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**HARMONIZATION OF REQUIREMENTS CONCERNING INTERNATIONAL ROAD
TRANSPORT AND FACILITATION
OF ITS OPERATION**

**REINFORCEMENT OF QUALITY CRITERIA FOR NEW ENTRANTS TO THE
OCCUPATION OF ROAD TRANSPORT OPERATOR (GOODS AND PASSENGERS)**

Transmitted by the International Road Transport Union (IRU)

1. Background

1.1 Cut-throat competition on the road haulage market as well as recent, sadly spectacular and very tragic tunnel accidents have drawn attention to the application of criteria for admission to the occupation of road transport operator (of goods and passengers).

1.2 Following a political decision in *European Union Member States* to liberalize the economy, the EU Council adopted, on 29 April 1996, Directive 96/26/EC on admission to the occupation of road haulage and passenger transport operator, codifying and abrogating Directives originating from the 1970s and their successive modifications. The objective of this Directive was to replace the quantitative criteria, based on the distribution of a limited number of licences, by a new, liberal EU policy, based exclusively on qualitative criteria for admission to the occupation. See a description of the qualitative criteria in the annex.

The implementation of the qualitative criteria suffers from various weaknesses described in paragraphs 2.1 – 2.6. Despite the system's limitations, the principle of this new, liberal Community legislation has spread - with various different criteria - to many other countries, in particular in central and eastern Europe.

1.3 In the countries outside the EU, there are two types of situation.

1.3.1 In most *EU candidate countries*, a trend can be observed towards harmonizing national legislation with the EU acquis. Regarding financial standing, some countries have applied Council Directive 96/26/EC standards and they are moving step-by-step to the higher standards of 98/76/EC (see below), though some Candidate States have requested a certain transition period to apply financial standing requirements to all carriers. In candidate countries, as well as in most other central and east European countries, the legal background for compulsory examination has yet to be fully adapted to EU requirements (e.g. regarding topics to be examined, independence of the examination body). In these countries, the operator licensing system is the general rule. However, in some countries, in certain sub-sectors, e.g. domestic or passenger transport, admission to the occupation is still not regulated by law.

1.3.2 In the *Commonwealth of Independent States (CIS)*, the existing legislation on admission to the occupation is still based on laws of the former Soviet Union. The legislation currently in place on admission to the occupation in most of the CIS countries is based on the following criteria:

- (a) A few elements of the “good repute” requirements but not according to EU legislation;
- (b) A few elements of the “financial standing” requirements, but at a low level;
- (c) A certain level of education required but not in the sense of “professional competence” as per the EU.

In several CIS countries, drafts for new legislation inspired by the principle underlying the EU alternative, but based on weaker criteria, have been submitted to and partially adopted by national Parliaments.

1.4 The introduction and implementation of the qualitative admission criteria in non-EU Member States has efficiently been supported by the ECMT within its geographic scope of activities (see Consolidated Resolution CM (2000)10/Final, Chapter II; implementation of the multilateral quota system).

2. Problems of implementation of admission criteria

These problems will be detailed using the *example of EU legislation*.

2.1 Despite the clear requirements to regulate the opening of the EU transport market on a liberalized basis, as set out in Directive 96/26/EC, it was found that the qualitative requirements set in the early 90s were very easy to fulfil and the criteria were not providing the profession with the intended and foreseen quality.

Directive 96/26/EC only set out minimum criteria. The integration of this new policy into the national legislation of EU Member States was implemented progressively. Due to the fact that the criteria applied in the various countries were not the same, many divergences still existed between Member States, which created imbalances and distorted competition. This concerned not only good repute criteria, but also the requirements for financial standing and professional competence.

2.2 As far as financial standing was concerned, the purpose of the general increase in required capital and reserves was to reduce considerable differences between Member States previously ranging from €3,000 to over €20,000 per vehicle.

