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COMMISSION STAFF WORKING PAPER

IMPACT ASSESSMENT

accompanying the

proposal for a Regulation of the European Parliament and of the Council on common rules concerning the conditions to be complied with to pursue the occupation of road transport operator

proposal for a Regulation of the European Parliament and of the Council on common rules for access to the international road haulage market (recast)

proposal for a Regulation of the European Parliament and of the Council on common rules for access to the market in coach and bus services (recast)

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1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Organisation and timing

This impact assessment has been prepared with a view to update Directive 96/26/EC on the admission to the occupation of road transport operator and Regulations (EEC) No 881/92, (EEC) No 3118/93, (EEC) No 684/92 and (EC) No 12/98 on access to the road transport market. It was launched in July 2006 and built on various studies carried out during 2004, 2005 and 2006¹. During the work on this impact assessment, particular attention was paid to ensuring that its scope reflects as accurately as possible the various types of feedback from stakeholders.

It should be noted that the legislative proposals attached to this impact assessment are part of the Commission simplification programme² and do not intend to make fundamental changes to the legal framework underpinning the internal road market. The aim is primarily to ensure more consistent, homogeneous and effective application and enforcement of existing rules. The impact of these proposals and the present report should be considered in this light.

In assessing the impacts, the list of possible kinds of impact as identified in the *Impact Assessment Guidelines*³ has been considered. However, as recommended in the guidelines, the impact assessment has taken into account the principle of proportionate analysis and has focused on the most significant forms of impact and distributive effects. Whenever possible, quantified estimates have been provided.

1.2. Consultation and expertise

Before drafting the legislative proposals and the present report a public consultation was conducted in order to gather as many comments and suggestions as possible from the individuals and bodies concerned. This exercise complied with the minimum standards for consultation of interested parties set out in the Commission Communication of 11 December 2002 (COM (2002) 704 final).

An open internet-based consultation took place between 9 June and 9 August 2006. The consultation paper included a questionnaire in two parts: Part A on access to the market and Part B on admission to the occupation. The Commission services received 67 contributions, breaking down into the following groups: national authorities: 16; international associations of road operators, employees or various interest groups: 10; national associations: 36; companies or self-employed: 5.

The Commission services discussed the key issues addressed in the proposal for access to the international road haulage market in the framework of the social dialogue with the social partners on 5 September 2006. On 7 November 2006 a hearing of stakeholders

¹ Study on cabotage (ECORYS, 2005); study on admission to the occupation (NEA, 2005); study on the working time directive (TNO, 2006); impact assessment of legislative proposals on the access to the occupation and the access to the market (ECORYS, 2006).

² References: 2006/TREN/01 and 2006/TREN/42

³ SEC (2005)791.

was held in Brussels with the participation of delegations from 42 organisations representing haulage operators, passenger transport operators, workers, enforcement authorities and road transport users plus 37 observers from national administrations.

Participants in both exercises welcomed the initiative. They shared the view that there is a need for further simplification and clarification of the current regulatory framework for the road transport market. One aspect repeatedly highlighted was the need to render the current rules on access to the market and admission to the occupation more comparable and easily and effectively enforceable.

The consultation paper, the contributions received, a summary of these contributions and the report on the hearing of 7 November 2006 are available on the “Your voice in Europe” website and at the following internet address:

http://ec.europa.eu/transport/road/consultations/road_market_en.htm.

It should be noted that the stakeholder consultation was assisted by an independent expert, Prof. Brian Bayliss, who contributed by putting all the comments received into an economic perspective. Prof. Bayliss used to be the co-chairman of the Committee of Enquiry on Road Transport which produced a comprehensive report on road freight transport in the Single European Market in 1994.

2. PROBLEM DEFINITION

2.1. Trends in the road transport market

Road transport accounts for 1.6% of GDP and 4.3 million jobs. It is an important sector in itself. But it has also a key role for society. It carries 45% of the goods traded within the EU and therefore is of paramount importance for the functioning of European supply chains. Coach and bus services, although representing only 8% of total passenger transport, also play an important role since they provide collective transport which, as an alternative to private cars, can contribute to reducing energy consumption and emissions from transport and can contribute to better accessibility in urban and isolated areas.

Since the implementation of the internal road transport market, the shape of the road sector has undergone profound change. After the price deregulation in international transport achieved in the late 1980s, the Directive on admission to the occupation of road transport operator and the four Regulations on access to the road transport market adopted by the Community a few years later have been the stepping stone for these changes. The Directive introduced minimum requirements as regards good repute, professional capacity and financial standing to be satisfied by operators wishing to engage in road transport. The four Regulations liberalised international road haulage and occasional passenger services and established regulated competition for authorising regular passenger services and certain cabotage haulage operations in a Member State by non-resident carriers from other Member States.

Since then more and more customers have had recourse to “hire and reward services” since the share of own account transport in total transport has dropped from 30% in 1986 to 17% in 2003. Road transport services have increased and diversified their offer,

responding more closely to customers' needs for just-in-time services or specialised services. Significant efficiency gains have been achieved. Although in the meanwhile fuel and labour costs have increased in all Member States, prices of transport for end-users have not increased overall, and have even in some cases decreased. Shippers and the whole economy have gained and the road haulage market has developed substantially, creating new business opportunities for the sector in a market which is expanding on average by 3.4% a year, i.e. slightly above the average GDP growth rate in the EU.

In particular, the international transport segment is growing. 27% of road transport in Europe is international transport⁴ and 0.9% is cabotage by foreign hauliers. Between 2000 and 2004, international flows measured in tonne-kilometre increased by 23%, against 9% for national transport. Cross-trade grew steadily at an annual average rate of 4.4% between 1999 and 2003. This rate increased to over 20% for 2004 and 2005.

Competition by road haulage operators from other Member States in the international transport market has become effective⁵, even if the situation varies greatly from one Member State to another. On average 50% of the intra-EU import and export market in each country is served by domestic hauliers (from 1% to 70%). In comparison, very little cabotage takes place with an average penetration rate of the domestic market of 1.2% in 2004. Yet it is increasing rapidly and it takes a bigger share on some of the large national markets: more than 1.6% of the national market in Germany, 2% in Austria, 2.6% in France and 3% in Belgium. Cabotage is however an important part of some Member States' business: for hauliers from Luxembourg, it even represents 25% of their total transport performance.

As regards the production costs structure of the road haulage sector, major changes have occurred. Costs differ between certain Member States, both in absolute terms and in terms of the distribution of different types of costs. Road haulage costs can be almost double from Member State to another. Labour costs (drivers) in particular can vary from 1 to 3 and even in some cases from 1 to 6.⁶ The comparison with the situation in 1998 also shows that the overall cost differences between Member States increased between 1998 and 2004. It appears that rising driver costs and fuel costs have had a very different impact depending on the Member State.

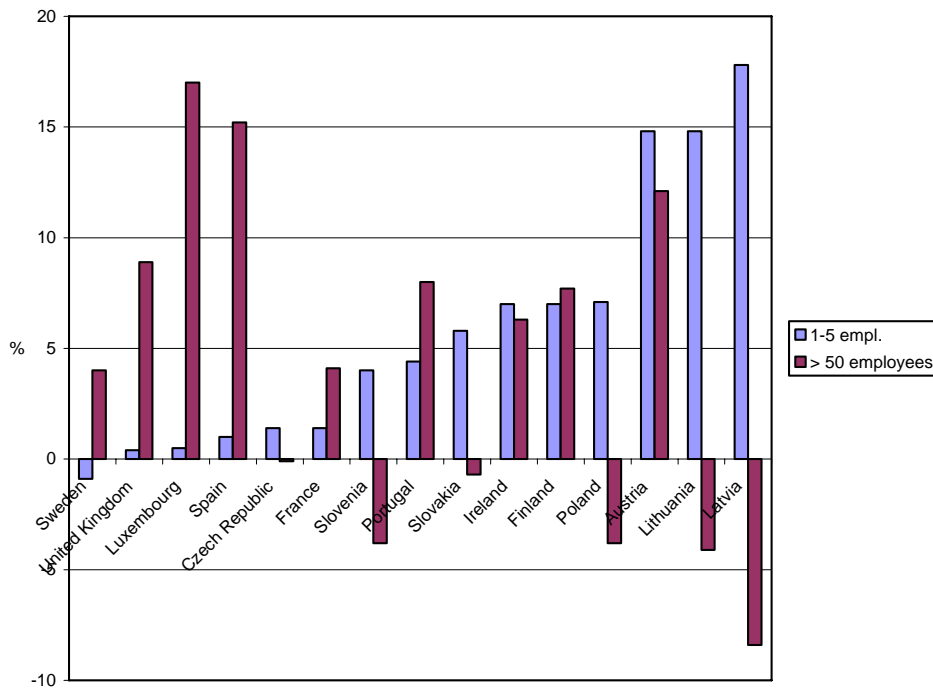
⁴ International transport comprises bilateral transport (transport between two countries by a haulier established in one of the two countries), cross trade (transport between two countries by a haulier established in a third country) and cabotage (transport within a country by a haulier established in another country).

⁵ Average penetration rate by foreign hauliers of the international transport market is over 50%, Road Report No1, DG TREN.

⁶ ECORYS, IRU

The structure and growth dynamism of the sector since 1995 reveal a slight move towards consolidation. Larger operators offering integrated logistic services and/or network organisations are expanding rapidly. Intense corporate restructuring has been taking place. But this trend is counterbalanced by the very low entry cost, a typical feature of road transport, which allows low qualified and undercapitalised operators to enter the market and to a lesser extent the re-designation of employees of larger firms as so-called “false self-employed drivers”. As a result, out of roughly half a million road haulage undertakings, 95% are small companies with fewer than 10 employees. This picture differs from some Member States to others. Figure 2 shows that both fragmentation and consolidation have taken place depending on the Member States.

Figure 2: Growth of undertakings between 1995 and 2003,



Source: TNO

A high proportion of small companies tend to be economically dependent on larger operators who prefer to subcontract through exclusive or preferential contracts rather than to invest in additional vehicles. Large operators thus benefit from flexible production capacities, can save investment costs, and dominate the sector. It is estimated that operators with more than 50 employees, while representing only 1% of the total number of companies, achieve 42% of the total added value of the market⁷. This dependency reinforces the asymmetry of power between the small companies and their customers, who are often larger hauliers or logistics companies. These small companies can hardly pass on any cost increases to their customer, which reduces their operating margins and keeps some of them in a difficult financial situation. These small operators therefore try to minimise their costs as much as possible. The heterogeneity in the market structure has another negative effect by contributing to the imperfect information of the end-customers, who, in the absence of guarantees of minimal quality standards, usually prefer to organise their transport through freight forwarders or large companies instead of small hauliers⁸. This trend is exacerbated by the fact that small road transport undertakings use a wide variety of legal forms, defined only in national company laws, which are hardly understandable by customers in other Member States.

