



## **FINAL REPORT**

**Study on admission to the occupation of  
road transport operator: review of current  
arrangements in member states and  
acceding countries**

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## 1 INTRODUCTION

### 1.1 Implementation of (road) transport Directives: closing the “expectations-capabilities gap”

Transport policy is one of the common policies of the European Community (Title V, Arts. 70-80 EC). Its importance is attested to by the fact that it is mentioned in Article 3 EC as one of the actions of the EC that also supports the free movement of persons, goods, and services. In addition, secondary legislation in the field of transport accounts for approximately 10% of the whole *acquis communautaire*

Traditionally, road transport in Europe was governed by bilateral international agreements on the basis of which states annually agreed on permit quotas for freight and passenger transport by road. The Community progressively abolished these quantitative restrictions by introducing harmonized qualitative criteria. Since 1 January 1993, Regulation 881/92/EEC has replaced quotas for intra-Community cross-border road freight transport with Community restrictions issued by the competent authorities of the Member States. Authorizations are granted for a renewable period of five years to any haulier carrying goods by road for hire or reward that is (a) established in a Member State, in accordance with the legislation of that Member State, and (b) licensed in that Member State to carry out the international carriage of goods by road, in accordance with the legislation of the Community and of the Member State concerning admission to the occupation of road haulage operator.<sup>1</sup>

The cross-border transport of passengers is governed by Regulation 684/92/EEC of 16 March 1992 on common rules for the international carriage of passengers by coach and bus. This Regulation grants the free provision of regular, shuttle, and occasional services by coach or bus to any carrier for hire or reward carrying more than nine persons, including the driver, without discrimination as to nationality or place of establishment if he (a) is authorized in the state of establishment to undertake carriage by means of regular services, shuttle services, or occasional services by coach and bus, (b) satisfies the conditions laid down in accordance with Community rules on admission to the occupation of road passenger transport operator in national and international transport operations,<sup>2</sup> and (c) meets legal requirements on road safety as far as the standards for drivers and vehicles are concerned. Transport operators must carry a Community

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<sup>1</sup> Arts. 3 and 6 of Regulation 881/92/EEC and Council Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, OJ 1996 L 124/1, as amended by Council Directive 98/76/EC, OJ 1998 L 277/17.

<sup>2</sup> Council Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, OJ 1996 L 124/1, as amended by Council Directive 98/76/EC, OJ 1998 L 277/17.

license, issued by the Member States, to operate. Regular services are subject to authorization by the Member State in whose territory the departure is located, with the agreement of the Member States where passengers are picked up or set down, whereas occasional services do not require such authorization.

In addition to the rules concerning the freedom of establishment and the free provision of services, the Community has also adopted extensive legislation concerning technical requirements for vehicles, the social and working conditions for drivers, taxation, safety in road transport, and rules relating to the protection of the environment.

Managing transport policies is an intricate task. The diverse forms of transport (road, railway, water, air) have different features and involve various actors (central administrations, decentralized administrations, public agencies, private associations, etc.). As a cross-border subject it involves regional and international consultations that may end in heated conflicts between countries. Moreover, the transport sector has a multi-disciplinary character, which means that, often, several ministries are involved in the implementation of EC Directives (economy, finance, education, environment, social affairs, tourism, etc.). Those particularities make the implementation of EC secondary legislation in the transport sector difficult because of the number of actors involved.

While the Commission keeps track of the *transposition* of Directives in its so-called scoreboards, it largely depends on the “vigilant individual” to point out where the actual *implementation* and *application* of the Directives in the national legal orders of the Member States cause problems. While the Commission expects the Member States to timely and correctly implement EC Directives, the Member States’ lack of (will and) capabilities sometimes leave things to be desired. In the twilight zone between the transposition of a Directive into domestic law and its correct implementation, anti-competitive behaviour and intra-Community trade barriers remain in place, as will be illustrated in this study on the implementation of Directive 96/26/EC.<sup>3</sup>

## 1.2 This report within the study

This is the Final Report within the framework of the study on admission to the occupation or road transport operator. Prior reports consisted of an overview of Member States practices included in “country reports” and a comparison of the Member States’ transposition and implementation of Council Directive 96/26.

This Final Report devotes one chapter to each of the core items of the Council Directive: financial standing, good repute and CPC. In a final chapter conclusions will be drawn on the

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<sup>3</sup> OJ 1996 L 124/1, as amended by Council Directive 98/76/EC, OJ 1998 L 277/17.

basis of the comparative analysis which is described in this report. Furthermore some recommendations are given including some suggestions on areas for further study.

## 2 GOOD REPUTE

### 2.1 Theory: transposition of the good repute requirement into national law

#### 2.1.1 General remarks

Directive 96/26/EC (on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operation) is a key Directive in the liberalisation of the road transport market for both goods and passengers and provides a good example of a transport Directive with no particular transposition difficulties, but which nevertheless poses considerable problems for the Member States in terms of its actual application and enforcement.

To facilitate access to the Community's market of road transport, the national laws governing admission to the profession of road transport operator have to be harmonized. Directive 96/26/EC was designed to codify and strengthen the common rules on admission to the occupation of road transport operators and the mutual recognition of the diplomas of such operators. This Directive replaced Council Directives 74/561/EEC (goods transport) and 74/562/EEC (passenger transport) on admission to the occupation of road haulage operators and road passenger transport operator respectively in national and international transport operations and Council Directive 77/796/EEC (as amended) concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators. Its objective is to improve the road transport operator's professional competences and quality of service while increasing safety by introducing a licensing system to access the profession. The Directive lays down three qualitative criteria to ensure the professional capacity of the European operators. They concern:

- sound financial standing (Art. 3(3) of Directive 96/26/EC),
- professional competence (Art. 3(4) of the Directive), and
- good repute (Art. 3(2) of the Directive).

Directive 98/76/EC was adopted to strengthen the common rules enounced by Directive 96/26/CE. On the one hand, it extended the scope of application of Directive 96/26/EC to vehicles of which the maximum authorised weight does not exceed 3,5 tonnes. On the other hand, provision was made for more stringent requirements concerning the good repute

requirement, adding conditions concerning the protection of the environment and the professional liability of transport operators (Art. 3(2)c of Directive 96/26/EC).

Directive 96/26/EC is a rather technical Directive (at least for the financial and professional criteria). That means that the Member States do not have a wide discretionary margin when transposing the Directive. They can only propose more stringent rules (for example, asking a higher level of financial resources necessary to start up a business). However, one of the criteria of admission, good repute, is more problematic because it leaves a wider discretion to the Member States and can create disparities between them.

The individual Member States have certain degrees of freedom in the national implementation of the EU Directive. First and foremost the individual country can extend the scope of the Directive, since the rules can be made applicable to motorised vehicles with a permitted total weight below 3,5 tonnes. On the other hand, the Member States may also choose wholly or partly to exempt undertakings that only perform local transport, which only has a limited importance to the transport market. Directive 96/26/EC as amended excludes certain categories of transporters: road haulage operators with vehicles with a permissible payload below 3,5 tonnes national haulage, operations with minor impact on the market, non-commercial passenger transport undertakings which have a main occupation other than that of road passenger transport operator, insofar as their transport operations have only a minor impact on the transport market. The Member States may also choose to extend the requirements for applicants who wish to be approved for road transport operations (and the Member States themselves are also partly responsible for defining the good repute concept). Furthermore, the requirements for financial capabilities and professional skills may be intensified at national level.

After three actions of the Commission before the European Court of Justice, in July 2004, Directive 96/26/EC as amended was transposed in the 15 old Member States.<sup>4</sup>

Practice concerning, in particular, the requirement of good repute shows that the implementation of the Directive is often problematic. It is the condition where more discrepancies between the Member States come into sight. The transposition of each element of that requirement will be analysed in more depth and a comparative study will be made of how the Member States' administrative and judicial authorities respectively apply and enforce each of the composite elements.

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<sup>4</sup> Case C-274/01 *Commission v Belgium*, ECR 2002, at I-5151, Case C-107/01, *Commission v Luxembourg*, ECR 2001, at I-10357, and C-127/01, *Commission v Greece*, Removed from the register on 30/01/2002.

### 2.1.2 Institutions involved in the implementation of the good repute requirement

The table below sets out the institutions of the 25 EU Member States which are involved in the implementation of the good repute requirement. As far as verification and controlling agencies are concerned, the obvious is not stated in the table: in all countries, in the course of their normal activities, the police, customs and border authorities, (motor) tax authorities, vehicle registration offices, veterinary services, anti-fraud services, labour inspectorates/courts, etc., gather information which can be used by the licensing bodies to decide whether or not an applicant (still) complies with the conditions of the good repute requirement. In the table below, only those verification and controlling bodies are mentioned which have been endowed with specific controlling powers in the context of road transport (haulage + passenger).

**Table 2.1** *Institutions involved*

Country	Verification & controlling agencies	Licensing body & policy institution(s)
Netherlands	Transport Inspectorate Netherlands	Dutch Organization for National and International Road Transport (NIWO) – Professional Transport Licences Commission (CVB) Ministry of Transport, Public Works and Water Management Provincial Executive (passenger transport)
France	Commissions consultatives régionales Land Transport Inspectors (CCT) Ministries of Transport, the Interior (police), Defence (gendarmerie) and Finance (customs and excise) Commissions des sanctions administratives Directions régionales du travail des transports (DRTT)	Prefects of the regions Directions régionales de l'équipement, Ministry of Transport
Germany	Federal Bureau of Road Haulage (BAG) Chambers of commerce	Road Haulage and Passenger Transport Bureaux of the Länder Federal Ministry of Traffic, Building and Housing (BMVBW)
Belgium	Road Haulage Commission Municipalities Chamber of Commerce	Department of Road Transport of the Service public fédéral Mobilité et Transports (formerly known as Ministry of Transport)
Italy	Department for Terrestrial Transport and Statistical and Information Systems, Transport Operators Registry, Traffic Police	Provincial Transport Committees Ministry of Infrastructure and Transport
Lithuania	State Road Transport Inspectorate	State Road Transport Inspectorate Municipalities (passenger transport) Ministry of Transport
Luxemburg	Judicial police	Ministry of the Middle Classes Ministry of Transport
Portugal	DGTT, General Inspection of Public Works, Transport & Communications National Republican Guard Public Security Police	Directorate General of Land Transport Ministry of Public Works, Transport and Housing (DGTT)

Slovenia	Ministry of Justice	Chamber of Craft Chamber of Commerce and Industry Ministry of Transport
United Kingdom	Ministry of Environment, Transport and the Regions – Vehicle Inspectorate, VOSA – Traffic Area Offices Traffic Police, Traffic Commissioners	7 Traffic Commissioners Ministry of Environment, Transport and the Regions – Dept. of Transport – Vehicle and Operator Services Agency (VOSA)
Denmark	Traffic Police	Road Safety and Transport Agency Ministry of Transport and Communication
Spain	Guardia Civil (Road Traffic Police) RTA Inspectorates MFOM Inspectorate	17 Regional Transport Administrations (RTA's) Ministry of Transport and Public Works (MFOM)
Ireland	Road Haulage Division – Enforcement Section Gardai (Police), Chartered Institute of Logistics and Transport in Ireland, Companies Registration Office	Department of Transport – Road Haulage Division – Licensing Section
Austria	District Administrative Authorities, Federal Safety Guard, Federal Constabulary, RTA Inspectorates	9 RTA's Federal Ministry of Transport, Innovation and Technology Professional Transport Association
Finland	Provincial State Offices	6 Provincial State Offices Ministry of Transport and Communications
Sweden	CAB Inspectorate	21 County Administrative Boards Swedish Administration for National Roads Ministry of Industry, Employment and Communications
Greece	Ministry of Transport and Communication, Directorate General for Transport	Ministry of Transport and Communications, Directorate General for Transport
Cyprus	Road Traffic Police, RTD Inspectorate, RTC inspectorate	Road Transport Council Ministry of Communications and Works (RTD)
Hungary	General Inspectorate of Transport, Chief Supervisor of Consumer Protection	Regional branches of General Inspectorate of Transport Ministry of Economy and Transport
Poland	Road Transport Inspectorate (RTI), Ministry of Justice	Licensing Department of MOI (BOTM) Ministry of Infrastructure (MOI), Road Transport Department
Czech Republic	RTA Inspectorates	Trade and License Authority 14 Regional Transport Authorities Ministry of Transport and Communications

A fourth column could have been added to the table in order to list the judicial authorities of the Member States before which appeals can be lodged against decisions of the licensing bodies. In most EU Member States, however, no specialized judicial body exists to deal with transport related cases. Appeals are usually lodged before the regular administrative courts of the countries. Appeals against NIWO decisions in the Netherlands, for example, are lodged before the Trade and Industry Appeals Tribunal (CBB).

Only the United Kingdom has created a specialized adjudicator for applicants who wish to lodge an appeal against a decision by the licensing body before an independent court: the Transport Tribunal.<sup>5</sup> In the UK, a transport operator may file an appeal against a decision by a Traffic Commissioner with the Transport Tribunal within 28 days (Section 37 of the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23)). This tribunal consists of 12 members that have been appointed for life. Every case is heard by a panel consisting of an independent “judge” (appointed by the Lord Chancellor’s Department) and two transport experts (“lay members” who have been appointed by the Ministry of Environment, Transport and the Regions). The appeal does not have suspending effect and is not restricted to a review of questions of law. Questions of fact may also be reviewed. On average, it takes three to six months for the tribunal to take a decision. If the appeal is dismissed, an appeal on a question of law may be filed with the Court of Appeal. Every year, one or two cases of this kind are referred to this court. Theoretically, a transport operator may also bring a final appeal to the House of Lords, but this has never happened in reality. Accordingly, the Transport Tribunal is *de facto* the highest court, but in theory, it may be two to three years before all appeal possibilities have been exhausted. This British example no doubt constitutes a best practice among the 25 EU Member States.

### 2.1.3 Subjects of good repute

The Directive, in Article 1(2), provides a definition of who should be of good repute. The “undertaking” that should fulfil this requirement is:

any natural person, any legal person, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality.

If the undertaking is not a natural person, then the person who will “continuously and effectively manage the transport” must satisfy the good repute requirement (Art. 3(1)). The Directive leaves it to the Member States to determine whether other persons must also satisfy the Directive (Art. 2(1)). Usually there is a good transposition of the Directive concerning that definition. However, minor differences exist: while some Member States may enter into greater detail when transposing the Directive, others take a broader approach to transposition. For example, the UK gives no definition of who should be of good repute at all. In Sections 2(1) and (5) of the Goods Vehicles (Licensing of Operators) Act of 1995, it is assumed that satisfying the requirement for the granting of a license in itself ensures sufficient demarcation. Finland, Lithuania, Spain (Art. 37 ROTT and Art. 12.4 of Order 24/08/1999), Portugal and Slovenia seem to satisfy themselves with a simple reference to the fact that the person who should be of good repute is actually and effectively the one in charge of the daily operations of the company. Austria has qualified the latter to mean that this person should, at least, devote 20 hours of

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<sup>5</sup> As for the Transport Tribunal Rules 2000, please refer to Statutory instruments, 2000, No. 3226.

effective work per week to the firm.<sup>6</sup> Hungary makes a distinction between those persons with continuous responsibility (vezető) and those with effective responsibility (szakmai irányító). One of them should comply with the good repute requirement. France, on the other extreme, explicitly extends it to a wide range of people. Article 2 (1) of the Decree 99-752 defines precisely which persons must satisfy the condition of good repute:

- the independent entrepreneur with a one-man undertaking;
- the partners and directors of a general partnership;
- the managing partners and directors of a limited partnership;
- the directors of a private limited liability company;
- the president of the administrative board (*conseil d'administration*), members of the board and general directors of a limited liability company (*société anonyme*);
- the chairman and directors of a simplified joint stock company; and
- the natural persons who effectively and continuously manage the transport or rental activities of the undertaking.

The same manner of detail in the definition of the subjects of good repute is applied by Sweden: if the applicant is a natural person, then his/her good repute is examined. As far as legal entities or undertakings established abroad are concerned, the criteria mentioned in Section 5(1) of the Commercial Transport Act (1998: 490) are applicable to “traffic managers” (Section 6(1)). These are one or several persons designated by the relevant legal entity who bear special responsibility for ensuring that the transport operations are conducted in accordance with the provisions of the CTA, sound business practices and the relevant road safety rules (Section 3). In practice, the persons involved are mainly the managing director of a company or cooperative, every partner in a partnership, or the manager of the Swedish subsidiary of a company which has its principal place of business in a foreign country (Section 4). Section 4 provides for the possibility, in exceptional cases, of designating someone other than the seven persons mentioned in the section as “traffic managers” of a legal entity. Basically, this means a person lower in the hierarchy of the undertaking who represents the real “power” as far as the transport operations of an undertaking are concerned. The scope of Section 3 has been further extended in Sections 6(2) and (3). These provide – as far as legal entities incorporated under private law and “business persons” based abroad are concerned – that the good repute requirement is also applicable to third parties who on the grounds of their own ties with the undertaking or its management board or on the grounds of their close ties with the managing director or his deputy and in the context of the Insolvency Act (1987: 672) take an interest in the activities of the undertaking. Examples of the latter category include spouses and blood relatives.

