

IRU Policy Observations on the revision of the EU road transport legislative framework





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Introduction

IRU supports a light touch legislative approach whereby the aim is to improve and better enforce the existing rules as opposed to developing new ones. Better enforcement is crucial as IRU views it as one of the underlying causes for any deficiencies when it comes to the legislation in question.

In the context of the upcoming “Road Initiatives” revision of the road transport legislative framework, IRU has a number of observations on how the current rules could be improved. This represents an opportunity to assess the effectiveness of the framework, to make improvements and to ensure that it is coherently applied across the EU.

This policy document outlines IRU’s positions on the EU road transport legislation currently under review in the Road Initiatives, specifically:

- access to the profession (Regulation (EC) No 1071/2009),
- access to the freight and passenger market (Regulation (EC) No 1072/2009),
- road charging (Directive (EC) 2004/52, Decision (EC) 2009/750 and Directive (EC) 1999/62)
- social and enforcement legislation (Regulation (EC) No 561/2006, Directive 2002/15/EC and Directive 2006/22/EC).

This is a living document outlaying IRU’s current positions and will be updated at regular intervals over the coming months including after the Road Initiatives proposals are communicated from the European Commission.

There are also a number of issues which are currently being discussed internally within IRU and are therefore not ready for public dissemination. It is possible that they will be included in future versions of this document. These issues include the application of the Posting of Workers Directive in the road transport sector and the Combined Transport Directive.

1. Access to the profession – road transport operator

IRU can currently identify a number of challenges relating to Regulation (EC) 1071/2009 - access to the profession of road freight and passenger transport operator. In the context of its upcoming revision in the framework of the “Road Initiatives”, IRU offers the following political guidance to improve the current rules.

Scope of the rules

An increased use of vehicles below 3.5 tonnes for intra-EU cross-border road freight transport can be observed in several Member States. Most Member States do not impose the same heavy rules on these vehicles as they do for those above 3.5 tonnes. Thus, transport can be carried out much more flexibly and at lower rates with the former which can create distortions of competition.

In order to tackle distortions of competition due to the increasing use of vehicles below 3.5 tonnes for intra-EU cross-border road freight transport, IRU supports the inclusion of EU road freight transport for hire and reward with such vehicles in the EU access to the profession rules. Some Member States have already lowered the 3.5 tonne threshold. It would be important to determine where to set the EU threshold (e.g. 0 tonnes, 0.5 tonnes, 2.8 tonnes), as Member States that have already introduced rules have not necessarily introduced the same lower threshold. Furthermore, a “light” version for the criterion on “financial standing” could be developed for vehicles below 3.5 tonnes.

Scope of the criteria

Some Member States are increasingly adding extra, albeit voluntary, conditions on transport operators (often in the shape of “accreditation schemes”) which come on top of the criteria to be fulfilled to obtain access to the profession. By doing this, they indirectly challenge the value of the four criteria (establishment, good repute, financial standing and professional competence) which need to be complied with in Regulation (EC) No 1071/2009.

In view of the further alignment of the national implementations of the rules on access to the

profession, IRU recommends removing the possibility for Member States to add additional criteria to the four already laid down in the Regulation. It should be avoided that companies flag out to Member States with the lowest legal criteria for access to the profession.

Good repute

Member States apply different standards in terms of the liability of the undertaking, its transport manager(s) and the drivers, the evaluation procedures leading to the loss of good repute and relating to rehabilitation and the weighing of infringements committed in a host Member State.

IRU could support new proposals that lead to a further aligned EU legal framework on the access to the profession and its enforcement. These proposals should take into account the differences in judicial systems in the Member States, but should minimise the possibilities (in areas such as “proportionality” and establishing the liability of the company, transport manager and/or driver for an infringement) to differently interpret, implement, derogate and enforce EU rules. In particular, the rules relating to the rehabilitation procedure for those who have lost their good repute should be further aligned, whereby every Member State should have a rehabilitation procedure in place.

Establishment

Member States interpret the notion of “letterbox” companies in a different way, which still leaves the possibility open to establish such companies, without necessarily infringing on national or EU rules. In addition, Member States are sometimes not in a position to enforce due to either potential tax loss or enforcement capacity.