The entry of small road haulage operators at low cost has led to fierce competition on the international transport market and overcapacities in some countries. This has exacerbated the pressure to cut prices and thus reduce profits. Profitability (defined as

⁷ INRETS.

⁸ TNO estimates that 70-80% of the customers of self-employed workers are large operators and not shippers.

the net surplus as a percentage of the companies' revenues) of both domestic and international road freight transport in France and the Netherlands has decreased continuously since 1986 and is below 1-2% in 2005. Given that the international transport market is open to competition, similar trends are very likely in other countries. A number of very small or one-man operators that enter the market are driven out of it rapidly. In the UK, 10% of newly created companies leave the market within two years⁹.

This pressure to save costs may incite some road operators to poorly comply with rules on road safety and social standards. While it can be assumed that the large majority of road companies operate in good faith, the record of infringements in several Member States indicates the existence of a number of negligent or even rogue operators. The compliance rate is also uneven between Member States. For every 100 working days checked, European enforcement agencies detect on average 2.9 offences against driving time rules, but the variation is high: in some Member States the detection rate is over 5, while in others it is less than 1. Lastly, compliance rates differ between undertakings operating outside their establishment country and those operating in their home country. The Vehicle and Operator Services Agency in the UK has found that heavy goods vehicles on international journeys have a higher rate of non-compliance than those engaged in purely domestic journeys (e.g. as regards roadworthiness, 31% of non-GB vehicles are non-compliant compared to 25% for GB vehicles). It also found that vehicles on international journeys are disproportionately more often involved in incidents which can lead to closure of lanes and severe congestion.

Low compliance rates have a negative effect on road safety and congestion since failure to comply with rules may create accidents or incidents in the network (lane closure). Heavy goods vehicles are involved in 10% of the total number of accidents with injuries. Although this figure is decreasing slightly, the seriousness of these accidents is two to three times higher than that of other accidents and 20% of road fatalities are caused by accidents involving heavy goods vehicles. The second negative effect is on market efficiency. The uneven level of monitoring and controls creates distortions of competition between operators committed to be fully compliant, and therefore to bear the corresponding compliance cost, and those inclined to deliberately exploit the disparities mentioned above.

The situation of the market for coach and bus services is somewhat different. Occasional services have been liberalised while regular services are still subject to special authorisation procedures prompted by concerns about safety and protection of passengers' rights. Across the EU there was an increase in passenger-kilometres up to 2001 and since then a slight decline can be noticed in recent years¹⁰, which has even led to a slight loss of market share to the benefit of air transport and high-speed trains. In 2005, an estimated EU total of 72.8 million passengers used international coach and bus services. This trend reveals that coach and bus services may not have fully exploited their potential advantages. Recent coach accidents with considerable casualties have also increased public concerns about compliance with the rules in the coach industry.

⁹ Traffic Commissioner's Annual Reports 2004-2005.

¹⁰ Road Report No 1, DG TREN.

In spite of considerable progress since the 1990s, differences persist between Member States regarding the framework conditions imposed on road operators. Undertakings have to comply with disparate minimum requirements concerning professional capacity, financial standing and cabotage, and the sector faces an uneven level of monitoring and controls in the Member States.

2.2. Problems related to access to the profession and the market

A number of problems relate directly to EC road transport legislation, notably the lack of clear principles for applying in a consistent manner the rules laying down the requirements for entering the market and the profession and performing the associated controls and monitoring. This legislative framework comprises the following legal acts:

1. Directive 96/26/EC aims to ensure that authorisations, usually in the form of national or Community licences giving access to the Community market, are issued only to competent and reputable operators. It establishes minimum standards as regards good repute, financial standing and professional competence. It applies to all operators that carry goods or passengers for commercial purposes, including both those operating within the domestic markets and those engaged in international transport. It also puts in place a system for the mutual recognition of the corresponding documents.
2. Regulation (EEC) No 881/92 establishes the freedom to provide international carriage of goods by road for hire and reward for the undertakings that hold a Community licence, while the first Council Directive identifies certain forms of transport which are exempted from all kinds of authorisation. Regulation (EEC) No 3118/93 allows undertakings holding a Community licence granted by a Member State to carry out national road services in another Member State (cabotage) under the condition that this service is provided on a temporary basis. Community licences can be issued only to undertakings established in a Member State which satisfy the requirements in accordance with Directive 96/26/EC.
3. Regulation (EEC) No 684/92 opens up access to the market in international carriage of passengers by coach and bus. The provision of occasional services is subject only to a Community licence while international regular services additionally require a special authorisation. Regulation (EC) No 12/98 authorises cabotage operations where they are carried out in the course of an international transport service.

Consultations with the stakeholders and various studies (e.g. the NEA study carried out in 2005¹¹) have revealed diverging application between Member States, unnecessary complexities and problems in seven main areas:

- Difficulties to monitor properly companies without stable and effective establishment;

¹¹ See http://europa.eu.int/comm/transport/road/policy/marketaccess/index_en.htm.

- Non-comparable certificate of professional capacity and financial capacity requirements for being admitted to the occupation;
- Unclear link between the holder of a certificate of professional capacity (“transport manager”¹²) and the undertaking using his/her certificate to obtain the licence giving access to the market;
- Unclear definition and control of temporary cabotage;
- Burdensome procedure for authorising international regular passenger services;
- Heterogeneity of a number of control documents;
- Uneven level of monitoring of compliance.

These problems create distortion of competition between operators which although operating the same market are subject to different administrative and legal requirements and a degree of mistrust of foreign operators amongst customers, national administrations and the road sector. It may undermine market efficiency, the quality and safety of road transport in general. Customers do not reap the full benefits of the internal market in road transport.

Other problems have been identified, such as existing derogatory regimes for undertakings operating smaller vehicles and grandfather rights exempting undertakings established in certain Member States from any requirements of good repute, professional capacity or financial standing. These wide-ranging derogatory regimes were usually conceded a long time ago to undertakings established before the accession of their country to the EU. There is no economic justification for maintaining them since they can only introduce distortions of competition. .

The following section describes the seven problem areas.

Establishment rules for being admitted to the occupation or being granted a licence

Each Member State imposes its own conditions on road undertakings wishing to establish themselves on its territory. Some have stringent criteria (office, parking space for each vehicle, activities, vehicle, staff, or even conditions regarding age of fleet) whilst others only require basic registration with chambers of commerce. This disparity encourages undertakings to locate in Member States where the levels of requirements and monitoring by enforcement authorities are lower but without having a real operational base and office in the country of registration (establishment country). These operators then offer their transport services between other Member States without undertaking any substantial amount of business in the country of establishment, thus without taking part in the real economic life of the host

¹² The “transport manager” is the person designated by the operator to manage the transport operations. The legislation requires that this person meets minimum requirements in terms of good repute and that he holds a certificate of professional competence.

country (“letter-box” companies). Some even leave the country immediately after obtaining a Community licence valid for five years. It could be argued that such out-flagging¹³ makes sense from the point of view of economic theory in so far as it contributes to the more efficient allocation of resources and the reduction of transport costs. But checking the good repute of these undertakings, which have no stable and effective establishment, is particularly difficult, in particular checking their compliance with rules that require access to their books (e.g. working time rules). **Undertakings without stable and effective establishment cannot be properly checked to the same extent as other undertakings.**

Financial capacity

The financial standing required by Directive 96/26/EC is aimed at ensuring that the undertaking is properly launched and well managed. It is broadly accepted that such a requirement helps to discourage operators to engage in the occupation when they are likely to be forced to leave it quickly, provides some sort of security to creditors, and contributes to making sure that the operator has enough financial resources to comply with standard business practices, in particular to properly maintain its fleet. The Directive provides that operators should have at least €9,000 for the first vehicle and €5,000 for the other vehicles. The problem is not so much the level of these amounts¹⁴ but rather what it is supposed to cover. Some Member States have opted for a flexible approach¹⁵ and require only minimum fixed assets (including land, building and vehicles), while others require minimum cash or a bank guarantee¹⁶ or minimum capital¹⁷. An undertaking deemed to satisfy the financial standing requirement in one Member State may not satisfy it in another Member State although authorised to operate on the same market. Another problem is that to be effective the financial standing condition should ideally be satisfied all the time and not only during five-years checks. Under the current system, however, this would entail a significant administrative burden. **Current legal provisions do not ensure a homogeneous level of minimum financial standing and may entail an unnecessary administrative burden.**

Professional capacity

Directive 96/26/EC provides that the person effectively and permanently in charge of an undertaking’s transport activity must hold a standard certificate

¹³ Out-flagging designates various business practices: subcontracting to hauliers with low-wage drivers, establishing subsidiaries in other countries, relocating a complete activity in another country. Out-flagging allows investment flows across borders and is neither good nor bad. In certain cases, its abusive use may reflect a deliberate strategy to avoid close monitoring of the records of compliance with the transport rules (evasive behaviour).

¹⁴ These amounts may appear low if they are compared with the average annual cost of maintenance for one 40-tonne vehicle, which range between €500 and €15 000, or reasonable if they are compared with the country average annual turnover of companies, ranging from €100 000 to €1 800 000.

¹⁵ Poland, Cyprus.

¹⁶ Belgium, Luxembourg, UK.

