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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation in the period from 1 January 2015 until 31 December 2016 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**

I. Introduction

This report refers to the pursuit of the occupation of road transport operators in Member States and its objective is to ensure the closer monitoring of the application of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC¹ (hereafter "Regulation (EC) No 1071/2009"). This Regulation applies to all undertakings established in the EU which are engaged in the occupation of road transport operator, as well as those which intend to engage in such an occupation. The occupation of road transport operator refers to both the occupation of road haulage operator² and the occupation of road passenger transport operator³. Certain categories of undertakings, such as those using motor vehicles of a laden mass of less than 3.5 tonnes, do not fall within the scope of the Regulation⁴. Regulation (EC) No 1071/2009 defines common rules governing the admission to the occupation of road haulage and road passenger transport operator.

In accordance with Article 3 of this Regulation, undertakings engaged in the occupation of road transport operator should have an effective and stable establishment in a Member State, be of good repute, and have appropriate financial standing and the requisite professional competence. Furthermore, Article 4 of this Regulation imposes an obligation on road transport undertakings to designate a transport manager who holds a certificate of professional competence that confirms the possession of skills and knowledge necessary to manage transport operations in line with all legal and industrial requirements and in an effective and continuous manner. The responsibility to verify transport undertakings' compliance with the conditions laid down in Regulation (EC) No 1071/2009 lies with the Member States. Moreover, well organised administrative cooperation between Member States plays a key role in improving the effectiveness of monitoring of undertakings operating in the European Union.

Article 26(1) of Regulation (EC) No 1071/2009 sets deadlines for the reporting obligations of the Member States and of the Commission:

- Every two years from the date of application of the Regulation Member States should draw up a report on the activities of the competent authorities and forward it to the Commission, as required in Article 26 of the Regulation;

¹ OJ L 300, 14.11.2009, p. 51

² Under Article 2(1) of the Regulation, 'the occupation of road haulage operator' means the activity of any undertaking transporting goods for hire or reward by means either of motor vehicles or combinations of vehicles.

³ Under Article 2(2) of the Regulation, 'the occupation of road passenger transport operator' means the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users in return for payment by the person transported or by the transport organiser.

⁴ Under Article 1(4) of the Regulation, 'Member States may, however, lower this limit for all or some categories of road transport operations'.

- On the basis of the submissions from Member States, the Commission should draw up a report every two years to be communicated to the European Parliament and the Council.

National reports provided by Member States constitute a crucial input to the Commission report. Article 26 of the Regulation outlines what data should be included in national reports:

"(a) an overview of the sector with regard to good repute, financial standing and professional competence;

(b) the number of authorisations granted by year and by type, those suspended, those withdrawn, the number of declarations of unfitness and the reasons on which those decisions were based;

(c) the number of certificates of professional competence issued each year;

(d) core statistics relating to the national electronic registers and their use by the competent authorities; and

(e) an overview of exchanges of information with other Member States pursuant to Article 18(2), including in particular the annual number of established infringements notified to other Member States and the replies received, as well as the annual number of requests and replies received pursuant to Article 18(3)."

This report covers the quality and timeliness of national data submissions (Section II) and an analysis of the reports provided by Member States (Section III). Section IV presents the conclusions.

II. Data submission

This is the third report under Regulation (EC) No 1071/2009 and it covers the period from 1 January 2015 until 31 December 2016. The first report⁵ covered the period from 4 December 2011 (the date from which the Regulation started to apply) until 31 December 2012. The second report⁶ covered the period from 1 January 2013 until 31 December 2014. The present reporting period is synchronised with the report on the implementation of the social legislation relating to road transport⁷, as required by Article 26(2) of Regulation (EC) No 1071/2009. This synchronisation allows Member States and stakeholders to have a coherent overview of the sector in relation to the internal market and social rules in the same reporting period.

⁵ COM(2014)592 final, 25/9/2014.

⁶ COM(2017)116 final, 7/3/2017.