IRU notes that priority should be given to the further alignment of national implementations, which could be achieved by removing the provision indicating that “Member States may require that establishments in their territory also have other documents available at their premises at any time.” Regarding the

obligation to keep core business documents at the company premises located in the Member State of establishment, the ongoing trend of digitalisation and the fact that the core business information might no longer necessarily be available in paper format should be taken seriously into consideration.

The European Electronic Register for Road Transport Undertakings (ERRU)

Member States have differing numbers of competent authorities and therefore there are different registers that should be interconnected. The rules for accessing the register(s) also vary. Different approaches to “risk rating” are used which makes it very difficult to compare between Member States. Infringements are

weighed differently, including those committed in a host Member State.

IRU regrets further delays in the implementation of the ERRU (as of 30 January 2019). IRU supports decisive EC legal action against those Member States which have not yet fully implemented the ERRU. In addition, the requirements relating to which data should be included in the ERRU and those providing access (including for roadside inspections) should be further aligned. It could be explored to which extent the different registers such as ERRU, Tachonet and the roadworthiness register) could be further integrated. The introduction of information in the ERRU should be done with the information of existing data bases rather than through new surveys and enquiries to transport operators. The administrative burden should be minimised.



2. Access to the road haulage market

IRU can currently identify a number of challenges relating to Regulation (EC) 1072/2009 - access to the road haulage market. In the context of its upcoming revision in the framework of the "Road Initiatives", IRU offers the following political guidance to improve the current rules.

Scope of the rules

An increased use of vehicles below 3.5 tonnes for intra-EU cross-border road freight transport can be observed in several Member States. Most Member States do not impose the same heavy rules on these vehicles as they do for those above 3.5 tonnes. Thus, transport can be carried out much more flexibly and at lower rates with the former which can create distortions of competition.

In order to tackle distortions of competition due to the increasing use of vehicles below 3.5 tonnes for intra-EU cross-border road freight transport, IRU supports the inclusion of EU road freight transport for hire and reward with such vehicles in the EU access to the market rules. Some Member States have already lowered the 3.5 tonne threshold. It would be important to determine where to set the EU threshold (e.g. 0 tonnes, 0.5 tonnes, 2.8 tonnes), as Member States that have already introduced rules have not necessarily introduced the same lower thresholds.

Transport documents

Despite the rapid digitalisation of society and many parts of the economy, including road freight transport and logistics, the paper format continues to prevail for control documents in the EU road freight transport legislation.

IRU calls on the European Commission to actively pursue the introduction and full recognition of electronic documents (such as the eVersion of the true certified copy of the Community Licence and the electronic consignment note) in EU road freight transport, as this could reduce the administrative burden for transport companies.

Cabotage

Individual Member States continue to interpret the provisions on road haulage cabotage differently in absence of sufficiently clear guidance from the European Commission.

IRU considers that the current cabotage rules and their interpretation should not be fundamentally changed – meaning that at this stage the rules should not be further liberalised nor should any additional restrictions be introduced. The rules should however be clarified further for example by inserting the information of the European Commission Q&A on road haulage cabotage into the Regulation.

In order to improve and facilitate enforcement, the current list of elements to be proven, as laid down in Article 8.3 of Regulation (EC) No 1072/2009, should be replaced by the requirement to have an existing paper consignment note (such as the CMR) or its eVersion on board the vehicle.

Relation with Hired Vehicles Directive 2006/1/EC

There are several provisions under Regulation (EC) No 1072/2009 which also relate to the hiring of vehicles without driver. While IRU does not advocate any further liberalisation or restrictions, an update of either Regulation or Directive must be consistent and should consolidate rules on the use of hire vehicles without driver. Modifications to Directive 2006/1/EC should not indirectly lead to a further liberalisation of the market or the introduction of new restrictions.

The EC's proposal to provide guidance documents for Directive 2006/1/EC should also refer to the relevant provisions in Regulation (EC) No 1072/2009. IRU would also support a clarification between the Hired Vehicles Directive 2006/1/EC and Regulation (EC) No 1072/2009 on the temporary hiring of a vehicle in order to replace a vehicle which has broken down abroad during a transport operation.

3. Access to the international market for coach and bus services

The success of the recent opening of domestic bus and coach markets in several EU Member States has revealed the true potential of what can be considered the safest, most sustainable and most inclusive transport alternative available to the European people.

IRU hereby presents a number of suggestions for the revision of Regulation (EC) No 1073/2009 on the access to the international market for coach and bus services, with the objective to accompany the development of bus and coach transport, by stimulating competition, to the benefit of passengers, and rewarding entrepreneurship.