¹⁷ France, Germany, Hungary.

delivered after he/she passed a standard examination covering matters related management of businesses and to transport activities¹⁸. This minimum qualification level corresponds to "level 3" in Council Decision 85/368/EEC on professional qualifications, which is broadly the level of a person who has completed primary school and/or technical training. However, the success rate of such an examination varies from 10% to more than 90% from Member State to another. Furthermore, candidates with five years of professional experience and those who hold certain diplomas can be exempted by Member States. As a result the value of the certificate differs between Member States. These disparities may create distortion of competition and the presence in the market of a few operators with low professional standing is prejudicial to the image of the sector amongst the general public. **Current rules do not guarantee a minimal common professional qualification level. National authorities tend to be reluctant to recognise the value of certificates issued in other Member States.**

Relationship between the undertaking and the transport manager

Directive 96/26/EC provides that the person who effectively and permanently manages the transport operations (he/she will be called the “transport manager” in this document) should meet minimum requirements in terms of good repute and hold a certificate of professional capacity. Some Member States have allowed one-man companies to designate an external person who is officially entitled to manage “effectively and permanently” their transport operation. A certificate holder may thus officially represent several undertakings. There are indications that this option is used excessively or even improperly, which makes the requirement of professional competence difficult to enforce properly and somewhat ineffective. This reduces costs for the small undertakings, but the risk is that the holder of the certificate used by an undertaking to gain admission to the occupation may not actually be involved in the management of the company. It may also create dependency between the natural person concerned and businesses which act both as his/her customers and his/her transport manager, which may give rise to disguised employment. **Unclear relationships between the undertaking and the transport manager do not offer guarantees of competence and reputation and create opacities in the contractual and liability chain.**

Definition and control of cabotage

Council Regulation 3118/93 allows the provision of a road haulage service within a Member State by a haulier established in another Member State under the condition that this service is provided *on a temporary basis*. In practice it is difficult to assess the temporary character of a transport operation and thus whether such transport is legal or not. This prompted the Commission to adopt an interpretative communication on the temporary nature of road cabotage¹⁹,

¹⁸ The amendments introduced by Directive 98/76/EC have specified some requirements as regards the organisation of this examination

¹⁹ Commission Interpretative Communication on the temporary nature of road cabotage in the movement of freight (2005/C 21/02), 26 January 2005.

trying to interpret this notion by basing itself on the Court's definition of "temporary" in connection with the provision of services. The Commission thus concluded that continuous, systematic or regular activities without leaving the country by a haulier who is not established in the host State on the territory of that State are considered not to be in line with Regulation 3118/93. Despite this clarification several Member States still saw a need to adopt their own guidelines or national rules on road cabotage. **This legal framework leaves hauliers without legal certainty that the cabotage operations they are carrying out in a Member State other than their own are lawful. It also impedes effective enforcement by national authorities.**

Procedure for authorising international regular passenger services

The market for international coach transport services is liberalised, but regulated. For international regular passenger services, Regulation 684/92 provides an authorisation regime: for each application national authorities must seek the agreement of the other Member States affected by the service, assess the consequences of the creation of the service, and notify the applicant of their acceptance or rejection of the application. As the intention of the Regulation is to liberalise the market, strict criteria are established for rejecting an application. While not questioned in principle, the procedure is perceived, especially by the sector concerned, as being too time consuming. Furthermore, some of the grounds for refusal specified by the Regulation are considered too restrictive and even obsolete. **The current procedure for authorising international regular services by coach creates barriers to new entrants and entails unnecessary red tape.**

Heterogeneity of the various control documents

In international road transport each haulier/operator receives one original of his Community licence which he keeps on his premises. For each vehicle used by a haulier/operator the authorities issue a certified copy which needs to be kept in the vehicle. Problems have arisen regarding the authenticity of the certified copies. The current regulations only specify the format of the original licence (A4 size, colour blue) but leave open whether certified copies should have the same colour and whether they must be signed and/or stamped. Some countries have issued copies with "certified copy" printed on them; these copies have raised problems in some other Member States. Some Member States mention the licence plate number of the vehicle on the certified copy. This has often led to situations where hauliers and enforcement authorities had difficulties in proving the authenticity of the certified copies. The same holds true for the driver attestation. **This lack of uniformity of certified copies as well as driver attestations creates problems during roadside checks and often leads to considerable time losses for operators.**

Monitoring of compliance

Directive 96/26/EC provides that when a national authority finds that an operator either is not of good repute, has no transport manager with the required certificate of professional competence or has too weak a financial

standing, it has to refuse or withdraw the operator's authorisation. In some Member States verifying good repute consists only in checking the records of serious criminal offences whilst in others it involves checking the complete record of offences against transport rules. Moreover some Member States carry out annual checks, others add random or targeted checks, while others use the flexibility offered by the current legal framework and carry out checks only every five years. Such diverging practices distort competition between operators established in countries with a high monitoring level and operators established in other countries. Another problem is that when assessing the good repute of an undertaking, account is taken only of offences committed in the country of establishment. The current legislation requires Member States to notify offences committed on their territory by non-resident operators to the Member States of establishment. It is up to the Member State receiving that information to decide whether to impose sanctions or not. In practice, this is rarely done given the lack of mutual recognition of offences. As a result, undertakings which carry out most of their activity abroad hardly ever have to fear sanctions in their Member State of establishment, for instance withdrawal or suspension of their qualification or licence, which explains the lower compliance rate observed among non-resident vehicles (see section 2.1). **The uneven level of monitoring and non-recognition of offences between different Member States may lead to a higher propensity of non-resident operators to poorly comply with rules, and to unfair competition between these operators and the others.**

2.3. Categories of stakeholders affected

Several categories of stakeholders are directly or indirectly affected by the issues described in the previous sections:

- Operators. Road haulage operators and coach and bus operators are directly affected because they are confronted with distortion of competition and administrative burdens due to unclear rules. They are however unevenly affected. The international transport activities of hauliers established in certain Member States appear to have declined steadily since the 1990s. By contrast, a number of operators who have based their business strategy on out-flagging in countries with lower wage levels have clearly gained. The rapid development of cross-trade traffic (transport between two Member States by a haulier from a third Member State) may well reflect this dynamic.
- Workers. Loopholes in the rules make it possible for some negligent or even rogue operators to poorly comply with the transport rules, in particular the social and road safety rules. This therefore has an impact on the working conditions and health of the workers in road transport services. Self-employed operators with low professional qualification have higher risks to become false independent workers and disguised employees.
- Enforcement authorities. These include both the authorities in charge of granting and monitoring admission to the occupation and licences and the officers carrying out roadside checks. These authorities have to cope in the current situation with complex rules and heterogeneous control documents

originating from different countries. Coordinating and consolidating information from various administrative sources (labour inspectorate, police, and tax administration) also appears to be time-consuming and costly.

- Clients and passengers. Final consumers may also be affected since the distortion of competition within the internal road transport market may lower its overall efficiency. The industry at large may therefore not reap the full benefits of a properly functioning internal market. Passengers of coach and bus services may also not enjoy the quality of services that an efficient internal market could provide.
- Other road users. Poor compliance with the rules by a number of operators contributes to poorer safety for other road users since 20% of road fatalities are caused by accidents which involve heavy duty vehicles. Incidents involving heavy duty vehicles may also cause traffic disruption and congestion which generate inconvenience for other road users.

Finally, it is worth recalling that road haulage accounts for 45% of the overall freight transport market. Price and quality of freight transport in all transport modes are de facto strongly influenced by the situation in the road haulage sector. A sub-optimal road transport market therefore affects the overall transport system.

2.4. Need for Community action

No change would mean continuation of the inconsistent and heterogeneous enforcement of market and profession rules, uneven compliance with social and safety rules, high administrative costs, a less than level playing field and lower market efficiency.

The varying application and interpretation of the current road legal framework between Member States justifies EU action on the basis of Article 71 of the Treaty in order to ensure that the legislation is applied uniformly and allow the internal road transport market to function more efficiently.

3. OBJECTIVES

3.1. General objectives

The White Paper on Transport "*European transport policy for 2010: Time to decide*"²⁰ noted that with the road transport sector open to fierce competition, more attention should be devoted to the effective implementation and enforcement of rules improving working conditions, road safety and functioning of the internal market. In its recent Communication "*Keep Europe moving – Sustainable Mobility for our continent, Mid-term review of the European Commission's 2001 Transport White Paper*"²¹, the Commission announced that it would examine experience in the road transport market and propose where needed improvements to the current rules on access to the market

²⁰ COM (2001) 370, 12.9.2001.

²¹ COM (2006) 314, 22.6.2006

and to the profession. The overall goal being to make sure that these rules better contribute to achieve the EU road transport policy that is to:

- Increase market efficiency;
- Improve road safety;
- Reduce road transport environmental impacts.

3.2. Specific objectives

In this context, the review aims at solving the problems mentioned in section 2.2. More specifically, the objectives are to simplify and clarify the current legal provisions, making them more enforceable and adding a few points. The more operational objectives are to:

- Contribute to a level playing field and reduce distortion of competition;
- Raise the level of professional qualifications of road transport managers;
- Reduce the administrative burden;
- Enhance compliance with safety, social and technical rules;
- Contain the environmental impact of road, notably empty returns of vehicles.

It should be noted that there are other items of road transport-related legislation which could contribute or already contributes to these objectives. This is the case for instance of the Regulation on driving time and rest periods and the Directive on the working time of mobile workers. Other initiatives not directly related to road transport legislation may also contribute to these objectives like the proposal on excise duties of commercial diesel²² or even the "European Qualification Framework"²³ which can be used to compare the qualification levels of different countries.

4. POLICY OPTIONS

The consultation process has highlighted the stakeholders' overall satisfaction with the initial balance achieved between liberalisation and quality standards in the road legislation on access to the market and admission to the occupation. However, the stakeholders have also suggested that the corresponding legal framework should be simplified and that the rules should be made enforceable and comparable. The preceding sections of this paper have identified seven areas where such changes have to be considered. Five broad strategic policy options combining detailed measures in these

22 COM(2007)52 Proposal for a Council Directive amending Directive 2003/96/EC as regards the adjustment of special tax arrangements for gas oil used as motor fuel for commercial purposes and the coordination of taxation of unleaded petrol and gas oil used as motor fuel

23 COM (2006)479 on a proposal for a Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning

seven areas have been outlined. This wide spectrum of policy options has been designed so that it reflects most of the opinions expressed in the consultation process.

Option 1

A “no change” option would leave unaltered the present four Regulations and the Directive which, together, make up the legislation on the internal road transport market.

Option 2

A “technical simplification and non-regulatory” option, in which the Directive on admission to the occupation would be merely codified and the four Regulations on access to the market would be merged into two, one dealing with freight transport and the other with passenger transport. The option would include by way of technical simplification the standardisation of Community licences, of their certified copies, and of the driver attestations. It would also phase out current derogatory regimes for small vehicles and grandfather rights. In addition, the Commission would:

- publish guidelines to encourage Member States to implement provisions related to financial standing in a more harmonised way;
- publish an interpretative communication on cabotage. The communication would replace the one already adopted in 2005.

Option 3

A “harmonisation” option, in which the current Directive on admission to the occupation would be revised and the four Regulations on access to the market would be merged into two, one dealing with freight transport and the other with passenger transport. The option would include the technical simplification proposed in Option 2 plus the following substantive changes:

- Common criteria would be drawn up to ensure that companies admitted to the occupation are effectively established.
- Minimal professional capacity would be harmonised through compulsory accredited training for all candidates. Financial standing requirements would be harmonised through standard indicators or an optional bank guarantee. The links between the undertaking and the person who is supposed to permanently and effectively manage its transport activity would be tightened up.
- Three cabotage operations consecutive to an international goods transport operation would be allowed within seven days, which could easily be monitored through existing consignment letters. The procedure for authorising international regular coach services would be simplified.
- Evidence of serious offences against EC road transport rules would be mutually recognised. Rules would provide for a common approach and tools

to monitor the repute of operators and to impose administrative sanctions such as withdrawal of authorisation or the disqualification of transport managers.