⁷ Referred to in Article 17 of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

In accordance with the obligation to report contained in Article 26 of Regulation (EC) No 1071/2009, all of the Member States submitted their national reports. This is an improvement compared to the last reporting period, when six Member States did not submit any report. However, some Member States had a serious delay in providing their data by the deadline of 30 September 2017, which affected the timing of preparation of this Commission report. In a number of reports, some of the required information was not provided, thus preventing a comprehensive analysis.

For the purpose of consistency and in order to assist the national competent authorities with fulfilling their reporting obligation, a standard form was proposed by the Commission services to the Member States in 2015 to be used from the second reporting period onwards. Almost all Member States which submitted their national reports used the standard form.

Since the Member States which submitted reports during the present reporting period are not the same ones as those which submitted reports in the previous reporting periods and given the fragmented nature of the information submitted, comparisons between the two reporting periods generally do not lead to meaningful conclusions.

In the context of the road initiatives adopted by the Commission on 31 May 2017⁸, a study on the ex post evaluation of Regulations (EC) Nos 1071/2009 and 1072/2009 was carried out⁹. The Commission also adopted a staff working document with the impact assessment for the revision of Regulations (EC) Nos 1071/2009 and 1072/2009¹⁰. Where relevant, the present report draws information from the study and from the impact assessment report.

III. Analysis of data on pursuit of the occupation of road transport operator

1. Overview of the road transport sector with regard to good repute, financial standing and professional competence

This part of the report concerns the presentation of national requirements, organization of checks, level of compliance and difficulties encountered, on the basis of information submitted by Member States. Due to the fragmentary nature of the reports made by the Member States, this overview is not comprehensive in scope. Whenever needed, the reports from the Member States are complemented with data from the above-mentioned evaluation study.

As allowed by Article 3(2) of Regulation (EC) No 1071/2009 under certain conditions, several Member States impose national requirements that need to be satisfied in addition to the four requirements set out in the Regulation (stable and effective establishment, good repute, appropriate financial standing and requisite professional competence) in order to have access to the occupation of road transport operator. For example, Slovakia added a requirement defining the minimum age of a transport manager at 21 years. Austria included the condition that road transport operators must have the necessary off-road parking spaces in

⁸ https://ec.europa.eu/transport/modes/road/news/2017-05-31-europe-on-the-move_en

⁹ <http://ec.europa.eu/transport/facts-fundings/evaluations/doc/2015-12-ex-post-evaluation-regulations-2009r1071-and-2009r1072.pdf>

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017SC0194>

the municipality or in another municipality in the same or adjacent administrative district. In Spain there is an additional requirement that applicants must have three vehicles representing at least one payload of 60 tonnes¹¹. Belgium, Greece, Finland, Italy, Latvia, the Netherlands, Sweden, the Czech Republic and France decided to extend at least partially the obligation of compliance with the rules on access to occupation of road transport undertaking to road hauliers operating vehicles with a permissible laden mass not exceeding 3.5 tonnes¹².

There is great diversity in the way Member States check compliance with the four requirements on access to the occupation of road transport operator set out in the Regulation, as well as in the number of checks carried out.

Estonia reported that checks of compliance with the requirements of the Regulation are carried out according to a risk-based system targeting primarily undertakings which have an increased risk of committing serious or frequent infringements of road transport rules.

In Ireland checks of good repute, financial standing and professional competence are performed at least every five years in the framework of an authorisation renewal process for each undertaking. In addition, these checks might take place more frequently for some operators which are deemed to present a high risk or come to the attention of the competent authority. Good repute is checked by vetting the transport manager and any other relevant person with the National Vetting Service provided by the National Police Force. This vetting service provides the competent authority with a list of convictions that can be used to determine good repute. During the 5-year period of validity of an operator's licence, there will ordinarily be no need for an operator to furnish additional information to the licensing authority. This would only happen when the authority has detected a risk in respect of that operator.

