INTERNATIONAL AND CABOTAGE ROAD TRANSPORT

Following the adoption of various items of EU legislation, both international and cabotage road haulage and passenger transport services have been gradually liberalised.

LEGAL BASIS

Title VI of the Treaty of Lisbon and in particular Article 91 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

To create a liberalised road transport market by opening up entry thereto, this to be achieved by removing all restrictions on carriers that are based on their nationality or the fact that they are established in a Member State other than that where the service is provided.

ACHIEVEMENTS

A. Road transport

1. Access to the road haulage market (and occupation of haulier)

Following an action by the European Parliament for failure to act, the Court of Justice found, in its judgment of 22 May 1985 (61983CJ0013), that the Council had failed to introduce before the end of the transitional period laid down in the Treaty of Rome (31 December 1969) provisions concerning: (a) freedom to provide international transport services and (b) permission for non-resident carriers to provide national transport services in other Member States. Through legislation over a 25-year period the EU has almost completed remedying all the shortcomings on these two points noted by the Court.

a. International road haulage services for hire or reward

Regulation (EEC) No 881/92 of 26 March 1992 consolidated existing legislation on cross-border transport services between Member States and established the system for issuing road hauliers with Community authorisations. The rules apply to the carriage of goods from or to a Member State or through one or more Member States. This system also applies to journeys between a Member State and a non-EU country if an agreement exists between the EU and that non-EU country. Whereas, previously, transport of goods between two Member States had only been possible on the basis of bilateral agreements and had also been subject to restrictions, the new regulation abolished all quantitative restrictions (quotas) and bilateral authorisations as of 1 January 1993. International road haulage in the EU has been an almost completely free market since then, access to it now being based solely on qualitative requirements which carriers must meet in order to obtain a Community authorisation. Authorisations are issued by the Member State in which hauliers are established and must be recognised by all other Member States.
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The Community authorisation is now also valid in all the member states of the European Economic Area.

Regulation (EEC) No 3916/90 of 21 December 1990 did however introduce a Community safeguard mechanism to deal with any crisis. This is a back-up measure to the complete dismantling of the quota system in the EU.

Council Directive 96/26/EC established three qualitative criteria for admission to the occupation of road haulage operator: good repute, financial standing and professional competence. That directive was repealed by Regulation (EC) No 1071/2009 of 21 October 2009 (see below) which added a fourth criteria, namely having an effective and stable establishment in a Member State.

Regulation (EC) No 484/2002 of 1 March 2002 established a driver attestation for all nationals of non-EU countries hired by a carrier in possession of a Community authorisation. That document applies to both international and cabotage transport. It certifies that the driver is employed by the carrier in accordance with the employment and vocational training laws and statutory requirements that apply in the Member State in which the carrier is established. This measure is intended to stop non-EU nationals being unlawfully employed as underpaid drivers on short-term contracts, which distorts competition and is prejudicial to road safety.

Lastly, Directive 2006/1/EC of 18 January 2006 governs the cross-border leasing of vehicles without drivers for the carriage of goods by road.

b. Cabotage

Council Regulation (EEC) No 3118/93 of 25 October 1993 was adopted to cover ‘cabotage’, i.e. the provision of road haulage services within a Member State by a carrier established in another Member State. In practice, this refers to non-resident carriers which, rather than returning empty after an international trip, pick up and deliver a further load in the host country before returning to the border. Regulation (EEC) No 3118/93 allows carriers with a Community authorisation issued by a Member State to provide road haulage services within other Member States on condition that they are provided on a temporary basis. Full liberalisation of cabotage has remained a temporary measure since 30 June 1998, however, with Member States being able to apply to the Commission for the adoption of a safeguard clause in the event that cabotage causes serious disruption to their market.

On 26 January 2005 the Commission issued an Interpretive Communication in an attempt to clarify the temporary nature of cabotage. Regulation (EC) No 1072/2009 of 21 October 2009 (Article 8(2)) then abandoned the concept of general cabotage and adopted the more restrictive formula of consecutive cabotage (allowing up to three cabotage operations within the seven days following an international journey to the cabotage host country). These provisions on cabotage have applied since 14 May 2010.

c. The Road Package of 21 October 2009

The EU has gradually created the conditions needed to allow a liberalised internal road transport market to be introduced. To create a level playing field, however, further harmonisation has been needed on social, technical and fiscal conditions (see following fact sheets).

The Road Package adopted in October 2009 as a result of a compromise between the European Parliament and the Council is made up of three EU regulations — Nos 1071/2009, 1072/2009 and 1073/2009 — all of which have applied in full since 4 December 2011. The rules are common to international and cabotage road haulage services. The legislative package provides for:
— a simplified, standardised layout for the Community licence (for the new criteria concerning establishment, see 1a above);

— the designation of a transport manager who must manage effectively and continually the carrier’s activities, have a genuine link to the carrier (employee, director or owner) and reside within the EU;

— enhanced procedures for the exchange of information between Member States on infringements by carriers, and the obligation for Member States issuing a Community licence to take action against a carrier who has committed an offence in another Member State. The withdrawal of Community licences, certified copies or driver attestations has also been provided for;

— a clear and easily enforceable definition of the temporary nature of cabotage operations (see 1b above).