Option 4

A “higher quality standards” option would include all the measures in Option 3 (“harmonisation”), except that:

- The financial capacity requirements would be 50% higher and an additional requirement of regular periodic training would be added.
- Stricter provisions would be added so that the person lending his certificate of professional capacity is actually full time employed by the undertaking.

Option 5

A “liberalisation” option, which would include all the measures in Option 3, except that:

- Cabotage operations consecutive to an international transport operation would be unlimited and the vehicle carrying out cabotage would only have to leave the caboted Member State after one month.
- The authorisations for regular passenger services would be totally abolished.

Other more radical policy options (suppression of cabotage, elimination of conditions for access to the profession, creation of a European Agency to deliver and monitor licences) would have moved too far away from the existing legal framework. They have therefore been discarded. The following table gives the individual measures considered in each policy option and each problem area.

Table 1: Measures considered in each policy option

Strategic option	Option 2: Technical simplification and non-regulatory measures	Option 3: Harmonisation	Option 4: Higher quality standards	Option 5: Liberalisation
Legal acts	Codify the Directive and merge the four Regulations	Revise the Directive and merge the four Regulations into two	As in Option 3	As in Option 3
Establishment	No change	Effective establishment: office with administration, staff, registered vehicles, operational base in country	As in Option 3	As in Option 3
Harmonise financial standing assessment	Non-binding guidelines issued by EC to establish uniform financial	Financial standing: - assessed by looking at the current assets and a liquidity ratio	Same assessment method as in Option 3 but with a 50% higher threshold	As in Option 3

	standing requirements	- or proven by means of a bank guarantee		
Harmonise professional competence assessment	No change	- Compulsory initial training before exam - Accreditation of training and exam centres - Phasing-out of exemptions	As in Option 3 + compulsory periodic training	As in Option 3
Transport manager (holder of a certificate of professional capacity and person subject to good repute)	No change	- Transport manager is liable for infringements - In case of one-man company, external transport manager cannot manage more than four companies	Transport manager to be always employed (or the owner in case of one-man companies)	As in Option 3
Cabotage definition	New interpretative communication updating Communication COM(2005) 2112	Three cabotage operations consecutive to international transport allowed within seven days Check is made by means of existing consignment letters	As in Option 3	Unlimited cabotage operations consecutive to international transport allowed within one month
Simplify procedure for authorising international regular coach services	No change	Simplify grounds for refusal and abolish hearing of transit countries	As in Option 3	Abolish totally current authorisation procedure
Simplify and standardise several control documents	More detailed specifications on certified copies and standardise driver attestation	As in Option 2	As in Option 2	As in Option 2
Improve monitoring of compliance	No change	- Harmonisation and mutual recognition of serious and repeated infringements - EU register of road transport operators - New targeted inspections	As in Option 3	As in Option 3

5. ANALYSIS OF IMPACTS

This section describes the measures considered in each policy option and assesses their economic, social and environmental impact and impact on road safety. It should be noted that, in accordance with the proportionate analysis principle, the depth of the analysis has matched the likely significance of the impacts. The quantified estimates, when available, relate to administrative and compliance costs while the assessment of the benefits and other possible indirect costs describes mainly their magnitude.

5.1. Establishment

Although there are no data on the share of letter-box companies in cross trade²⁴, they are likely to follow the same pace of development. Over the period 1999-2003, cross trade has grown at an average of 4.4% per year. It has increased annually by 20% since 2004, which is a clear indication that undertakings are increasingly carrying on their transport activities outside the country of establishment. The companies without real office and operational base (letter box companies) are difficult to monitor, which raises a problem of uneven enforcement. It creates distortion of competition between letter-box companies established in countries with lower establishment requirements and companies operating from countries with higher requirements.

Correcting such distortion would require setting minimum common criteria for an operator's effective and stable establishment. A practical approach, already into force in some Member States, would be to grant access to the occupation and the market only to operators which can prove that they have an office with administration (books) and an operational base with facilities for their vehicles (e.g. parking).

It is assumed in this paper that such a measure would be adopted in Options 3, 4 and 5. Options 1 and 2 would therefore make no change compared with the current situation. The impacts would be the following:

Options 1 and 2: "No change"

Difficulties to check letter-box companies would continue. The diverging national rules as regards establishment and the resulting uneven enforcement levels would persist. The number of letter box companies and their activity are likely to grow given the current pace of development of cross-trade. These undertakings would strengthen their position in the road market to the detriment of operators established in the countries with higher establishment requirements. It would be prejudicial to a fair competition and to the objective of better compliance with road safety and social rules. The indirect economic impact of this

²⁴ Transport between two Member States by an operator registered in a third Member State.

type of out-flagging is hard to estimate. It can simply be observed that the drivers, as mobile workers, are likely to spend part of their earnings abroad and that the positive economic impact for the host country, if any, will be lower than that of undertakings effectively established with a real substantial activity in the country of establishment. There might even be evasion of company tax for the host country given the difficulties of checking.

Options 3, 4 and 5, Measure: “Stable and effective establishment”

Minimum requirements ensuring stable and effective establishment would create a more level playing field. Undertakings with letter-box subsidiaries would either cease their out-flagged activities or, most likely, expand their business in the country of establishment by developing an operational basis with offices and books, which could be monitored with the same level of reliability as is the case for other operators effectively established. This would improve compliance with social and road safety rules. Operational bases with facilities for maintaining vehicles could also improve roadworthiness of vehicles and thus indirectly reduce the environmental impacts of road transport. Transport prices offered by such companies would increase slightly and unnecessary empty returns of their vehicles would decrease. A limited number of stakeholders argued that such new EC requirements would create obstacles to the “freedom of capital and entrepreneurial mobility”. The volume of investment flows across borders is however unlikely to be reduced in Member States with attractive conditions in terms of geographical transit location and/or wages. This measure may on the contrary encourage heavier investments such as distribution centres that are more productive for the country of establishment, which would benefit from new road transport services for its own trade.

Summary of impacts

Compared with no change	Options 3, 4 and 5 Measure: “Stable and effective establishment”
Economic	
- administrative costs for public bodies	Lower
- administrative costs for undertakings	No change
- compliance costs	No change
- competitive conditions	Improve
- position SME	No change
Social	

- job quality	May improve
Road safety	
- rate of compliance with rules	Improve
Environment	May improve

5.2. Financial standing

Section 2 has shown that the current provisions are too vague and leave room for too widely diverging methods for assessing financial standing and verifying whether the conditions required by Directive 96/26/EC are satisfied²⁵. However, it appears that companies with low financial standing tend to be more negligent and to infringe the rules more than the others.

The following measures are therefore envisaged:

Option 1: “No change”

Diverging practices would remain, which means that unequal conditions of competition would persist and, in countries where financial standing is checked only once every five years and with a more relaxed approach, the financial standing requirement would continue to be ineffective in ensuring a homogeneous minimum level of financial standing.. In some countries, the way in which the current legal provisions are applied creates rigidity in the capital structure of companies and may entail an unnecessary administrative burden. Companies with low financial standing from the other countries would continue to infringe the rules.²⁶

Option 2, Measure: “Non-binding guidelines on financial standing”

The Commission would issue non-binding guidelines for Member States, specifying that:

- *Current assets*²⁷ should be above the amount fixed in the present Directive and the ratio between *current assets and payable within one year* (quick ratio) should be above 80%. The level of current assets would be checked on the basis of certified annual accounts

²⁵ For example, several Member States have chosen to check the financial standing more frequently than every five years as required by the Directive: Spain, Italy, France and the Czech Republic.

²⁶ A sample analysis of records of serious infringements against roadworthiness and driving time rules made in France has found that 18% of companies which do not meet the financial capacity condition do not comply with roadworthiness and driving time rules, which is 50% higher than the population of transport companies which meet the financial capacity requirement.

²⁷ Nomenclature of Directive 78/660/EEC on the annual accounts of certain types of companies.

used for tax statements. The notion of “current assets” designates assets that will normally turn into cash within one year and includes for instance trade debtors, cash and bank deposits. The quick ratio is a standard indicator used in finance to assess the liquidity of a company. Having a ratio above 1 indicates that the company does not have to sell supplies to service its short-term debt. As a rule of the thumb, the ratio is deemed acceptable when above 0.5.

- *Undertakings that so wish (e.g. those without certified annual accounts - usually natural persons) could prove their financial standing by means of a bank guarantee.* The latter would be called only with the agreement of the licensing authority and would be of the same amount as the one mentioned in the Directive. If the operator fails to fulfil some of its debt obligations, the creditor can turn to the financial institution, which would be obliged to request the agreement of the competent authorities delivering the licence to revoke the guarantee. Such a system would give the assurance that financial standing is permanently met and avoid regular reporting. It would be easy to implement and would give greater security for creditors.

The guidelines would deviate slightly from the current legal provisions since the quick ratio is not mentioned in the current Directive. This may be prejudicial for legal clarity and certainty. The guidelines, being non-binding, would be unevenly applied by Member States. And although financial standing may improve in some countries, diverging practices between Member States would persist.

Options 3 and 5, Measure: “Harmonised financial standing”

The above mentioned guidelines would become law. Financial standing checks would be consistently applied in all Member States. Such harmonisation would contribute towards creating a level playing field and greater transparency for creditors in the road transport sector. In countries that currently interpret the Directive less restrictively, it would prevent companies with relatively limited financial backup from entering the market and avoid some of the negative impacts (damage to creditors, etc.) associated with bankruptcies. By contrast, countries currently applying a more rigid approach by requesting minimum equity capital could offer more flexibility of capital structure to small operators, which is particularly relevant for small companies in the start-up and growth phase. In the Member States which currently apply a less restrictive approach, the number of operators with poor financial standing would decrease. This would in turn improve general compliance with roadworthiness and driving time rules, and therefore indirectly road safety and the environment. Lastly, enforcement and administrative costs would decrease. It is estimated that the use of bank guarantees (given

once for the whole life of a company) would avoid time-consuming regular reporting and checks, generating for businesses savings of approximately €33 million and for national administration €27 million if 270,000 companies opted for it.

Option 4, Measure: “Higher financial standing”

The amounts required to prove financial standing would increase by 50%. In terms of road safety, this stricter definition of financial standing would further reduce offences against road safety rules. It would give higher security to creditors but would affect existing very small companies, which might not be able to comply. The impact would be more severe in countries with low per capita incomes, where many small companies have a relatively low turnover per annum (e.g. below €100,000) and may encounter compliance difficulties.