In Latvia checks of compliance with financial standing are performed by means of information from the annual reports provided by the Register of Enterprises. Moreover, all four requirements are checked before granting an authorisation for transport operations. The majority of authorisations suspended originate in requests from the State Tax Inspectorate, when it has decided to suspend the economic activity of the transport company. Since in Latvia certified true copies of Community licences and licences for national transport are issued for each particular vehicle and only for a period of up to twelve months, in case of non compliance with the four requirements, the certified true copies of the Community licences and the licences for national transport are not renewed. Good repute is checked for the transport manager, the undertaking and its members of the board. When the transport manager or members of the board of the undertaking are replaced, the good repute of each of the new members is checked. The Latvian enforcement authorities note some difficulties in determining compliance with the financial standing requirement related to the insurance policy, as there is no detailed description in Regulation (EC) No 1071/2009 about the risks to be insured for a transport undertaking.

¹¹ This national requirement is however not compliant with the conditions set out in the Regulation, which led the European Court of Justice to render a judgement on 8 February 2018 obliging Spain to repeal this requirement (Judgement of the European Court of Justice in case C-181/17 – European Commission v Spain).

¹² See table 4 of the impact assessment report referred to in footnote no. 10.

In Belgium, the first checks of stable and effective establishment are conducted by consulting the Crossroads Database of Undertakings in Belgium when a new Community licence has been delivered. Afterwards, a check is organized by the controlling authority in Belgium. This check is also carried out on specific demand or if a company is known for having breached transport law. Moreover, a rehabilitation procedure takes place 2 years after loss of good repute for "transport-related infringements".

In Spain two methods are used to control compliance with the criteria on access to the profession. The first method consists of requesting undertakings to submit documentation proving that they comply with the four requirements. The second method involves inspectors going to the premises of the undertakings for on-site checks. In Spain road transport undertakings must apply for a renewal of their authorisation every two years and therefore compliance with the four requirements is controlled every two years. Moreover, every year a series of inspections are carried out to verify that the undertakings whose authorisation has not been renewed do not carry out any transport activity.

In Poland there are 400 inspectors responsible for checks at the roadside and at the premises of road hauliers. The information collected by the inspectors is forwarded to the International Transport Office and to local authorities issuing the Community licenses and checking the four requirements set out in Regulation (EC) No 1071/2009. In Poland a stable and effective establishment is considered to be a place with technical equipment and devices appropriate to carry out transport activities in a structured and continuous manner, which includes at least one of the following elements: a parking place; an unloading area; equipment for maintenance of vehicles.

In Germany there was only a risk rating system at the regional level, but as from July 2014 there is a country-wide risk rating system. Infringements are rated with either 5 points (most serious infringements), 3 points (more serious/serious infringements) or 1 point (other infringements). An undertaking is then rated as having an increased risk if it has accumulated either 5 points (for undertakings with up to 10 vehicles), 8 points (up to 50 vehicles) or 11 points (more than 50 vehicles).

The UK's Driver and Vehicle Standards Agency has had a system known as OCRS (Operator Compliance Risk Score) since 2006. This system was refined in 2012 so as to improve its predictive ability. The OCRS integrates information on roadworthiness infringements, which are correlated with other infringements.

In Denmark all new applicants for a national or Community licence are checked for appropriate financial standing, professional competence, debt and stable establishment. Checks of good repute are only conducted if the police have reported a problem or if there is any other indication that there might be a problem. Infringements are registered for 5 years and comprise the infringements that are detected by the police during roadside checks. The Danish authority typically checks all new applicants as well as around 250 existing operators. The latter are selected on the basis of the risk rating system. Operators must meet an initial financial standing requirement of DKK 150,000 (around €20,000) in order to obtain the first two licences, whereas Regulation (EC) No 1071/2009 only requires reserves of €9,000 for the

first vehicle and €5,000 for each additional vehicle¹³. In Denmark, for each additional vehicle DKK 40,000 (around €5,400) is required. Further, the company must not have arrears to the government exceeding 50,000 DKK (around €6,700). The Danish Transport Authority makes an enquiry with the Danish Tax Authorities on this matter when verifying the appropriate financial standing of the undertaking.

Romania has a risk rating system to target checks of infringements reflecting all offences in road transport for each transport company. If a company opens a branch, checks are done on its stable and effective establishment.

