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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation in the period from 4 December 2011 until 31 December 2012 of
certain provisions of Regulation (EC) No 1071/2009 establishing common rules
concerning the conditions to be complied with to pursue the occupation of road
transport operator**

**(1st report from the Commission on the implementation by Member States of certain
provisions concerning the access to the occupation of road transport operator)**

I. Introduction

This report refers to the pursuit of the occupation of road transport operators in Member States. Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC ¹ (hereafter "Regulation (EC) No 1071/2009") applies to all undertakings established in the EU which are engaged in the occupation of road transport operator, as well as those which intend to engage in such an occupation. The occupation of road transport operator refers to both the occupation road haulage operator² and the occupation of road passenger transport operator³. Certain categories of undertakings, such as those using motor vehicles of a laden mass of less than 3.5 tonnes, are exempted from the scope of the Regulation. Regulation (EC) No 1071/2009 defines common rules governing the admission to the occupation of road haulage and road passenger transport operators.

In accordance with Article 3 of this Regulation, undertakings engaged in the occupation of road transport operator should have an effective and stable establishment in a Member State, be of good repute, have appropriate financial standing and the requisite professional competence. Furthermore, Article 4 of this Regulation imposes an obligation on road transport undertakings to designate a transport manager who holds a certificate of professional competence that confirms the possession of skills and knowledge necessary to manage transport operations in line with all legal and industrial requirements and in an effective and continuous manner. The responsibility to verify transport undertakings' compliance with the conditions laid down in Regulation (EC) No 1071/2009, lies with the Member States. Moreover, well organised administrative cooperation between Member States plays a key role in improving the effectiveness of monitoring of undertakings operating in the European Union.

Article 26(1) of Regulation (EC) No 1071/2009 sets several deadlines:

- Every two years from the date of application of the Regulation, Member States must communicate the data as required in Article 26 of the Regulation;
- On the basis of the submissions from Member States, the Commission shall draw up a report every two years to be communicated to the European Parliament and Council.

¹ OJ L 300, 14.11.2009, p. 51

² Under Article 2(1) of the Regulation, 'the occupation of road haulage operator' means the activity of any undertaking transporting goods for hire or reward by means either of motor vehicles or combinations of vehicles.

³ Under Article 2(2) of the Regulation, 'the occupation of road passenger transport operator' means the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users in return for payment by the person transported or by the transport organiser.

National reports provided by Member States constitute a crucial input to the Commission report. Article 26 of the Regulation outlines what data should be included in national reports:

"(a) an overview of the sector with regard to good repute, financial standing and professional competence;

(b) the number of authorisations granted by year and by type, those suspended, those withdrawn, the number of declarations of unfitness and the reasons on which those decisions were based;

(c) the number of certificates of professional competence issued each year;

(d) core statistics relating to the national electronic registers and their use by the competent authorities; and

(e) an overview of exchanges of information with other Member States pursuant to Article 18(2), including in particular the annual number of established infringements notified to other Member States and the replies received, as well as the annual number of requests and replies received pursuant to Article 18(3)."

In addition to this introduction, the report comprises three sections that cover the quality and timeliness of national data submissions (Section II) and an analysis of the reports provided by Member States (Section III). Section IV presents conclusions drawn.

II. Data submission

This is a first report under Regulation (EC) No 1071/2009 and it covers the period from 4 December 2011 until 31 December 2012 in order to synchronise its publication with the report on the implementation of the social legislation relating to road transport⁴, as set out in Article 26(2) of Regulation 1071/2009. The starting point of this timeframe corresponds with the date from which this Regulation started to apply. The next reporting period will cover the full two-year timeframe from 1 January 2013 till 31 December 2014.

Despite the obligation to report contained in Article 26 of this Regulation at the point in time when this report was drafted six Member States, namely Belgium, Denmark, Finland, Germany, Luxembourg and Portugal, did not submit their national reports. Some Member States had a serious delay in providing their data by the deadline of 30 September 2013, which significantly affected the timing of preparation of this Commission report. In a number of reports certain necessary information was not provided, thus making it problematic to carry

⁴ referred to by Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1)

out a comprehensive analysis. There are also cases where the data provided covered a different timeframe than required.

