



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 June 2008

Interinstitutional File:

2007/0099 (COD)

2007/0098 (COD)

2007/0097 (COD)

10159/08

**TRANS 179
CODEC 693**

REPORT

from : Presidency

to : COUNCIL

No. prev. doc. : 10066/08 TRANS 174 CODEC 680 + COR 1

10067/08 TRANS 175 CODEC 681

9816/08 TRANS 166 CODEC 639 + ADD 3

No. Cion prop. : 10092/2/07 TRANS 189 CODEC 599 + REV 2 (en, fr, de)

10114/1/07 TRANS 194 CODEC 602 + REV 1 (en,fr, de)

10102/2/07 TRANS 191 CODEC 601 + REV 2 (en, fr, de)

Subject : **Road transport**

- a) Proposal for a Regulation of the European Parliament and of the Council on common rules for **access to the international road haulage market (recast)**
 - *Political agreement*
 - b) 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**
 - *Political agreement*
 - c) Proposal for a Regulation of the European Parliament and of the Council on common rules for **access to the international market for coach and bus services (recast)**
 - *Political agreement*
-

Introduction

1. Following the "**Conclusions on the contribution of the transport sector to the Lisbon strategy**" of the Spring 2007 European Council, the Commission decided to make proposals to review the existing legislative framework on access to the profession and access to the market in order to, inter alia, ensure that administrative burdens were appropriate and proportionate.
2. Consequently, on 25 May 2007, the Commission transmitted the following three legislative proposals to the Council:
 - a proposal for a Regulation of the European Parliament and of the Council on common rules for access to the international road haulage market (recast),
 - a 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, and
 - a proposal for a Regulation of the European Parliament and of the Council on common rules for access to the market of coach and bus services (recast).

As a whole, these three proposals seek to modernise, replace and merge provisions governing road transport operators and access to the road transport markets.

Work within the Council bodies

3. Following the Commission's presentation of the three proposals and the respective impact assessment at the Land Transport Working Party meeting of 10 July 2007, the Portuguese Presidency concentrated its work on the proposal on access to the international road haulage market. However, as parts of this draft Regulation are closely linked to the establishment of national electronic registers, which forms part of the proposal on the access to the profession of transport operator, the Portuguese Presidency also decided to examine in parallel the corresponding Articles of this draft Regulation.

At the TTE Council of 29-30 November 2007, the Ministers took note of progress reports concerning the results achieved on the above two draft proposals.

4. The Slovene Presidency continued examining the proposal on access to the international road haulage market and launched the discussion of the other two proposals (access to the profession of the road transport operator and access to the market for coaches and buses), taking into consideration their respective impact assessments.
5. In order to advance discussions on the outstanding issues, the Slovene Presidency presented a compromise package reflecting the key political elements to the TTE Council of 7 April 2008.
6. In the light of the results of this debate, the Working Party on Land Transport further examined the three proposals and reached agreement on most of the technical issues.

Work done by the European Parliament

7. On 21 May 2008, the European Parliament adopted its opinions in first reading on the proposal on common rules for access to the international road haulage market as well as on the proposal on common rules concerning the conditions to be complied with to pursue the occupation of road transport operator. On 5 June 2008, the European Parliament also adopted its opinion on the proposal on common rules for the access to the international road haulage market for coach and bus services. Following examination by the Council working bodies some of the amendments adopted by the European Parliament were included into the texts contained in Addenda 1, 2 and 3 of this report.

A. Proposal on access to the international road haulage market

State of play

8. The proposal, which was issued in recasting format, aims at simplifying the current legislative framework by abolishing obsolete measures as well as the re-examination of the content, presentation and formulation of the two Regulations in force in order to avoid ambiguous interpretations.

All delegations have expressed their support in principle for the Commission proposal, agreeing on the need to simplify and further harmonise the rules currently in place, thus eliminating legal uncertainty for Community hauliers and adapting legislation to market needs. Following thorough discussions at Working Party, COREPER and Council levels, certain provisions were adapted to the requests of delegations, thus reaching an overall consensus on most of the chapters contained in this draft legislative instrument. This consensus concerns in particular:

- Scope and definitions, such as the definition of "serious infringement of Community road transport legislation";

- a simplified and standardised format for the Community licence, certified copies and the driver attestation;
- the periods of validity of the Community licence and of verification of compliance;
- the chapter covering mutual assistance and penalties, i.e. the sanctioning of infringements by the Member State of establishment and the host Member State;
- a list of security features in order to avoid manipulation and forgery of the Community licence and driver attestation documents.