Regulation (EC) No 1071/2009 introduced stricter rules on admission to the road haulage business and sought to modernise the road transport industry’s image. Regulation (EC) No 1072/2009 also further consolidated and harmonised rules on cabotage. In particular, it merged Regulations (EEC) No 881/92 and No 3118/93 and repealed Directive 2006/94/EC (on certain types of carriage of goods by road), which did away with the legal uncertainty surrounding carriers. See 2c below for further information on Regulation (EC) No 1073/2009.

2. Gradual liberalisation of passenger transport

a. International bus and coach passenger transport

Progress in opening up the market for passenger transport services has been slower than for road haulage.

Regulation (EEC) No 684/92 of 16 March 1992 helped open up the market for international bus and coach passenger services by permitting any EU transport company to operate passenger services for more than nine people (including the driver) between Member States. Passenger services may either be regular (at specified intervals on specified routes with predetermined stopping points) or occasional (carriage of groups formed on the initiative of a contractor or the carrier himself). Regulation (EEC) No 684/92 was supplemented and amended by Regulation (EC) No 11/98 of 11 December 1997, which introduced a Community licence to be issued by the authorities concerned in the Member State of establishment to bus and coach companies operating for hire or reward. Carriers must keep the Community licence with them as proof that they are entitled to operate services in their home country. Regular international services must also be covered by a prior authorisation issued in the carrier’s name.

b. Cabotage

Regulation (EC) No 12/98 of 11 December 1997 authorised cabotage operations for all occasional services, for special regular services (for specified categories of passengers), provided that the latter are covered by a contract concluded between the organiser and the carrier (e.g. transporting workers or students), and for regular services, provided that the cabotage operation is performed in the course of a regular international service (and not at the end of the line). Passenger cabotage services, just like haulage cabotage, are performed on a temporary basis.

The market has not as yet been opened up for the following services where the authorities concerned may refuse to allow non-resident carriers to operate passenger cabotage services: national regular services operated independently of an international service and urban, suburban and regional services, even when supplied as part of an international service.
c. The Road Package of 21 October 2009 (see 1c above)

Regulation (EC) No 1073/2009 lays down common rules for access to the international market for coach and bus services. It clarifies the scope and simplifies procedures by revising and consolidating the previous legislative framework (Regulation (EEC) No 684/92 on international carriage of passengers and Regulation (EC) No 12/98 on passenger cabotage services), which it also replaces. It confirms the principle of the free provision of services, under the same conditions as those laid down in Regulation (EEC) No 684/92, and then goes on to set out the conditions for issuing and withdrawing Community licences, their periods of validity, the detailed rules for their use and the layout of both the licence and certified copies thereof.

Here too the provision of passenger cabotage services is permitted, as with freight haulage, provided that cabotage is not the main aim of the transport service; it must take place subsequent to a regular international service.

ROLE OF THE EUROPEAN PARLIAMENT

In the area of road transport, the European Parliament has called for, and supported, the gradual opening up of the road haulage and passenger transport markets in numerous resolutions and reports. At the same time, it has repeatedly emphasised that liberalisation must go hand in hand with harmonisation, and that social aspects and safety must be guaranteed.

The European Parliament has advocated greater liberalisation in haulage cabotage services, in particular, in order to cut the number of times lorries return empty (see paragraph 18 of its resolution of 6 July 2010 on a sustainable future for transport). Moreover, it said that the Commission should draw up a report before the end of 2013 on the state of the Community’s road transport market, in order to assess whether there has been sufficient progress on harmonisation of rules, particularly in the field of social legislation and safety, for consideration to be given to further opening up domestic road transport markets, including the removal of restrictions imposed on cabotage (see paragraph 29, fifth indent, of the European Parliament resolution of 15 December 2011 on the Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system).

The Commission took the first step towards this with the publication in June 2012 of the report by the High Level Group, which recommended the gradual opening up of the EU road haulage market. The Group recommended in particular introducing two different kinds of cabotage: (1) limited to a short period of time and connected to an international trip; (2) not connected to an existing international trip and for which a registration procedure would be required to ensure that the driver comes under the host country’s labour law.

Finally, the Commission published a report on 14 April 2014 on the ‘State of the Union Road Transport Market’#. That was the report requested by the European Parliament in its resolution P7_TA(2011)0584 of 15 December 2011 (see above). The Commission announced in the report that Regulations (EC) No 1071/2009 and (EC) No 1072/2009 would be revised under the REFIT programme (Communication of December 2012 on Regulatory Fitness). The aim would be to make legislation in force simpler and clearer, rather than to open up the market further. The Commission highlighted in particular the need for ‘clarifying … the definition of stable and effective establishment in Regulation (EC) No 1071/2009 and of cabotage in Regulation (EC) No 1072/2009#’. Furthermore, it laid stress on enforcing the two regulations through more prescriptive provisions on the frequency and modalities of checks and also by means of the new generation of digital tachographs (point 4.3 of the Commission Communication).
Parliament, in turn, in its resolution of 9 September 2015 on the implementation of the White Paper on Transport, called inter alia for better enforcement and, if necessary, clarification or review of the common rules for access to the international road haulage market (Regulation (EC) No 1072/2009). It also called on the Commission to take measures against illegal practices that lead to unfair competition and encourage social dumping. In this connection, Parliament advocates the adoption of a social code, addressing also the problem of disguised self-employment, to take better account of the specific nature of international road transport workers and ensure fair competition.

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