Not all Member States provided a justification for the delay in submitting their reports or gaps in data. Those who did remarked that difficulties in inter-connecting their national register to the European Register of Road Transport Undertakings had prevented them from providing the data on this subject. Other indicated that certain terms of the reporting requirement were unclear, such as the reference to "core statistics". Finally certain Member States in which local or regional authorities are responsible for enforcement noted that collecting data from these authorities was challenging.

It should be taken into consideration that even though the content of the report is outlined in Article 26(1) of Regulation (EC) No 1071/2009, there is no standard reporting format established. For the purpose of consistency and in order to assist the national competent authorities with fulfilling their reporting obligation in the future, a standard form will be proposed to Member States following the analysis of national submissions.

III. Analysis of data on pursuit of the occupation of road transport operator

1. Overview of the road transport sector with regard to good repute, financial standing and professional competence

This part consists of a presentation of national requirements, organization of checks, level of compliance and difficulties encountered, on the basis of information submitted by Member States. Due to the fragmentary nature of the reports by Member States, this overview is not comprehensive in scope.

Data on national systems for awarding access to the occupation was presented by Austria, France, Italy, Slovakia and the Czech Republic. Two Member States, namely Austria and Slovakia imposed national requirements that need to be satisfied in parallel with conditions set out in Regulation (EC) No 1071/2009. Slovakia added a requirement defining the minimum age of a transport manager at 21 years. Austria included a condition for a road transport operator to have necessary off-road parking spaces in the municipality or in another municipality in the same or adjacent administrative district.

France decided to extend the obligation of compliance with the rules on access to occupation of road transport undertaking to road hauliers operating vehicles with a permissible laden mass not exceeding 3.5 tones and undertakings engaged in road passenger transport operating vehicles suitable for carrying less than nine passengers. In addition, a simplification of the administrative procedures in relation to financial standing has been introduced.

In the Czech Republic, there are four types of authorisations for undertakings operating. Namely: (i) passenger vehicles for transporting more than nine persons including the driver, (ii) goods vehicles or combination vehicles, whose permissible laden mass exceeds 3.5

tonnes, (iii) passenger vehicles for transporting no more than nine persons, including the driver and (iv) goods vehicles or combination vehicles whose permissible laden mass does not exceed 3.5 tonnes. The first two categories are under an obligation to meet the requirements of Regulation (EC) No 1071/2009.

Italy indicated that rules were being drawn up for adoption, which provide for a review of what constitutes an infringement under the legislation in force and of the associated penalties. Italy is also drawing up procedural measures which the competent authority may take if, in specific cases, it finds that loss of good repute would be disproportionate to the infringement committed. Finally the Italian authorities are improving their administrative and technical procedures so as to ensure that the measures provided for in Article 6 of Regulation (EC) No 1071/2009 are effective. In addition, Italy specified difficulties encountered when verifying compliance with the requirement of financial standing in real time and due to the divergent legal concepts of a guarantee laid down in national law, lack of corporate insurance policies at early stages and management of procedures in relation to this requirement by more than a hundred independent and administratively independent provincial administrations across Italy.

Spain explained that conditions in relation to professional competence, financial standing and good repute were very rigorous in national law and consequently, no significant changes were required after the coming into force of Regulation (EC) No 1071/2009 apart from specific amendments to legislation as regards the description of people working as transport managers.

With regard to the implementation of the provisions concerning good repute (Article 6 of Regulation (EC) No 1071/2009), Slovenia considered that the instances in which the licensing authority may suspend or withdraw the transport operator authorisation or declare a transport operator unfit to pursue that occupation were lacking precision.

As regards checks of the compliance with Article 3(1) of Regulation (EC) No 1071/2009, Estonia, Hungary, Ireland and Latvia shed some light on their national situation.

Estonia pointed out that checks are carried out according to a risk-based system and mainly undertakings which have an increased risk of committing serious or frequent infringements to road transport rules are targeted.

In Ireland checks of good repute, financial standing and professional competence are performed at least every five years in the framework of an authorisation renewal process for each undertaking, as the duration of an authorisation is limited to this period. In addition, these checks might take place more frequently for some operators who are deemed high risk or come to the attention of the competent authority. Good repute is checked by vetting the transport manager and any other relevant person with the National Vetting Service provided by the National Police Force. This vetting service provides the competent authority with a list of convictions that can be used to determine good repute.

