems of inconsistent enforcement, uneven compliance, uneven playing field and high administrative costs would persist and even become worse as cabotage was opened up to all Member States’.14

European Parliament

In 2013, the European Parliament's Policy Department conducted a study on the Development and implementation of EU road cabotage at the request of the Transport and Tourism Committee. The study provided an analysis of the European freight cabotage transport services in the EU and discussed the main changes occurring in the regulation of this market in recent years.

With regard to Member State implementation of the cabotage rules, the analysis showed that the existence of several national bodies charged with monitoring infringements led to a fragmentation of control operations (coordination and monitoring) of cabotage. At the same time, different advantages can be identified in different Member States, as a result of significant differences between national infringement sanctions.

The study pointed out an increased participation by new EU Member State hauliers in the cabotage operations. ‘Overall the proportion of cabotage operations undertaken by vehicles registered in one of the EU12 Member States increased from 12 % in 2007 to nearly 40 % in 2011.’16

---

13 This evaluation does not concern the provisions of Regulation (EC) No 1071/2009 on passenger transport, nor the legislation related to the international market for bus and coach services.
14 REFIT ex-post evaluation, p.5.
The evolution of cabotage had differing social and economic effects on different Member States. While all road transport freight was affected by the economic crisis, the study identified two ‘patterns’: companies from EU15 Member States ‘have intensified the practice of flagging-out to exploit the favourable labour cost differences and regain competitiveness’, while ‘companies from EU12 Member States have made greater use of cabotage opportunities offering cheaper alternatives to European consignees looking to reduce their costs’.\(^\text{17}\)

The study concluded that the most relevant changes in the cabotage market were driven by EU enlargement. Regulation (EC) No 1072/2009 produced some positive effects for cabotage operations, mainly in terms of clarification and harmonisation, but improvements can still be made. The Policy Department carried out a second study for the Parliament’s Transport and Tourism Committee in 2013,\(^\text{18}\) which looked at the social and working conditions of professional drivers active in the road freight transport sector. According to this study, enforcing the application of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 would contribute to the improvement of professional drivers’ social and working conditions.

**Other reports**

A high-level group (HLG), appointed by then Vice-President of the European Commission Siim Kallas, delivered a report on the development of the EU road haulage market. In June 2012, the HLG presented an in-depth analysis of the market situation under Regulation (EC) No 1072/2009. The group’s mandate was to verify ‘the extent to which the necessary framework conditions for the full opening and integration of the EU market have been achieved and, if relevant, what remaining obstacles needed to be tackled’.\(^\text{19}\) The conclusions and recommendations of the group were based on both market analysis and stockholders’ views and concerns.

The report estimated that the creation of a single European transport area could have positive effects on the market in all Member States. Four main obstacles to the creation of a single European transport area were identified by the authors: driver shortage, enforcement practices, cabotage practices and lack of innovations and applications of good practice.


The group made the following recommendations:

- **Driver shortages:** The attractiveness of the profession should be strengthened; career evolution should be encouraged; and access to the profession should be made easier.

- **Enforcement practices:** Different practices in Member States have led to distortions in competition between hauliers and discrimination in the carrying out of controls. The Commission should therefore promote a uniform interpretation of rules referring to serious infringements and sanctions and should extend the common definitions of infringements and penalties in the areas of working and driving time to other areas of regulation.

- **Cabotage practices:** Cabotage is an important element in achieving the single European transport area, but it is not suitable for this purpose in its present form. A distinction between ‘linked’ and ‘non-linked’ cabotage is recommended.

- **Lack of innovation and application of good practice:** Innovation could provide significant efficiency improvements in the sector through both technical and process-related change, but the will to innovate in the sector is rather limited.

The HLG recommended a gradual and flexible opening of the road cabotage market, accompanied by further harmonisation of social legislation and enforcement procedures.

3. **European Parliament position/MEPs’ questions**

3.1 **European Parliament resolutions**

In a [resolution](#) of 17 December 2014, the European Parliament asked the Commission to set up a new list of infringements to the EU road transport rules that could lead to loss of good repute for a road transport operator. In March 2015, the European Commission answered, in its [follow-up](#), that the European Parliament’s concerns would be carefully examined ‘even if there are demands in the resolution of the Parliament which cannot be accommodated’, such as the request for infringements against national laws to be applied to cabotage operations, given that only the relevant EU acquis is affected by the proposed regulation.

3.2 **Written questions by Members of the European Parliament**

Several Members of the European Parliament have asked the Commission to clarify the state of play and its intentions in the road transport sector. Some of the questions are related to particular situations in different Member States and others address the topic from a more general perspective.20

**Written question** by Franck Proust (EPP, France), 30 October 2015

The Commission is asked to introduce more checks to halt unlawful cabotage and to set up a system for monitoring the posting of workers to curb social dumping

---

Answer by the European Commission, 7 January 2016
The Commission has already started an evaluation process of different EU legal acts in the road transport sector. On the basis of its results, the Commission will decide on the most relevant options and measures to propose in the future.

Written question by Claude Rolin (EPP, Belgium), 30 September 2015
The Commission is asked to take steps to fight the improper invocation of fundamental freedoms to avoid applying the EU rules and the emergence of dummy corporations and unfair commercial practices in Europe in the road transport sector.

Answer by the European Commission, 24 November 2016
The European Commission seeks solutions that cover both internal market and social issues in freight and passenger transport. Based on the results of the Commission’s ex-post evaluation, the issue of letterbox companies will be examined together with other road initiatives.