In the Netherlands, the Dutch Road Haulage Organisation for National and International Transport (NIWO) has developed a method to detect transport operators that are in risk of no longer fulfilling the requirement of appropriate financial standing. Transport operators that are at risk will be closely monitored. In the event that a high risk transport operator is not able to satisfy the requirement of appropriate financial standing within the given time limits laid down in Article 13 of Regulation (EC) No 1071/2009, the Community license is withdrawn. With this method, transport operators are obliged to satisfy the requirement of appropriate financial standing during the whole period of validity of the Community license and not only during the application period. Risk rating also applies to requisite professional competence. According to the data reported, so far the NIWO did not suspend or withdraw an authorization on the basis of the requirement of the good repute.

In Finland the risk rating system is linked to checks of good repute. Systematic checking of good repute concerning all the relevant persons is considered to be a demanding task, which is precisely why risk rating is needed.

In Luxembourg, the Ministry of the Economy carries out checks before an authorisation is issued, in order to verify compliance with all four requirements. Checks of good repute are also carried out when the holder of an authorisation encounters financial difficulties, such as insolvency or bankruptcy in order to protect the co-contracting parties. Checks of good repute, financial standing, professional competence and stable and effective establishment are also carried out when the holder of an authorisation applies for a new authorisation, for example when widening the scope of activities to another sector for which he needs an additional authorisation.

As for the difficulties encountered concerning checks of stable and effective establishment, which are considered to be more resource-consuming than other checks, several enforcement authorities stress the demanding nature of the checks and the lack of administrative capacity to control all road transport undertakings registered in a given Member State.

Only two Member States submitted data on the number of checks carried out with regards to the four requirements on access to the occupation of road transport operator. In Estonia, 80 checks of good repute and 80 checks of professional competence were carried out in the period 2015-2016. In Sweden, 131 checks of good repute took place.

¹³ See Article 7(1) thereof.

2. Authorisations

Article 2 of Regulation (EC) No 1071/2009 defines the authorisation to pursue the occupation of road transport operator as “an administrative decision which authorises an undertaking which satisfies the conditions laid down in that Regulation to pursue the occupation of road transport operator”.

The legal nature of "administrative decision" varies between Member States. This might be a prerequisite to obtain a licence for national transportation and/or a Community licence in order to carry out international carriage, it might be the equivalent of a licence for national transportation only or it might mean a licence for national and international transport granted by means of one single authorisation.

For example, in Bulgaria and Lithuania there are four types of licences (national passenger, national freight, Community licence for passenger and Community licence for freight). However, in Bulgaria only one document (i.e. authorisation) is granted for national and international transport.

In Belgium, only Community licences are granted as authorisation either for passenger transport or freight transport.

From 2012 undertakings established in Estonia which intend to operate in the road transport market must apply for the Community licence, which is the only type of authorisation existing in that Member State.

In Luxembourg there are only two types of licences: one for national transport and the other one for international transport.

In Romania only Community licences are granted as authorisations either for passenger transport or freight transport.

In the UK there are two main types of authorisation that apply to passenger and freight transport undertakings. They are Standard National Licences and International Licences. The International licence is for those undertakings which carry out international transport and this corresponds to holders of Community licences. In addition, the UK has further categories outside of the scope of Regulation (EC) No 1071/2009 for own account operators. There is a further classification for passenger carrying organisations which are not businesses and these are not considered as operating for hire and reward, such as schools, charities and community groups.

As a result of the existence of different types of authorisations for undertakings to pursue the occupation of road transport sector, the data submitted by Member States can only be broadly compared. However, most Member States submitted a global number of authorised operators on 31 December 2016, which constitutes a point of reference for data on numbers of authorisations granted, suspended or withdrawn. Austria has 11,499 authorised operators (freight and passenger), Belgium has 9,007, Bulgaria has 13,354, Cyprus has 2,945, the Czech Republic has 24,482, Germany has 51,127, Denmark has 5,618, Estonia has 3,330, Greece has 12,187¹⁴, Spain has 96,237, Finland has 15,941, France has 128,319, Hungary has 13,267,

¹⁴ Greece and the Netherlands reported only the number of freight operators.

