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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.1.2009  
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2007/0098 (COD)

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT**

**pursuant to the second subparagraph of Article 251 (2) of the EC Treaty**

**concerning the**

**common position of the Council on the adoption of a regulation of the European  
Parliament and the Council establishing common rules concerning the conditions to be  
complied with to pursue the occupation of road transport operator**

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**1. BACKGROUND**

Date of transmission of the proposal to the EP and the Council 23 May 2007.  
(document COM(2007)263 final – 2007/0098COD):

Date of the opinion of the European Economic and Social Committee: 16 January 2008.

Date of the opinion of the European Parliament, first reading: 21 May 2008.

Date of transmission of the amended proposal: 13 June 2008.

Date of adoption of the common position: 9.1.2009

**2. OBJECTIVE OF THE COMMISSION PROPOSAL**

The objective of the proposal is to establish common rules concerning conditions to be complied with to pursue the occupation of road transport operator. The proposal aims at replacing Directive 96/26/EC by a new regulation in order to reach better harmonisation and to promote fairer competition between operators within the internal market.

**3. COMMENTS ON THE COMMON POSITION**

**3.1. General comments on the common position**

Two elements were central during the discussions in the Council. First, the procedure the competent authorities have to follow in case of infringements classified as "most serious infringements" and which are included in a new Annex III. Secondly, the electronic register that Member States have to establish, its architecture and content as well as the time limits for the interconnection and the introducing of data.

**3.2. Detailed Commission comments**

The common position includes many of the amendments of the European Parliaments first reading (8, 9, 10, 11, 12, 13, 108, 16, 17, 18, 19, 20, 23, 24, 26, 29, 30, 32, 38, 39, 43, 45, 48,

49, 56, 61, 65, 67, 68, 69, 74, 75, 76, 77, 79, 81, 82, 83, 85, 89, 90, 91, 92, 93, 94, 97 and 98). All these amendments were acceptable for the Commission.

Other amendments are included in part (35, 36, 44, 62, 80) or with different deadlines (73, 88, 100 and 101). The following provisions are also already integrated in the common position:

- The definition of the link between the transport manager and the undertaking (21) and the request that the manager is resident in the EU (22, 25);
- concerning the external manager (article 4, paragraph 2): the common position takes over the idea to give the possibility for Member States to allow a total fleet of 50 vehicles per external manager and to lower this figure, but not the possibility not to introduce such a limitation (109); the common position also reformulates the condition of the independence of the external manager (28);
- the procedure consecutive to the most serious infringements as set out in Annex III (40, 41, 42): the common position foresees a similar procedure, but does not include deadlines as proposed by the Parliament on the adoption of the list of infringements, nor the comitology procedure for the adaptation of Annex III;
- the possibility for Member States to exempt persons with a certain experience from the exam (52); however the common position requests a higher number of years of experience (15 years, article 8a new);
- the Annex III (amendment 104) on the most serious infringements in an adapted version;
- the approach to adapt the periodicity of checks of undertakings to technical progress (59); however, the common position proposes to target checks on undertakings posing an increased risk from 2015 on; until then a check has to take place every five years.

Concerning the register (article 15, amendments 70, 71, 72, 73, 74), Parliament and Council supported the establishment and the interconnection of electronic registers on road transport undertakings in a stepwise approach, but proposed different timetables.

In addition to the Commission proposal, both the first reading and the common position give the possibility to create a separate register on the infringements and the transport managers who are declared unfit to manage an undertaking. According to the common position, these managers should remain not only two years in the registers, but as long as the good reputation is not re-established.

The Parliament proposed in its first reading to have a public and a private section of the register, the latter being only accessible to competent authorities under special conditions (endowed with specific powers in the road transport sphere and sworn officials). The Parliament proposes further that a register on transport managers should be created. These proposals were not integrated in the common position.

While the first reading of the Parliament requests in addition the inclusion in the register of the vehicle registration marks of vehicles operated outside the Member State of establishment, the common position states that the Commission may give in 2009 a recommendation on the inclusion of vehicle registration marks. This last provision was part of the final compromise in the Council negotiations.

Furthermore, the common position has not integrated the following provisions which could have been acceptable or acceptable in principle for the Commission:

- a stricter scope for the exception for the non-commercial transport of passengers from the regulation (amendment 107);
- the reference to secure data supports as a condition relating to the requirement as to establishment (31);
- the request to adapt the exchange rate for currencies yearly instead of every 5 years (46);
- the request that the criteria for the accreditation of the bodies for the training and the examination of transport manager applicants are mutually compatible (51);
- the possibility for Member States to promote regular training for transport managers (53);
- the request that the competent authority is responsible for updating and maintaining the electronic registers (57);
- the shortening of the time limits for an undertaking to demonstrate that it has an effective and stable establishment (64);
- the proposal that Member States inform the Commission about the certificates they recognise as proof of professional competence (86);
- the reformulation of the reference to the "regulatory procedure with scrutiny and curtailed time limits" (96); the common position removes this procedure.

The common position does not include the following provisions which were not acceptable or not acceptable in the proposed wording for the Commission:

- the reformulation of the requirement on parking places, where the Parliament replaces the request to have a sufficient number of parking places by a request to be able to prove where the vehicles are parked (111); the Council has deleted this provision;
- the reference to archiving of data and data protection as Community rules whose non respect could put into question the good repute of a transport manager (37);
- the second part of amendment 44, saying that the capital resources are to be demonstrated by means of a certified trading balance sheet or a balance sheet for tax purposes;
- the obligation to pass the exam on the professional competence in the Member State of residence (50);
- the obligation for transport managers, after a five year period of absence, to undertake a retraining (113);
- the reference to an interdiction to transfer the certificate on the professional competence to legal persons (55);
- to control only "in case of doubt" even after the interconnection of the registers whether the transport manager is declared unfit to manage the transport activity (58);

- the shortening of the time limits for an undertaking to replace a transport manager (63);
- the deletion of the possibility to postpone via the regulatory procedure with scrutiny the interconnection of the national registers (116);
- the demand for a study on the possible inclusion of taxis into the scope of the regulation (99);
- the proposed date of 1 June 2009 for the application of the regulation (103); the common position foresees to apply the regulation 24 months after its entry into force.

The common position also includes the following new provisions:

- reference to animal transport as rules against which a transport manager or an undertaking may not have infringed (Article 6, paragraph 1, subparagraph b);
- the possibility for Member States to issue different authorisations for undertakings only performing national transport (Article 10, paragraph 1);
- the possibility for Member States to extend the time limit for the examination of the application of an authorisation (Article 10, paragraph 3);
- the possibility for Member States to shorten the delay within which the undertaking has to inform about changes concerning the data used for the application of the authorisation (Article 10, paragraph 5);
- a change in the formulation of what an undertaking has to demonstrate when the requirement as to the financial standing is no longer satisfied (Article 12, paragraph 1, point c);
- more detailed description on the rules on the electronic registers to be adopted by the Commission in accordance with the comitology procedure (Article 15, paragraph 5);
- a simplification on the report that Member States have to give on the pursuit of occupation (Article 26).

#### **4. CONCLUSION**

The Council adopted its common position by qualified majority. The Commission considers that the common position reflects the main objectives of its proposal and can therefore support it.