The bulk of the Member States, however, remain satisfied with a concise enumeration of the subjects of good repute: for legal persons, all (transport) managers, directors and shareholders having a managing position, the statutory body, its members or its responsible representatives

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<sup>6</sup> This means that Austrian law authorises transport managers to undertake their activities in maximum two transport companies at the same time.

(if appointed) shall meet the requirement of good repute. For natural persons, the physical person himself, as well as his representatives (if appointed), shall meet the criterion.

In Denmark, it is possible to revoke a license if a person acting on behalf of the transport operator (e.g. a driver) no longer satisfies the good repute requirement.

#### 2.1.4 Transposition of the good repute requirement

##### *Minimalist and maximalist approaches to transposition*

The Directive 96/26/EC (as amended) lays down the conditions for the good repute requirement in its articles 2 to 6. These conditions are that the applicant:

- Has not been convicted of serious criminal offences, including offences of a commercial nature;
- Has not been declared unfit to pursue the occupation under any rules in force concerning the pay and employment conditions in the profession, or road haulage or road passenger transport, as appropriate, in particular the rules relating to driver's driving and rest periods, environmental protection, as well as the other rules relating to professional liability.

The Directive leaves it to the Member States to determine whether or not those conditions are fulfilled. It is in the practical interpretation and application of the conditions rather than in their legal transposition where huge discrepancies are to be found between the Member States. This is not to say that the national laws transposing the Directive are all up to date or complete. France, Hungary and Italy, for example, have not (yet) transposed the condition of environmental protection which was introduced by Directive 98/76/EC. Perhaps the lack of any explicit reference in the relevant legislation obscures the fact that this element has been covered somehow somewhere, but this situation does not help to clarify the legal position of the applicant.

Some countries have chosen a more or less precise definition of the offences. For example, in Spain a combined reading of article 44 LOTT<sup>7</sup>, articles 37-39 ROTT<sup>8</sup> and articles 12, 14 and 15 of Order 24/08/1999<sup>9</sup> offers a very complete and detailed picture of all the offences which, in one form or the other, can lead to the loss of good repute (see country report). This results in a situation in which the requirement is put into practice as it is described in the law. Sweden, on the other hand, has opted for a broad definition of the offences which can lead to the loss of good repute, thereby leaving wide interpretative powers to its administrative authorities.

In reviewing the good repute of the person involved, the relevant supervisory authority in Sweden will attach importance to the applicant's "ability and willingness" to fulfil his

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<sup>7</sup> Ley de Ordenación de los Transportes Terrestres (Law for Land Transport Planning)

<sup>8</sup> Reglamento de la Ley de Ordenación de los Transportes Terrestres" (Code of the Law for Land Transport Planning, regulating both freight and passenger transport)

<sup>9</sup> amendments on LOTT on issuing licenses and CPC

obligations vis-à-vis the general public, the question of whether he abides by the law as well as other relevant circumstances (Section 11(1)). In accordance with Section 11(2), the good-repute requirement is not satisfied if the applicant has been convicted of or has had a civil judgment rendered against him in respect of:

1. a serious criminal offence, including financial offences;
2. a serious or repeated violation of:
  - (a) the CTA or regulations issued pursuant to the CTA;
  - (b) the statutes or regulations concerning traffic and road transport, in particular the provisions relating to driving and rest periods, the dimensions and weights of vehicles, the equipment and condition of vehicles, road safety, or environmental protection; or
  - (c) the provisions relating to pay and employment conditions in the relevant industry.

### ***Seriousness of the offence***

Like Sweden, most Member States have opted to leave the precise interpretation of the term “*serious*” offences to practice instead of defining it in the law; criminal offences concerning the violation of the physical integrity of others (murder, rape etc.) and financial offences (such as accounting offences and tax evasion) usually “counting” earlier and more heavily against the applicant or holder of a license than the offences and contraventions mentioned in, for example, the Swedish Sections 11(2), sub (2). Nevertheless, serious violations of the rules mentioned under (2) can also immediately result in the loss of good repute. While Ireland is toying with the idea of establishing guidelines that should somehow qualify the seriousness of an offence, in the UK, a person is deemed not to be of good repute if he has been convicted for one serious offence, or if he has been convicted for contraventions against road transport regulations. A “serious” offence is defined as:

any offence under the law of any part of the United Kingdom or under the law of a country or territory outside the UK subject to a prison sentence for a period exceeding three months, a fine exceeding level 4 on the standard scale, community service for more than 60 hours, and, in the event of an offence committed under the law of a country or a territory outside the UK, any sentence corresponding with the three above-mentioned punishments. A road transport contravention means any road transport offence under the law of any part of the UK, offences in respect of legislation concerning driving and rest periods, weights and dimensions of vehicles, traffic and vehicle safety, protection of the environment, professional liability and any corresponding offence under the law of a country or territory outside the UK Goods Vehicles Act, Schedule 3, Section 4.

The standard gliding scale of penalties thus serves as an easily amendable benchmark to separate the serious from the less serious offences. The same classification system, albeit with

different thresholds, exists in, for example, Slovenia, Portugal, Spain and Cyprus.<sup>10</sup> In imitation of Article 3(2)(a) and (c) of Directive 96/26/EC, Belgium makes a distinction between convictions for offences against transport rules (driving and rest periods, loading, traffic rules, safety, pay and employment conditions etc.) and general convictions. In determining whether an offence is to be considered as “serious”, each category is subject to different criteria. Belgium uses a double limit for both categories of convictions.

Convictions above the upper limit are intrinsically serious, which means that the transport operator is determined not to be of good repute. Convictions below the lower limit are intrinsically non-serious, which means that the transport operator is considered as being of good repute. Convictions between the two limits are referred to the Road Haulage Commission for review purposes. This Commission is entrusted with the task of rendering well-argued advice to the Minister of Transport, who will render the final decision. Belgium applies the inflation-adjustment increase system to fines. The legislation concerning these increases permits the periodic adjustment of criminal fines due to inflation without the need to amend any law.

**Table 2.2** *Convictions in Belgium*

1° Convictions against transport rules	2° General convictions
> € 2,000 or 4 months: intrinsically serious → refusal or withdrawal of the licence	> € 4,000 or 6 months: intrinsically serious → refusal or withdrawal of the licence
> € 1,000 or 3 months: referral to the Road Haulage Commission for review	> € 2,000 or 3 months: referral to the Road Haulage Commission for review
< or = € 1,000 or 3 months: intrinsically non-serious → transport operator is designated as being of good repute	< or = € 2,000 or 3 months: intrinsically non-serious → transport operator is designated as being of good repute

Austria also forms an interesting example, as, under the relevant provisions of the GüterbefG (para. 5/2) and the BZGü-Vo (para. 15/1), an applicant or license holder is deemed not to be of good repute if he has been convicted to a term of imprisonment of three months or has to pay a fine of more than 180 so-called “day rates”. A “day rate” is the denomination of fines imposed according to the offence and the income level of the sanctioned person. “Day rates” can go from 2 to 327 EUR.

### ***Extra conditions***

Whereas the “*repetition*” criterion was abrogated with the adoption of Directive 98/76/EC, the notion was kept in, *inter alia*, Hungarian, Finnish, Italian, Czech and French legislation to offer the supervisory authorities of those countries an extra element of discretion in determining whether, depending on the circumstances, a breach of law is sufficiently serious to amount to the loss of good repute. Article 35 of the Czech Road Transport Act provides an exemplary model: it prescribes that more than two penalties imposed for a long list of offences, will be

<sup>10</sup> See the respective country reports.

considered to constitute a serious offence.<sup>11</sup> Evidently, certain periods are attached to these calculations in order to rehabilitate an applicant or license holder (apart from the general rule that convictions are “spent” when the time of punishment has lapsed), but those periods vary wildly from one Member State to the next.

In Slovenia, like in France, a short period of two years is attached to the repetition of, *inter alia*, employment, competition and road safety offences. In Finland, this is even shorter: at least 3 times during the past year. Spain applies the ratio of at least 5 offences specific to the profession and as listed in article 140 LOTT<sup>12</sup> in a period of 1 year. In Poland and Hungary, like in most countries, the normal rehabilitation period of 5 years is applied. In Cyprus, persons convicted for the crime of intentional murder are not rehabilitated at all. For robbery, burglary, theft, forgery, deceit and any wrongful act under the drugs law, a period of 10 years is observed.

Other restrictive elements, extra to those introduced by the Directive, can be found in the Italian legislation – which lists “national heritage” among the serious offences – and in the Lithuanian legislation – which, likewise, puts financial crimes at the same level as serious criminal offences. In the United Kingdom, every operator who wants to obtain/keep a licence has to comply with the condition that he has an “operator’s centre” at his disposal, where vehicles that are not in use are stored (Goods Vehicles (Licensing of Operators) Act 1995). This centre must meet all environmental requirements and the local construction plan. Moreover, transport operators must ensure that their vehicles remain suitable and serviceable by providing for their own maintenance infrastructure or by making arrangements with a local garage for that purpose. Besides, transport operators must draw up proper rules to ensure that legislation relating to driving and rest periods is honoured.

## **2.2 Practice: implementation and enforcement of the good repute requirement**

### **2.2.1 Application**

For a proper application of the requirements of the Directive the Member States have to rely on their respective administrations. National administrations enjoy more or less discretion depending on the powers attributed to them in general as well as the room for manoeuvring which is left for them in the national legislation by which the Directive is transposed. When assessing their work in terms of application and enforcement, three main problems stick out. The first problem relates to the structure of each national administrative system and its decision-making processes with regard to good repute. The second problem concerns the transmission of information when implementation and enforcement are dissociated in the administration’s functioning. The third difficulty is linked to the sanction mechanisms which are put in place to ensure the Directive’s enforcement. We will consider each of these issues below.

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<sup>11</sup> The list is reproduced in note 2 of the country report for the Czech Republic.

<sup>12</sup> Ley de Ordenación de los Transportes Terrestres (Law for Land Transport Planning)

### *Structure of the administration*

Depending on the country, the administration in charge of the application of the Directive will be centralized or decentralized. This is due in the first place to the fact that some Member States are of a federal type (e.g. Germany, Belgium, the UK and, to a certain extent Spain) but it is also the result of national policies of decentralisation. Decentralization has both positive and negative sides. In Germany the work of the administration is divided between the Länder, and within each Land between the local authorities that issue the licenses. That division of work makes the management of the system difficult. As a result, no licenses have been withdrawn on the basis of lack of good repute in Germany. That situation is characterised by a race to the bottom, where the Länder proposing the most lenient rules or practices attract more companies. This policy is accentuated by the strong motivation of the regions to preserve jobs within their territories. That situation is of great concern when one thinks that Germany is the biggest domestic market for transport within the EU and a major transit country.

On the contrary, the Spanish experience proves that decentralization does not have to be problematic if the competences are well defined and if there is a national policy. Indeed, one central Ministry of Transport (MFOM) provides the uniform legislative framework for a national unified road transport market, and 17 Regional Transport Administrations (RTA's). The General Directorate for Road Transport of MFOM, is the central body in charge of road transport legislation development, application and enforcement. It grants a uniform legislation for the national market, providing the necessary conditions for a unified transport market, despite the geographical localisation of the transport firm. There are no major conflicts between administrations because Regional Inspectorates have regional powers (monitoring of undertakings having their activity within the region's limits or of firms holding a national transport licenses located within their jurisdiction) and the MFOM Inspectorate has nation-wide powers (monitoring those firms holding a national or international transport license and with a nation-wide activity or of very large size). The 17 Regional Transport Administrations, depending on each Regional Government, are the executive bodies for transport legislation within their territories. The information concerning transport firms and complementary activities firms is centralised in the National Register of Transport Activities where the MFOM and the RTA's share information. The licensing of transport activities is granted by the 17 RTA's, both for national and international transport licenses (goods and passengers).

The number of competent administrations is also of significant interest. Practice shows that the system is more effective when there is only one body involved. It reduces backlogs and the scrutiny is more accurate. In Germany, France and Luxemburg, several ministries and administrations are involved. Germany reaches the edge of rationality with 600 road transport authorities. Moreover, the application of the rules differs from one Land to another.

### *Transmission of information*

To confirm that the applicant or licence holder satisfies the good repute requirement, the administration needs to have access to information about his or her past offences. Here again,

there are disparities in the procedure. Some countries proceed by requiring applicants to produce a certificate or declaration of good conduct/repute or to sign a so-called “consent to repute form” while others find the information directly through an internal database (criminal record) that is available to the national administration.

The problem with the use of criminal records is that it does not mention all the offences described in the Directive. Often, it only states the most serious of offences or only refers to crimes (e.g. Portugal). Therefore, using criminal records does not necessarily lead to a good application of the Directive.

Other countries have an external verification procedure. The applicant has to present a declaration/certificate signed by the incumbent person stating that he/she complies with the conditions (Spain). The problem with the declaration/certificate is that it is time-consuming. Indeed, it is sometimes necessary to visit different parts of the administration at different places (Belgium).

The transmission of information also meets problems due to the existence of privacy regulations. The privacy regulations in Germany are so strict that they jeopardize a good exchange of data on non-compliance between, for example, the BAG (Bundesamt für Güterverkehr, the German Ministry of road haulage) and the Länder (e.g. the Länder only inform each other on the “black sheep”, and even then only on an ad hoc basis). The same applies to Ireland where the applicants have to sign a so-called “consent to repute forms” for the undertaking, the transport manager, the directors, partners, etc. The Department of Transport can then send these on to Gardai (the police) to check whether the applicants have any relevant convictions. Thus, the “consent” forms are, de facto, a circumvention of the data protection act: an application will not be considered unless the applicant has consented to the fact that the Department of Transport can check the central database held by the police. This is not done in all cases but randomly in approximately 20% of haulage and currently all passenger operators, as well as in those cases where offences have been brought to the Road Haulage Division’s attention by transport officers (= Road Haulage Enforcement Section), the police, or counterparts from other EU Member States (e.g. from VOSA<sup>13</sup> in the UK). The consent to repute is only valid for 6 months after it has been signed and must be requested again during the 5 years of the currency of the license.

In general, the central or the regional governments will be assisted by other bodies such as the police forces or other inspectorates. The sharing of information between those different bodies is necessary for the licensing administration to be aware of new infractions committed by the license holder. For example, in the UK, the Traffic Commissioners are assisted in their task by the vehicles inspectorate which have the power to stop and check vehicles at the side of the road. In France the police and the transport labour inspectorates assist the Direction Régionales and the Directions Départementales de l’équipement. The Spanish system is characterised by a

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<sup>13</sup> Vehicle & Operator Services Agency

close collaboration between the public bodies involved at all levels of the administrative side of the industry. This is due to the fact that competences between the central Ministry of Transport and Public Works (MFOM) and the 17 Regional Transport Administrations are well-defined. Also the collaboration of the agencies in charge of law enforcement is fairly structured: the collaboration between the RTAs (Spanish Regional Transport Administration) and MFOM inspectorates is good and the contact between the Guardia Civil (main road police), the Ministry of Internal Affairs (through the General Directorate for Road Traffic) and the MFOM is constant. There is a resident liaison officer from the Guardia Civil at the MFOM and the MFOM organises continuous training courses for the Guardia Civil in order to have a sufficient number of specialised transport officers on the road.

Germany, on the contrary, experiences severe difficulties at this level due to its federalist division. The BAG (Bundesamt für Güterverkehr) only informs local authorities in case of repeated severe infractions confirmed in administrative/penal procedures. In that case the BAG raises the issue of reliability with the local authority. There is, however, no structure in the transmission of information about offences and other license-related issues from the BAG in the direction of local authorities and vice versa. A noteworthy element of German practice is that apart from official authorities like the BAG, associations are also consulted in case of applications for licenses: they can express their opinion to the local authority regarding the applicant.

Member States' authorities have faced difficulties in determining whether a professional transport operator has been convicted abroad. This is partly due to the poor exchange of information between EU countries in the area of criminal judgments, and leads to a significant gap in the enforcement of the Directive's requirements.