Summary of impacts

	Option 2: "Non-binding guidelines"	Option 3 and 5: "Harmonised financial standing"	Option 4: "Higher financial standing"
Economic			
- administrative costs for public bodies	Reduce	Reduce €27 million p.a.	Reduce €27 million p.a.
- administrative costs for undertakings	No change	Reduce €33 million p.a.	Reduce €29 million p.a.
- compliance costs	No change	No change	No change
- competitive conditions	No change	Improve	Improve
- position SME	No change	No change	Worse
Social			
- job quality	No change	No change	No change
Road safety			
- compliance with rules	No change	May improve	Improve
Environment	No change	May improve	May improve

5.3. Professional competence

The current EC legislation provides that the transport manager must hold a certificate of professional competence and prescribes the type of examination required to obtain such a certificate (matters to be covered and arrangements for exams). It leaves Member States free to exempt a number of candidates, in particular where they have professional experience or hold a diploma. Furthermore, the levels of training and qualification actually required to pass successfully an examination diverge considerably from one Member State to another.

The following options for promoting a more homogeneous level are considered:

Options 1 and 2: “No change”

Uneven levels of professional competence, reflecting the huge variation between the rates of success in the examinations, would persist, and so would distortion of competition. The presence of a few operators with lower professional standing would continue to have a negative impact on the image of the profession. Low qualified operators are more likely to become false independent workers or disguised employees of larger companies. They tend to be more negligent and to poorly comply with road safety and social rules.

Options 3 and 5, Measure: “Harmonised professional capacity”

Three changes would be introduced:

- (i) Compulsory one-month training course prior to the exam;
- (ii) Accreditation of training and exam centres;
- (iii) Phasing-out of current exemptions.

(i) The competences required for the existing examinations can theoretically be acquired only through proper training. In many Member States, the candidates attend such a course prior to the exam either because they are obliged to do so by law or because they know this gives them the best chances of passing the examinations²⁸. By extrapolating available data from some Member States, it can be assumed that a total of 20,000 candidates apply each year in the EU for a certificate of professional capacity. Assuming that half of them already attend a course and that the cost of a standard course is € 1,200, the additional compliance cost for such a measure would be €12 million per annum.

(ii) It is worth noting that at least seven Member States already accredit the training and examination centres. Accreditation criteria in the other

²⁸ This is the case in at least 10 Member States.

countries could be easily implemented through self-regulation²⁹. It is estimated that the cost of accrediting 500 test/training centres, which would be largely sufficient for the whole of the EU, would entail an administrative cost for public bodies of €2 million per annum. It would be less if part of these costs is recovered through fees.

(iii) The current examination exemptions applicable to candidates with five years of professional experience or who hold a diploma would also be phased out. Such candidates could however, in some cases, be exempted from compulsory training. Compared with the “no change” option, they would therefore only have to pass an examination. There are indications that the number of candidates with professional experience is relatively low whereas the number of candidates holding a diploma is higher. It can be assumed for the purpose of this impact assessment that 8,000 candidates would be concerned each year and would have to sit the examination, out of which 2,500 only would have to attend a compulsory training. In such a case, the additional cost for training and/or sitting an examination would be annually €4 million.

The benefits would be an improved and converging level of professional competence throughout the profession. From an economic point of view, training and education is likely to improve the efficiency of the road sector. It is likely also to improve the rate of compliance with transport rules, hence road safety. It would also improve the sector’s image and make transport managers more aware of the benefits of cleaner road transport. Finally, a less uneven level of qualification between self-employed workers and transport managers from large firms would reduce the power imbalance between them and thus decrease the dependency level of self-employed workers.

Option 4, Measure: “Compulsory periodic training”³⁰

In addition to measures in Option 3, the holders of a certificate of professional capacity would have to attend at least every five years a one-week periodic vocational training course to refresh their knowledge. Such a measure would be justified by the fact that the regulatory framework and techniques in road transport evolve quite rapidly. It is furthermore a common practice in many large transport companies. Moreover, compulsory periodic training already exists for self-employed drivers since drivers are subject to periodic training every five years in accordance with Directive 2003/59/EC on the initial qualification and periodic training of drivers. For one-man companies, such vocational training could be combined at lower cost with training in law, management and transport rules as required by Directive 96/26 for the

²⁹ For instance, guidelines for accrediting training centres have already been published by the International Road Transport Union

³⁰ The EU average number of employees in road transport undertakings is 3.5.

initial qualifications of transport managers. It is estimated that the total cost of such measure (including time loss for managers) would be €96 million per annum.³¹

The benefits in terms of better qualifications, better compliance with rules and improved working conditions would be greater than in Option 3 and would be more likely to materialise. More generally, promoting vocational training and lifelong learning in the road sector (not only for transport managers) is usually considered as a positive measure. It may however be more appropriate to leave social partners to agree among themselves on such measures according to the situation in each country and each market segment.

Summary of impacts

Compared with no change	Options 3 and 5: “Harmonised professional capacity”	Option 4: “Higher professional qualification”
Economic		
- administrative costs for public bodies	Increase €2 million p.a.	Increase €2 million p.a.
- administrative costs for undertakings	No change	No change
- compliance costs	Increase €16 million p.a.	Increase €112 million p.a.
- competitive conditions	Improve	Improve
- position SME	Improve	Worsen
Social		
- job quality	Improve	Improve
Road safety		
- compliance with rules	Improve	Improve
Environment	May improve	May improve

5.4. Relations between the transport manager and the operator

The key issue is to ensure that the “transport manager”, who is competent and reputable enough for the undertaking to be authorised to operate, is the one who really permanently and effectively manages the transport operations. The corresponding legal provisions should be enforceable and at the same time contribute to avoid the re-designation of employees as false independent workers..

³¹ Weekly course cost estimated at €400 or €200 if combined with driver courses

Three possible measures have been considered:

Options 1 and 2: “No change”

The enforcement authorities of several Member States have difficulties in checking the repute and competence of undertakings; the possibility left open for the “transport manager” not to be actually involved in the daily management of the transport undertaking favours low-quality entrepreneurship; differences between operators in different Member States also create an uneven level of professional capacity and repute. This in turn, as explained in 2.5 is detrimental to fair competition and to the image of the profession. It is also prejudicial to the transparency in the contractual relationship with shippers and a good compliance with road safety and social rules.

Options 3 and 5, Measure: “Make transport manager liable”

The transport manager would be held liable for serious offences or repeated offences. He would also be employed as a general rule. The only derogation to this rule would be for natural persons who could designate an external person to manage his transport operations but under the condition that this person has a clear contract describing his task and could manage no more than four undertakings at the same time. This would avoid the situation in which the transport manager is not actually involved in the actual transport management process. This measure would raise the profile of the transport manager in all undertakings and encourage better entrepreneurship. One-man companies would have the possibility to choose between taking a CPC examination or establishing a clear contract with dedicated transport managers.

For those operators who prefer to take a CPC examination, it would be a one-off cost. Assuming that 44,000 operators would take an examination, of which 10% would attend a prior training course, the cost when spread over five years would be €6 million per annum. The benefits would be greater assurance that all transport undertakings satisfy the same minimum conditions regarding professional capacity and therefore that the average standard of professional qualification in the sector would be raised, in particular among very small companies. Another important benefit is that the measure would contribute to reducing the imbalance in terms of power and information between small hauliers and big undertakings subcontracting to the former. Given the dominant role of road transport in the whole transport system, it could have a potential indirect effect by correcting wrong quality and price signals. It would improve compliance with social and road safety rules.

Option 4, Measure: “Employ transport manager”

The transport manager would in this option not only be liable as in Options 3 and 5 but would also be always employed without any possible

derogation even in the case of natural persons. In other words, all one-man operators who currently prove their competence and repute by means of an external person would have to pass a CPC exam. It can be assumed that 220,000 managers would have to take an examination, of which 10% a prior training course. The cost, spread over five years, would be € 30 million per annum and may disadvantage micro companies.

Summary of impacts

Compared with no change	Options 3 and 5: “Make transport manager liable”	Option 4: “Employ transport manager”
Economic		
- administrative costs for public bodies	Increase	Increase
- administrative costs for undertakings	No change	No change
- compliance costs	Increase €6 million p.a.	Increase €30 million p.a.
- competitive conditions	Improve	Improve
- position SME	No change	Worsen
Social		
- job quality	Improve	Improve
Road safety		
- compliance with rules	Improve	Improve
Environment	May improve	May improve

5.5. Cabotage of goods transport

There is a generally perceived need for a simple, clear and enforceable definition of cabotage. The current definition leaves too much room for interpretation. Economic operators thus lack the necessary legal certainty to effectively plan their transport operations, and Member States have difficulties enforcing the current rules. Three options can be envisaged:

Option 1: No change

The problems described above would persist, with legal uncertainties for operators, and unnecessary administrative and compliance costs due to the difficult controls and the requirement to have a logbook imposed by some Member States.

Option 2, Measure: “New interpretative communication”

The Commission would adopt a new interpretative communication which will indicate to Member States whether their existing or planned national rules are lawful. The Communication would confirm that Member States are free to allow cabotage for up to 1 to 2 months, to require a logbook (book of record sheets) in vehicles carrying out cabotage, and to take a restrictive stance (e.g. forbidding vehicles to come back within a year). This measure would be easy to implement. Depending on the rules adopted by the individual Member States, this approach might be suitable, for example, for seasonal cabotage but less adequate for hauliers wishing to make short cabotage journeys (1 to 3 days) on a repeated and planned schedule throughout the year. The obligation to carry a special logbook for the specific host Member State could be seen as a burden for drivers, hauliers and national authorities. The major drawback of this approach is that the current patchwork of different national implementing rules would persist and possibly even grow, which means more legal uncertainties and administrative costs for undertakings which operate in several Member States.

Option 3 and 4, Measure: “Limited consecutive cabotage”

With this measure, by means of a revised Regulation, a maximum of three cabotage operations could be carried out within seven days following an international transport operation. All journeys (incoming plus the cabotage operations) would be clearly documented using the existing consignment letters (CMR document). Information from the tachograph could be used in order to check the maximum number of consecutive cabotage operations following the international transport trip. Member States would have the possibility to agree on a bilateral basis on mutual opening of cabotage. This simple and enforceable definition of cabotage would lead to more clarity, less uncertainty and more equality as regards competitive conditions. Clarity regarding the conditions under which cabotage is allowed would impact positively on the operators’ planning of trips and thus increase their efficiency. It could possibly improve the loading of vehicles, and, by enabling less lorries for the same transport demand, reduce the impact of road transport on environment.

This approach would not significantly change the volume of cabotage and the envisaged legal limitations seem to be consistent with current practices. Based on a survey of a limited sample of hauliers, it is estimated that the average frequency of cabotage trips is 10 per year, the number of cabotage trips consecutive to international transport does not usually exceed 3 and the average duration of cabotage trips is between 6 and 12 hours. Longer stays of non-resident hauliers in the host Member State such as in the case of seasonal cabotage would not be possible, unless authorised by the Member State. In return, hauliers making regular

international trips would be allowed to return to the host Member State on a weekly basis to perform cabotage transport operations again.