Outstanding issues

9. The major political issues, which the Council is invited to discuss in particular, are the principle of cabotage as well as the rules applicable to cabotage operations and the date of the Commission report (see ADD 1).

a) Cabotage (Articles 8, 9 and 9 a)

10. In order to overcome the Member States' difficulties in implementing the concept of "temporary" cabotage, as laid down in the existing legislation, the Commission proposed to specify cabotage operations allowing for up to three transport operations consecutive to an international journey within seven days. It also obliges the haulier to keep - in the vehicles - documents such as the consignment letters which clearly show the date and place of arrivals and departures.
11. At the TTE Council of 7 April 2008 the Presidency presented a compromise which:
 - followed the Commission proposal in its approach to re-define cabotage and the structure of cabotage operations (Art. 8) and
 - introduced the obligation for the Commission to assess - in a future report - whether the progress in the harmonisation of certain rules (i.e. enforcement and taxation) allowed, in the future, for a further opening of the domestic transport markets, including in the field of cabotage (Art. 16.3).

12. Whilst Member States could agree in principle to the provision concerning the report, they were divided over the re-definition of cabotage and the structure of cabotage operations.
13. On 28 May 2008, COREPER examined a modified Presidency compromise proposal which draws from the request of several Member States to allow the possibility for return cabotage while trying at the same time to accommodate the concern expressed by other Member States in order to avoid that hauliers abuse of such a provision. This compromise proposal contains a provision (Article 8.2) allowing hauliers to carry out cabotage operations in transited Member States limited to one operation per transited Member State within the 3 days following the unladen entry into the territory of that Member State. The overall number of permitted operations, however, is still limited to three within seven days. Such a wider structure provides Community hauliers with more flexibility within the framework established by the original Commission proposal and contributes to avoid unladen journeys on Community roads. At the same time it sets a limit to uncontrolled cabotage operations.

Upon requests of various delegations, the Presidency also decided to re-introduce certain "safeguard" provisions which are currently in force and which allow Member States, following the Commission's approval, to introduce "protective" measures in case of serious disturbance of the national transport market in a geographical area due to or aggravated by cabotage. (Article 9a)

The positions of the Member States following the discussion at Coreper can be summarized as follows:

BG, CY, CZ, DE, DK, EE, ES, FI, HU, IE, LT, LU, LV, MT, PL, RO, SE, SI, SK and the Commission could agree with the Presidency compromise provided it would not be significantly modified.

DE, FR, IT, MT and UK would, however, prefer to have an additional safeguard to cabotage abuse and to include into the compromise proposal a provision which clearly underlines the non-systematic and temporary character of cabotage operations.

AT and EL supported the same request while favouring a limitation to one cabotage operation within three days, instead of the 3-in-7 formula suggested in the compromise proposal.

BE, NL and PT considered the Presidency compromise as too restrictive and underlined their support for a more liberal approach. These Member States, as well as EE and LT, opposed the re-introduction of the safeguard provisions (Article 9a) and any reference to "non-systematic" within the provisions of the draft Regulation.

b) Reporting (Article 16.3)

14. At the TTE Council of 7 April 2008, the ministers agreed to introduce the obligation for the Commission to assess, in a future report, whether the progress in the harmonisation of certain rules (i.e. enforcement and road user charges) allowed a possible further opening of the domestic transport markets, including cabotage. This report should also contain an analysis of the market situation and the evolution of employment conditions in the profession. The ministers, however, did not discuss extensively the date of delivery of this report, which is currently set for the end of 2012.

At COREPER of 28 May 2008 some Member States positioned themselves as follows on the date of the report:

BE, MT and NL prefer 2012; BG, PL and the Commission favour 2013; IT advocates 2014; whereas AT and EL expressed a preference for 2015. Other delegations are flexible or can support the Presidency proposal (2012).

Modified Presidency compromise proposal

15. In order to meet some of the concerns expressed by delegations at COREPER, the Presidency decided to slightly modify its compromise text by amending recital 11 on "cabotage" and Article 16.3 on the reporting as follows:

Recital 11:

"[Without prejudice to the provisions of the Treaty on the right of establishment,] cabotage operations represent the provision of services by hauliers within a Member State in which they are not established and should not be prohibited as long as they are not carried out in a way that creates a permanent or continuous activity within a host Member State. To assist in enforcing this requirement, the frequency of cabotage operations and the period in which they can be performed should be limited. In the past, such national transport services were **permitted** on a temporary basis. In practice, it has been difficult to ascertain which services are **permitted**. Clear and easily enforceable rules are thus needed."