#### ***Discretionary powers of the administration***

Article 6 of Directive 96/26/EC provides that decisions taken by the competent authorities of the Member States and entailing the rejection of an application for admission to the occupation of road transport operator shall state the grounds on which they are based. However, the Directive does not state how the decision is to be made. It is up to the Member State to delegate the relevant powers to their administration and to determine their scope. Large discrepancies can therefore occur if one compares, for example, the margins of each country's licensing bodies' discretion to appreciate whether or not an applicant complies with the good repute requirement.

The UK is one of the few EU Member States that does not impose fixed penalties on offenders who have committed road transport offences. It is up to each Traffic Commissioner (TC) to decide what level of sanctions should be applied in each case. As a general rule, the TC takes all possible information into consideration in determining whether the applicant satisfies the good repute requirement, but he considers in particular any material evidence – mainly relevant convictions of the individual (natural person), undertaking (legal entity), managers, employees

(including drivers) and any intermediaries – as well as all relevant data about prior behaviour that he considers relevant to a person's fitness to hold a license. The TC thus holds a double and very wide discretionary power: first with regard to the appreciation of relevant information, and second with regard to the choice of penalties to be imposed.

In countries like Belgium, the Czech Republic, Cyprus, Spain or France, the administrations do not have such a discretionary power. They have to make use of the list of offences described by the national law. In the case of France:

Not having been entered on the convictions record B2 with prohibition from the exercise of a commercial profession;  
Having been convicted of not more than one offence against penal or social legislation inscribed on convictions record B2 (Art. 2 Decree 99-752).

The French text is so detailed that there is no discretion left to the administration. That system ensures a proper enforcement of the Directive if the list of offences is complete and if the national judges apply the law. If the discretionary power allows a more flexible approach, it does not ensure that a strict approach is taken.

### 2.2.2 Enforcement

The work of the national administrative authorities is the basis for a good management of the system. That is why it is necessary to have an active and well-trained body of civil servants. The enforcement of the conditions enounced by the Directive is also related to the problem of transposition. Indeed, if the country has satisfactorily transposed the Directive but if there is no effective enforcement then there is no real implementation of the Directive. A uniform and effective enforcement of transport rules is necessary to guarantee a fair competition between the Member States. It relies on the work of the judiciary and thus on its adequate training on transport rules. Because transport offences are part of the good repute test, it is important that correct weight be applied to those particular infractions. That is why it is worth having a look at the way tribunals of the EU Member States apply transport law. Below, the *ex ante* and *ex post* control of the fulfilment of the Directive's requirements will be explored.

#### ***Ex ante control***

National judges often lack training on transport law (e.g. in Ireland). Offences on transport law are not considered important or are often minimised by the judiciary. The problem is that, in most Member States, there are almost no legal specialists in this field, and – perhaps even worse – that there exists no “independent” specialized transport court or tribunal for lodging appeals with (the UK, with its Transport Tribunal, is a notable example). The result of this situation is that there is generally a very low level of sanctions in Europe, especially in the new Member States (e.g. Poland).

Moreover, fines which are issued and collected on the spot (e.g. at road-side checks) are usually not registered and thus not taken into account when assessing the good repute of a candidate. Often, offences against employment conditions, rests and driving times, weight and dimensions of the vehicles simply get fined, consequently, these offences are not brought before the courts and therefore do not play any role in the granting of the license. This means that only sentences ordered by courts are considered by the licensing bodies.

These problems of enforcement of the Directive generally result in very few withdrawals of licenses. In France, of over the 9,700 checks undertaken in 2001 by the land transport inspectors and the transport labour inspectors, 232 led to withdrawals and 633 to cancellations of the Community license. These figures have steadily increased since 1966. In the new Member States, the situation is even more worrying. In Poland only 24 licenses were withdrawn in 2002. Instead, the country issues a lot of fines.

It is not uncommon that transport undertakings fraudulently organise bankruptcy and several weeks later re-establish their transport activities (so-called “phoenix companies”). This problem was especially raised in Ireland and Belgium. Despite the fact that this practice of fraudulent bankruptcy is regulated in Belgian law, it is seldom sanctioned in practice. The Irish and Belgian authorities should intervene more often when there are indications of such fraudulent use of bankruptcy laws, but simply do not have the resources necessary to tackle the problem.

### ***Ex post control***

According to article 10a of the Directive 96/26/EC, “Member States shall provide for systems of penalties for infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive”.

There is generally a very weak use of sanctions concerning the application of the Directive and there are some discrepancies between the law and the practice. Countries often opt for the lower level of sanction; some countries even apply only administrative sanctions (e.g. Italy). In Ireland, only 3 levels of sanctions exist – refusal of license, suspension of license or revocation of license. Moreover, the requirement is not very effectively applied in practice. In only a few cases have licenses been refused or withdrawn, and, so far, no licenses have been revoked. In one case where renewal of a license was refused on the basis of failure to meet the requirement of good repute because of a large degree of duplication in (tachograph) offences in a short period of time, the court overturned the decision on the basis that an operator is entitled to his livelihood.

France, on the other hand, has established a complex web of administrative and penal sanctions. The French Decree n° 99-752 transposing the Directive lays down the administrative and penal sanctions incurred for failure to meet the requirements which originate from the Directive.

***Administrative sanctions***

Whenever it is found that there has been an infringement of the rules concerning transport, working conditions and safety, a copy of the relevant facts constituting the infringement is sent to the prefect of the region where the undertaking's details have been entered into the register of road haulage operators and rental firms. The sanctions imposed by the prefect range from provisional or permanent suspension of the administrative authorisations held by the undertaking to a definite suspension which can only take place if there has already been a decision to suspend the authorisations within the previous five years. When the Prefect finds that an infringement which amounts to a misdemeanour (as cited in the decree) has occurred after at least one prior infringement of the same nature, he can order that one or more of the vehicles belonging to the undertaking be kept off the roads for a period of at least three months, at the cost of the undertaking. However, decisions to suspend authorisations or to ban vehicles from the road are taken on the advice of the *Commission des sanctions administratives* (administrative sanctions committee).

***Penal sanctions******Misdemeanours (tribunal correctionnel)***

An undertaking which owns the vehicle or an undertaking which uses one for the illegal exercise of the occupation may be prosecuted if it appears from a check that the one or the other is not authorised to carry out transport activities or the rental of vehicles. This offence is punishable with a period of imprisonment of a maximum of one year and a fine of up to €15,000. If he cannot show residence in France, the driver can be required to deposit a sum of up to €2,000.

***Petty offences (police court)***

If the road haulage operator (and/or rental firm), whether resident or not, is not in a position to present the administrative transport authorisation corresponding to the type of work and trip in which he is engaged, that operator is subject to a fine for petty offences of the 5<sup>th</sup> Category (up to € 1,500). This infringement occurs in particular when the administrative transport authorisation is not with the vehicle, is incomplete, is not accompanied by the additional documents required, or is presented after its valid period of use.

In short, one can see that France makes use of the fine only for minor offences. As a matter of fact, the transport offences appear on the criminal record and can be held against the license holder, who may see his license be withdrawn by the prefect and the *Commission Consultative Régionale*.

***Rehabilitation***

In accordance with Article 3(2) of Directive 96/26/EC, the good-repute requirement is not satisfied as long as there has not been rehabilitation or a measure having a similar effect in accordance with the national rules in force. Rehabilitation is not always present in the national laws transposing the Directive. No specific rules exist in Germany or in the Netherlands for

instance. Belgian legislation does not provide for rehabilitation measures other than the general rule that a convict is deemed to be rehabilitated when his sentence has been “spent”. Otherwise, according to Article 621 of the Belgian Criminal Procedural Code, the person concerned is allowed to lodge an appeal for mercy. In the Netherlands and France the principle of rehabilitation has been implemented in practice by means of the rule that the transport operator cannot apply for a new licence until two years have lapsed since the withdrawal of the licence. Other specific rehabilitation periods for certain types of offences have already been discussed above. Generally, however, the applicant can try to obtain a license again 5 years after the withdrawal of his license.

The general absence of a transparent definition and interpretation of the concept of rehabilitation, leads to legal uncertainty for the undertakings because they do not know when they will be able to apply again for the license.

### *Appeal*

The Member States usually make use of their Administrative Courts (which are not or poorly specialised in transport issues) for appeals concerning refusal or withdrawal of licenses. In Germany, if a license is rejected, the applicant has the possibility to appeal at “Verwaltungsgericht” (constitutional court). In Sweden the administrative courts are competent for the appeal against decisions relating to the granting, revision, withdrawal of a license, or the attachment of conditions. In Ireland, if an operator is adjudged not to fulfill the requirement of good repute, he will be notified of Road Haulage Division’s intention to refuse/revoke his license and given an opportunity to appeal against this decision. If no appeal is lodged his license stands revoked. If an appeal is lodged, a person other than the officer who made the original submission reviews the case in light of the appeal and makes a decision based on the facts and the law. If the appeal is allowed the license is granted/stands. If the decision stands, the operator has the right of appeal to the district court within 7 days of that decision and if the court upholds the decision to refuse/withdraw license, the operator is no longer allowed to operate under the law. If the court overturns the decision, the license must be granted/returned to the operator. Unfortunately, here again, we are confronted with the rather low level of specialization of legal experts in this field. Indeed, the operator is represented by a solicitor (appointed by the CSSO, the Chief of State’s Solicitors Office), but the problem is that there are almost no legal specialists in this field, and – perhaps even worse – that there exists no “independent” specialized transport court or tribunal for lodging appeals with. Transport rules are not well understood by the national judges. The judiciary often considers road transport operator’s offences of minor importance compared to other offences.

### 3 FINANCIAL STANDING

#### 3.1 Theory: transposition of the financial standing requirement into national law

##### 3.1.1 General remarks and institutions involved

The Financial Standing requirement is presented in the EC legislation in a very strait forward definition: road haulage firms must have available capital and reserves of, at least, €9.000 when operating one vehicle and €5.000 for each additional vehicle. With one exception, the €5.000 figure is used as a minimum value for all the Countries, having introduced some of them higher monetary thresholds to the €9.000 and even additional conditions in order to strengthen the requirement. The majority of the surveyed Countries (14 out of a total of 21) have introduced the capital and reserves quantities as presented in the 96/26/EC.

The institutional framework for the transposition and application of the Financial Standing requirement is the same as for the other two requirements. There are no specific public bodies or institutions with powers allocated for the transposition, application or control of the requirement solely, separated from the Good Repute and Professional Competence. In general, the National Transport Authorities<sup>14</sup> are the bodies involved in the application and primary stages of the enforcement process, counting with the support of other public bodies for verification duties such as tax and Social Security agencies or Ministries and police agencies and court system (in the case of enforcement).

As previously referred, the participation of other public agencies is often related to the establishment of additional requirements to those presented in the Directive. Such requirements can be the obligation of having updated payments with any public body (Ministry of Social Security and Ministry of Finance), as in Denmark, where firms have a limit for debts with any public authority of €6.700.

This involvement of several public agencies requires a high level of institutional collaboration. A good example can be taken from Spain, where all the information concerning transport firms is centralised in the General Register of Road Operators and Transport Complementary Activities. This “list of firms” integrates financial, tax and social security information; crossing those data supports a close and continuously updated surveillance of the financial status of haulage firms.

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<sup>14</sup> In the form of Ministries, General Directorates or decentralised bodies (regional or local transport authorities).

In several Member States the participation of some private parties are specific to this requirement, as often financial institutions play a key role in the practical application and assessment of the requirement. These external parties are independent financial institutions, private auditors and banks that assess and certify the financial situation of transport firms through procedures specified in the national legislation.

The Professional Associations may also play a role as external institutions involved in the assessment of the Financial Standing requirement, as in Austria, where the cooperation between the Road Haulage Association and the administration is very close. The Austrian Road Haulage Association provides support to the nine Regional Transport Administrations (RTAs) in assessing the compliance of new transport firms with the Financial Standing requirement. This is done through a “viability report” submitted to the RTAs by the professional association when the firm requests an operating licence. The professional association also assists firms that fail to comply with the financial requirements, providing support in the elaboration of financial viability plans<sup>15</sup>.

The following table presents, in a resumed way, the different institutions involved in the application of the financial standing requirement. Within the category “external support institutions” we include all private institutions with any kind of role that supports the verification procedures for Financial Standing. This means that the involvement of those institutions can go from providing documents used for the verification procedure (such as certificates or guarantees) to undertaking an external verification procedure themselves. For more precise information on the matter, complement the reading of this table with Table 3.2, at the end of paragraph 3.2.1).

**Table 3.1** *Institutions involved*

Country	Governmental verification institutions	External support institutions
Austria	Regional Transport Administrations (9) and Federal General Directorate for Road Transport	Transport Professional Association, banks and financial institutions
Belgium	Federal Road Transport Department	Banks and insurance companies
Cyprus	Road Transport Council	Banks and insurance companies
Czech Republic	National Transport Authority	Banks
Denmark	Road Safety and Transport Agency	Banks
Finland	Transport Administration	Banks, credit institutions, auditors and certified accountants
France	The several <i>Direction Régionale de L'équipement</i>	Banks

<sup>15</sup> This viability plan must be presented to the transport authorities by any firm that fails to comply with the financial standing requirement.

Country	Governmental verification institutions	External support institutions
Germany	Ministry of Finance	Social welfare institutions, professional associations, Inland tax office, municipal authorities
Greece	Local branches of the General Directorate for Transport	Banks and financial institutions
Hungary	General Inspectorate for Transport	Banks and financial institutions
Ireland	Road Haulage Division and Companies Registration Office	Accountant institution
Italy	Provincial Transport Administrations (106) and the provincial branches (106) of the National Register of Road Transport firms ( <i>Albo dei Autotrasportatori</i> )	Banks and financial institutions
Lithuania	State Road Transport Inspectorate	Banks
Luxemburg	Ministry of Trade and Ministry of Transport	Banks
Netherlands	Dutch Organisation for National and International Road Transport (NIWO)	Auditors
Poland	Licensing Department of the Ministry of Infrastructure	Banks and insurance companies
Portugal	General Directorate of Road Transport	Banks
Slovenia	Ministry of Transport, Chamber of Commerce and Chamber of Industry	Banks
Spain	National General Directorate for Road Transport, the Regional Transport Administrations (15) and the General Register of Road Operators and Complementary Activities	Banks and financial institutions
Sweden	The County Administrative Boards (21) of the Ministry of Industry, Employment and Communications	Banks
United Kingdom	Ministry of Environment, Transport and Regions	Banks

It is important to remark that in some countries the “external support institutions” such as banks or financial institutions have only an “on the paper” participation. This is due to the low interest of those private institutions in taking part in the financial standing assessment, being however its participation accepted by most national laws (through guarantees, insurances, reports, etc). The key problem is the degree of responsibility shared by the financial institutions in their role as external verification partner of the system. Unless forced through national additional dispositions to those in the EC Directives, the auditors, banks and other financial institutions have low interest in taking part in the assessment of the financial standing of transport firms.

### 3.1.2 Incomplete transposition (e.g. on the sum of the standing)

The assessments of the transposition status of the Financial Standing requirement cannot be easily separated from the other two requirements, as in general terms the Countries surveyed transposed the elements presented in the EC Directives jointly. Nevertheless, three different types of situations can be highlighted concerning incomplete transposition:

- The requirement is transposed and in force for international haulage, but not for firms undertaking national haulages, which is the case of Lithuania and most other CEE (the Czech Republic until the beginning of the present year);
- The requirement does not regulate the access to the market, which is the case of Italy.

The Italian case can be considered as a “transposition on the paper” only, since the access to the road haulage market is closed to new firms<sup>16</sup>. As the objective of that Directive is to provide the legal bases for the regulation of the access to a free market (which is not the case in Italy), the transposition of the EC Directive cannot be considered as completed.

In Lithuania national haulage companies are currently enjoying a transitory regime concerning the Financial Standing requirement. Only on the 1<sup>st</sup> of January 2007 onwards national haulage firms will have to comply with the same conditions as international road haulage firms. In similar terms, but previous to the 1<sup>st</sup> of January 2004, Czech national road haulage companies did not have to comply with the standards provided by the EC Regulations concerning Financial Standing. Nowadays, the practical transposition of this requirement can be considered as complete.

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<sup>16</sup> On the other hand, incumbent firms must comply with the minimum requirements imposed by the 96/26/EC.

### 3.1.3 Subjects of financial standing (what is included in the sum: bank account, assets, etc.)

**Art. 3.3.b, Council Directive 96/26 as amended:**

*For the purposes of assessing financial standing, the competent authority shall have information on: annual accounts of the undertaking, if any; funds available, including cash at bank, overdraft and loan facilities; any assets, including property, which are available to provide security for the undertaking; costs, including purchase costs or initial payment for vehicles, premises, plant and equipment and working capital.*

**Art. 3.3.c, Council Directive 96/26 as amended:**

*The undertaking must have available capital and reserves of at least € 9.000 when only one vehicle is used and at least € 5.000 for each additional vehicle.*

In general, the subjects of financial standing are not more detailed in the national legislation than in the Directive. Most of the Countries transposed into national legislation a translation of the list of subjects of Financial Standing provided by Directive 96/26/EC. Some examples of this “plain definition” are Spain, Portugal, Austria, Cyprus and Greece.