Organisation of national and international regular service markets

IRU supports the provision of a common EU framework for the non-discriminatory access to markets in EU Member States that have liberalised their domestic markets or intend to do so.

Passenger terminals

IRU supports the provision of common EU rules for the governance of passenger terminals (coach terminals and multimodal terminals). Common EU rules must aim to guarantee the non-discriminatory and equal access to passenger terminals, their essential infrastructure and facilities to all operators which are duly authorised to provide regular international and domestic services, irrespective of their Member State of establishment. Common EU rules should tackle the definition of a terminal, allocation of responsibilities, setting of charges, capacity allocation and capacity constraints.

Competition between transport modes and protection of services covered by public service contracts

IRU supports a revision of the reasons and criteria for refusing authorisations of regular bus and coach services, with the objective to stimulate competition, to the benefit of passengers, and reward entrepreneurship. While it is natural to protect services covered by public service contracts from competition, the level of protection (Article 8 (d) and Article 15 (c) of the Regulation) should be higher for bus and coach services covered by public service contracts awarded following a competitive tendering procedure than for services covered by public service contracts directly awarded to internal operators and for services performed by other modes of transport.

Authorisation procedures for international regular services and cabotage operations

IRU supports a system whereby authorisation procedures would be simpler, clearer, more rapid and transparent than the current practice in most EU Member States.

Administrative formalities

IRU proposes to discontinue the use of journey forms for occasional coach services and to plan for the digitalisation of all other control documents, including the Community License, the authorisations of regular services and their certified copies.



4. Road user charging

Introduction

Fifteen years of experience and two revisions of the Eurovignette legislation have shown that road user charging should not be at the service of a failed forced modal shift policy.

IRU hereby presents a number of suggestions to ensure that the future revision of Directive (EC) No 1999/62 facilitates the greening “at-source” of the commercial road transport sector – road freight transport and collective bus and coach transport.

Aim of the legislation

IRU considers that the principle behind EU legislation on road charging must not be a penalisation of the commercial road transport sector. In return for its contribution, the commercial road transport sector should receive benefits and incentives that would fully facilitate the further improvement of its sustainability, being understood as its economic and environmental performance as well as its social acceptability.

Contribution of the European road freight transport sector

Within the current Eurovignette framework, heavy goods vehicles cover 130% of their infrastructure and external costs on EU motorways via infrastructure charges, fuel excise duties and vehicle taxes. Any revision of the Eurovignette Directive resulting in an increase of the fiscal burden on road freight transport operators could only be interpreted as an attempt to artificially increase road transport prices, without any consideration for actual infrastructure and external costs.

Contribution of the European bus and coach sector

IRU cannot support a revision of the current EU legislation on road charging, which would aim to increase the charges for bus and coach transport. Evidence from several countries indicates that collective bus and coach transport already amply cover

their infrastructure and external costs. If the sector is expected to pay more for its infrastructure and externalities, it will expect an equivalent return in the form of benefits and incentives. As the Commission recently announced its support to the further development of bus and coach transport via the revision of Regulation (EC) No 1073/2009, IRU considers that planning to increase the fiscal pressure on bus and coach operators would be counterproductive with regard to this priority policy objective.

Infrastructure and external cost charging of the different transport modes

Commercial road transport already pays out much more than the sum invested in road infrastructure and suffers from less favourable treatment than other modes in terms of energy taxation and various subsidies. No transparency exists as to whether the other modes also sufficiently pay for infrastructure usage and externalities. IRU is therefore calling for a non-discriminatory approach between the different transport modes, whereby other modes of transport should also fully cover their infrastructure and external costs.

The revenues from road infrastructure and external-cost charging should flow back to road transport projects, including projects related to infrastructure and environmental performance. The use of revenues from road infrastructure and external-cost charging to cross-subsidise other modes of transport is unacceptable.

Vignette versus tolling systems

IRU is not in favour of a phasing out of vignette systems. Member States must be able to choose between vignettes or tolls. No measures should be introduced which could lead to commercial road freight transport operators paying more for the use of road infrastructure than they already do today, as there is evidence that the sector already pays too much. There must not be any double payment. In addition, the initial investment and maintenance costs for electronic tolling systems are much higher than those for vignette systems.