This measure would encourage more efficient controls and time spent during roadside checks would be reduced. The obligation to carry logbooks in the Member States currently applying the requirement would disappear. It is estimated that this would save annually in total € 3 million for public enforcement bodies and €4 million for hauliers.

Option 5, Measure: “Unlimited consecutive cabotage”

Cabotage would be allowed following an international trip for an unlimited number of operations and during a period of one month. This option would represent a substantial extension of the cabotage market and be very close to full liberalisation of cabotage. It would allow competition by hauliers from all Member States in all the domestic markets. It would reduce transport costs in a first step, then increase the volume of cabotage and make further road transport attractive compared with more sustainable transport modes. It would shift a number of jobs to Member States with lower labour costs. By contrast with Options 3, it might create legal complexities. Some Member States might decide to apply national rules on VAT and labour rules to hauliers performing cabotage operations. All in all, this option could have substantial impacts which would need a deeper analysis and therefore goes beyond the scope of this simplification exercise.

Summary of impacts

Compared with no change	Option 2: “New interpretative communication ”	Options 3 and 4: “Limited consecutive cabotage”	Option 5: “Unlimited consecutive cabotage”
Economic			
- administrative costs for public bodies	No change	Saving €3 million p.a.	Saving €3 million p.a.
- administrative costs for undertakings	No change	Saving €4 million p.a.	Saving €4 million p.a.
- compliance costs	No change	No change	No change
- competitive conditions	Improve	Improve	Improve
- position SME	No change	No change	No change
Social			
- job quality	No change	No change	Worse

Road safety			
- compliance with rules	No change	Improve	No change
Environment	No change	No change	Worse

5.6. Regular coach services

For international regular passenger services, Regulation 684/92 creates an authorisation regime whereby the consent is required of the governments of the Member States affected by the service. Member States on whose territory passengers are picked up or set down can refuse authorisation if at least one of six grounds³² is established. While some grounds refer to the applicant himself, others are aimed at protecting existing regular services. Thus Member States' authorities can intervene in the market by effectively blocking market entry by a new operator. The authorisation process is time-consuming, especially when transit countries have to be heard, despite the fact that the Regulation provides for a decision to be taken by the authorising authority within four months. It is seen today as cumbersome and blocking the entry of new entrants.

Three approaches are envisaged:

Options 1 and 2: "No change"

³² Article 7(4) of Regulation 684/92 provides that authorisation shall be granted unless:

- (a) the applicant is unable to provide the service which is the subject of the application with equipment directly available to him;
- (b) in the past the applicant has not complied with national or international legislation on road transport, and in particular the conditions and requirements relating to authorisations for international road passenger services, or has committed serious breaches of legislation in regard to road safety, in particular with regard to the rules applicable to vehicles and driving and rest periods for drivers;
- (c) in the case of an application for renewal of authorisation, the conditions of authorisation have not been complied with;
- (d) it is shown that the service in question would directly compromise the existence of regular services already authorised, except in cases in which the regular services in question are carried out by a single carrier or group of carriers only;
- (e) it appears that the operation of services covered by the application is aimed only at the most lucrative of the services existing on the links concerned;
- (f) a Member State decides on the basis of a detailed analysis that the said service would seriously affect the viability of a comparable rail service on the direct sections concerned. Any decision pursuant to this provision, together with the reasons therefore, shall be notified to the carriers affected.

As from 1 January 2000, in the event that an existing international bus service is seriously affecting the viability of a comparable rail service on the direct sections concerned, a Member State may, with the agreement of the Commission, suspend or withdraw the authorisation to run the international bus service after having given six months' notice to the carrier.

The current situation and perceived unnecessary red tape would persist. Barriers to new operators wishing to enter the market would be maintained.

Options 3 and 4, Measure: “Simplified authorising procedure”

This would involve abolishing the hearing of transit countries³³ and reducing the number of grounds for refusal. The opening of a new coach line could be refused only when such a line would endanger the economic viability of an existing public service, identified as such with clear public service obligations in accordance with the new Regulation on public services in land transport (in the course of being adopted by Parliament and Council). This would make the authorisation regime more transparent and effectively lower the barrier for new market entrants. Authorising authorities would be faced with less administrative work and possibly fewer disputes with applicants appealing against negative decisions. This would also favour operators because fewer refusal grounds would give them more certainty when assessing whether a new line is acceptable or not. One of the main impacts would however be simply to speed up the current authorisation procedure. Based on the number of licences issued³⁴ there are 22,105 carriers operating international passenger transport services with 113,774 vehicles in operation. It is estimated that speeding up this authorising procedure could save for the industry €25,000 per procedure. Assuming that 500 authorisations are requested each year, this measure would save up to €13 million per annum.

Option 5, Measure: “Abolition of authorising procedure”

Regular international services would be fully liberalised along the same lines as occasional services. Any undertaking established in a Member State would be free to operate a new regular international service on any route whether or not it is already operated by one or more other transport undertakings. The principle of free competition would apply, which could reduce costs to the benefit of customers. The impacts on job quality would be mixed in so far as a shift in jobs to lower labour cost Member States might occur. Time-consuming authorisation procedures would be no longer necessary and administrative and compliance costs would be reduced. Assuming again that 500 authorisations are requested each year, savings for the industry of €17 million per annum would be achieved. There might be some risks for road safety since the repute of a coach operator who wishes to open a new route would no longer be checked in

³³ These countries can at present send their comments within two months without being able to effectively block a decision. However, in practice, authorising Member States tend to wait for the two months before taking a decision. While transit countries would not lose out if they were simply informed by the authorising Member State of the new service, the procedure could be speeded up considerably, gaining two months.

³⁴ 17 of the 25 Member States actually provided data.

advance. Enforcement would have to focus on rules on access to the profession of passenger transport operator or rules on road safety. The Member State in which the carrier is established would have a vital supervisory role in this new liberalised market. Withdrawal or non-renewal of the Community licence (or the withdrawal of certified true copies of the Community licence) would have to be used more than at present as penalties to encourage carriers to comply strictly with the regulations. Proper supervision of the obligations of carriers with possible penalties involving the Community licence could replace the current investigations carried out in the authorisation procedure for regular services.

Summary of impacts

Compared with no change	Options 3 and 4: “Simplified authorising procedure”	Option 5: “Abolition of authorising procedures”
Economic		
- administrative costs for public bodies	Reduce	Reduce
- administrative costs for undertakings	Reduce €13 million p.a.	Reduce €17 million p.a.
- compliance costs	No change	No change
- competitive conditions	Improve	Improve
- position SME	No change	No change
Social		
- job quality	No change	May worsen
Road safety		
- compliance with rules	No change	May decrease
Environment	No change	No change

5.7. Control documents

There are documents that must be carried on board a vehicle: mainly the certified copy of the Community licence and the driver attestation (if the driver is not of EU nationality).

The current regulations only specify the format of the Community licence (A4 size, colour blue) but leave open whether certified copies should have the same colour and whether they must be signed and/or stamped. Some countries have

issued copies with “certified copy” printed on them; these copies have raised problems in some other Member States. Some Member States mention the licence plate number of the vehicle on the certified copy. The same holds true for the driver attestation. It emerged from the stakeholder consultation that the parties concerned favoured further harmonisation and standardisation of these documents.

Two approaches are considered here:

Option 1: “No change”

The current problems regarding the authenticity of the control documents would remain. They affect both hauliers and enforcement bodies.

Options 2, 3, 4 and 5, Measure: “Standardised control documents”

National authorities would have to replace current documents with standardised new documents when the current documents need to be renewed; there would be a transitional period. These options would simplify the work of verifying bodies. They would also contribute to fairer competition since the cases where documents are considered invalid would be minimised. The administrative costs of introducing standardised documents transitionally or immediately would differ, however. Gradual introduction would avoid some operators being forced to renew their recently issued documents and pay extra costs. The possibility of fraud would be reduced. Roadside inspections could be speeded up considerably if there is no doubt as to the validity or authenticity of these documents. This would lead to efficiency gains both for operators and for verifying bodies.

Summary of impacts

Compared with no change	Options 2, 3, 4 and 5
Economic	
- administrative costs for public bodies	Reduce €20 million p.a.
- administrative costs for undertakings	Reduce €20 million p.a.
- compliance costs	No change
- competitive conditions	Improve
- position SME	No change
Social	
- job quality	No change
Road safety	

- compliance with rules	No change
Environment	No change

5.8. Monitoring of repute

Effective monitoring of the repute of operators is needed to preserve the deterrent effect of administrative sanctions such as the permanent or provisional withdrawal of authorisations, be they Community licences or national licences, and to improve the rate of compliance with the whole set of road transport rules, with special reference to road safety and driving time. There is, however, considerable evidence that monitoring of the repute of operators is uneven between Member States and, given the lack of effective exchange of information between Member States, also between non-resident hauliers and the others. The latter is a particular matter of concern since international transport is growing at a faster pace than domestic transport. This uneven level of monitoring is prejudicial to road safety but also to fair competition and a level playing field. Another matter of concern is the cost-effectiveness of monitoring systems and the need to look for ways of reducing the inherent associated administrative costs.

Two approaches are considered:

Options 1 and 2: “No change”

The disparities in monitoring and control would increase, as well as the associated negative impacts (distortion of competition, lower rate of compliance). As indicated in previous sections, undertakings which operate in Member States other than the one of their establishment would have less and less incentives to correctly comply with rules. This could also have an indirect effect by inciting transit Member States to take discriminatory measures for instance against foreign lorries.

Options 3, 4 and 5: “Improve monitoring”

The approach would establish the mutual recognition of evidence of certain offences (for subsidiarity reasons, only those related to Community rules) and reinforce the existing legal provisions on the exchange of information and the imposition of administrative sanctions above a certain level of seriousness or repetition of offences. It would also introduce common tools to boost the cost-efficiency of existing monitoring systems, namely an electronic register of operators and targeted check plans. The impact of such a measure can be estimated as follows:

- The Member State in which the carrier is established would have a more important supervisory role in the liberalised market. Withdrawal or non-renewal of the Community licence or

disqualification of the transport manager would thus have a stronger deterrent effect than today and the rate of compliance would be less uneven between Member States and between international and domestic hauliers, with positive impacts for road safety and fair competition.