An important point to be addressed is that Directive 96/26/EC leaves a “door open” for different interpretations on which should be the financial items to be included as subject of financial standing, based on the texts of articles 3.3.b and 3.3.c. This creates remarkable differences in the practical financial conditions that the different governments demand from the firms, as Member States provide very similar lists of items to be used as indicators of financial standing (mostly those from the Directive) but differ largely on how the indicators should be interpreted and used<sup>17</sup>.

### 3.1.4 Definitions of financial standing

**Art. 3.3.a, Council Directive 96/26 as amended:**

*Appropriate financial standing shall consist in having available sufficient resources to ensure proper launching and proper administration of the undertaking.*

The definition provided by the Directive is quite wide and general. The most used option by the Member States is to translate into their national legislation the phrase “having available sufficient resources to ensure proper launching and proper administration”.

<sup>17</sup> This point will be further developed in the section “Practice: implementation and enforcement of the financial standing requirement”.

No important discrepancies were detected, as the sense of article 3.3.a is kept in the different national legislations.

### 3.1.5 Extra conditions laid down in the law

Some Member States developed extra conditions to those presented in the Directive (article 3.3.d), mainly related to the involvement of auditors in the external verification process, limits to debts with public bodies and compulsory bank deposits.

#### *Auditor's involvement*

The involvement of auditors is a widespread practice between the Member States in the external verification process. However, most of the times this involvement is comparable to that of financial institutions such as banks or insurance companies. Some Countries use small variations of the Directive's text:

***Art. 3.3.d, Council Directive 96/26 as amended:***

*The competent authority may accept or require, by way of proof, the confirmation or assurance provided by a bank or other qualified institution. Such confirmation or assurance may be given by a bank guarantee, possibly in the form of a pledge or security or by any other similar means.*

The real involvement of auditors presents little difference to other “properly qualified institution”, as the Directive and most legislation of the Member States leave space for a series of financial guarantees or certificates (“in the form of a pledge or security or by any other similar means”). Thus, in most Countries the auditor's report is not an additional condition, but an alternative way of proof between the several options admitted as external verification procedures. This issue is further developed in point 3.2.1 of this report.

#### *Debts with public bodies*

Several Member States present the explicit extra condition of keeping update payments in tax, social security, insurance or transport matters concerning public bodies. However, the definition of this extra condition is blurred in some cases. As a resume, it can be said that the detail of the definitions and debt amounts involved vary substantially between countries.

In Denmark, the national legislation provides a very specific definition of the requirement, setting monetary limits for the debts with public bodies and agencies. The limit for “being of financial standing” lies in € 6.700 of debt for applicants to a transport licence, being the applicant rejected until all payments are fulfilled. This is applied also to the person in charge and that “continuously and effectively” manages the daily operations of the firm. Concerning operating firms, the transport licence is revoked when the enterprise (or the firm owner) has more that €13.500 of debt with public bodies.

In Germany, all applicant firms for a transport licence must present a “clean record” concerning debts with public bodies. When applying or renewing the transport licences, firms must submit certificates from the tax authorities, social security and the occupational accident insurance fund stating that all payments are updated.

Ireland, Spain and Hungary present the same kind of extra condition in very similar terms to those in Germany: all debts with public bodies must be duly fulfilled before allowing firms to renew the transport licence or before a licence is awarded to a new entrant in the transport market.

### ***Compulsory bank deposit***

Only two countries adopted this kind of measure as compulsory, Luxemburg and the United Kingdom. In both cases the amount of the bank deposit will be calculated on the bases of the €9.000 and €5.000 required per truck used for road haulage activities. In both cases the funds must be kept in bank deposit for the duration of the transport activity, being this deposit time extended in the case of Luxemburg for 6 additional months<sup>18</sup>. Both in the UK and Luxemburg the professional associations oppose the measure, as the bank deposits are immobilised funds that cannot be used for the daily operations of the firm.

Other countries accept the bank deposit as another means of proof of financial standing. These countries are Cyprus, Finland and Hungary. It is important to remark that this instrument is hardly used in these countries due to the availability of others that allow firms to show compliance with the requirement without immobilising funds.

The Spanish legislation is somehow in between the above mentioned two situations, depending of the financial situation of the firm. In a situation of compliance with the financial standing requirement, the legislation accepts bank deposit as a mean of proof amongst others. On the other hand, when a firm does not comply with the requirement or its financial situation suggests that it will not, the transport administration might require from the firm financial guarantees from banks and even a compulsory bank deposit (in the amount of the minimum assets) as a further guarantee for creditors.

### ***Other extra conditions***

Spain, Hungary and Italy present in their legislations specific extra conditions to those introduced in the Directives. The Spanish legislation includes a limit in the maximum age of trucks. This limit is set in 2 years for firms with international or national transport licences and 6 years for regional or local transport licences. The main purpose of the limit is to ensure that firms have an additional financial asset, as trucks fulfilling those conditions have a quite high market value.

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<sup>18</sup> This measure was taken in order to provide further guarantee to potential creditors after the finalisation of the activity.

Hungarian legislation chooses a reinforcement of the capital of transport firms and sets an additional condition concerning the financial items used for the evaluation of the “capital and reserves”. At any time, the own capital of the firm must be at least 50% of its available funds.

Finally, Italian haulage firms have the obligation of reporting to the Transport Authorities the non-fulfilment of the financial standing requirements. This system includes a sanction system in the case the firm fails to report non-compliance, with fines between €1.500 and €4.500<sup>19</sup>. This condition is not aimed at the reinforcement of the financial stability of the firm, but at the strengthening of the monitoring capabilities of the transport administrations.

### **3.2 Practice: implementation and enforcement of the financial standing requirement**

#### **3.2.1 Application**

##### *Interpretation of “available capital and reserves”*

The key issue under the differences between the Member States’ legislation is the interpretation of what can be considered as “available capital and reserves”. Some countries include all assets as “available”, being a more strict interpretation than from countries considering “available capital” only some current assets as bank accounts and cash.

Most Countries follow the “soft interpretation” on what should be “available capital and reserves”: all assets used by the firm for undertaking its activity (premises, plant, trucks and equipment) as well as any current assets (cash and bank accounts, overdraft and loan facilities, etc). The analysis of the firm’s annual accounts is in most cases the way that transport administrations assess the total value of those financial items. In some cases, the administrations follow another kind of complementary indicators. For instance, Poland and Cyprus accept as indicator of the trucks’ value the amount of their insurance policies, and Spain demands a maximum age for the trucks used in the starting up of the firm’s activity as further guarantee of the value of the assets.

On the other hand, a few countries follow a “hard interpretation” on the financial items to be used as indicators for the “available capital and reserves”. Only some current assets are considered as available, those with a higher liquidity such as cash and accounts. According to this, the UK and Luxemburg require from transport firms a minimum level of bank deposits in the amounts requested by each national legislation<sup>20</sup>. It is arguable that this interpretation

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<sup>19</sup> The fines are exclusively related to the lack of reporting the situation, not to the non-compliance “per se”. Firms have 3 working days to report the non-compliance.

<sup>20</sup> 9.000€ for the first vehicle and 5.000€ for the following, in both countries.

reduces largely the capacity to manoeuvre of firms, as these funds must be kept “available as a security” at any time, and cannot be used in the daily operations of the firms<sup>21</sup>.

These different interpretations of “available capital and reserves” may have two important consequences in the European road haulage sector, derived from the use of the compulsory deposit:

- A difference in treatment across countries that can create a competitiveness gap between transport firms of different Member States in the context of a unique transport market. The compulsory bank deposit can be considered as an additional fixed cost. This cost is not born by firms from other countries that have a larger capacity of managing their financial resources. Furthermore, firms under this system have lower manoeuvring capacity for the management than those that enjoy less restrictive systems;
- The systems chosen by each country can determine the type of companies composing the haulage sector, as the compulsory deposit is a more difficult condition to be fulfilled by small firms. Some transport officials interviewed pointed at the fact that, when transposing the Directive, the option of demanding a bank deposit as financial guarantee was considered. This was the case of Austria and Spain, where finally the deposit was not introduced as it was considered that most of the smaller companies simply would not be able to raise the needed amount.

Also Spain considers the alternative of the compulsory bank deposit, but only in situations where the capacity of the firm to fulfil its obligations with creditors is in jeopardy. Then, the Transport Administration requires from the firm a bank deposit as further guarantee for the payment of debts, jointly with an adequate “viability plan”.

### ***Minimum capital requirements***

The minimum capital requirements were transposed and applied by most Member States as presented in the Directive. However, some examples of deviations of those figures can be highlighted: Finland, Italy and Portugal.

Finnish law provides a different minimum threshold for capital and reserves from those provided by the Directive. The minimum threshold for the first vehicle used was set at €10.000, while for each subsequent vehicle another €10.000 is required.

The Italian example must be taken cautiously, due to the incomplete transposition of the Directive and the problems in terms of uniform application that administrative decentralisation process is creating. National legislation raised the minimum capital requirement to €50.000 at the constitution of the firm for the first truck in use, being €5.000 for the second and others. These figures must be maintained during the life span of the firm.

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<sup>21</sup> In fact, this is the main argument used by the professional associations against this practice that consider the compulsory deposit as an unnecessary financial burden.

Portugal also raised the minimum capital at the constitution of the firm to €50.000, but this figure is demanded regardless the number of trucks. In case the firm operates at least 10 trucks, the calculation is done using the €9.000 and €5.000 limits<sup>22</sup>. The €50.000 are only necessary at the constitution of the firm, as the inspections undertaken at the renewal of the transport licence (every 5 years) would require only minimum available resources of €9.000 for the first truck and €5.000 additional for the second and others.

### *External verification procedures*

Almost all Member States accept some kind of external verification procedure in the assessment of the financial standing. The number of systems used is large as well as the type of financial institutions involved: bank guarantee, insurance companies' certificates, viability reports from the professional associations, reports from auditors, etc. In most Member Countries these procedures are not compulsory and are used in practice as alternative means for the verification of the requirement. In the following paragraphs there are included several examples of external verification procedures worth to be highlighted.

An interesting example of external verification procedures is Austria. The Austrian Road Transport Professional Association (WKO) assumes a key role participating actively during the life span of firms in supporting the financial standing assessment. The WKO intervenes when new firms apply for a transport licence through a "viability report" of new undertakings. This report is issued by the regional divisions of the WKO and accompanies the other financial standing documents. The entry of the new firm is authorised by the transport administrations only in case the report qualifies the firm as having the necessary economic conditions to be "viable" in the transport market. Another situation where the WKO takes part is when firms pass through economic problems and the fulfilment of the financial standing requirement is not accomplished. In such cases, the firm must present a viability plan duly supported by the WKO showing an adequate financial performance in the near future.

Cyprus and the Czech Republic follow similar procedures for external verification of the financial standing requirement. More precisely, starting firms are required to prove financial standing through bank certificates, or bank guarantees. When applied to firms already operating in the market, these means of proof are alternative to those of the annual accounts and bank deposit (and yearly tax statements in the case of the Czech Republic). Cyprus also presents another external verification procedure: the Road Transport Council accepts as means of proof of the value of the firm's assets, the trucks insurance policies.

In Denmark, in very similar terms to those of the previously presented Austrian practice, the transport administration requires the participation of independent financial advisors. This agent

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<sup>22</sup> Up to 9 trucks the financial resources demanded to the company would be lower than €50.000 using the calculations based in the €9.000 and €5.000 thresholds.

must support the formalisation of a sound and detailed business plan to be presented when the firm first applies for a transport licence.

Finnish licensing bodies accept the intervention of external auditors in the assessment of the financial standing. There are two alternative ways of proof: through a guarantee issued by a credit institution or through a certificate on the value of the assets issued by auditors. These external verification procedures are not compulsory, but they are alternative to the bank deposit.

German practice also involves external verification procedures and institutions. Firms proving financial standing must submit (in addition to other relevant documents) a certificate on equity capital validated by qualified auditors, banks or licensed tax consultants. These certificates may also be based in the value of loans, bank guarantees or other assets of the firm.

In Greece the involvement of third parties through external verification procedures has two different alternatives. Firms can prove financial standing through the presentation of bank certificates showing the value of the capital stock or through a bank guarantee issued by a bank or a qualified financial institution.

In Ireland, Italy and Lithuania external verification procedures are admitted in very similar terms. Companies applying for a transport licence or renewing the existing one must present an accountant's report (Ireland) or an official certificate issued by a bank or financial institution (Italy and Lithuania<sup>23</sup>). This document must show that the transport firm has the minimum net assets required by the national law.

Portugal, Sweden and Spain accept the same kind of external verification procedures through the same instrument (bank guarantee) but in two very different situations. The Portuguese DGT and the Swedish Country Administrative Boards accept bank guarantees as an alternative means of proof to others stated in the respective national laws<sup>24</sup>. On the other hand, the involvement of banks (through bank guarantees) in Spain is only required when the firm does not comply with the financial standing requirement. Then the firm must obtain from financial institutions a guarantee in the amount of the legal minimum assets<sup>25</sup>.

A key issue of the participation of external institutions is the degree of involvement of the institution in the process, this is, if the bank or auditor has some responsibility on what is certified. In most Countries there are no references to the implications of issuing guarantees, reports or certificates. In fact, in some Member States (this is the case in Spain) the transport officials and members of associations interviewed remarked the fact that in their countries the financial institutions were extremely reluctant to get involved in this process. As this kind of

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<sup>23</sup> Both in Italy and Lithuania this official certificate is not compulsory, but another mean to prove financial standing.

<sup>24</sup> The alternative means of proof are in both countries very similar: tax or income statements, commercial register certificates or accountants report.

<sup>25</sup> This is often complemented with a compulsory bank deposit in the required amount.

external verification process is generally accepted as an alternative for the assessment of the capital requirements, its use in practice is not very extended.

Only Belgium reported precise actions against financial institutions issuing financial guarantees in potential debts of the transport companies. In the Belgian case, the cooperation between the financial institution and the transport administration is very close, being the financial institution in charge of reporting changes in the financial situation of the transport firms. In case the haulage firm fails to fulfil some of its debt obligations, the financial institution that issued the guarantee has obligations with the creditors. The Belgian transport administration also accepts guarantees issued by financial institutions not established in Belgian territory, but in another Member State of the EU.

#### ***Verification and monitoring process***

***Art. 6.1, Council Directive 96/26 as amended:***

*Member States shall ensure that competent authorities check regularly and at least every five years that undertakings still fulfil the requirements of good repute, financial standing and professional competence.*

The close monitoring of the economic situation of the firms is a key factor for a good assessment of the financial standing requirement which is, perhaps, the most dynamic of the three. The financial situation of haulage firms and, thus, the capacity for having the “available resources to ensure proper administration of the undertaking” can vary largely between inspections.

Before analysing the national legislations, it can be argued that the maximum period between inspections given by the Directive seems too large. Inspections every 5 years hardly provide sound monitoring basis to control in an effective way the changes of the financial situation of firms, unless transport administrations complement it with effective inspection systems and efficient information exchange between the different institutions with responsibilities in the assessment of the financial standing (public agencies as well as private third parties involved in external verification procedures).

The most used interval between inspections is 5 years, being the shorter 1 year, in force in the Czech Republic and France. Another interesting example is Spain that combines a fairly short interval between inspections (2 years) with strong inspection systems and a centralised and highly automatic information system, which central institution is the “General Register of Road Operators and Transport Complementary Activities”.

*The effect of political decentralisation*

A decentralised or regionalised political structure and the subsequent organisation of the transport administration can be of extreme importance in the real application (and enforcement) of the legislation. On one hand, a good level of coordination between administrations and a clear framework for the share of competences can enhance the uniform application of the legislation. On the other hand, low levels of information exchange, poor definition of the boundaries of the competencies between administrations of different level or lack of uniformity in the minimum requirements demanded to firms (by administrations of the same level) can result in an absence of standard in the application of the legislation. This can create undesirable effects, such as “firm tourism” to the region with more relaxed standards, a quality gap or even the breach in the national uniformity of the transport market. The examples of Austria, Sweden and Italy are introduced, as in these three countries the political organisation has some negative effects in the application of the Directive.