External costs

For IRU, external cost charging should not be mandatory, the decision should be left to Member States, as is currently the case. No other externalities should be included in the scope of the legislation. A risk of double payment exists with CO2 emissions, which are generally already internalised through fuel taxation. Accident costs are also already internalised through insurance and penalty schemes at national level. More transparency needs to be created without introducing any additional external cost charge.

Evidence shows that the road freight transport sector already pays more than enough in taxes, charges and duties to cover external costs, which are currently not included in the scope of the Eurovignette Directive. Even with adding accidents costs and climate change costs to the list of external costs chargeable in the framework of the Eurovignette Directive, the road freight transport sector would still cover more than 100% of its infrastructure and external costs with the current level of taxation.

Congestion charging

For IRU, congestion costs are already borne by the transport sector itself in terms of loss of resources, time and in terms of additional costs and taxes. Any form of additional charging for congestion, even the currently allowed differentiation, is considered an unacceptable double payment and a penalty. Concrete, alternative options to avoid congestion should be offered to the road freight transport sector, such as a 24-hour use of the infrastructure instead of seeking to introduce a wider scope to charge for congestion. Collective bus and coach transport must be considered as a solution to congestion problems. As such, buses and coaches replace more than 30 cars on the road and already contribute to making the European mobility system more sustainable.

Earmarking

IRU considers that the revenues from road infrastructure and external costs charging should flow back to road transport projects, including infrastructure-related and environmental performance-related projects. These revenues must not be used to cross-subsidise other transport modes. If the commercial road transport sector is expected to pay more for its infrastructure costs and externalities, it will expect an equivalent return in the form of benefits and incentives, that would fully facilitate the further improvement of its sustainability.

Implementation of EETS

IRU supports the EETS objectives being “one OBU - one contract - one invoice”, whereby one single market would be established and road freight transport operators would have the choice to deal with one provider, one contract and one invoice, providing that it would reduce costs and the administrative burden for operators. This solution would be a considerable cost-saver, as operators would only have to pay administrative fees to one provider and would only have to invest in one electronic system to pay user charges. This solution will require a binding roadmap to make existing and new systems covering all EU Member States operating an interoperable toll system. Toll chargers must be required to open up existing contracts and not to limit new contracts to national markets. The technical harmonisation of national electronic tolling systems must be guaranteed and EETS providers should potentially be required to provide one single financial guarantee covering the whole EU.

The realisation of the single market for electronic tolling systems should result in an overall cost reduction for EU hauliers and should not lead to higher tolls or user charges when using EETS compared to national and local providers.

5. Social rules in road transport and their enforcement

For the upcoming revision of the road transport legislative framework, IRU favours clarification and simplification of the existing open issues rather than introducing new regulatory acts, together with more transparent and effective enforcement.

In general, the framework of EU rules is accepted by the industry and the road transport operators managed to design their business models around and in compliance with the rules, despite the fact that a number of provisions remain unclear or are subject to different national interpretations and enforcement practises.

Clarification

IRU suggests that the following concepts are clarified in the social legislation, access to the profession and market and digital tachograph rules - weekly rest in the cabin, recording other work, recording periods away from vehicle, availability periods and ferry rule. Besides these provisions, TRACE and CLOSER projects identified other definitions and provisions that need further clarification such as the issues related to cabotage (start/end of an cabotage operation, multidrop operations etc.) recording of mixed activities, calculation of frequent breaks (ECJ Charlton case C116/9), extended daily driving times (and the question if an extended daily driving falls in two weeks, for which week this extended daily driving should be accounted), situation in the first hour of driving in the case of multimanning and the definition of journey.

Flexibility/ Rules are not adapted to the needs of the sector

IRU supports that certain rules are applied in a more flexible manner in order to reflect the unforeseen circumstances hampering compliance with the rules. For example the rules could be more flexibly applied to allow the driver to take his daily/weekly rest at home or at his operational centre if only insignificant additional time (distance) is necessary to reach the destination. More flexibility in applying the rules could be envisaged

for local multi-stop multi-drop deliveries and for other specific types of transport operations. The operators would benefit from the added flexibility as it would improve the transport productivity but it would also improve working conditions of professional drivers, by allowing them to spend the daily/ weekly rest not en route.

