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 AND OBJECTIVES

Title VI and in particular Article 91 of the Treaty on the Functioning of the European Union. The aim is to create a liberalised road transport market by opening up entry thereto under certain conditions. This is 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, in order to create a level playing field.

ACHIEVEMENTS

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

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 on: (a) the freedom to provide international transport services; and (b) permission for non-resident carriers to provide national transport services in other Member States. The EU has now almost finished remedying all the shortcomings in these two areas noted by the Court.

a. International road haulage services for hire or reward

Council 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 applied to the carriage of goods from or to a Member State or through one or more Member States. This system also applied to journeys between a Member State and a non-EU country if an agreement existed between the EU and that non-EU country. Whereas, previously, the 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. As part of the 2009 Road Package, the regulation was replaced by Regulation (EC) No 1071/2009 (see below).
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 applied to both international and cabotage transport. It certified that the driver was employed by the carrier in accordance with the employment and vocational training laws and statutory requirements that applied in the Member State in which the carrier was established. This measure was 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. The regulation was replaced by Regulation (EC) No 1072/2009 of 21 October 2009 and subsequently amended by Regulation (EU) 2020/1055 of 15 July 2020. The European Commission has proposed a revision of Regulations (EC) No 1071/2009 and (EC) No 1072/2009 through the ‘Europe on the Move’ legislative initiative. Published on 31 May 2017, the proposal is entitled ‘Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector’ (COM(2017)0281). Parliament adopted the regulation at second reading in July 2020, and the final act (Regulation (EU) 2020/1055) was published on the Official Journal on 31 July 2020.

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. The Commission has also proposed a revision of this directive through the ‘Europe on the Move’ legislative initiative. This proposal was also published on 31 May 2017 and is entitled ‘proposal for a directive of the European Parliament and of the Council amending Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road’ (COM(2017)0282). Parliament adopted the decision at first reading in January 2019 and the ordinary legislative procedure is ongoing (2017/0113(COD)).

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 referred to non-resident carriers that, rather than returning empty after an international trip, would pick up and deliver a further load in the host country before returning to the border. This regulation allowed carriers with a Community authorisation issued by a Member State to provide road haulage services within other Member States on the condition that they were provided on a temporary basis. Regulation (EC) No 1072/2009 (Article 8(2)) 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 but, as mentioned above, are now amended by Regulation (EU) 2020/1055.

c. The Road Package of 21 October 2009

The EU 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 of social, technical and fiscal conditions was necessary. The road package adopted in October 2009 as the result of a compromise between 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. 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. It established four qualitative criteria for admission to the occupation of road haulage operator: good repute, financial standing, professional competence, and having an effective and stable establishment in a Member State. Regulation (EC) No 1072/2009 also further consolidated and harmonised rules on cabotage. In particular, it merged Council Regulations (EEC) No 881/92 and No 3118/93 and repealed Directive 2006/94/EC (on the establishment of common rules for certain types of carriage of goods by road), which did away with the legal uncertainty surrounding carriers. Regulation (EC) No 1073/2009 refers to passenger transport (see the next section for further information).

2. Gradual liberalisation of 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 to 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. The regulation was supplemented and amended by Council 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.

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

Through the road package adopted in 2009, Regulation (EEC) No 684/92 and Council Regulation (EC) No 12/98 were merged into one single regulation (Regulation (EC) No 1073/2009) to clarify and simplify the rules for the international carriage of passengers by road (coach and bus services) within the territory of the EU and the conditions under which non-resident carriers may operate national transport services within a Member State. Regulation (EC) No 1073/2009 confirms the principle of the free provision of services, 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 (i.e. it must take place subsequent to a regular international service).

Regulation (EC) No 1073/2009 also amended Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport. It was also

In February 2019, Parliament adopted at first reading its decision on the Commission’s proposal to amend Regulation (EC) No 1073/2009 to further open up national markets on access to international coach and bus services (COM(2017)0647). In September 2019, Parliament’s Committee on Transport and Tourism (TRAN Committee) decided to open interinstitutional negotiations (2017/0288(COD)).

ROLE OF THE EUROPEAN PARLIAMENT

In the area of road transport, 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. 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, in its resolution of 15 December 2011 on ‘the Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system’[1], Parliament called on the Commission to draw up a report before the end of 2013 on the state of the Union’s road transport market. This was to assess whether there had been sufficient progress on harmonisation of rules, particularly in the field of social legislation and safety, and for consideration to be given to further opening up domestic road transport markets, including the removal of restrictions imposed on cabotage. The Commission took the first step towards this with the publication in June 2012 of the report by the High -Level Group on the Development of the EU Road Haulage Market, 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 abides by the host country’s labour law. The Commission then published its report on the State of the Union Road Transport Market on 14 April 2014.

In its resolution of 9 September 2015 on the implementation of the White Paper on Transport[2], Parliament called, inter alia, for better enforcement and, if necessary,

clarification or review of the common rules for access to the international road haulage market. It also called on the Commission to take measures against illegal practices that lead to unfair competition and encourage social dumping. In this sense, Parliament advocates the adoption of a social code, also addressing the problem of disguised self-employment, to take better account of the specific nature of international road transport workers and ensure fair competition. A resolution on road transport in the European Union[3] was adopted on 18 May 2017 and covers issues such as improving competitiveness and innovation in the road sector, facilitating cross-border mobility on roads, improving social conditions and safety rules and promoting low-emission road transport.

During its session of 20 June 2017, the TRAN Committee discussed the Commission’s second report on the implementation in the period from 1 January 2013 until 31 December 2014 of certain provisions of Regulation (EC) No 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator (COM(2017)0116). In September 2019, the TRAN Committee discussed the third implementation report (COM(2019)0084).

In July 2020, Parliament endorsed a legal act, as part of the Mobility Package, on ‘pursuing the occupation of road transport operator and access to the international road haulage market’ (2017/0123(COD). Regulation (EU) 2020/1055 was published in the Official Journal on 31 July 2020 and provides a legal framework for posting rules applicable to cabotage and international transport operations, excluding transit, bilateral operations and bilateral operations with two extra loading or unloading stops (3.4.3).

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