In Austria the transport administration is divided into the Federal Transport Administration (FTA) and the 9 Regional Transport Administrations (RTAs). The FTA is in charge of the transposition of the Directives and the general application, in terms of minimum standards according to national law. The RTAs are responsible for the application and enforcement of the legislation, which means that control the minimum capital requirements of the firms. The key problem is that the procedure for checking the minimum financial requirement is not harmonised between the RTAs and this creates differences in the real demand level from one region to another. A similar problem can be assessed in Sweden, where national legislation accepts 4 different and alternative ways for proving the financial standing: bank guarantees, tax or income statements, certificate from a registered accountant or any other way in accordance to the legislation. The 21 County Administrative Boards (CABs) are in charge of the application and enforcement of the legislation and each of the 21 have different ways for assessing the financial standing. As a result, the financial requirements may vary between RTAs due to the lack of coordination between these regional bodies and due to the lack of more precise guidelines from the Swedish Central Administration.

In Italy the political and administrative decentralisation process currently undergoing is causing not only differences in the interpretation or application of the Directives but the delay of the entry in force in the Italian transport legislation. The final form of the administrative decentralisation is under debate and this is affecting relationship, definition of competences and powers of the national and local authorities (regional and provincial). Moreover, the developing legislation that should detail the basic legislation that transposed the Directives on the access to the road transport market is almost fully stopped due to the political debate.

The following tables present in a synthetic way the main characteristics of the application of the Directive in the surveyed Member States. The table presents 4 items of the national legislations:

- Minimum capital requirements for the first, second and other vehicles used for transport activities;
- Maximum interval between compulsory inspections, in general coincident with the periods for the renewal of the transport licences;
- External verification procedures, such as the involvement of banks or other financial institutions, reports from auditors and other practices;
- National extra conditions to those laid down in the Directive, such as compulsory bank deposits, tax and debt limits and others.

**Table 3.2** *Main characteristics of the application of the Directive in the surveyed Member States*

	Minimum Capital		Maximum interval between inspections	External verification procedure			Extra conditions		
	1st vehicle	2nd and others		Insurance or bank guarantee	Auditor's report	Other procedure	Bank deposit	Tax and debt limits	Other
<b>Austria</b>	9.000	5.000	3 years	Yes	Yes, the Austrian Road Haulage Association provides a "viability report" for new firms				
<b>Belgium</b>	9.000	5.000	5 years	Yes, having financial institutions issuing the guarantee responsibilities on potential debts					
<b>Cyprus</b>	9.000	5.000	Not available	Yes		Insurance certificates based on the value of the trucks	An alternative way of proof, non compulsory		
<b>Czech Republic</b>	10.000	5.500	1 year	Yes, but only for firms starting transport activities		Yearly tax statement, for the assessment of the value of firm's assets			
<b>Denmark</b>	20.000	5.400	5 years	Yes, in the form of a standard bank guarantee	Yes, new firms must present a business plan under supervision of an auditor or financial institution			Debt limit with any public agency of €6.700, for having "financial standing". If debt reaches €13.500, transport licence is revoked	
<b>Finland</b>	10.000	10.000	5 years	Yes, issued by a credit institution	Yes, certificate issued by accountants or auditors		An alternative way of proof, non compulsory		

	Minimum Capital		Maximum interval between inspections	External verification procedure			Extra conditions		
	1st vehicle	2nd and others		Insurance or bank guarantee	Auditor's report	Other procedure	Bank deposit	Tax and debt limits	Other
<b>France</b>	9.000	5.000	1 year	Yes, up to the 50% of the required financial capacity, as a complement to available capital					
<b>Germany</b>	9.000	5.000	5 years	Yes, the firm must submit a certificate on equity capital issued by a financial institution or auditors				Firm must present clean records form tax authorities, insurance, social security and municipal authorities	
<b>Greece</b>	9.000	5.000	5 years	Yes, a certificate provided by a financial institution must show the capital stock, plus a bank guarantee on the firm's accounts					
<b>Hungary</b>	10.200	5.700	Not available	Yes, a guarantee or insurance on the amount of €20,4 per ton transported (or per ton of capacity of the fleet)			An alternative way of proof, non compulsory, related to the bank guarantee	Firms must prove at any time that fulfil all obligations concerning taxes, customs, social security and transport issues	Own capital of firms must be at any time 50% of its available funds
<b>Ireland</b>	9.000	5.000	5 years	Yes, report from financial institution showing financial requirements in total net assets				Firms must prove that fulfil all tax obligations at renewal of the transport licence	Firms must present an affidavit stating that there is no arrangement with creditors
<b>Italy</b>	50.000	5.000	3 years	Yes, report from a financial entity showing that the available resources fulfil the minimum capital requirements					Obligation of firms to auto-report when not complying with financial standing (subject to fines from €1.500 to €4.500)
<b>Lithuania</b>	9.000	5.000	5 years	Yes, bank guarantee on the amount of the minimum financial requirements					

	Minimum Capital		Maximum interval between inspections	External verification procedure			Extra conditions		
	1st vehicle	2nd and others		Insurance or bank guarantee	Auditor's report	Other procedure	Bank deposit	Tax and debt limits	Other
<b>Luxemburg</b>	9.000	5.000	Not available				Compulsory cash deposit for the total amount of the financial resources		
<b>Poland</b>	9.000	5.000	Not available	A notary act is accepted as proof of the assets value					Insurance certificates based on the value of the trucks
<b>Portugal</b>	50.000 / 9.000	5.000	5 years	Yes, bank guarantee on the amount of the minimum financial requirements		Certificate from the Official Commercial Register			
<b>Slovenia</b>	9.000	5.000	5 years						
<b>Spain</b>	9.000	5.000	2 years	Required only in special cases (firms going through financial problems)			Required only in special cases (firms going through financial problems) and together with a viability plan	Firm must present clean records form tax authorities, social security and transport activities	Certificate on the number and age of vehicles: maximum 2 years for national and international transport
<b>Sweden</b>	10.000	5.000	Not available	Yes, bank guarantee and auditor's report are alternative means of proof of the financial standing					
<b>The Netherlands</b>	18.000	5.000	5 years		Yes, accounts of the firm must be approved by an auditor				
<b>United Kingdom</b>	9.000	5.000	Not available				Compulsory cash deposit for the total amount of the financial resources		

### 3.2.2 Enforcement

The main enforcement effort is done in the surveyed countries by the Transport Administration, supported by the different police agencies. Of great importance for the enforcement actions is the adequate organisation of a dedicated inspection agency or, at least, an inspection plan within the Transport Administrations. This importance lays in the fact that most countries do not control the financial wealth of companies for long periods of time, in most of them only every five years. The economic situation of companies is normally highly volatile, especially in transport markets with a large number of small firms, and real enforcement sometimes is reduced to check the financial requirements when the firms renew their licences. As an extreme example, it could be said that, in some countries, firms could comply only once each five years to be of good repute; what happens in between would have no real importance, as there would be no means for real monitoring.

Another important factor for enforcement is the existence of institutionalised and sound information flows between the different agencies involved in the process. The exchange of information must be fluid in order to provide the Transport Administrations with the necessary indicators to value the situation of firms, moreover in those countries with extra conditions involving the participation of other public bodies or private third parties (auditors, banks, insurance companies, etc)<sup>26</sup>. Two examples (Ireland and Spain) are presented concerning good practices in the enforcement, mostly covering the issues of inspection between compulsory checks and institutional relationships.

In Ireland compulsory checks are scheduled every 5 years, when transport licences are renewed. At this time firms must present all the required legal and financial items to prove compliance with the requirement. Nevertheless, the Irish Transport Administration uses spot checks at least twice during the 5 year period to assess the situation of firms. The Enforcement Section of the Road Haulage Division requests at that moment firms' accounts, tax clearance certificates and registration records and proceeds to inspection.

In Spain the period between licence renewals (when compulsory inspection is done) is shorter than in other countries, being only 2 years. This short period is complemented with a highly structured inspection system: random inspections are taken every year, based in an Inspection Plan that the Central and Regional Transport Administrations (RTAs) agree. The competences are quite well delimited: each RTA has the responsibility for inspecting firms based in their territory and the Central Transport Authority undertakes "high inspection", in cases of large firms (national scope) or cases of social relevance. Concerning the necessary information flows to support such system, the Spanish transport administration has strongly institutionalised relationships between the different bodies involved. All the information concerning road

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<sup>26</sup> The factor involving institutionalised information flows becomes critical in environments where the transport administrations are not unique, due to the political decentralised organisation of countries, such as Germany or Spain.

haulage firms is centralised in the “General Register of Road Operators and Transport Complementary Activities”, including tax and social security payments. A series of automatic links between the relevant administrations has been developed, enhancing information exchange between Regional and National bodies and other public bodies (Ministry of Finance, Social Security, police agencies, etc).

### ***Sanctions***

In general, the lack of statistics was a problem during the assessment of national enforcement procedures. Very few countries have available statistics and the argued reasons are diverse: lack of information exchange, decentralisation of the transport administration, etc. Some States are reluctant or simply do not allow such statistics to go public.

It can be argued that the financial standing requirement is very difficult to be assessed and monitored properly through time, and this may lead to a real “laissez-faire” vision of the road haulage market from the Administration. In some interviews, transport officials declared that “the market regulates itself”. This means that, keeping the Administration rigorous standards for the access to the market, those firms with real financial capacity will survive and continue to operate. The compulsory periodic financial checks are undertaken, but the real “assessment” is provided by the market.

Nevertheless, some countries have statistics regarding checks and sanctions for non-fulfilment of the financial standing. In Denmark around 60 operators lose their licences per year due to financial problems, being around 25% of these due to non-compliance of the minimum financial standards; the rest is due to bankruptcy or compulsory liquidation. In France 10% of the firms checked per year do not comply with the financial standing requirements. Currently the Irish Road Haulage Division has 20 licences in process of being suspended and some 70 more identified for suspension. In Poland the number of licences revoked due to non-compliance of the financial standing was 11. This number is similar to that from The Netherlands where the average number of withdrawals for financial reasons is 10 per year since 2003<sup>27</sup>.

### ***Rehabilitation of Financial Standing***

***Art. 6.1, Council Directive 96/26 as amended:***

*If the requirement of financial standing is not fulfilled at the time of checking the authorities may, where the undertaking's other economic circumstances give grounds for assuming that the requirements of financial standing will again be sustainably fulfilled within the foreseeable future on the basis of a financial plan, give further notice of not more than one year.*

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<sup>27</sup> A special inspection procedure was launched in 2001 when Directive 98/76 entered in force. The result was 200 licences revoked in 2001 and 2002.

The rehabilitation is introduced in the national legislation of the Member States at least in the terms presented in the Directive. Once a firm has lost financial standing, it is given a period of time up to one year to restore it. Some of the countries are precise concerning the conditions for this rehabilitation, which are mostly related to the presentation of a viability plan that must be submitted to the transport administration. In general, this implies the participation of private third parties such as banks, auditors or other financial institutions that assist firms or at least validate the document. Some examples of the rehabilitation procedures in several countries with some specific conditions are presented below.

In Austria, when a firm does not comply with the minimum capital requirements, the Regional Transport Administrations (RTAs) give 1 year to the company to enhance its financial situation. For this, the Road Transport Association will provide assistance to the company (acting in the role of “qualified auditor”) and approving the plan that would be sent to the Administration.

Ireland has quite strict rehabilitation conditions. In case a non-compliance is detected, the firm is given 14 days to correct the financial problem. If the company fails to do so, the transport licence is suspended until the company complies again with all the financial requirements.

The Spanish legislation introduces compulsory bank deposits, in some cases, as a security for creditors in case of non-compliance with the minimum capital requirements. The firm is given up to a year to solve the financial problems (based in a viability plan) and through this time the deposit may be required. If the company succeeded in complying again, the bank deposit would be returned.

### ***Appeal***

In the surveyed Member States there are no explicit references to appeal procedures in the context of the administrative decisions of the transport administrations. Nevertheless, several countries (for instance: Spain and Greece) specify that firms can appeal to the decisions of the Transport Administrations in the ordinary court system. Concerning the existence and procedures of appealing systems within the Transport Administrations, there is no information available.

## **4 CPC**

### **4.1 Theory: transposition of the professional competence requirement into national law**

#### **4.1.1 General remarks and institutions involved**

Directive 96/26 describes the requirement for professional competence. The Directive mentions the fact that applicants for the CPC should possess specified knowledge concerning various topics such as civil and commercial law, business and financial management of the undertaking and subjects concerning road safety. The Directive also stipulates that this knowledge should be tested by means of a compulsory written examination (multiple choice questions and/or open questions) and some written exercises which may be supplemented by oral examinations. These examinations should take a minimum amount of time and the weighting of results is described in the Directive as well.

According to the Directive, exempted from the examination can be those persons who can prove to have five years of practical experience; these persons do need to sit a specific test. Other persons that can be exempted from the examination are those that have certain advanced diplomas that provide proof of a sound knowledge of the subjects for examination. Finally the Directive stipulates that Member States may exempt undertakings that are solely engaged in domestic transport from having to study international subjects.

Once the examination is passed the applicant will receive a certificate of professional competence (CPC).

Typically examination is carried out by a government (owned) institute whereas various types of entities provide training courses that allow applicants to prepare themselves. However the picture varies very much in Member States including involvement of private entities in examination and professional road transport associations in training. In Finland the transport Association is even responsible for the examination. Usually when these public responsibilities (assure minimum level of know how with transport operators) are laid down in the (semi-) private sector, specific safeguards apply that ensure that the authority still keeps influence. An overview is presented in the next table.

**Table 4.1** *Institutions involved in training and examination*

Country	Training Institute	Exam Institute
Netherlands	Private institutes	SEB examination foundation
France	Several recognized by regional authority	
Germany	Chambers of Commerce	Chambers of Commerce
Belgium	Institute of Road Transport	Exam commission appointed by the Department of the Road Transportation
Italy	--	Provincial Committees of the National Hauliers Register
Lithuania	Different institutes, but the Road Association is by far the biggest	Inspectorate
Luxemburg	Chambers of Commerce	Ministry nominates the exam commission
Portugal	ANTRAM, road transport association	Directorate General of Land Transport
Slovenia	Chambers of Commerce	Independent state commission as part of Ministry of Education
United Kingdom	All sort of private initiatives	Oxford, Cambridge and Royal Society of Arts Examinations Board
Denmark	4 licensed training centers, but the Road Association one is by far the biggest	4 licensed training centers under the control of the Road Agency
Spain	Associations, private institutes and unions	Regional Transport Authorities
Ireland	Approved training centers, including tutors and courses	Chartered Institute of Logistics and Transport
Austria	Professional Association	Regional Transport Authority
Finland	20 training institutes	Finnish Transport Association
Sweden	Private institutions	Swedish administration for national roads
Greece	Transport Haulers Professional Training School	Directorate General of Transport through regional branches
Cyprus	Not yet founded	Exam commission appointed by the Ministry
Hungary	60 different recognized training institutes	Authorized training institutes
Poland	Various training centers, a.o. hauliers association	Motor Transport Institute
Czech Republic	Cesmad Bohemia	Transport Authority / Transport Research Institute

#### 4.1.2 Incomplete transposition (e.g. on experience instead of examination, how is the exam structured)

The Directive has completely been transposed in most countries, only a few countries still face some minor transposition differences.

The entering into force of up to date legislation in Belgium is still pending (planned for 2005). Cyprus has transposed the Directive in national law but this law will come in to force as of January 2005. In Portugal the level of knowledge required for the examination is not entirely clear and the law does not describe clearly who needs to have the CPC. In Greece the examination system is under reform, because the structure and content of the examination is not entirely in line with the Directive. In some countries there are explicit exemptions in the law for those operators that have established themselves long ago. For example in Greece the law stipulates that transport operators that have established themselves before 1984 do not need to take the examination for the certificate for professional competence. In the Czech Republic case studies are not yet a part of the examination but these will become part of it shortly. Italy has transposed the Directive in national law but full implementation and thus open access to the market was recently postponed to January 2005.

In general, especially the new Member States have transposed the Directive literally into national law. The obvious advantage is that there is no conflict between national and European legal tasks. The disadvantage however is that elements and terms that actually should be worked out in greater detail (e.g.; definition who needs to have a CPC; description of the “test” for experienced operators) are not covered in more depth. Besides, a risk of this practice is that the organizations involved do not fully think through how to organize the implementation. This is something that happens more “automatically” when you formulate “your own” rules.

#### **4.1.3 Exemptions to the CPC obligation**

Although the Directive lists the items that should be covered by the examination, the required knowledge levels and skills still differ between one country and the other. However, most countries do touch upon the topics required in the Directive. The IRU Academy has tried to raise the standards to a higher level through a system of certification of training institutes. This has particularly been of use for the new Member States in Central and Eastern Europe.