In Latvia, checks of compliance with financial standing are performed by means of information from the annual reports provided by the Register of Enterprises.

Hungary indicated the numbers of checks on conditions of good repute (11062), financial standing (7197) and professional competence (5329) during this reporting period.

Six Member States, namely Cyprus, Estonia, Ireland, Lithuania, Malta and Slovenia indicated that there was a high compliance rate of road transport undertakings operating in the sector with requirements laid down in Article 3(1) of Regulation (EC) No 1071/2009.

2. Authorisations

It stems from data provided that most Member States do not report on authorisation in the sense of Chapter III of Regulation 1071/2009. According to the Regulation, "authorisation to pursue the occupation of road transport operator" refers to an administrative decision which authorises an undertaking which satisfies the conditions laid down in Regulation 1071/2009 to pursue the occupation of road transport operator.

Depending on the national schemes, there is a range of scenarios; an authorisation might be a prerequisite to obtain a licence for national transportation and/or a Community licence in order to carry out international carriage, it might be an equivalent of a licence for national transportation or it might mean a licence for national and international transport granted by means of the single authorisation. However due to a lack of information about national systems in regard to authorisations, quantitative data submitted by Member States do not give a clear picture on numbers of undertakings pursuing the occupation of road transport operator. To this end, **Member States are encouraged to prepare an outline of their national arrangements for authorisations in order to allow for a collection of consistent data in the next reporting period.**

Several Member States submitted a global number of authorised operators on 31st of December 2012, which constitutes a point of reference for data on numbers of authorisations granted, suspended or withdrawn. The Czech Republic has almost 95,600⁵ authorised operators, Italy about 81,000, the United Kingdom more than 53,500, Sweden around 18,000, the Netherlands almost 11,700, Ireland 5,800, Lithuania 4,500 and Slovakia 2,800. Hungary notified of slightly more than 45,000 valid licences.

On the basis of this data, it appears that the **vast majority of authorised undertakings are road hauliers.**

In addition, Estonia and Spain provided information on the number of Community licences, respectively 1,700 and 27,000, at the same point in time, however with no indication of what proportion of all authorisations to pursue the occupation of road transport operator they amount to. Bulgaria notified that on 13th of January 2014, there were around 10,300 carriers holding a Community licence.

⁵ Number refers to four types of authorisations covering: passenger transportation with a vehicle of more than 9 people, no more than 9 people, goods transportation with vehicles whose permissible laden mass does not exceed 3.5 tonnes and does exceed 3.5 tonnes. Not all of them need to comply with the requirements of Regulation 1071/2009 to pursue the occupation of road transport operator.

2.1 Authorisations granted

As regards authorisations granted, Member States reported divergent data; often on Community licences and licences for national transportation. Only twelve Member States⁶ provided data on authorisations granted and half of them⁷ referred to the full period set out by Regulation (EC) No 1071/2009. On the basis of this data, it can be noted that in these twelve Member States around 171,000⁸ authorisations were granted to pursue an occupation of road transport operator in passenger and goods transport. The number of national authorisations granted range from 900 in Ireland to 81,000 in Italy. A detailed table with the information submitted is presented in Annex I to this report.

From the data provided it stems out that the highest quantities of authorisations were granted in Italy (81,000 for both passenger and goods transport) and Spain (almost 31,000 for both passenger and goods transport). These figures can be compared to 10,000 granted authorisations for passenger and goods transport in France. It should be noted that the French figure includes also operators engaged in transportation of goods with vehicles whose permissible laden mass is below the threshold of 3.5 tonnes and operators engaged in passenger transport with vehicles for fewer than 9 people, including a driver. In Spain the number of authorisations granted includes registrations, transfers of undertakings, replacements, change of type, change of residence, upgrades, lifting of a temporary suspension and takeovers.

There are no explanations provided from other Member States in relation to what the authorisations granted category includes in terms of components. For the purpose of consistency of data it would be beneficial to reach a common understanding at the European level of what type of data should be included in the category of authorisations granted.

