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IRU POSITION ON THE EUROPEAN COMMISSION PROPOSAL FOR A REGULATION ON ACCESS TO THE MARKET OF BUS AND COACH SERVICES IN THE EUROPEAN UNION

IRU Position on the European Commission Proposal for a regulation on common rules for access to the market for bus and coach services in the EU - COM(2007)264, adopted by the IRU Passenger Transport Council.

I. ANALYSIS

1. General

- On 23 May 2007, the European Commission adopted two new proposals for Regulations on common rules for access to the international road haulage market and to the market for bus and coach services in the EU. Both proposals combine and modify the rules which are currently found in several different EU legal acts on market access (four for road haulage and three for bus and coach transport).
- The main issues, which are raised in the new proposals, are the further harmonisation of Community licences and their certified true copies, the introduction of a new definition of cabotage for road freight transport, the authorisation procedure for international bus and coach regular lines, the simplification of control forms for occasional services by bus and coach, and the withdrawal of the market crisis mechanism. The text of the new proposal for a regulation on common rules for access to the market for bus and coach services in the EU can be found at: http://ec.europa.eu/transport/road/legislation/doc/com_2007_264_en.pdf.
- The market access rules on road freight and bus and coach transport have been kept in two separate regulations. Moreover, both market access rules have been consolidated in two separate regulations – one for road haulage and one for bus and coach transport - which improves clarity and transparency.
- Further harmonisation of the rules of bilateral agreements concluded by EU Member States and third countries on road transport matters will also lead to more transparency and could facilitate transport operations to and from third countries. However, regarding international regular lines by bus and coach to/from third countries, an international agreement negotiated between the EU and third countries may be the optimal solution.

2. Access to the international market

- The European Commission Proposal for a regulation on common rules for access to the market for bus and coach services in the EU is a step forward in further simplifying and harmonizing market access rules and their implementation across the EU.
- The models of the Community licence (Chapter II) and the certified true copies will be standardised. This will lead to more transparency and certainty in enforcement, and reduce the number of unjustified penalties for operators. However, the proposed model of the Community passenger transport licence should also reflect the new requirements regarding cabotage, since passenger transport cabotage rules are now part of the newly proposed Regulation (Chapter V). In addition, sufficient time will be needed for authorities and industry to adapt.
- The introduction of an electronic register, including for licences, will improve the exchange of information between EU Member States and lead to better enforcement.
- Cooperation between relevant competent and enforcement authorities in EU Member States will also be improved. Enforcement will be facilitated and better targeted.
- No driver attestation will be introduced for passenger transport by bus and coach.
- But, serious reservations are raised against the formulation of Article 2.d. on own-account transport operations. The problem stems from the fact that the terms “non-commercial” and “non-profit” are not defined in a clear way anywhere, leading in many cases to unfair competition.
- In addition, the duration of four months for authorities to issue an authorisation for an international regular line (Article 8.3.), and for the Commission to take a decision in the case an application is referred to it by a Member State (Article 8.8.) seem too long.
- Caution is also needed regarding the provisions of Article 8.4.d. and the blanket right given to authorities to refuse an application if the service would seriously affect the viability of a comparable service operated under a public service contract, which stipulates a public service obligation (instead of “comparable rail service” under the current rules). It should be avoided that this provision becomes simply an extension of the current discrimination in favour of rail.
- One of the main industry requests has always been the simplification and harmonisation of the journey form for occasional services. This is the reason why, the industry’s preferences go for a bolder simplification of journey forms for international occasional transport operations inside the EU and with third countries.
- The market crisis mechanism has been abolished.

II. IRU POSITION

- The IRU considers that the new proposals for access to the EU international road transport market for road haulage and bus and coach services are a positive step forward towards further harmonisation, simplification and clarification of rules, improved enforcement, a level playing field for operators from different nationalities and more efficient, sustainable freight logistics and travel and tourism flows in the EU.
- More specifically, regarding market access for bus and coach services in the EU, the IRU is in favour of:
 - Applying Community rules on the whole territory of the EU,