- Provided that the electronic register used existing infrastructure such as Tachonet³⁵, it would require an initial investment cost for the Commission services of €0.5 million. Since several Member States already hold electronic registers of transport operators and since nearly all of them already have the Tachonet infrastructure in place, the initial investment costs for Member States would also likely be limited and can be estimated for the EU at €15 million (to be spread over five years). Annual costs for training and maintenance of such a system can be estimated at €6 million. Such a register would ease the monitoring and checks, all enforcement authorities having access to it, particularly in big countries with enforcement agencies organised on a decentralised basis. The initial investment cost would therefore be paid back rapidly through reduced administrative costs. The register could also in a second phase be enhanced with a portal so that all operators could consult or update certain fields of the register on-line. Such a solution has been shown to reduce administrative costs considerably in other sectors (see COM (2006) 691 on measuring administrative costs and reducing the administrative burden).
- Another advantage of such registers is that they would make it possible to identify operators with a higher rate of infringements and to target checks at those operators. Currently several Member States check every year, two years or three years whether all undertakings still meet the conditions of the admission to the occupation, whereas Directive 96/26/EC require only five-years checks. These periodic systematic checks could be replaced by targeted checks so that the administrative burdens for the undertakings and the enforcement authorities could be reduced. Assuming that targeted checks would concern in total 10% of undertakings and that the periodic checks are done only once every five years in all Member States, 100,000 checks could be avoided each year. This would reduce the administrative burden for the industry by €33 million and for the national administrations by €51 million. This would also make enforcement more continuous (instead of occurring at regular intervals).

Summary of impacts

³⁵ Tachonet is a system used by Member States since 2006 to exchange information on cards delivered to professional drivers allowing them to use a digital tachograph recording their driving time in accordance with Regulation (EEC) N° 3821/85.

Compared with no change	Options 3, 4 and 5: “Improve monitoring”
Economic	
- administrative costs for public bodies	Reduce €42 million p.a.
- administrative costs for undertakings	Reduce €33 million (p.a.)
- compliance costs	No change
- competitive conditions	Improve
- position SME	No change
Social	
- job quality	No change
Road safety	
- compliance with rules	Improve
Environment	May improve

5.9. Summary of impacts

Some of the impacts have been assessed quantitatively, others only qualitatively. The terms used have the following meaning:

- “Administrative costs” refers to the costs associated with enforcement of the rules on access to the occupation and the market (administrative cost for the undertakings + administrative cost for public bodies)³⁶.
- “Compliance costs” refers to the costs for companies to comply with rules (e.g. on training).
- “Market” refers to the market efficiency: fair competition and level playing field or transport cost.
- “Jobs” refers to the quality of working conditions in the transport sector or the number of jobs.
- “Safety” refers to compliance with road safety rules.

³⁶ Administrative costs are usually defined as the costs incurred by enterprises, public authorities and citizens in meeting legal obligations to provide information. In the context of this document, the term refers specifically to the cost of monitoring the undertakings, including the cost of regular checks, and the cost of roadside checks.

- “SMEs” refers to the impact on very small companies.
- “Environment” refers to the impact on the environment, including empty returns of vehicles, emissions and energy consumption.

Table 2: Summary of impacts

In comparison with Option 1 (no change)	Type of impacts	Option 2 Technical simplification and non-regulatory measures	Option 3 Harmonisation	Option 4 Higher quality standards	Option 5 Liberalisation	
New provisions on establishment	Admin cost	=	Reduce	Reduce	Reduce	
	Compliance cost	=	=	=	=	
	Market	=	Improve	Improve	Improve	
	Jobs	=	Improve	Improve	Improve	
	Safety	=	May improve	May improve	May improve	
Financial standing assessment	Admin cost	Reduce	Decrease €60 million	Decrease €56 million	Decrease €60 million	
	Compliance cost	=	Reduce	Increase	Reduce	
	Market	=	Improve	Mixed	Improve	
	Jobs	=	=	=	=	
	Safety	=	Improve	Improve	Improve	
SMEs	SMEs	=	=	Penalise very small companies	=	
	Professional competence assessment	Admin cost	=	Increase €2 million	Increase €2 million	Increase €2 million
		Compliance cost	=	Increase €16 million	Increase €112 million	Increase €16 million
		Market	=	Improve	Improve	Improve
		Jobs	=	Improve quality	Improve quality	Improve quality
Safety		=	Improve	Improve	Improve	
SMEs	SMEs	=	Improve quality	Penalise very small companies	Improve quality	
	Link transport manager and the operator	Admin cost	=	No change	Reduce	No change
		Compliance cost	=	Increase €6 million	Increase €30 million	Increase €6 million
Market		Improve	Improve	Mixed	Improve	
		=				

	Job quality	=	Improve	Improve	Improve
	Safety	=	Improve	Improve	Improve
	SMEs		Improve quality	Penalise very small companies	Improve quality
Cabotage definition	Admin cost	=	Reduce €7 million	Reduce €7 million	Reduce €7 million
	Compliance cost	=	Reduce	Reduce	Reduce
	Market	=	Improve	Improve	Improve
	Jobs	=	=	=	Shifts in jobs
	Safety	=	=	=	Decrease
	Environment	=	=	=	Worsen
Simplify authorisation procedure for regular passenger services	Admin cost	=	Reduce €13 million	Reduce €13 million	Reduce €17 million
	Compliance cost	=	=	=	=
	Market	=	Improve	Improve	Improve
	Jobs	=	=	=	Shifts in jobs
	Safety	=	=	=	Decrease
Control documents	Admin cost	Reduce	Reduce €40 million	Reduce €40 million	Reduce €40 million
	Compliance cost	=	=	=	=
	Market	Improve	Improve	Improve	Improve
	Job quality	=	=	=	=
	Safety	=	=	=	=
Improved monitoring	Admin cost	=	Decrease €75 million	Decrease €75 million	Decrease €75 million
	Compliance cost	=	=	=	=
	Market	=	Improve	Improve	Improve
	Job quality	=	=	=	=
	Safety	=	Improve	Improve	Improve

Note: Cost estimates are annual costs expressed in euros (one-off costs spread over five years). Impacts neutral in all options are not indicated; = means no change.

6. COMPARING THE OPTIONS

The impact assessment has analysed the economic impact, the impact on road safety and the social impact. The results for each option are summed up in the table below:

Table 3: Comparaison of options

Compared with no change	Option 2 Technical simplification and non-regulatory measures	Option 3 Harmonisation	Option 4 Higher quality standards	Option 5 Liberalisation
Economic				
- administrative costs for public bodies	May reduce	Reduce	Reduce	Reduce
- administrative costs for undertakings	No change	Reduce	Reduce	Reduce
- compliance costs	No change	Increase	Increase	Increase
- competitive conditions	No change	Improve	Improve	Improve
- position SME	No change	Improve	No change	No change
Social				
- job quality	No change	Improve	Improve	Worsen
Road safety				
- compliance with rules	No change	Improve	Improve	Worsen
Environment	No change	Improve	Improve	Worsen

The key conclusions are summed up below:

1. The “no change” option would leave the present road legislation unaltered and the problems outlined at the start of this document would grow.
2. The “technical simplification and non-regulatory” option would be very easy to implement, but is unlikely to narrow the gaps between the national rules. It would reduce administrative costs slightly but the main problems identified at the start of this document would remain.
3. The “harmonisation” option would contribute to fairer competition, improve compliance with the road transport rules, raise the average level of professional qualifications in the sector and indirectly improve road safety and reduce the environmental impact of road transport. Compliance costs would slightly

increase. Administrative costs related to checks on compliance with the rules on admission to the market and access to the market would be reduced significantly by around €190 million each year (both for undertakings and for public authorities), in particular thanks to an EU wide electronic register.

4. The “higher quality standards” option would be the most effective to raise the average level of professional qualifications in the road transport sector. It would also improve the sector’s financial capacity significantly. In the long run, it would encourage more efficient operators, bringing benefits for the whole economy. The savings in additional administrative costs achieved in Option 3 would be partly offset by higher compliance costs for the industry, which might disadvantage very small undertakings and independent workers.
5. The “liberalisation” option would reduce transport costs in certain countries, which in turn might further increase the volume of road transport and its overall negative effects on the environment. The savings in administrative costs achieved in Option 3 could be partly offset by increase of legal complexities with cabotage. It could shift jobs between countries. Without effectively enforced high quality standards (i.e. implementing Option 4) the incentives for negligent or rogue behaviour would increase rather than diminish. All in all, this option could have substantial impacts which would need a deeper analysis and therefore goes beyond the scope of this simplification exercise.

Of the four policy options reviewed, apart from the no-change option, the options with the greatest positive impacts are Option 3 (“harmonisation”) and Option 4 (“higher quality standards”) and then Option 5 (“liberalisation”). Both Option 3 and Option 4 would have a positive impact on road safety and improve the quality of jobs. Option 4, although likely to be the most effective in the long run, entails higher compliance costs and would disadvantage very small undertakings. Option 3 would give to Member States the possibility to significantly reduce administrative costs by a total of around € 190 million per annum.

Given the possible drawbacks of Option 4 for very small undertakings, this impact assessment recommends Option 3 (“harmonisation”) which will contribute to the effective enforcement of high professional and safety standards and reduce distortion of competition.

7. MONITORING AND EVALUATION

It would be necessary to continuously monitor developments in the internal road transport market and evaluate on a regular basis the impact of the changed legislation.

A system for reporting by Member States on the granting, suspension and withdrawal of national and Community licences and the certificate of professional competence, including the main grounds for withdrawals (good repute, financial standing or professional competence) would have to be established by the new rules.

The reduction of competition distortions can be assessed on the basis of complaints received by the Commission and on the observation of the market and the above

reporting system. Eurostat data collected through Regulation (CEE) N° 1172/98 are an essential component of such market observation.

Compliance with safety and social rules can be monitored on the basis of the rates reported by Member States under the various legal instruments (Regulation on driving times, Directive on roadside inspection).