As said above, to obtain the certificate for professional competence one has to pass an official examination. However the Directive clearly states that applicants can be exempted from the examination if they can provide proof of having at least 5 years of experience in a transport undertaking at the management level or if the applicant holds a certain advanced (technical) diploma. The first group has to take a test proving their knowledge, whereas for the second group it suffices to present the relevant diploma.

Concerning the test the first group has to sit, it should be remarked that the Directive does not describe specifically which topics such a test should address and what form it should have. The obvious result is that almost no Member State that offers this option describes the proceedings of such a test in its national laws. It seems that in a lot of cases no test is done at all, but only a kind of verification process (verification of the experience). In Germany an additional interview will take place in case of doubt on the relevance of the experience. Only in Poland the law

decrees that people with more than 5 years of experience still need to take the examination but that the examination in those cases consists of 75 instead of 80 questions, thus leaving no room for unclear situations.

Member states apply quite different approaches towards the derogations for the examination. These derogations have advantages and disadvantages. France, for example seems to have made exemptions from the examination the rule by putting up a system in which having an advanced diploma is the norm for those who wish to obtain CPC, while at the same time making the examination so difficult that only 10% of the applicants passes it. In France 75% of the applicants obtain the CPC on the basis of prior education. Although the rationale behind this system is that it raises the level of the road transport operators, it should be remarked that the sector suffers from decreasing popularity among younger people and the difficulty of the examination could further prevent new “blood” entering the sector.

Denmark has the opposite system in which you can not pass the examination without taking the training. On top of that one is not allowed to take the training without having three years of experience in the transport sector within the past ten years. Thus not giving exemptions for the examination but instead building in an extra threshold. In the Netherlands about ten persons annually receive derogation on the basis of previous education or training.

Another risk of derogation is that there are not always real checks concerning the relevance of the previous training or education. For example, in some countries a lawyer might be exempted only from those modules of the examination that relate to legal matters, while in some other countries a lawyer might be exempted entirely from the examination. The point is that a lawyer might have a university degree but is not necessarily educated in the field of road safety or commercial and financial management.

The following table gives some insights in the way exemptions are dealt with.

**Table 4.2** Exemption from CPC exam

Country	Exemption on basis experience	Exemption on basis of education	Country	Exemption on basis experience	Exemption on basis of education
Netherlands	No	Yes, but very modestly applied.	Spain	No	Foreseen in new legislation
France	Yes	Yes and broadly applied	Ireland	--	--
Germany	Yes, tested if considered appropriate through an interview	Yes	Austria	No	Yes, validation by an external commission
Belgium	No	No	Finland	No	Yes, Polytechnic diploma in the field of logistics

Country	Exemption on basis experience	Exemption on basis of education		Country	Exemption on basis experience	Exemption on basis of education
Italy	Yes	--		Sweden	No	No
Lithuania	No	Yes		Greece	No	No
Luxemburg	No	No		Cyprus	Yes 5 years experience	Yes, University Diploma
Portugal	Yes	Yes		Hungary	Yes 5 years experience, smaller test	Yes, university diploma with knowledge of the subject
Slovenia	--	--		Poland	Yes, 5 yrs experience, less questions in Exam for international transport	Yes, relevant degrees
United Kingdom	Yes Grandfather rights >1979	Yes		Czech Republic	Yes, 5 years experience; smaller CPC exam	Yes based on listed diplomas
Denmark	No	No				

#### 4.1.4 Requirements for applicants and scope

In most Member States the CPC is open for all applicants; there is no minimum level of education or professional experience required. In Finland the persons applying for the examination for the certificate needs to have at least 6 months of practical experience in the sector, including on-the-job training and experience regarding administrative and financial aspects of running the business. In Italy, a secondary school degree is required.

There is no common definition to whom the requirement of professional competence should apply. Council Directive 96/26/EC (as amended by 98/76/EC) states that this person should be the applying natural person – the road transport operator – or the one who shall continuously and permanently manage the transport operations of the undertaking. The lack of specification in the Directive leads in practice to some irregular situations. What is considered to be “continuous and permanent” management of transport operations is open to different interpretations. In some cases the person with the certificate of professional competence does not have an active role in the undertaking while in other cases the same person with the certificate of professional competence is fulfilling the requirement for different undertakings. Portugal stipulates: “Professional Competence should be fulfilled by an administrator, director or manager that holds the power to make decisions in the undertaking, isolated or jointly and who runs the undertaking in permanence and effectiveness”. However, involved Portuguese parties point out that this description does not work in practice either.

The following table gives an overview of who should have the Certificate of Professional Competence.

**Table 4.3** *Persons in the company who need a CPC*

Country	CPC holder	Country	CPC holder
Netherlands	Permanent and actual control > 20 hours per week, not fulfill anywhere else	Spain	The person in charge of the daily operations
France		Ireland	Full time director or manager. A CPC holder can only be involved in one company
Germany	The entrepreneur	Austria	Person in charge of daily operations which means in practice >20 hours per week,
Belgium	Manager/owner with financial power	Finland	Responsible for transport in the company
Italy	Manager with permanent and actual control	Sweden	Natural person or traffic manager; this can be more than one
Lithuania	Manager or authorized person	Greece	Manager/director effectively in charge
Luxemburg	The manager; an individual can appoint someone with a CPC on a permanent basis	Cyprus	Management & owner, not specified the task in time
Portugal	Manager / administrator / director	Hungary	
Slovenia	Authorized person / sole rider / director	Poland	Manager (involved in day to day operations)
United Kingdom	Director or traffic manager	Czech Republic	Employee or having a contract stating his duties. Limited in working for others
Denmark	>70% of his working time		

In Ireland the legislation is quite clear: an undertaking must hold a certificate of professional competence to conduct its activities as a transport operator. If it does not, then it must employ somebody on a full-time basis to satisfy the requirement. That person can not hold any other employment unless the person is a director, partner or spouse of the undertaking. A person can be transport manager for one undertaking only, unless acting for associated undertakings operating from the same premises with the same directors. This policy was introduced in 1999 to try to counteract the practice of “phantom” transport managers, *i.e.* transport managers employed by undertakings in name only but with no involvement in the operation of the undertakings.

In Belgium there is a possibility to have an operation without having a CPC, but only in those cases where the minister has granted special permission to do so. The circumstances under which this happens should involve the death or in competency of the previous CPC holder and this may not have taken place longer then one year ago. Furthermore the person requesting this permission should be at least 50 years old and should prove at least 5 years of practical experience in the daily management of the operation. However in any other situation the persons that can prove five years of experience still need to take both the training and the examination. Furthermore every applicant for a CPC must show a statement from the bank proving that the person, who is indicated to permanently and effectively lead the transport company, has the power to access the bank account of the company. The article in Belgian law

stating that the holder of the CPC can only use his certificate in one undertaking only has been repealed.

In a lot of the other Member States however, it is unclear who should actually have the CPC and there are various loopholes to share one certificate CPC among various companies (Portugal, Lithuania, Netherlands, and UK).

Belgium describes the position of the CPC holder in the following way:

- Either he himself as a natural person practices the profession of employer of goods transport by road; or
- he exercises the mandate of his superior or represents the manager of the undertaking; or
- he has sealed a mandate on a work agreement with the undertaking.

In the Netherlands the organization responsible for the implementation of the requirement, NIWO, has drafted guidelines that prescribe that the person with the CPC must satisfy the following requirements:

- A salaried employment, or receive a management fee
- Receive a reasonable salary or management fee, as based on the relevant job category in the Collective Labor Agreement
- Empowered with a full authority, or in exceptional cases a limited authority, depending on the authority possessed by the other managers
- Registered in the Trade register
- Engaged in a management position for a minimum of 20 hours per week, or a full-time position in large companies (in principle more than 5 vehicles)
- Not fulfill a full-time position elsewhere, unless at the same address or within the same group of companies.

## **4.2 Practice: implementation and enforcement of CPC**

### **4.2.1 Training**

The main difference in the field of training is whether it is compulsory or not. Compulsory training can have two advantages. First of all the passing rates for examination might be increased and in the second place it offers a good opportunity to increase the skills and knowledge of the sector. Of course the decisive factor remains the quality and difficulty of the examination. The level of examination can de facto force participants to take training.

Compulsory training also has several setbacks of which the main one lies in the fact that one man companies cannot perform their services for a number of days during the training period, leading to direct loss of income.

In some countries like Belgium and Denmark training is compulsory. In Luxemburg training is also obligatory unless the candidate has at least five years of professional experience in the road transport industry. In other countries such as Germany and The Netherlands “training is recommended”. Without training, chances to pass the examination in these countries are small. Therefore in practice the majority of applicants follow a preparatory course.

Within those countries that have compulsory training, the way this is specified differs again. Some have issued a law that makes the volume of training explicit (Belgium: 116 hours; Finland: 4 weeks) others (Luxembourg, Greece) only mention that training as such is compulsory. In Denmark it is under discussion to increase the training course to 6 weeks instead of 3 weeks; leaving out the obligation of having 3 years experience in road transport. During these 3 extra weeks basic management skills will be taught, since these skills are found to be often lacking.

Whether training centers are accredited by national governments, has no specific relation with the fact that training is compulsory. In most Member States training centers are not accredited. However there are some exceptions to this rule. In Belgium for example the Institute of Road Transport is appointed by law to provide courses. As said, training is compulsory in Belgium. However, there are plans to liberalize the market for the competent training authorities in Belgium, although it appears that even these centers will be accredited by the government.

The training centers in Denmark are also government approved, 4 training centers have been licensed by the Ministry of Transport. In France, where training is not obligatory, training centers need to be approved by the Prefect. In Greece, where training is obligatory, it is provided by the officially appointed Transport Haulers Professional Training Schools. In Hungary where training is not obligatory either, there 60 training institutes which are authorized the General Inspectorate of Transport. In Ireland, the Chartered Institute of Logistics and Transport in Ireland (CILTI) has been appointed by the Department of Transport to organize courses and exams, CILTI also oversees approved training centers. In Finland training and examination is monitored by the Access Training Steering group and the training planning Group, both of which have been appointed by the Ministry of Transport and Communications.

The fact that in the abovementioned examples some institutes are government approved does not necessarily mean that these Member States use elaborate systems for the accreditation of these training centers. It might very well be that if an Institute simply has to apply for government approval which is then subsequently granted. The accreditation of training centers in these countries would be an interesting subject for further study.

#### **4.2.2 Examination**

It was already mentioned that the amount of people that will do an examination may differ depending on the way the possible derogations (on the basis of experience or prior education)

are dealt with. Here we witness tremendous differences. For example in France, only 10% of the issued certificates have been obtained through having professional experience and where 75% of the issued certificates were issued through the recognition of diplomas. Less than 15% of the certificates was issued to applicants who took the examination. An opposite example is The Netherlands where only very few derogations are granted on the basis of prior education. Moreover the applicants –if given a derogation – usually only receive this for one or two (out of seven) modules. Hence they will still need to do the remaining part (modules) of the examination.

Examinations are organized by either the Authorities or semi public bodies like the Chamber of Commerce. Table 1 in paragraph 4.1.1 shows a wide range of possibilities. In some countries such as Lithuania, the Authority organizes the examination itself while other countries have it organized through the regional branches of the Authority, as is the case in Sweden and Spain. On the other end of the spectrum there are authorized institutes dealing with the exams, like in Hungary. The Netherlands has a special position, having the exams organized by a foundation jointly set up by the industry and the Authority.

The organization of the examination differs as well. Some countries have highly computerized systems; others arrange the examination in a less sophisticated manner. Especially in the new Member States such as Poland and Lithuania the approach towards the examination is taken quite seriously: the systems are highly computerized and the possibilities for fraud are very limited. In Lithuania all questions are randomly picked by a computer without any human interference, thus making it impossible to know the questions beforehand or based on previous examinations. In Poland the examination committee consists of different persons than the ones that oversee the examination itself when it is taken. The results are digitally stored and immediately emailed to the Licensing Department.

If one assumes that the profile of the applicants (see scope in paragraph 4.1.4) is approximately the same, passing rates are a useful indicator of the examination level.

The following table presents an overview of the passing rates for most countries. In addition some information is provided on the way of examination (written or written and oral) and whether a difference exists between national and international CPC.

**Table 4.4** *Examination schemes & passing rates*

Country	Written/Oral Examination	Difference between National and International CPC	Overall passing rate
Netherlands	Written exam	Yes, Supplementary module	62
France	Written exam	No	10
Germany	Written and oral exam.	No	53
Belgium	Written and oral exam.	No	35-42
Italy	Unclear		N.A.

Country	Written/Oral Examination	Difference between National and International CPC	Overall passing rate
Lithuania	Written exam	Yes, supplementary exam for international transport	50
Luxemburg	Written exam.	No	N.A.
Portugal	Unclear		70
Slovenia	Written exam		80
U.K.	Written exam	Yes, supplementary exam for international transport, including oral questions	High
Denmark	Written exam.	No	90
Spain	Written exam.	No	17
Ireland	Written exam.		75
Austria	Written and oral exam	Yes, Difference between short and long distance transport	80
Finland	Written exam		N.A.
Sweden	Written exam	No	N.A.
Greece	Written exam	No	N.A.
Cyprus**	In business before 2001 Oral Exam, after 2001:Written exam	Yes, Supplementary exam for international CPC	100
Hungary	Written exam	Supplementary exam for international CPC	N.A.
Poland	Written exam	Supplementary exam for international CPC	75
Czech Republic	Written exam		N.A.

Note: average figures taken over diverse periods of time (whatever was available)

\* The CPC Exam is considered to be a basic hurdle for transport managers and is intended to make them aware of where to find source of information, rather than being a test for the reproduction of substantive issues.

\*\* In Cyprus all current operators have to do the exam, however they all pass the exam.

The passing rate in Spain (17%) is considered to be kept very low in order to close the market for newcomers, which is an alternative way to control the access to the profession. It also offers a tool to limit the formation of small haulage firms, since these small firms already have a high share of the market. It is worthwhile mentioning that potential operators from Western Spain sometimes try to circumvent the tough Spanish examination by getting a CPC in Portugal.

Many of the French operators have opted for an alternative escape of the difficult (10% passing rate!) examination: receiving a derogation on the basis of prior examination.

Not all Member States appear to have case studies in place, an EU requirement. In the Czech Republic case studies are in preparation but not yet part of the examination.

In most countries there is a slight difference between national and international CPC's. Mostly, applicants need to answer additional questions in the examination for the international CPC. In Denmark, Sweden and Spain there are no differences between national and international CPC exams.

If there is a difference between the national and international exam it is rarely very large; in most countries the international exam forms simply an addition to the national exam. In the Netherlands for example the required knowledge for the national CPC consists of 6 modules, if one wants to obtain the international CPC an extra module on international transport has to be passed. In Poland applicants for the international CPC have to answer 30 questions more than for the national CPC. Except for Cyprus, all Member States have written exams, consisting mainly of multiple choice questions. As said, the Czech Republic is in the process of developing some case studies for the examination.

### ***Diploma Tourism***

Because of differences in the level of difficulty of the examination and the knowledge that is required to pass the examination there is a risk of "diploma tourism". The examination in Portugal has a rather low difficulty level: it is quite easy to pass the exam. Apart from this, it is said that the average educational level of applicants for the CPC in Portugal is quite low, thus enhancing the assumptions that the examination is quite easy to pass. As said, in Spain it is quite well known that some of the operators in the west of the country obtain their CPC in Portugal since the examinations is easier to pass than in Spain. At the same time the French road haulage associations fear diploma tourism. Because of the fact that the examination is so difficult to pass in France they fear that operators will send some of their employees to a country where passing the examination is much easier.

However, in practice, most countries accept the CPC exam passed in other countries. The effect of "diploma tourism" is, according to most Inspections, quite small, as all exams can only be passed in the national language. For most candidates the barrier to learn for example Greek, Lithuanian or Danish is much higher than to simply study for the exam. Secondly, most countries are proud that their exams (especially the new Member States) are on quite a high level. The high passing rate in the UK has in the past been the reason for other EU Member States to derogate from the EC law principle of mutual recognition of diplomas to prevent their nationals from going "CPC shopping" in the UK.

### 4.2.3 Enforcement

CPC is controlled normally every five years, like the other requirements. Only in Spain this requirement is checked every 2 years and in Italy every 3 years. In most countries ad random checks are performed as well. The CPC is very seldom withdrawn. This is due to the character of the CPC, which is mostly a certificate that has been acquired for life. Only in Lithuania the exam has to be passed every five years.

As said, CPC is usually only checked when an operator applies for the license. Enforcement agencies do not have the capability to check all transport companies on their premises. There is no clear information available concerning what is subject to in-company checks; i.e. is the presence of a CPC-holder checked at all during these controls? It is probably quite realistic to assume that enforcement agencies give priority to issues as rest and driving times and other working conditions when checking a company.