2.3 With regard to professional competence, there was also huge variation in the national criteria, which generated so-called «CPC tourism», characterized by operators passing their tests in countries with less stringent requirements than those applied in their home country.

2.4 Furthermore, experience has demonstrated that newly-created and dynamically developing hire or reward transport activities, such as express courier services, using small vehicles with limited loading capacity, also had to be covered by harmonised rules on admission to the occupation.

2.5 Thus, the major changes to Directive 96/26/EC as amended by Directive 98/76/EC were aimed at:

- (a) Improving (raising) requirements for financial standing;
- (b) Strengthening professional competence requirements for operators (CPC requirements), among other things by:
 - Putting more emphasis on road safety, the environment and the harmonization of requirements for the organization of examinations;
 - Making all operators subject to an examination or test; even those with a 5-year relevant experience must pass a supplementary test, limiting «CPC Tourism»;
 - Setting down other details for the skills required, the examination levels and the marking modalities and introducing a common-format certificate.
- (c) Checking at least every five (5) years whether companies still fulfilled all three criteria.

2.6 Today, according to information available to the IRU, the European Commission intends to survey the implementation of Directive 98/76/EC in EU Member States, including CPC arrangements, to analyse whether the examination standards are sufficient to cover the consequences of the highly competitive market and to meet the quality demands of our industry. The survey could also include States applying for EU membership.

3. Industry position

3.1 Due to the high level of competition in the liberalized world trade markets, resulting from the application of the GATT/WTO Agreement in 144 countries, road transport's customers are demanding, day after day, far better and more complex transport services. Therefore, the road transport industry supported the legislation to liberalize the transport industry and to replace the quantitative licensing system for admission to the occupation by a liberal system based exclusively on harmonized and efficient quality criteria.

3.2 Today, the IRU is still in favour of such a liberalized system. It maintains its previous position, according to which all transport companies carrying goods and passengers for hire or reward should be subject to efficient and harmonized quality criteria for admission to the occupation, regardless of the weight or loading capacity of their vehicle(s). This issue has only partially been solved, e.g. in the EU by Directive 98/76/EC.

3.3 However, the numerous negative experiences, in almost all EU countries, have clearly demonstrated that the objective of Directive 98/76/EC to implement quality criteria to install a competitive market providing equal opportunities to each operator has not been achieved because the quality criteria are far too weak to be effective. It is still possible for any fleet operator to access the profession without making any investment or having an office. In fact, operators still may park their vehicles on the public highway and engage in hire or reward activities without duly obtaining a licence and without risking controls on the road or on company premises.

The fulfilment of the financial standing requirement can be relatively easy by bank guarantees, whereby even if a company goes bankrupt, the owners may still easily get a new guarantee to start a new company. Financial institutions might have vested interest in keeping alive almost bankrupt companies, thus trying to recover outstanding credits. Companies with uncertain financial background may even engage in cabotage activities in a foreign country (within the EU) causing important disturbances on local markets.

3.4 This Directive has not resulted in the desired level of harmonization. There are still important differences of interpretation and implementation of the three criteria at national levels.

3.5 Major problems result from the fact that there is no regular state control either of the harmonized, strict implementation of the quality criteria by national authorities or of their level of requirements.

3.6 The current deficiencies of the system of admission to the occupation have dramatic effects on competition. There is a strong need for the *harmonization of national legislation* and this issue should be tackled as a first priority, in particular in the case of non-EU Member or Candidate States. The current EU legislation could serve as a benchmark for such an exercise.

The introduction and implementation of the criteria beyond the borders of the EU should be phased-out. International operations and carriers should be subject to a harmonized system in the earliest possible phase. EU candidate countries represent a special case in this respect.