8. REFERENCES

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Traffic Commissioner's Annual Reports 2004-2005

ANNEX

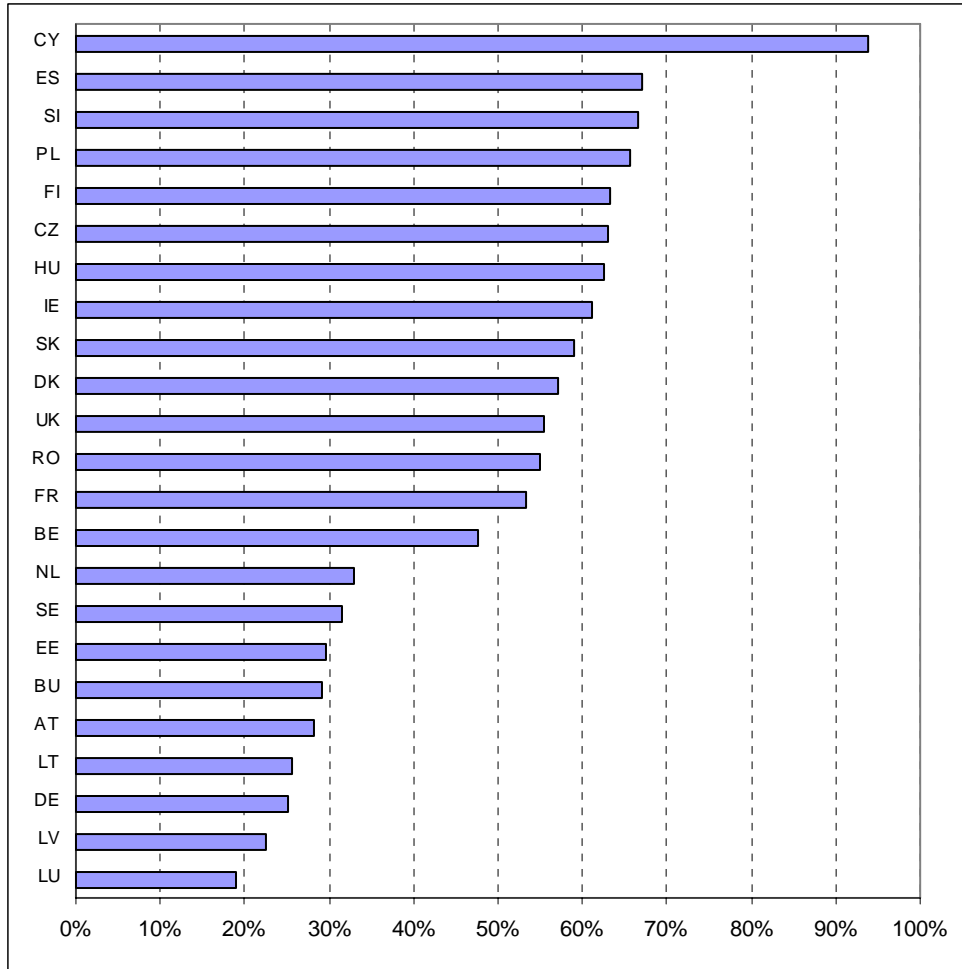
Key data on road transport

Table 4: Number of road transport undertakings and employment (2004)

	Road freight transport		Road passenger transport	
	Number of undertakings	Number of employees	Number of undertakings	Number of employees
BE	7 881	63 172	2 145	32 849
CZ	26 538	102 569	9 195	47 732
DK	7 089	39 085	3 845	30 500
DE	34 030	284 527	24 052	288 945
EE	1 666	12 589	228	<i>6 000</i>
EL		<i>50 000</i>		<i>65 000</i>
ES	131 816	364 949	65 579	164 787
FR	43 865	346 082	36 240	214 329
IE	3 901	16 175	445	9 131
IT	102 542	331 597	22 327	144 522
CY	1 453	2 559	1 370	2 141
LV	1 652	14 161	423	15 213
LT	2 848	27 716	1 577	19 384
LU	455	7 411	165	2 205
HU	20 739	69 065	9 684	55 038
MT	346	811	1 007	1 473
NL	9 135	119 179	4 560	55 019
AT	6 818	58 572	4 628	44 013
PL	77 381	199 578	47 141	149 811
PT	10 964	58 565		36 700
SI	6 714	17 891	823	4 890
SK	632	9 595	91	16 410
FI	11 046	38 666	8 851	24 137
SE	14 883	67 233	9 348	57 227
UK	34 698	298 912	10 826	213 535
BG	11 541	<i>45 000</i>	7 985	46 788
RO	12 020	64 007	6 986	77 815
Total	582 653	2 709 666	279 521	1 825 594

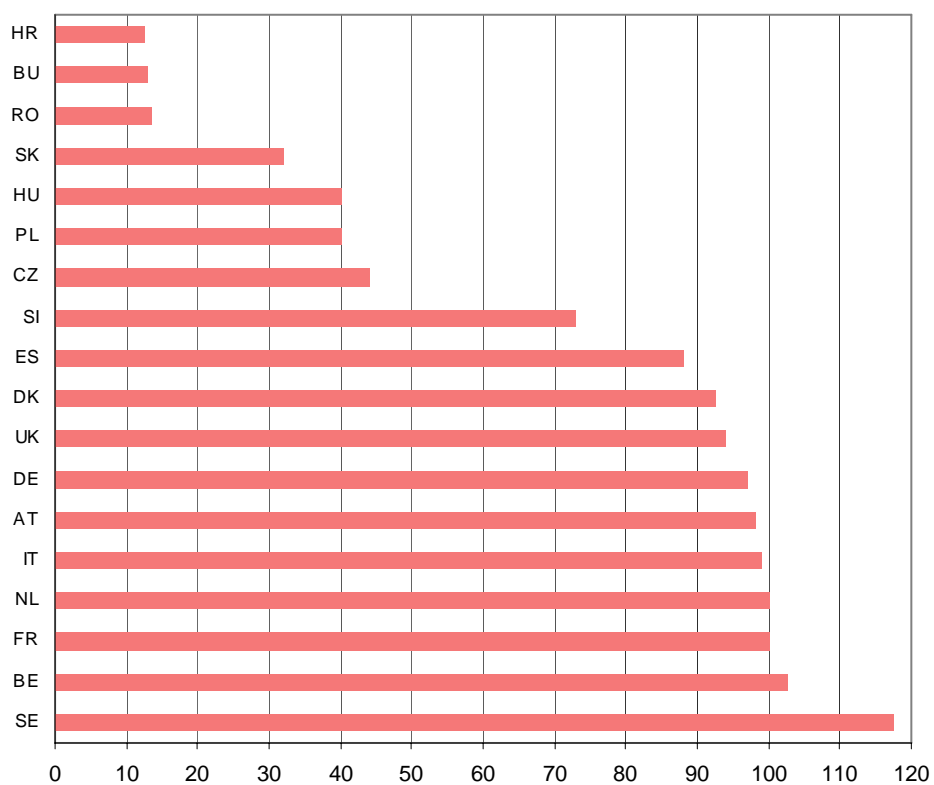
Source: DGTREN (estimates in italic)

Figure 3: Share of one-man companies in total road transport undertaking



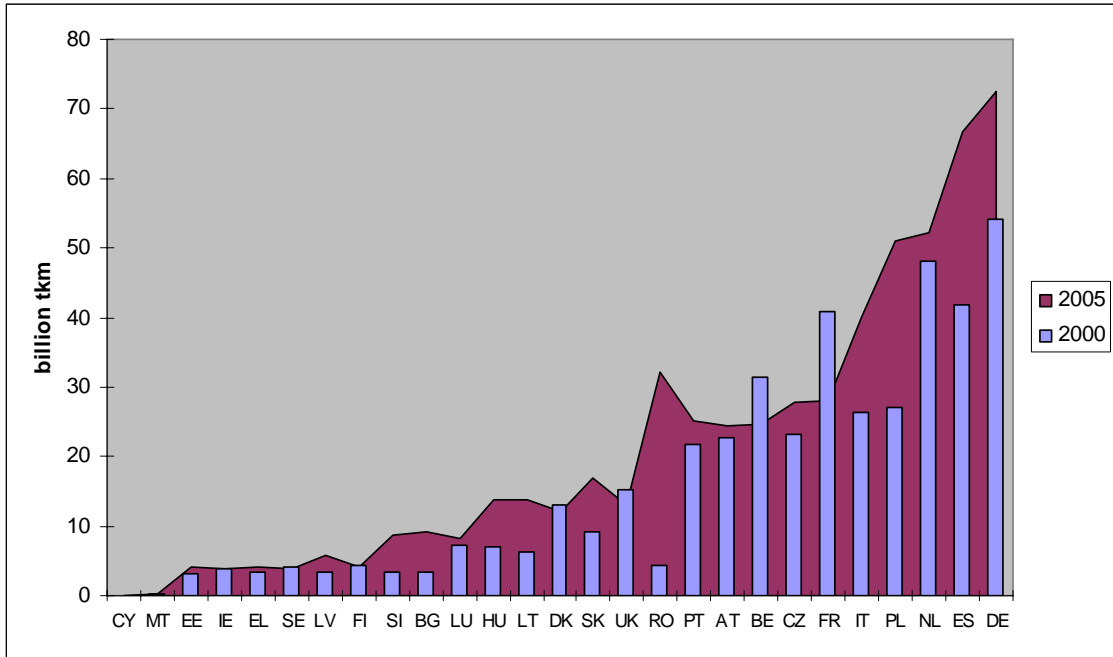
Source: ECORYS

Figure 4: Country differences in labour costs of road haulage (2005)



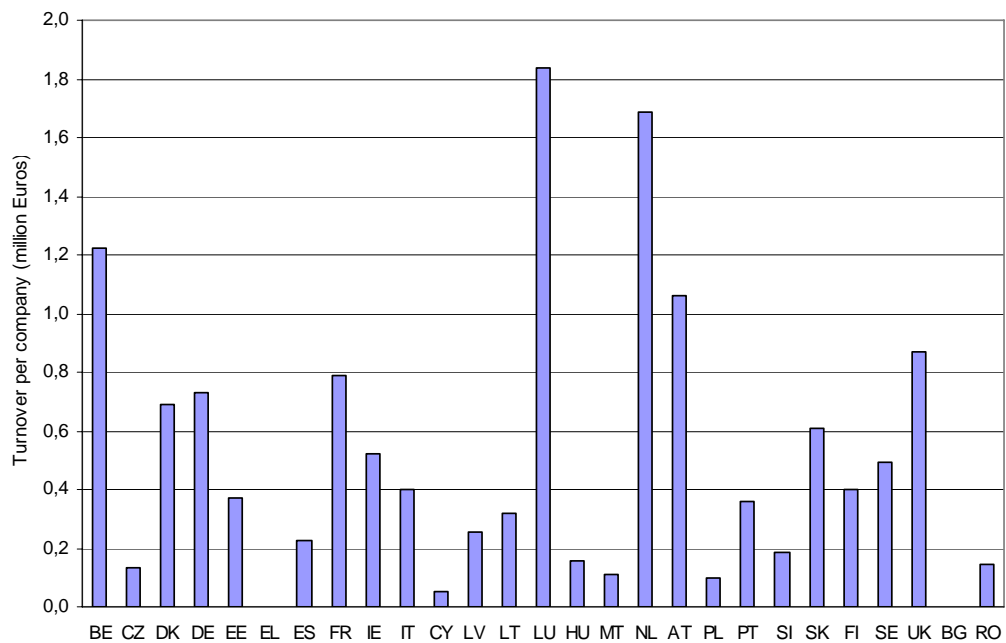
Source: ECORYS

Figure 5: International road transport by Member States of establishment (2000-2005)



Source: DGTREN

Figure 6: Annual turnover per road transport undertaking (2004)



Source: DG TREN