Furthermore, the proportion of authorisations for road haulage is in all cases at least two times higher (Ireland) and up to almost seventy times as high (Spain) as authorisations granted for passenger transport. This tendency is only reversed in France, where more authorisations were granted to undertakings pursuing their occupation in passenger transport. This can be explained by the French decision to include a wider scope of vehicles, which are under an obligation to satisfy requirements set out in Regulation (EC) No 1071/2009.

2.2 Authorisations withdrawn and suspended

On the basis of data reported by Member States, it can be observed that the highest number of withdrawals of authorisations was reported in Spain and amounted to almost 37,600 for

⁶ Austria, the Czech Republic, France, Greece, Hungary, Ireland, Italy, the Netherlands, Poland, Slovakia, Spain, Sweden

⁷ Austria, Greece, Hungary, Ireland, Italy and Sweden

⁸ The amount includes authorisations granted only in 2012 and during the whole reporting period from 4th December 2011 to the 31st December 2012.

passenger and goods transport. These withdrawals were due to failure to provide proof of meeting the conditions needed for an authorisation to be granted, on the request of an applicant or cease of operations. France had a second highest number of withdrawals of authorisations for passenger and goods transport, which equalled to 4,700, followed by Slovakia with 1,200, Sweden with 965, the Czech Republic with 956 and Slovenia with 599 withdrawals. In the Netherlands more than 1,000 authorisations were withdrawn only for road haulage.

At the other end of the scale, Greece reported 222 withdrawals for passenger and goods transport, Poland (68), Latvia (58), Hungary (33), Italy (31) and other Member States did not reach more than 10. Detailed information on withdrawals and suspended authorisations is included in Annex II to this report.

The number of authorisations for passengers and goods transportation that was withdrawn was greater than the number of authorisations granted only in three Member States, namely Slovakia, Spain and the Netherlands. The difference is the highest in the case of Spain, where 6,600 more authorisations were withdrawn than granted. This discrepancy might be larger, when taking into consideration additional 12,500 authorisations that were suspended in Spain. In Slovakia and the Netherlands the prevalence of authorisations withdrawn was less significant and amounted to 46 and 229 respectively.

Some Member States shared details on the reasons for a withdrawal of an authorisation. In Austria 9 out of 10 and in the Netherlands most withdrawals were caused by not meeting the requirement of Article 3(1)c of Regulation (EC) No 1071/2009 on appropriate financial standing of a road transport operator. In Slovenia the reasons for withdrawals were either winding up of a company or expiry of a Community licence. Sweden reported that 962 out of 965 withdrawals were due to the non-fulfilment of Article 3(2) of Regulation (EC) No 1071/2009, which refers to additional requirements that can be imposed by Member States. Lithuania had a single withdrawal based on failing to meet professional competence requirement and three linked to non-compliance with the requirement on address of establishment and transport manager data changes.

3. Certificates of professional competence

On the basis of information provided by twenty Member States, there were more than 52 thousand certificates of professional competence issued. This number includes certificates granted on the basis of examination as provided by Article 8 of Regulation EC (No) 1071/2009 and through recognition of experience, following an exemption specified in Article 9 of this Regulation.

The biggest share of certificates granted in the European Union during this reporting period belonged to Romania and amounted to 31.5% of the total number of certificates granted and reported by Member States, followed by France (11%), Spain (11%), Italy (8%), the Czech Republic (8%), Sweden (6%) and Poland (5%). Of the Member States that reported data, only

Malta reported that there was not a single certificate of professional competence issued in the reference period. Detailed information is presented in Annex III to this report.

4. Transport managers declared unfit

In accordance with Article 14 of Regulation (EC) No 1071/2009, when a transport manager loses its good repute, the competent authority should declare the transport manager unfit to manage the transport activities of an undertaking.

Most Member States⁹ who submitted data on number of declarations of unfitness, stated that there was not a single case recorded during the reporting period for both passenger and goods transport. Declarations of unfitness were issued in four Member States; France (3)¹⁰, Estonia (14)¹¹, Hungary (129)¹² and Italy (348)¹³. France specified grounds for declarations of unfitness as either tachograph fraud or serious infringements to the Road Code. In Hungary the delay or deficiency of the required 10-year periodic training of transport managers led to loss of good repute in some cases. The data provided by Member States can be found in the Annex II to this report.