Specific IRU proposals concerning passenger transport sector

The occasional passenger transport segment is of particular concern as its characteristics (for example seasonality and different driving patterns) do not correspond with the current provisions of Regulation 561/2006. Requirements on the rather rigid weekly rest, the 12 day rule and the daily spread over do not allow for the full potential of this segment to be realised not only from the operator's perspective but also as a driver. Therefore, IRU strongly supports that a well-suited 12 day rule, the weekly rest and the daily spread over be treated as derogations for the passenger transport sector from the general driving and rest time rules for freight and passenger transport.

In terms of infrastructure, there are problems related to the lack of parking spaces in cities and especially the lack of measures to ease movement of collective passenger transport by bus (including tourist coaches).

Working time

IRU is of the opinion that Directive 2002/15 makes it more challenging to comply with the existing complex rules for drivers and operators and that its requirements add to the administrative burden for operators. It should be assessed whether a sufficient level of protection for drivers is not already guaranteed by Regulation 561/2006 combined with the General Working Time Directive 2003/88. It should also be analysed whether a merger of Regulation 561/2006 and Directive 2002/15 could be envisaged, providing that no operational flexibility is lost especially as regards the definitions of periods of availability and working time.

Although IRU would be in principle open to debating such a possible merger, the impact of this regulatory step must be thoroughly assessed and interplay with the General Working Time Directive 2003/88 analysed.

Level of penalties

The great variation of penalties is a big problem which leads to a lot of uncertainty among transport operators regarding how a particular rule is interpreted, implemented, applied and eventually penalised in a particular Member State. Some hauliers force an inspection in a particular Member State to avoid being potentially penalised in another where the penalties are higher. However, IRU does not support the EC proposing minimum requirements with regard to the level and types of penalties; this should be left to national decision-making.

IRU has been actively involved in the work on the categorisation of infringements and sees this as one of the principal preconditions for the correct functioning of the EU road transport market. Here, the administrative omissions or simple human errors (over which the company has very limited control in the case where they are committed by the driver) should not be treated with equal seriousness as behaviour directly threatening road safety or deliberate falsification or manipulation. In this light, infringement classification must contain strictly those infringements that have as a direct consequence a risk of fatality or serious injury.

Enforcement

IRU favours intelligence-led enforcement based on the increased use of e-documents, relying on aligned risk-rating systems, electronic exchange of information and increasingly on company controls. This would contribute to the level playing field in the road transport sector. IRU supports alignment of the enforcement practises in principle, so synchronisation of market and social controls could be supported. The aim should not be a quantitative increase of inspections but the enhanced efficiency of enforcement potentially linking minimum number of checks to risk based assessment. Both road side and company checks remain valid enforcement tools.

The European Electronic Register for Road Transport Undertakings (ERRU): IRU underlines the need to finally

make the ERRU operational. IRU supports decisive EC legal action against those Member States which have not yet fully implemented the ERRU. In addition, the requirements relating to which data should be included in the ERRU and those providing access (including for roadside inspections) should be further aligned. It could be explored to which extent the different registers such as ERRU, Tachonet and the roadworthiness register could be further integrated. The introduction of information in the ERRU should be done with the information of existing data bases rather than through new surveys and enquiries to transport operators. The administrative burden should be minimised.

Online platform: A space should be created where Member States can post comprehensive information relating to applicable national rules, legal interpretations, national enforcement practices, documentation and any other requirements.

Cooperation between Member States and training: IRU supports an EC-induced strengthening of cooperation between Member States. IRU also supports the introduction of training provisions for the enforcement officers, similar to those in Regulation (EC) No 165/2014, for other areas, building on the existing initiatives such as TRACE and CLOSER.

Establishment: IRU is prepared to further explore the potential introduction of a minimum number of checks for establishment conditions and of minimum standards for such checks. On the other hand, this must not result in a situation where Member States' authorities increase the controls only to formally meet the thresholds.

Cabotage enforcement: In order to improve and facilitate enforcement, the current list of elements to be proven, as laid down in Article 8.3 of Regulation (EC) No 1072/2009, should be replaced by the requirement to have an existing paper waybill (such as the CMR waybill) or its eVersion on board the vehicle. An idea worth considering is the introduction of minimum standards and minimum number of checks in case of cabotage. On the other hand, this must not result in a situation where Member States' authorities increase the controls only to formally meet the thresholds. Also the fact that in some Member States the cabotage activity is low must be taken into account.



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