Article 16.3:

"The Commission shall draw up a report on the state of the Community road transport market by the end of [2012]. The report shall contain an analysis of the market situation, **including an evaluation of the effectiveness of controls**, and the evolution of employment conditions in the profession, as well as an assessment as to whether the harmonisation of the rules in, inter alia, the fields of enforcement, road user charges as well as social and safety legislation has progressed to such an extent that the further opening of the domestic road transport markets, including cabotage, could be envisaged."

By introducing these modifications the Presidency tries to underline the temporary character of cabotage operations and to meet the request of some delegations to assess the effectiveness of the control mechanism foreseen in Article 8.3.

B. Proposal on common rules concerning access to the occupation of road transport operator

State of play

16. All delegations have expressed their support in principle for the Commission proposal, agreeing to establish common rules concerning the conditions to be complied with to pursue the occupation of road transport operator.

Following thorough discussions at Working Party, COREPER and Council levels, the Slovene Presidency adapted certain provisions to the requests of delegations, thus reaching an overall consensus on most of the issues contained in this draft legislative instrument. This consensus concerns in particular:

- subject matter, scope and definitions;
- requirements and conditions for becoming a transport manager;
- exemption from examination to become a transport manager ("grandfather rights");
- establishment of a risk based checking system;
- mutual recognition of certificates and other documents;
- the list of the most serious infringements.

Major outstanding issue

National electronic registers (Article 15 and Article 26)

17. At the TTE Council on 7 April 2008, a majority of delegations expressed concerns on the time limits stipulated in the Commission proposal while stressing that no additional bureaucracy should be created by setting up the national electronic register. Furthermore, many Member States expressed concerns on the financial implications connected with the setting up and maintaining of these registers. To this end the Presidency, who considers the electronic register as the centrepiece of this proposal as well as an essential element of its compromise package, proposed a "gradual" approach in setting up the national registers with the possibility to postpone certain time-limits through the comitology procedure with scrutiny.

The modifications of the text introduced by the Presidency could be summarized as follows:

- No later than 1 June 2009 the Commission shall issue guidelines on the structure of the register;
- Member States shall have the time to establish their national register until 24 months after the date of entry into force (20 days after publication);
- From 31 December 2012 - at the latest - the national registers have to be interconnected (i.e. all national registers have to be accessible to the competent authorities of other Member States);
- Apart from to the most serious infringements, which have to be recorded right from the establishment of the national register, Member States have to include serious infringements only from 2016 on into the national register;
- In the bi-annual report (Article 26), drawn up by the Commission, the functioning and the elements of the national electronic registers will be reviewed.

At COREPER, on 28 May 2008, a clear majority of delegations indicated they could support the Presidency compromise proposal on the national register. Some of them, however, clearly indicated that their agreement on this issue was linked to a previous agreement on the issue of cabotage. One delegation expressed some concern related to data protection and some of them recalled their concern related to the timing necessary for the full implementation of the national registers.

18. In addition, some delegations still have scrutiny reservations or reservations on other issues which are reflected in different footnotes in Addendum 2 to this report.

C. Proposal on common rules for access to the market for coach and bus services

State of play

19. The proposal, which was issued in recasting format, aims at simplifying the current legislative framework by abolishing obsolete measures as well as the re-examination of the content, presentation and formulation of the current Community legislation in force.

All delegations have expressed their support in principle for the Commission proposal, agreeing on the need to simplify and further harmonise the rules currently in place, thus eliminating legal uncertainty in the field of international carriage of passengers by coach and bus throughout the Community. Following thorough discussions at the Council's preparatory bodies, the Slovene Presidency adapted certain provisions to the requests of delegations, thus reaching an overall consensus on most of the issues contained in this draft legislative instrument. This consensus concerns in particular:

- scope and definitions, such as the definitions of "international carriage" and "cabotage operations";
- a simplified and standardised format for the Community licence and certified copies including a list of security features in order to avoid their manipulation and forgery;
- access to the market;
- the chapter on implementation.

Outstanding issues

20. The Coreper examined the proposal and found consensus on most of the issues. However, some delegations still have scrutiny reservations or reservations which are reflected in the footnotes appearing in Addendum 3 to this report.

Conclusions

21. The Presidency invites the Council to:

- examine the Presidency compromise text as outlined in this report and reflected in its addenda¹ in order to address the outstanding issues ;
- adopt a political agreement on all three legislative proposals.

¹ Only the legislative texts contained in the addenda will form part of the agreements. The recitals will be examined by Council bodies at a later stage. Only recitals on which the Council agrees, will form part of the agreements.