5. Exchange of information

According to Article 16 of Regulation (EC) No 1071/2009 each Member State should keep a national register of road transport undertakings that have been authorised to engage in the occupation of road transport operator. Minimum requirements for the data to be entered in these registers in order to facilitate the interconnection between the Member States' registers are defined in Commission Decision (EU) 2009/992 on minimum requirements for the data to be entered in the national electronic register of road transport undertakings¹⁴. The establishment of the European Register of Road transport Undertakings (ERRU) was envisaged as a next step to facilitate cooperation between the national authorities for the purpose of further enhancement of cross-border enforcement of the European road transport legislation in accordance with Article 16(5) of Regulation (EC) No 1071/2009. The ERRU register should simplify cross-border enforcement, making it more cost-effective, provided that all Member States are connected and that they effectively use the system exchanging high quality data contained in their databases.

On the basis of data provided, it can be noted that the **system of administrative cooperation between Member States has not been accomplished**. Some Member States such as Cyprus, Lithuania, Malta, the Czech Republic, the Netherlands and Slovakia indicated that there was no exchange of information in the meaning of Article 18 of the Regulation (EC) No 1071/2009, which might be partially due to their geographical location. However, good

⁹ Austria, the Czech Republic, Greece, Malta, the Netherlands, Poland and Slovakia

¹⁰ in 2012

¹¹ idem

¹² During this reporting period

¹³ This number includes declarations issued until 26 September 2013

¹⁴ OJ L 339, 22.12.2009, p.36

practices were demonstrated by Bulgaria, Estonia, France, Ireland, Poland, Romania and Spain, where exchanges of information took place during this reporting period. **The Commission supports further enhancement of the administrative cooperation that strengthens consistent and effective implementation across all EU Member States.**

The interconnection of national registers was to be achieved by 31 December 2012. Several Member States informed on the state of implementation of the ERRU. The register was not operational in Cyprus and France. Ireland indicated that it is in the last stage of implementing a new electronic register of road transport undertakings and the interconnection would follow shortly. Slovenia assured that all information required under Article 26 of Regulation (EC) No 1071/2009 would be available for the next reporting period, after completion of a national electronic register, which entered into its final stage. France proposed an initiative for a common database at the European level that would gather codified infringements, following practices of the Euro Contrôle Route.

IV. Conclusions

This report provides an overview of information submitted by Member States under Article 26 of Regulation (EC) No 1071/2009 on access to the occupation of road transport operator. This information covers certain aspects of the implementation by Member States of Regulation (EC) No 1071/2009 (as listed in Article 26§1 a) to e) of Regulation (EC) No 1071/2009) in the period from 4 December 2011 until 31 December 2012.

The quality and timeliness of submissions from Member States was greatly affected by the fact that it is a first reporting period. Due to a large amount of missing data, the Commission report does not provide for a full analysis of implementation of provisions of Regulation (EC) No 1071/2009. The Commission reminds Member States of their obligation to provide the complete report containing all the elements of data listed in Article 26§1 a) to e) of Regulation (EC) No 1071/2009 within the required timeframe.

For the purpose of consistency of national submissions and in order to assist the national competent authorities with fulfilling their reporting obligation in the future, a standard reporting form should be established by the Commission in cooperation with Member States. Discussions on this standard form should help to clarify any questions regarding the nature of the data to be submitted, which in turn should help Member States to organise data collection in time for the next reporting period. Finally the completion of the inter-connection of national registers to ERRU is also expected to improve the quality of data provided.

For the next reporting period, 2013-2014, all Member States are called upon to comply with the reporting obligation in order to allow for a full-fledge report and to avoid infringement procedures under Article 258 of Treaty on the Functioning of the European Union. In addition, Member States are encouraged to prepare an outline of their national systems for

authorisations in order to allow for a more reliable and a better quality overview at the European level.

It is worth underlining that the system of administrative cooperation between Member States has not been accomplished. The Commission supports its further enhancement, which would strengthen consistent and effective implementation of Regulation (EC) No 1071/2009 across all EU Member States.