Croatia has 601, Ireland has 5,585, Italy has 105,560, Lithuania has 866, Luxembourg has 497, Latvia has 4,313, Malta has 684, the Netherlands has 13,172¹⁵, Poland has 84,304, Portugal has 8,674, Sweden has 17,608, Slovenia has 5,811, Slovakia has 8,564 and the UK has 42,573 authorised operators. Overall in the EU, there were 608,212 freight and 77,913 passenger transport operators¹⁶.

The vast majority of authorised undertakings are road hauliers. The percentage of authorised road hauliers compared to the overall number of authorised operators in the Member States having reported was 89% as of 31 December 2016 (88% as of 31 December 2014), whereas only 11% were passenger transport operators. The only exception was Malta, where the number of passenger transport operators (596) exceeded by far the number of road hauliers (88), whereas in France the percentage of passenger transport operators was significantly above the EU average (24%).

2.1 Authorisations granted

On the basis of the data provided by twenty four Member States¹⁷, 278,092 authorisations were granted to pursue the occupation of operator in passenger (25,788) and goods (252,304) transport during the reporting period.

The number of authorisations granted ranged from 27 in Malta to 122,790 in Spain. A detailed table with the information submitted is presented in Annex I to this report.

Most of the authorisations granted in 2015 and 2016 concern road hauliers (91% overall) and only a small share of authorisations concern passenger transport operators (9%).

2.2 Authorisations withdrawn and suspended

On the basis of data reported by twenty five Member States¹⁸, the total number of authorisations withdrawn or suspended during the period 2015-2016 was 130,998. It can be observed that the highest number of withdrawals and suspensions of authorisations was reported in Spain and amounted to 76,534 for passenger and goods transport. At the other end of the scale, very few withdrawals and suspensions were recorded in Portugal (1), Ireland (7), Luxembourg (13) and Romania (15). Detailed information on withdrawals and suspended authorisations is included in Annex II to this report.

¹⁵ Greece and the Netherlands reported only the number of freight operators.

¹⁶ Three Member States did not report on the number of passenger transport operators and one Member State did not report on the number of freight transport operators.

¹⁷ Austria, Portugal, Belgium, Bulgaria, Czech Republic, Germany, Denmark, Estonia, Greece, Spain, Finland, France, Croatia, Ireland, Italy, Luxembourg, Latvia, Malta, the Netherlands, Poland, Sweden, Slovenia, Slovakia, the United Kingdom.

¹⁸ Malta, Hungary and Cyprus did not report on this point.

Withdrawals and suspensions of authorisations were largely due to the expiry of the authorisation / Community licence, winding up of the company or on request by the operators in most of the Member States which reported on the reasons for such withdrawals and suspensions.

However, Spain indicated that the main reason for withdrawal or suspension of authorisations was non-compliance with the four requirements on access to profession (47,719 withdrawals on that basis). In Sweden, the main reason for withdrawals was non-compliance with the requirement of effective and stable establishment (1,514 withdrawals on this basis), as well as in Estonia (167) and Slovenia (55). In the United Kingdom, the main reason for withdrawals was lack of good repute (466 withdrawals and suspensions on this basis).

3. Certificates of professional competence

Certificates of professional competence attesting the written and oral examinations successfully passed by the candidate drivers are issued by the competent authorities and constitute proof of professional competence, as provided for in Article 8 of Regulation (EC) No 1071/2009.

On the basis of information provided by twenty five Member States¹⁹, 477,761 certificates of professional competence were issued during the reporting period. This number includes certificates granted on the basis of examination as provided by Article 8 of Regulation EC (No) 1071/2009 and through recognition of experience, following an exemption specified in Article 9 of this Regulation.

The biggest share of certificates granted in the EU during this reporting period was in Spain (388,218), followed by the Netherlands (25,597), Romania (20,960), Poland (7,100) and France (6,616). Detailed information is presented in Annex III to this report.