3.7 Finally, to harmonize and improve requirements for professional competence, the industry has launched its own initiative, namely the IRU Academy. The IRU Academy establishes

"Excellence" in road transport related training and testing by issuing and checking training standards (focusing today on the certificate of professional competence) through:

- Accrediting training institutions corresponding to the IRU Academy training and examination standards (duly harmonized with EU examination requirements) and
- Issuing personal Diplomas to individuals undergoing accredited training and successfully sitting appropriate tests.

The IRU Academy, with a wide potential geographic coverage (in principle the 69 countries of the world where the IRU is represented through national member organizations), was put in operation two years ago. Today, the IRU Academy is working with accredited training institutes in 19 different countries. The IRU Academy's activities are supported by the European Commission, the ECMT, the World Bank, the European Training Foundation, and the European Transport Workers Federation, all members of the Academy Advisory Board. The mutual recognition of Diplomas issued by the Academy should be regulated by authorities cooperating with and acknowledging the IRU Academy.

4. Conclusion

It is proposed to the UNECE and its Member Governments to take action aimed at:

- Defining and introducing efficient, harmonized and controllable quality criteria for admission to the occupation for all hire or reward goods and passenger transport activities by road (the latter including even taxi operators with due regard to local circumstances and a clear separation of licensing the profession of coach and taxi operators), regardless of vehicle weight categories; these intensified conditions should be applied to new entrants and should be subject to «grandfather rights» for existing operators;
- Intensifying harmonized procedures to control the implementation of legislation on admission to the occupation in all UNECE Member States;
- Co-operating with the representative trade organizations of the road transport industry at national and international levels towards the implementation, the control and the regular adjustment of the criteria to the requirements of the road transport industry, duly considering the industry's own initiatives and capabilities for «self-regulation», e.g. in the field of training certification.

5. The implementation of the qualitative admission criteria system and its control should be subject to a new UNECE Resolution.

Annex

Description of the qualitative criteria and other issues set by EU directives 96/26/EC and 98/76/EC

The qualitative criteria are based on the following conditions:

1. Good repute requirements

- to be determined by the Member States;
- common conditions to be met:
 - no conviction of serious criminal offences, including offences of a commercial nature;
 - not being declared unfit to pursue the occupation;
 - no conviction of serious offences against e.g. pay and employment conditions in the profession, rules of road transport, and in particular drivers' driving and rest periods, weights and dimensions of commercial vehicles, road and vehicle safety, environmental protection.

2. Appropriate financial standing

- sufficient resources available to ensure the proper launching and proper administration of the undertaking;
- for assessment purposes, the authorities review annual accounts, funds available, assets, costs, premises, plants, equipment;
- the undertaking must have available capital and reserves of at least €9,000 when only one vehicle is used and at least €5,000 for each additional vehicle;
- bank guarantee (or other similar means) may be accepted or required as evidence.

3. Professional competence

- possession of knowledge corresponding to the level of training provided for in Annex I to the Directive;
- established by compulsory written examination which may be supplemented by an oral examination;
- exemption is possible for applicants with at least five years' practical experience, provided that such applicants sit a test, as well as for holders of advanced diplomas;

- the certificate is a proof of professional competence, it can be limited to national transport;
- additional examination may be required from natural persons holding a certificate issued in another Member State (in application temporarily for three years as from 1 October 1999; extension of this period by the Council for a further five years is possible).

There are various exemption conditions and various transition periods for undertakings engaged in the occupation before/after certain dates differing for various groups of Member States.

Applications for admission may be rejected and authorizations withdrawn; authorities check at least every five years that undertakings still fulfil the requirements.

An information exchange should take place on offences and mutual assistance should be extended between Member States.

Diplomas, certificates and other evidence of formal qualifications will be mutually recognized.

Restrictions on freedom of establishment will be abolished by the Member States on the basis of pieces of evidence issued by other Member States.

Annexes I and II list the subjects of professional competence: civil law, commercial law, social law, fiscal law, business and financial management, access to the market, technical standards and aspect of operation, road safety, requirements for the organization of examinations, model certificate of professional competence.