A key item for enforcement is the determination “who needs to have a CPC”. For an enforcement agency it is simply almost impossible to check whether the holder of the CPC is in fact involved in the management of transport operations. It is also almost impossible to check whether the CPC holder is not the main CPC holder for a number of other companies. The Irish practice, as described in paragraph 4.1.4, to counter the “phantom manager” phenomena is a way to prevent one CPC holder from being the manager of many companies at the same time. It seems that practically all Member States struggle with this issue.

There are also some differences between countries in the procedure to be followed when the holder of the CPC for road transport operator for some reason leaves the road transport company. Almost no countries use permanent monitoring systems to check whether a company still has a holder of a CPC for road transport operator. This check takes place every five years and is only paper-based.

In Lithuania the company has one year to find a replacement if a holder of CPC for road transport operator leaves the company, but only if there is a person in the company having more than 3 years experience in managing road transport. If not the license is suspended. Other countries apply periods of 6 – 18 months to give the company the opportunity to find a replacement for the holder of the CPC. Italy has the strictest timeframe of only 3 months to replace the CPC holder.

There seems to be no reporting duty when the CPC holder leaves the company and fines are not applied, with the exception of Italy. Withdrawals, however, take place in case of non-compliance with the requirement: 20 withdrawals and 20 temporary withdrawals annually in the Netherlands; in Ireland there are about 100 withdrawals per year.

In most new Member States only recently the Directive was introduced in full length, so there are not many figures on enforcement yet. In most of the new Member States it is not yet entirely clear how many operators there are exactly (especially domestic operators), therefore it is difficult to have an overview of the market in terms of size, number of trucks etc. It seems that most new Member States apply a two step approach where the large group of domestic hauliers will only face the obligation to have CPC in the future. These countries started out with the international hauliers.

## 5 CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Introduction

The conclusions in this Final Report are drawn on the basis of the comparison as presented in the previous chapters. These conclusions give an indication of the consequences this study has for the future legislative framework.

Along with best practices for the three requirements, good repute, financial standing and CPC, these conclusions have been presented during a seminar which took place on March 21, 2005 in Brussels. The title of the seminar was “Becoming a road transport operator: Community rules in practice”. The seminar brought more than 50 representatives from the relevant competent authorities and representatives from the road haulage sector together to discuss a number of best practices concerning the implementation of the Community rules on the admission to the occupation of road transport operator.

The topics that have been discussed during this seminar and the resulting conclusions have been included in this report.

### 5.2 Good repute

Except for the ambiguity which exists over the transposition of the condition of environmental protection in a small number of Member States, the good repute requirement of Directive 96/26/EC (as amended) has been properly, albeit sometimes very differently, transposed in the national legislation of the 25 EU Member States. A typical feature of the coverage of good repute is that the legal standards are included in different legislative documents such as road transport codes but also penal law, environmental law, social legislation and fiscal legislation. (E.g. Austria, Luxemburg, Finland, Ireland). The danger is that both authorities as well as the operators lose the overview. Moreover competencies and involved authorities differ per legislative act. The risk is that the involved actors do not co-operate enough. Therefore, improvements will only be reached through a more comprehensive approach.

The greatest difficulties in the application of this part of the Directive are found on the enforcement side. This is often the result of the fact that both the Directive and the national legislation of the Member States fail to define general notions of the EU Directive such as “a natural person who will continuously and effectively manage the transport” (one of the possible subjects of the good repute requirement). It is suggested that the EU shed light on this matter, for example, by adding to the requirement a minimum amount of time spent on the management of transport activities of a company (eg. the Austrian requirement of min. 20 hours per week).

During the seminar it was pointed out that Member States have trouble implementing this part of the Directive, especially when it relates to larger companies.

The same disparities in interpretation and application between Member States can be seen when one considers the vague notion of “seriousness” of an offence. The difficulty in defining the seriousness of an offence was also specifically mentioned by various participants in the seminar. While it would be tempting to clearly define this term at the European level by, for example, (i) benchmarking certain types of offences on the basis of an easily adaptable system of penalties (eg. UK, Sweden, Italy), or (ii) inserting in the Directive references to a limited number of offences which are commonly held to be “serious” (e.g. intentional murder, rape, etc.), there nevertheless seems to be very little common ground at the level of the Member States on what exactly constitutes a serious offence. Most Member States actually seem to appreciate their wide margins of appreciation in this context. The resistance of most against a creeping harmonization of national criminal law may stand in the way of clarification at the EU level. The same rationale would apply, it seems, to the issue of rehabilitation.

As far as the creativeness of some Member States towards the introduction of extra conditions to satisfy the good repute requirement is concerned, one could suffice by saying that these additions are generally harmless (e.g. the Italian qualification of offences against the national heritage as serious), impractical or too costly to apply in all 25 Member States (e.g. the British requirement of an operator’s centre in a large number of countries where the majority of transport companies are one-vehicle operators who park their trucks on the street before their house at night) and that, therefore, the Commission should abstain from introducing such new elements in an amended version of the Directive. However, one notable exception might apply in this respect. While the element of “repetition” was removed from Directive 96/26/EC with the adoption of 98/76/EC, most Member States have kept this criterion to allow their licensing bodies to strike a balance between the rigid formulation of the Directive (which seems to imply that a single offence should already lead to a refusal or withdrawal of a license) and the economic state of the road haulage and passenger transport sectors, by determining that a repetition of minor offences can constitute a serious one and should thus lead to the refusal or withdrawal of a license. Perhaps it is unwise to re-introduce the element of repetition in the Directive so shortly after it was abandoned, but a certain level of minimum harmonization on this point (e.g. more than three offences in a period of one year against the law on transport or environmental protection) could (i) be possible (politically speaking), and (ii) might lead to a clearer picture and thus an improvement in the legal protection of international transport operators.

The vagueness of the law, combined with the fact that most Member States’ judges have a low knowledge of transport rules, leads almost invariably to a relatively lenient attitude towards the enforcement of such rules. The transport sector itself, on the other hand, is generally well-informed by the Member States and by its private business associations. To improve the implementation of the Directive, harmonization of the enforcement procedures and training of

the administration and judiciary would be necessary to ensure a fair competition on the European roads. The latter should be a question of money rather than willingness on the part of the EU or the Member States. With road transport being the most preferred and used mode of transport in most of the EU Member States, one would hope that more EU and national resources would be made available to settle disputes in the sector in a professional way. The training of judges in transport law could go hand in hand with the creation, at national level, of specialized (chambers of) courts or tribunals (cfr. UK's Transport Tribunal). The former, on the other hand, may be easier said than done. Most Member States seem not very keen on a creeping communitarisation of their criminal law provisions. This reluctance indirectly limits the Commission's powers to launch new initiatives in this field.

In order to stimulate Member States efforts in the field of monitoring the triple requirement, specifically good repute, we can imagine that national administrations are asked annually to submit figures on license revocation/withdrawal and the grounds for this sanction. Strict enforcement is no goal as such but the number of administrative sanctions applied is a clear indicator for the seriousness of enforcement applied. When this issue was discussed at the seminar, various member states indicated to be in favour of a higher degree of exchange of information between countries.

This study shows that there is a need to limit the number of administrations involved in the enforcement of EC transport rules. During the seminar it became quite clear as well that there are problems in the coordination at both national and international level in terms of infringements, penalties and subsequent license withdrawals. This is very important in order to fight the phenomenon of a race to the bottom, where hauliers will seek to establish companies in the country where the application of the Directive is more lenient. In this respect, the sharing of information is also crucial to allow for the extra-territorial enforcement of the Directive's good repute requirement. At the national level, effectiveness of procedure and enforcement is helped if there is one central ministry (not two or more) which provides a uniform legal framework for a national and unified road transport market and guidelines for the verification, application and enforcement of the relevant rules by the (de)central(ized) authorities. The existence of a centrally kept register of transport activities and offences, accessible for all concerned in terms of input (the police, tax and customs authorities, etc.) and/or the appointment of liaison officers specialized in transport with the police, etc. would greatly add the overall goal of improved effectiveness of the relevant law, because it would allow for a better flow of information across the implementing agencies. Attributing specific transport license related inspection and verification powers to a branch of the police or some other inspectorate would also enhance the effectiveness of enforcement. At the European level, information sharing could be enhanced by the creation of a special database (e.g. at Europol) to keep license related information of offences committed by international operators. Access to such a database would increase the effective enforcement at the national level when licensing bodies can include the internationally gathered information in their decision-making processes. At the seminar it was suggested to collect this information in the framework of Regulations (EEC) No 881/92 and (EEC) No

684/92 (on the number of licences and certified copies in circulation). This would enable the Commission to distribute each year a table summarising licence withdrawals and the reasons for these withdrawals.

### **5.3 Financial standing**

From the analysis of the national legislation and assessment procedures of the financial standing requirement several points of interest can be remarked. First of all, the Directives are completely transposed and in force, with very specific exceptions of incomplete transposition in for example Italy, which is the only Member State where the Directive is transposed only on paper and in fact does not regulate the access to the transport sector.

The analysis of the real application of the Directive in the 25 EU Member States provides a very diverse picture, when focused on the different practices and requirements used for the assessment of the financial standing requirement. The most basic figure of the practical application of the Directive is the minimum capital requirement. In general, very few deviations from the Directive's amounts were listed.

Although followed by most countries, the 5 year period between compulsory inspections does not seem to be appropriate to check effectively the compliance of firms. In fact, in many countries the inspection system does not seem to support the enhancement of the enforcement capabilities of the transport administrations. The practical consequence is that the real financial situation of firms is hardly tested between compulsory inspections. Thus, we could say that in some countries firms only must be of financial standing once each five years, when transport licences are renewed. However, during the seminar some Member States indicated to have a more structural approach towards checking compliance. Some countries check financial standing every time there is a change in the undertaking, or financial standing is checked every two years. One of the main conclusions of the seminar was that the permanent nature of checks, i.e. only once every 5 years, poses a problem in terms of the actual assessment of the quality of the financial standing.

The involvement of third parties such as auditors, banks or other financial institutions is very significant in several countries, mainly through the validation of accounts, certification of assets and validation of viability plans. However, there are two important issues that limit the extension of the use of such external verification procedures to most Member States. First, some of the actions that involve external agents are considered only as alternative means of proof to other direct verification procedures; this means that transport firms naturally tend to use simpler (and perhaps cheaper) ways of proof. And second, in most Countries the responsibility of those auditors and financial institutions in the process is not clearly defined, mainly when it concerns potential debts of the haulage firm and derived consequences in the financial institutions. The combination of these two factors results in a generalized low interest of banks and auditors in being active agents in external verification processes in the majority of the Member States.

The extra conditions proposed by some countries do not seem to be the best solutions for supporting a better application of the Directive. On the one hand, compulsory bank deposits are a totally safe guarantee for debtors against potential financial problems of transport firms, but at the same time are inefficient in financial terms, as they deprive liquid resources from potentially important uses, which is strongly criticised by transport associations as an additional and unnecessary financial burdens for firms. On the other hand, the condition of the 50% of own capital over total funds (introduced in Hungary) may reduce the growth capacity of the firms through debt and may lead to unnecessary overcapitalisation.

Furthermore, the concept of “capital and reserves” is quite controversial, as the different interpretations of this expression lead to very different ways of proof. Some Member States accept as capital any asset of the firm and others only those with higher liquidity and, thus, more security for creditors. Even in cases where the same financial items are accepted as proof of financial standing, the procedures for the assessment are different; this problem is more serious when dealing with Regional or Local Transport Administrations of a country that uses different procedures to assess the same national standards.

It can be argued that the text of the Directive is too open in what refers to the minimum financial conditions to be accomplished and the indicators and means used to prove it. Up to some extent, this has to be this way in order to embody the national legislations and practices of 25 Member States, some of them newcomers, avoiding too radical changes in the national access to the market standards. On the other hand, this openness (exemplified in the definition of the requirement, in article 3.3.a) produces different interpretations and practices per country that do not support the use of a “European uniform approach” to the matter.

One of the key points lies in articles 3.3.c and 3.3.b of the Directive, those defining the financial threshold for financial standing and the indicators for its assessment respectively. There is an apparent contradiction between them or at least a lack of consistency: 3.3.c refers to “minimum capital and reserves”, while the focus of the financial items listed as indicators in 3.3.b is on several categories of assets<sup>28</sup>. Apparently, 3.3.c suggests a valuation of both assets and liabilities of firms, as “capital and reserves” are also known as “own capital”, which results in accounting terms from the comparison of total assets against total liabilities. This means that, in a proper validation process, the calculations based on the € 9.000 and € 5.000 should reflect the difference between total assets and total liabilities in terms of own capital. This procedure is not interpreted in this way in practical terms by the Directive, as the financial assessment procedures focus, due to the references of 3.3.b, on the assets’ value. The assessment procedures followed by the countries are very diverse, according also to the Directive.

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<sup>28</sup> All the listed items are assets with different liquidity: “funds available, including cash at bank, overdraft and loan facilities; any assets, including property, which are available to provide security for the undertaking; costs, including purchase costs or initial payment for vehicles, premises, plant and equipment and working capital”. It is important to remark that the referred “costs” are just indicators of the assets’ value, not a real liability.

This apparent inconsistency of the Directive gives ground to diverse practical assessment procedures in the EU members. The “hard interpretation” of “available capital a reserves” followed by Luxembourg and the UK guarantee, through bank deposits, the immediate availability of own capital (in the form of a reserved capital amount) devoted to debt payment. On the other hand, “soft interpretations”, which are followed by most countries, only focus on the assets, an extreme example of which is given in Poland, where the minimum capital can be showed through the value of the fleet (taken from the insurance policies of trucks), regardless the amount of liabilities faced by the firm. In such cases, what firms prove is “asset availability” and not “capital availability”.

Future legislation developments from the EC should take into account these inconsistencies, tending to provide indicators really suitable for the purpose of own capital (capital and reserves) assessment. In any case, the considered alternatives must minimize any kind of limitation on capital structure and asset management policies. For example, it should be allowed for companies to constitute themselves with more or less own capital or acquire fleet as they see fit (through direct purchase or any kind of leasing arrangements). This, for instance, would invalidate the Hungarian solution of keeping a compulsory minimum of 50% of own capital over funds.

Finally, the lack of a spread-out use of statistics makes it very difficult to assess the real impact of the enforcement of the Directive at European scale. Only small fractions can be valued from national examples and even on this scale the information available does not amount to much. This makes it almost impossible to assess the impact of the introduction of the Directive in the markets.

#### **5.4 CPC**

The requirement concerning professional competence is in most countries correctly transposed. A few countries have faced delays. In Italy for example the new law on the three requirements has only come into force as of January 2005. Sometimes it is rather difficult to determine to what extent the transposition has been correct, for example in Portugal. Most of the new Member States have literally taken over the text of the Directive into their national law. The disadvantage of this is that elements that in fact require coverage in greater detail such as the description of a “test” in case of experience or determining who needs to have a CPC are still open to various interpretations (as is the case in the text of the Directive). Some of the legislation in the “old” Member States as well leaves however a lot of space for interpretation.

The main weaknesses of the Directive however relate to the implementation in real life. First of all the level of examination varies greatly. Some countries have very difficult examinations such as France whereas in other countries, such as Portugal or Cyprus, the examination is quite easy to pass. During the seminar the delegate from France gave some insight in the background and reasons for the low passing rate. It appears that in some of the

(mostly new) Member States there is no clear insight in the national market and the extent to which they should have a CPC. The EU rule is clear but the application is sometimes limited to international operators. During the seminar it was pointed out that although diploma tourism exists it is not a wide spread practice.

Secondly there are quite some differences between countries when it comes to training for the CPC. The main difference lies in the division between compulsory and non compulsory training, while at the same time there are some countries where training is not compulsory but the examination level is so high that training is inevitable. So far however, there is no proof for the hypothesis that obligatory training leads automatically to higher qualified operators. For that the level of examination seems to be more decisive. Furthermore there is no uniform system for the accreditation of these training centers. In some countries where training is not obligatory, training centers need to be government approved (Hungary, France) and in some of the countries where training is obligatory it is not always very clear according to which rules these training centers are accredited. The accreditation of training centers in these countries would be an interesting subject for further study.