4. Transport managers declared unfit

In accordance with Article 14 of Regulation (EC) No 1071/2009, when a transport manager loses his good repute, the competent authority should declare the transport manager unfit to manage the transport activities of an undertaking.

Declarations of unfitness were issued in ten of the reporting Member States: Austria (3), Belgium (5), Denmark (82), Germany (5), Spain (17), Estonia (11), Finland (15), Italy (72), Sweden (49) and United Kingdom (253). The data provided by Member States can be found in Annex II to this report.

5. Exchange of information

According to Article 16 of Regulation (EC) No 1071/2009 each Member State should keep a national register of road transport undertakings that have been authorised to engage in the occupation of road transport operator. Minimum requirements for the data to be entered in

¹⁹ Austria, Belgium, Bulgaria, Czech Republic, Germany, Denmark, Estonia, Greece, Spain, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Sweden, Slovenia, and Slovakia.

these registers and common rules on their interconnection through the European Register of Road Transport Undertakings (ERRU) are defined in Commission Decision (EU) 2016/480²⁰. Notably, this data covers the good repute of the transport undertakings, serious infringements committed and data on the Community licences.

The establishment of the ERRU was envisaged as a next step to facilitate cooperation between the national authorities for the purpose of further enhancement of cross-border enforcement of the European road transport legislation in accordance with Article 16(5) of Regulation (EC) No 1071/2009. The ERRU register should simplify cross-border enforcement, making it more cost-effective, provided that all Member States are connected and that they effectively use the system exchanging quality data contained in their databases. The interconnection of national registers was to be achieved by 31 December 2012.

Despite significant delays by some Member States, all Member States have now interconnected their national electronic registers of road transport undertakings.

Several Member States noted that participation in ERRU resulted in better cooperation and exchange of information between Member States and improved the effectiveness of their national electronic registers. A significant amount of information exchanges regarding serious infringements and good repute has been registered notably in Belgium, the Czech Republic, Germany, Estonia, Croatia, Italy, Latvia, Slovenia and Sweden. Most of these exchanges concern requests for checks of good repute sent to and received from other Member States. It is noteworthy that the volume of information exchanges has increased very significantly when compared to the previous reporting period²¹. This would seem to indicate that the completion of the interconnection of the national electronic registers is encouraging further use of ERRU and that Member States in general are stepping up their use of the platform. The data provided by Member States can be found in Annex IV to this report.

IV. Conclusions

This report provides an overview of information submitted by Member States under Article 26 of Regulation (EC) No 1071/2009 on access to the occupation of road transport operator. This information covers the aspects of the implementation by Member States of Regulation (EC) No 1071/2009 listed in Article 26(1) of that Regulation during the period from 1 January 2015 until 31 December 2016.

The quality and timeliness of submissions from Member States was highly variable, affecting the overall quality of this report. Due to some missing data on certain aspects of the Regulation, this report could not provide for a complete analysis of implementation of the provisions of Regulation (EC) No 1071/2009. However, both the number of Member States having reported and the depth of the data reported have substantially improved in relation to the previous reporting period.

²⁰ Commission Implementing Regulation (EU) 2016/480 of 1 April 2016 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings and repealing Regulation (EU) No 1213/2010; OJ L 87, 2.4.2016, p. 4.

²¹ Despite the fact that several Member States did not report on information exchanges in the previous reporting period, the increase between the two reporting periods is very significant.

It is worth underlining that the system of administrative cooperation between Member States has greatly progressed by the time of drafting this report. However, The Commission also supports its further enhancement, which would strengthen consistent and effective implementation of Regulation (EC) No 1071/2009 across all EU Member States.

The Commission reminds Member States of their obligation to provide the complete report containing all the elements of data listed in Article 26(1) of Regulation (EC) No 1071/2009 within the required timeframe in order to allow for a fully-fledged report and to avoid infringement procedures under Article 258 of the Treaty on the Functioning of the European Union. The Commission also urges Member States to use the standard reporting form for the purpose of consistency of national submissions.