- A better definition of own-account transport in line with the fact that these transports are carried out free of charge,
 - Allowing freedom to provide services on the EU territory for holders of a Community licence valid for international transport,
 - Appropriate transitional periods to adjust to new models of the Community licence and its certified true copies, whilst integrating the notion of cabotage in them,
 - Shortening to three months the period for authorities to issue authorisations for international regular lines,
 - Restricting to ten weeks the period for the Commission to take a decision in case an application for an international regular is referred to it by a Member State,
 - Limiting the right of authorities to refuse an application for an international regular line in case it affects a service, carried out under a public service contract, to new applications only,
 - The abolition of the journey form for international occasional transport inside the EU and the generalisation of the use of the Interbus journey form for services between the EU and third countries,
 - The conclusion of an international agreement on international regular bus and coach lines between the EU and third countries.
- The European Commission should undertake a study on the evolution of national and international transport by bus and coach in Europe, to be able to base policy development on facts.
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TECHNICAL SUPPLEMENT

to the IRU position on the European Commission Proposal for a regulation on common rules for access to the market for bus and coach services in the EU [COM(2007)264]

1. Scope – EU rules and bilateral agreements (Articles 1.2. and 1.3.)

In the absence of a Community framework to regulate road transport-related matters with third countries, the European Commission proposes (Articles 1.2 and 1.3.) to allow provisions of bilateral agreements to apply to the part of the journey on the territory of the relevant Member State of picking up or setting down passengers. The Commission also proposes to harmonise progressively the respective provisions of existing bilateral agreements with third countries.

Further harmonisation of the rules of bilateral agreements concluded by EU Member States and third countries on road transport matters will lead to more transparency and could, with time, facilitate transport operations to and from third countries.

On the other hand, applying the provisions of bilateral agreements as they stand now may also lead to confusion and a situation, which will be difficult to manage by operators themselves, since these provisions are not known to operators, in particular to those residing in countries which are not Contracting Parties to these bilaterals.

- ⇒ *The IRU welcomes a progressive harmonisation of road transport bilateral regimes between EU Member States and third countries.*
- ⇒ *The IRU is of the opinion that the optimal solution would be to apply the provisions of this Regulation on the whole territory of the Community, in order to increase transparency and legal certainty.*
- ⇒ *An international Agreement on international regular bus and coach lines, similar to Interbus, to be negotiated between the EU and third countries, will further contribute to facilitating international travel by bus and coach, whilst at the same time harmonising the rules, their enforcement, controls and sanctions, on the basis of the EU acquis, models and practices.*

2. Definitions – own-account transport (Article 2.d.)

Serious reservations are raised against the formulation of Article 2.d. on own-account transport operations. The problem stems from the fact that the terms “non-commercial” and “non-profit” are not defined in a clear way anywhere, leading in many cases to unfair competition.

- ⇒ *Define better own-account transport operations to reflect unambiguously the fact that these are carried out free of charge.*

3. Freedom to provide services on the EU territory (Article 3.1.)

Article 3.1. allows holders of a Community licence issued by the EU Member State of establishment to carry out services throughout the Community, without specifying that this licence should be valid for international transport. However, there exist EU Member States who still issue licences for both national and/or international transport.

- ⇒ *Revise the wording of Article 3.1. in order to clarify the fact that the freedom to provide services on the EU territory is conferred only to holders of a Community licence valid for international transport.*

4. Community licence (Chapter II)

The industry broadly supports the proposed simplification (Chapter II), according to which the Community licence and its certified true copies should (Article 4) be issued according to an EU model (Annex I). However, the proposed model of the Community licence should also reflect the new requirements regarding cabotage, since cabotage rules are now part of this Regulation (Chapter V). In addition, sufficient time will be needed for authorities and industry to adapt.

- ⇒ *The model of the Community licence, including its title, should integrate the notion of cabotage, which is regulated by this Regulation.*
- ⇒ *Appropriate transitional period for authorities and operators to adjust to new Community licence models with minimum bureaucracy and costs should be introduced.*

In addition, the future introduction of national electronic registers, their interconnection at EU level and the direct access to them for control officers performing controls on the road side, opens new innovative ways to further simplify enforcement and control in the future. It is expected that it would also affect the role of certified true copies and the need for them to be kept on board of the vehicle.

5. Regular services subject to authorisation – documents to be kept on board of vehicles in case of use of additional vehicles (Article 6.6.)