In the third place the definitions of who needs to have the CPC and under which conditions the CPC holder may operate vary among countries. Various participants of the seminar pointed out that it remains quite vague in terms of who should have CPC in the company. Directive 96/26/EC as amended by 98/76/EC states that he who needs CPC should be the applying natural person or the one who shall continuously and permanently manage the transport undertakings of the company. Many countries have used this rather vague description either as definition or as a starting point. Austria for example defines “the person in charge of daily operations” as the person that should have CPC, this person should work in the company for at least 20 hours per week. Denmark stipulates that the CPC holder needs to work 70% of his time in the company. Portugal stipulates: “Professional Competence should be fulfilled by an administrator, director or manager that holds the power to make decisions in the undertaking, isolated or jointly and who runs the undertaking in permanence and effectiveness”. However, involved Portuguese parties point out that this description does not work in practice either. The Netherlands is currently considering a new definition: “the person who is professionally competent has to give permanent and actual guidance”. The Dutch NIWO definition (paragraph 4.1.4) is another way of setting the standards the CPC holder should meet.

In some countries a CPC holder is not allowed to represent more then one company at the same time (Ireland), while in others this practice is permitted. Although the Irish solution may seem attractive, a weak point is the consequence that a company with 1000 trucks only needs to have one CPC holder whereas the same CPC holder is not allowed to represent two companies with 2 trucks each. This can be considered to be unfair in relation to the smaller and medium seized enterprises.

The monitoring of the fulfillment of this requirement presents some problems as well. Enforcement agencies are not always equipped to actually determine whether a CPC holder is present in a company or that he just exists on paper. Furthermore, it is hard to enforce and check whether companies actually notify the relevant authorities when the CPC holder dies or leaves the company. The burden of proof seems to be with the enforcement agencies rather than with the companies. In other cases –when cases are brought before the courts – judges seem to find little reason for severe sanctions as a consequence of a missing CPC. Lithuania requires that the holder of the CPC retakes those parts of the examination that relate to road transport every 5 years for renewal of the certificate for professional competence.

Finally, there are large differences in the way in which Member States deal with derogations, which leads to inconsistencies in the implementation of the requirement across Europe. Some countries, like France, made having an advanced diploma the norm for those who wish to obtain the CPC, while at the same time making the examination so difficult that only 10% of the applicants pass. Another risk of derogation is that there are not always real checks concerning the relevance of the previous training or education. For example, in some countries a lawyer might be exempted only from those modules of the examination that relate to legal matters, while in some other countries a lawyer might be exempted entirely from the examination. The point is that a lawyer might have a university degree but is not necessarily educated in the field of road safety or commercial and financial management. Almost no country has specified the test which applicants with more than 5 years of experience have to take.

All these difficulties in terms of implementation should however not prevent us from drawing some positive conclusions as well. The transport sector itself and all involved parties are well aware of the rules and in general they are strongly supported by both operators and the road haulage associations. In fact the access to the profession rules may, in addition to the driver's hours, be considered as one of the most famous legislative Directives in the transport acquis, with an important impact on the whole road transport sector. Therefore it is appropriate to invest further in a clearer EU regulatory framework in this area and in particular allocate time and funding to the improvement and clarification of 96/26/EC as amended by 98/76/EC.

## **5.5 Passenger Transport**

Since the Directives concerning the admission to the occupation of transport operator also apply to operators of passenger transport this study would not be complete with at least a basic investigation of the situation in passenger transport.

In most countries the rules for freight transport and passenger transport are more or less the same. Some countries, however, have delayed the transposition of all aspects of Directive 98/76/EC concerning the rules on admission to the occupation of road transport passenger operator. The Commission brought a case against Belgium before the European Court of Justice at the end of 2003 because Belgium had failed to transpose all aspects of Directive 98/76/EC

concerning the rules on admission to the occupation of road transport passenger operator. Belgium was due to pay a daily fine pending transposition from the 22<sup>nd</sup> December 2003 onwards. The Belgium authorities, however, had by the 22<sup>nd</sup> December 2003 transposed Directive 98/76/EC into national law by means of the Royal Decree concerning the condition for access to the profession of road passenger transport operator. This Royal Decree has entered into force on the 1<sup>st</sup> January 2005.

### *Licensing*

There are still some noteworthy differences in the licensing regimes in the different countries.

In Germany for example the license is granted for a set period which differs per type of bus. The licenses granted to public transport undertakings are granted for the same time the undertaking has the right to transport passengers with a maximum of 8 years. For coaches the maximum period for which a license is valid is 4 years. The maximum period for trolleybuses and trams is 25 years, but also depends on the right to transport passengers.

In Finland the licenses are valid for 10 years, while every 5 years, or after an extension of the vehicles under a license, a check takes place whether the qualitative requirements are still fulfilled.

In Lithuania there are no guidelines for the issuing of a license for local bus transport. Licenses are issued by municipal institutions. Every municipality has developed its own procedure controlling financial standing and good repute. CPC is checked by passing the CPC examination at the Inspectorate. Even for the Inspectorate, which operates on a national level it is unclear how the other two requirements are checked by local municipalities and on which basis the licenses are issued. International passenger operators, however, have to follow the same procedures as freight haulers.

In most countries a division can be made between public passenger transport and private passenger transport including transport by coach. The difference has effects in for example the Netherlands and Spain where private transport can be performed by anyone with a license but public transport has to be won through a tendering procedure (and a license, naturally). In the Netherlands also a Communitarian license is required in addition to the normal license for international passenger transport.

In Spain the same institutions as in goods transport are involved in passenger transport. However passenger transport is more strongly regulated when it concerns public transport services. As a consequence of this strong regulation it is relatively difficult for a small company to enter the public passenger transport market in Spain. In France, the government has created more lenient rules concerning passenger transport operators.

### *Good repute*

The requirement of good repute in France must be met by a CPC holder who “effectively and continuously manages the transport activities of the business.” The French regulations are quite precise in pointing out by which convictions the criteria for good repute are no longer met.

In Germany the requirement of good repute is no longer satisfied if the transport undertaking – despite written warnings – fails to satisfy the safety rules or if its acts constitute a violation of the obligations under the law “Regulation on Admission to the Occupation of Passenger Transport Operator”.

In Portugal the list of violations which leads to non-compliance with good repute requirement is more extensive than for goods transport. The verification of the requirement of good repute is in practice a criminal check, which takes place every 5 years when transport licenses are renewed. The Directorate-General of Land Transport (DGTT), which issues transport licenses, has access to the criminal records managed by the Ministry of Justice. However, DGTT has no access to the records of the non criminal offences related to the profession and activities of the firm and the drivers. Therefore, the control and enforcement of the requirement is poor.

### *Financial standing*

For financial standing it can be said that the main differences are derived from the consideration of “public service” that the passenger transport has. This means that in some cases extra conditions are imposed in order to meet higher financial standards, and some times the relevance of the public services allows a “special treatment” of passenger transport firms. Only a few countries present specificities worth to be mentioned.

In the Netherlands the regulations for financial standing are very strict. A company needs to possess €36.302,42 each first vehicle and €4.991 for each subsequent vehicle. Furthermore it must have a total company capital of €45.378,02. Portugal follows a similar reinforcement way for the requirement: the minimum capital requirement demanded for passenger transport firms is € 100.000. This amount corresponds to the total capital stock of the firm at its start-up, including the € 9.000 and € 5.000 per vehicle in that amount. However, the Portuguese legislation is more lenient regarding periodic checks, as firm must show only available financial resources of at least €5.000 per vehicle operated. In Austria the Directive’s requirements are reinforced through the increase of the minimum capital threshold to € 18.000 for the first vehicle in use and to €10.000 for each additional vehicle. The presentation of an external audit from a financial institution is compulsory. The entity has to provide a comprehensive report on the financial ability of the firm to undertake its activity each five years. The account of vehicles done on the basis of the total number of buses involved per concession or in case of a firm operating several independent lines, the assessment is done separately for the vehicles involved in the operation of each line.

The financial standing in the Czech Republic for passenger transport firms is structured and assessed in terms according to the Directive. However, the financial standing requirement conditions are not applied to those services carried out to satisfy “basic transport needs”.

France also refers to “basic public transport needs” as a justification to enforce the financial requirement in a slightly more lenient way. The objective is to support the survival of transport firms providing basic transport services in rural areas. However, controls to passenger transport firms are undertaken annually, and financial standing of firms is followed quite closely, especially because many firms are publicly subsidised. The French transport administration announced recently the intention of undertaking a reform of the financial conditions of access to the passenger transport market.

### *CPC*

In the Netherlands CPC can not be acquired based on experience. In Finland the passenger transport operator has to pass the operator course of 6 months (4 days of training each month) at an institution approved by the Ministry of Transport and Communications. If the operator has 5 years of practical experience in the management of an enterprise operating passenger transport services only shall pass the final exam of the course.

Spanish CPC examination is the same for both national and international transport. Passing rates in Spain are low: below 20%. In Portugal persons with a higher education graduation or with officially recognized graduation that implies good knowledge may be excused of the examination on these matters.

## **5.6 Assessment of project output**

The study has taken place in the period between January 2004 and April 2005. Most countries were visited in the first stage of the project and, in the case of the new Member States, some of these countries had not acceded to the European Union at the time the interviews were held. This illustrates the changing environment in which this project was executed. In any project where a close look is taken at practical implementation of legislation one has to take into consideration that only a momentary picture of the situation is presented.

The subject needs continuous monitoring because it is obvious that the practical implementation of EU legislation concerning road transport in general and the implementation of Directive 96/26 as amended by 98/76 in particular remains in constant development.

However, the approach chosen for this study has proven to provide at least some insight in the practical implementation of the requirements on good repute, financial standing and professional competence. Best practices as well as regulatory gaps have been identified. Furthermore, it became apparent that in some countries the transposition of the Directive into national law was lacking.

This being said, various recommendations can be made for improvement on both a national and an international level. These recommendations are presented in the next paragraph.

## 5.7 Recommendations

Based on the research that was done within the scope of this study various recommendations can be made. These recommendations present the view of the consortium and do not necessarily reflect the views of the road transport sector or the authorities involved in the law development or practical implementation of the Directives 96/26/EC and 98/76/EC concerning the admission to the occupation of road transport operator.

Recommendations will be given on both a community level and Member State level and include areas for further study.

### *Recommendations on member state level*

- The study has made clear that there is a need to limit the number of institutions involved in the enforcement of the various regulations for road transport. At the national level effectiveness of procedures and enforcement is helped if only one ministry, instead of two or more, provides a uniform legal framework for a national and unified road transport market and guidelines for verification, application and enforcement of the relevant rules. This was also a very clear outcome of the discussions during the seminar.
- Fitting the above recommendation, Member States should do everything possible to make the applied set of legislative requirements as comprehensive as possible. A scattered set of public law, civil law and penal norms does affect chances for effective implementation in a negative way.
- Many Member States have, at the national level, no idea whether and how many licenses have been withdrawn and on which grounds. This is however a clear indicator of efforts made to remove the “cowboys” from the road for the benefit of the entire sector. Therefore all Member States should make institutional arrangements that allow them to report on enforcement efforts carried out annually
- The majority of Member States needs to work on a transparent and well considered system for derogations for CPC. At present this is often too ad hoc.
- More efforts should be done in all Member States to implement the good repute requirement and to check compliance with this requirement periodically. With maybe the exception of the UK the implementation of good repute is far from convincing.

### *Recommendations on Community level*

- During our research we found out how difficult it was to have a proper overview of cases of license suspension/withdrawal although this sanction is extremely important as “ultimate remedy”. Any Member State should in fact be able to have a more precise insight in the practice in this regard. Therefore we can imagine a system were Member States annually report (temporary) withdrawals of licenses and the motivation (CPC,

financial standing, good repute or other). This forces the Member States to create a transparent and active enforcement policy without intervening in Member States prerogatives (prescribe how things should be organized). This information gives insight in the “behaviour of the sector” and may moreover be useful as a tool for enforcement agencies. Therefore the future Directive should require annual submission of these data to the European Commission. From the discussions during the seminar it became clear that some Member States have experience in gathering qualitative data on license withdrawal. The outcome of such national evaluations should be communicated with the Commission. Further study towards this end should take into account the manner in which Member States have to report license suspension or withdrawals. Furthermore the form, content and accessibility of a database on EU level should be carefully defined.

- The financial standing requirement should be described in the Directive in greater detail to facilitate harmonization in its implementation, particularly the “assets” that can be used to proof financial standing. Suggestions for this have been made in this report and reaffirmed during the seminar. The involvement of external parties (accountant, bank) to verify financial standing should be made obligatory.
- Of special interest would be the development of a system of ratios for the valuation of financial standing of transport firms. These ratios should be focused on a true assessment of the capital and reserves availability and in the capacity of firms for facing debts. The system could be composed of a number of different and complementary indicators easily traceable over time (for instance, from items included in the balance) and with a certain degree of flexibility: for instance, of a set of 5 indicators, the firm could be considered of financial standing if at the time of compulsory renewal of the transport licence it can be proved that 4 out of the 5 were accomplished in the years between inspections. This system could also easily apply to yearly inspections of the accounts, and would provide a quite straight forward and standardised method for analysis. On the other hand, such a method would imply an effort from the national administrations in terms of coordination, improvement of information technology tools and general inspection costs. The type of indicators used in such a system requires further research in order to ensure that each of these indicators is measurable and realistic for each Member State.
- Another possibility to be explored is the development of an insurance coverage system, perhaps as an alternative or complementary means of proof for financial ratios. Such a system would allow a greater flexibility, greater liberty of management to the company (and, supposedly, greater efficiency in overall economic terms). The greatest advantage of the insurance system is that it would shift most of the assessment costs to the private sector (insurance companies), whereas transport administrations would have only to spend resources in checking that all mandatory insurance coverage complies with the law.
- A key point for the correct assessment of financial standing is the separation between compulsory inspections. At this moment, this separation seems too high to provide a really continuous monitoring of the financial capacity of firms, especially in very dynamic transport markets with a large proportion of small firms. During the seminar it was pointed out that in general the current system of assessing financial standing is to

rigid. This is a path for evolution that can be followed by National Transport Administrations and could be introduced in future EC legislation developments. Nevertheless, the enhancement of assessment capabilities can be done by other means, namely through the reinforcement of the inspection systems and procedures. This would allow better monitoring between licence renewals and prevent the development of more restrictive legislation.

- Some transport officials as well as professional associations expressed the need to differentiate the evaluation of the financial standing of firms at the beginning of the activity and at the periodic checks. In starting-up periods, it is quite common that the initial life cycle of a business is characterized with negative cash-flows, negative results, high debt-to-equity ratios and even negative own capital and reserves. The cash cycles may also vary considerably, specially taking into account that there are companies specialized in the transport of specific products, or alternatively face a different client structure (concentrated or dispersed), which may significantly influence payment schedules. Further study could be directed to such facts, searching for a potential difference of treatment concerning the assessment of starting-up companies and incumbent firms.
- It is important to pay specific attention to the development of information support systems for the assessment of the requirement for financial standing. In practical terms, Member States should centralise financial information concerning public agencies, such as tax and social security departments. These debts are not included in the Directive but can be considered as a good indicator of the capacity of firms to face debtors. Such co-ordination is essential, especially in Member States with a decentralised political organisation and regionalised transport agencies.
- The consortium has come to the conclusion that any involvement of the IRU in examination issues is confusing as this is the work of the competent authority. We have experienced however that the level of examination still differs a lot throughout Europe. As one of the tools to reach a more equal level we can imagine a role of the IRU as official body that establishes a “visiting committee” consisting of examination experts that regularly visit examinations in Member States in order to make an assessment of the level of the examination. The results of the visits can be included in an annual report to be presented to Member States and the Commission. This can also be used as a tool to enhance the overall quality of examination. The role of the IRU should be that of an “advisor”. More insight, however, is required in the form in which such an advisory committee should operate.
- The practice regarding the re-examination demand differs extremely throughout Europe. The 5 years examination should be described in greater detail in the newly proposed Directive. The consortium can imagine that the Directive requires for example: that the refreshing examination should include all relevant new developments in relation to the original examination. The consortium can imagine that the topics of the refreshment course should be made public annually on internet.

- The text of the Directive should be more restrictive as far as it concerns the allowing of derogations.
- The Directive leaves room for exemptions in the CPC examination for those applicants that can prove 5 years experience in the road transport sector or who have certain advanced diploma. Applicants with more than 5 years experience should sit a test of which the contents are not described in the Directive. The consortium would like to suggest that the Directive sets the minimum standards, topics and circumstances for such test as practice proofs that this is kept very open in national legislation.
- The consortium can also imagine the training of national court judges, prosecutors and lawyers to ensure better understanding of the ins and outs of the European Acquis for road transport. Furthermore setting up specialized transport (chambers of) courts and tribunals could be one of the ways to ensure that the national judicial systems are better equipped to handle road transport related cases. A study into the possibilities for such a training program and setting up these specialized (chambers of) courts could shed more light on the possibilities and limitations of this recommendation.
- The question of enforcement of the implementation of the Directive in the different Member States by the European Commission and the application of possible sanctions against countries, which do not comply with these regulations, deserves further study.