Written question by Claudia Țapardel (S&D, Romania), 14 July 2016
The European Commission is asked to indicate the actions it undertook as a response to three requests formulated in Parliament’s resolution of 17 December 2014 (see point 3.1 above): classification of serious infringements in road transport; uniform application of common rules on admission to the occupation of road passenger transport operator; and removing legal and technical access barriers to the road transport market.

Answer by the European Commission, 5 October 2016
The European Commission set up a common classification for serious and very serious infringements of the EU road transport rules in Regulation (EU) No 2016/403, adopted in March 2016. Member States are obliged to apply this common classification by 1 January 2017.

The Commission also launched a review of the social and internal market rules in road transport, at the end of 2014.

To ensure the uniform implementation of EU legislation, the Commission initiated impact assessments and launched public consultations (15 June-15 September 2016) on the internal market regulations in road transport. A public consultation on social legislation in road transport will follow.

Revising road transport legislation is also included among the European Commission’s future projects.

Written question by Lucy Anderson (S&D, UK), 31 January 2017
The European Commission is asked to state on the impact of discrepancies between Member States on monitoring and compliance on employment issues, the Commissions’ plans to introduce new EU tools to collect and analyse these data and the effective management of employment issues and road transport priorities, in the absence of an EU Road Transport Agency.

Written question by Hannu Takkula (ALDE, Finland), 29 February 2016
The European Commission is asked about its intentions to ensure consistent rules on cabotage in the internal market and avoid social dumping and unequal submarkets.

Answer by European Commission, 22 April 2016
Lawful cabotage operations are regulated by Article 8 of Regulation (EC) No 1072/2009. The European Commission has begun infringement procedures against Member States going beyond this article and creating uncertainty for operators and distortions in the internal market.

The European Commission carried out different evaluations on Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009. Based on the results of these evaluations, the Commission will initiate modifications. The issues raised by the written question will be taken into consideration in this context.
4. Consultations, petitions, citizens’ questions

Open public consultation

The Commission received 175 responses from hauliers (40), logistics industry representatives (17), associations representing road transport workers and individual workers (33), transport operators and transport operators’ associations (49), national authorities and relevant associations (49) and other (18), covering 22 Member States. The answers illustrated the respondents’ different views on the questions raised by the survey, as they were free to adapt the answers to each question to reflect their own opinions. The Commission analysed all responses individually.

Petitions
Seven petitions were received by the European Parliament between 2007 and 2013, covering both Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009. Six of these were declared admissible and were answered by the European Parliament (one) or by the European Commission (five). All seven petitions are now closed. The petitions declared admissible referred to: restrictions imposed by Council Regulation 881/92/EEC and 1072/2009/EC on common rules for access to the international road haulage market; Polish law on road transport and its alleged non-compliance with EU rules on passenger transport by road; the right of establishment and freedom of movement of services; harmonisation of rules for special road transport; interpretation of certain provisions of Regulation (EC) No 1071/2009; developments in road haulage in Europe; and redundancies in the road haulage sector.

Citizens’ Enquiries
Since 2015, the Citizens’ Enquiries Unit (Ask EP) has received 13 questions from citizens related to road transport in the European Union and its Member States. The questions covered various issues of road transport, such as: road safety; transport of goods; urban public transport; working conditions; differences in speed limits between Member States; maximum length of car carrier trailers; applicable legislation; and clean road transport.

5. European Economic and Social Committee

In 2015, the European Economic and Social Committee (EESC) presented its opinion on ‘The internal market of international road freight: social dumping and cabotage’.

In this document, the Committee expressed its support for the Commission’s initiatives to simplify and clarify EU regulations in the field, to set up criteria to avoid abusive use of “letterbox” companies and to ‘fight social dumping, fraud and abuse regarding the posting of workers and access to welfare benefits’.

At the same time, the EESC called both the European Commission and the Member States to give priority to:

- ‘ensuring full cooperation between labour and road transport surveillance authorities in the EU Member States’;
- ‘consolidating the data of the national electronic registers for road transport undertakings’;
- ‘implement the interconnection of the national registers through the European Register of Road Transport Undertakings (ERRU)’;
- ‘fully enforcing in the road transport sector the mandatory minima’ imposed through Regulation (EC) No 593/2008 (Rome I).
The Committee also considered that simplification of rules of access to the transport market could go hand in hand with measures preventing social dumping. An option to consider could be to align ‘the rules on road freight transport with those applicable to temporary provision of services in general’, in order to strengthen a ‘culture of compliance’.

6. Conclusions

Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 set out a common legal framework to access road transport operator business and the road haulage market. The different analyses and studies carried out at European level show that the two regulations had positive effects on the internal market (such as harmonisation, introduction of quantitative criteria, clarification of terms, linking of the international cabotage to international carriage operations) and are an appropriate tool to deal with this issue.

Nevertheless, several shortcomings were identified, considerably limiting the efficiency of the two legislative acts. Improvements are therefore needed, in particular regarding cabotage performance, rules enforcement, clarifying problematic terms, letterbox companies, and infringements. At the same time, harmonising the issues interpreted differently by Member States will benefit the market as a whole. The situations experienced by stakeholders, as well as best practices, could provide useful input for future approaches in this field.

Beyond specific provisions and particular issues to be clarified and/or improved, the existing evaluations show that the most appropriate approach for the future would be a progressive opening of the haulage market and a deeper harmonisation at economic, legal and social level across the European Union.

7. Other sources of reference

Eurostat, Road freight statistics, December 2015.


European Commission, EU Semantic Interoperability Catalogue, European Register of Road Transport Undertaking.