Article 6.6. provides for the possibility, in temporary and exceptional situations, to use additional vehicles, including from other companies. With the current wording, it also allows the service to be operated by companies that hold a licence for national transport operations only.

- ⇒ *Make sure that the company involved in this service disposes of its own Community licence for international transport and that a certified true copy of it is kept on board of the vehicle.*

6. Application procedure for an international regular line – duration of taking a decision on granting an authorisation (Articles 8.3. and 8.8.)

The proposed duration of four months for the authority to issue an authorisation (Article 8.3.) is perceived as too long.

- ⇒ *It is proposed to shorten this period to 3 months.*

Extending from ten weeks to four months (Article 8.8.) the time-limit for the Commission to take a decision, in the case an application is referred to it for decision by a Member State, seems excessive.

- ⇒ *The maximum period for the Commission to take a decision should not exceed ten weeks.*

7. Authorising procedure - refusal of an application for an international regular line (Article 8.4.)

Regarding the proposed four potential reasons for refusal of an application for an international regular line (Article 8.4.), it should be noted that, in principle, the fact that the transport company is a holder of a Community licence and, therefore, satisfies the conditions for access to the profession should give sufficient guarantees for the authority in question to issue this authorisation.

Caution is needed however regarding the provisions of Article 8.4.d. and the possibility given to authorities to refuse an application if the service would seriously affect the viability of a comparable service operated under a public service contract, which stipulates a public service obligation (instead of “comparable rail service” under the current rules).

Apart from the fact that such cases will be very difficult to argue and prove in objective terms, it should be avoided that this provision becomes simply an extension of the current discrimination in favour of rail¹.

However, it can also be argued that such a provision could be justified bearing in mind the specific circumstances in the various Member States. On the other hand, the expected exceptionally long transition period for the enforcement of the future EU rules on public service obligations may jeopardise the effective enforcement of this provisions. In this latter case, it is feared that this would open a legislative gap, leading to ruinous competition and price cuts, without a possibility for authorities to prevent that. All the more so, since, according to the newly proposed wording of Article 16.1.a., “prices” are no longer among those national rules and provisions that must be respected by foreign registered operators in case of cabotage operations.

⇒ *Authorities should be given the right to refuse an application on the grounds of the service seriously affecting the viability of a comparable service operated under a public service contract, which stipulates a public service obligation, for new applications only. Suspending, withdrawing or not prolonging existing authorisations on this ground is not acceptable for the industry.*

8. Occasional services – control documents (Articles 12 and 17)

One of the main industry requests has always been the simplification and harmonisation of the journey form for occasional services (Articles 12 and 17, the latter regarding cabotage transport).

The industry proposes:

- ⇒ *The abolition of the journey forms for international occasional transport operations inside the EU;*
- ⇒ *The mandatory use of the Interbus journey form alone for all occasional coach services between the EU and third countries, whilst at the same time requesting the European Commission to step up efforts to invite other EU neighbouring countries to join Interbus (something which the current reform of the ECMT/ITF makes also formally possible).*

9. Occasional services – local excursions (Article 13)

Limiting local excursions to non-resident passengers alone seems unjustified in cases, where a previously assembled group of local people is carried out previously in an international journey, of which the local excursion would then become a constitutive element.

10. Cabotage (Chapter V)

Although most cabotage rules (Chapter V) remain unchanged, an important modification has been proposed, namely, the abolition of the crisis mechanism., on the grounds that it has never been utilised.

¹ The bus and coach association in Denmark, DB, gives the following example. A private international regular service has been successfully run for over 25 years from Copenhagen through Sweden to the island (Danish) of Bornholm. A bridge was constructed in 2000 and the national rail company started a “comparable, regular service” under a PSO contract, arguably a less competitive one. Keeping this element in the new proposal constitutes at least a theoretical threat to the bus and coach company in question of seeing its licence withdrawn under the new rules.

Attention is also drawn to the fact that a specific wording is needed to clarify that cabotage for own-account transport should not be limited (Article 14).

Article 15 may also need to be re-worded in order to clarify that cabotage services carried out within the framework of Article 15 are carried out free of authorisation.

11. Repeals (Article 29)

It should be mentioned that Regulation 684/92 has been amended by Regulation 12/98.
