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IRU position on access to the profession of road passenger and goods transport operator

IRU Position on access to the profession of road passenger and goods transport operator - approved by the IRU General Assembly in Geneva on 13 April 2007

I. ANALYSIS

Conditions of access to the profession together with those of access to road transport markets represent vital parts of the general legal and economic framework of road transport.

1. General situation

Generally speaking, the road passenger and goods transport market functions well. Road transport has become a formidable tool to ensure people's mobility and an indispensable part of the total supply chain from production to consumption.

Rules for access to a profession in road transport represent an important element determining the competitive situation on a market, the structure of an industry and, importantly, operators' behaviour and profitability.

Liberalisation of this market, regardless of its virtues, coupled with deregulation, has brought about challenges both in terms of market functioning and access to the profession. Despite the merits of the current qualitative access criteria in the road transport sector, the socio-economic situation in the sector is worrying. The dominant trend of liberalisation is feared to further exacerbate existing problems, imbalances and shortcomings.

The qualitative access criteria which are presently applied in many countries in Europe and beyond are partly deficient by definition, and imperfect in their application. Therefore, the criteria of access to the profession have long been subject to discussion in the road transport sector, bearing in mind that if in place and properly applied, they can contribute to remedying the situation.

There are substantial differences in the road passenger transport sector, comprising bus, coach, taxi and the goods transport sector.

In the *taxi* sector, the introduction of access to the profession for taxi operators, which is not yet the case at EU-level, would guarantee minimum quality standards for those wishing to enter the market, especially in a deregulated system.

So far, such rules have efficiently accompanied the liberalisation of coach tourism and the long distance bus and coach market in Europe.

This is also partially true for the public passenger transport market, whose structure and players have undergone profound changes in recent years, whilst legislation, including at EU level, has had difficulties keeping pace with increasing internationalisation and the involvement of private players, in order to ensure a level playing field for all actors.

The road freight transport sector faces great challenges in terms of temporal, sectoral, structural, regional or sometimes even absolute over-capacity and its extremely negative consequences in certain sub-sectors and countries.

2. Periodic/structural overcapacities in road freight transport - the problem

The market situation is not stable and changes in relation to the balance between supply and demand.

Due to recent economic developments, there is sometimes a shortage of qualified drivers with impact on available loading capacity. This offers the possibility of creating a more balanced situation with respect to demand and supply of transport. There is however, on the basis of recent experiences, a general agreement among IRU membership that the *road freight transport* sector may over and over again face temporal, structural, regional and even absolute *over-capacities on the market* depending on the sub-sectors or geographic areas concerned. As a result, there may be *negative consequences*, such as price cutting, falling profits, reduced service quality, operations and operators not observing elementary rules of the game, and so on.

The issue is how to get rid of over-capacities *where and when they exist*. If in such a case a capacity reduction cannot be achieved, the price situation will not improve. A wide majority of the IRU Membership believes that a *part* but not the whole issue of the capacity over-supply on the freight market and its consequences can be tackled by a *stricter and more harmonised application of an improved set of quality criteria of access to the profession* in the road transport industry. While doing so, it should be borne in mind that the qualitative criteria of access to the profession have been introduced to increase the *quality* of licensed operators and not to restrict their access to the profession or to regulate, at least not in a direct manner, capacity supply.

Some individual IRU Members believe that a “crisis mechanism”, in the form of temporarily freezing capacities by not issuing new operator licences (Regulation (EEC) 3916 of 21 December 1990) would be a remedy against overcapacity. However, for the majority of IRU Members, Government interference could be more harmful than the overcapacity itself. In addition, freezing the market would have negative and unjust consequences for well-managed companies while rewarding weak management. The market flanked with level-playing-field rules should deliver a reasonable balance between supply and demand in the years to come.

3. The situation of self-employed drivers

Small entities (self-employed drivers and small companies) dominate the road transport sector.

As such, *there is nothing wrong* with the status of independent self-employed drivers/operators. The low capital intensity of the profession predestines this sector for small-sized business starters. Owner-drivers, who represent the majority of transport operators in most countries, stand for an almost unlimited source of *flexibility, dynamism, innovation, high-level personal customer service and many other extremely beneficial features of the profession*. Any entrepreneur should be able to set up a business of any size as long as he/she observes the rules of the game.

However, according to the prevailing opinion within the IRU Membership, problems may start when self-employed drivers, in particular in the road freight sector, are in fact *forced into the status of hidden employees of larger transport companies which hire them purely for reasons of circumventing social security rules*. In such a case, certain outsourcing companies, where they exist, do not take responsibility for the social security of self-employed drivers, who themselves are tempted to “forget” about the simplest precautions to be taken to join social security systems.

To tackle this inequality and general social problem, the rule of compulsory social security systems should be strictly applied. Good practices should be encouraged/introduced e.g.

through social sector dialogue or, if that does not work, through targeted auditing and sanctioning, to ensure an appropriate social security coverage, including for all self-employed drivers. This set of measures, in particular in the road freight sector, should accompany the application of the access-to-the-profession scheme. Further investigation may also be needed to define the precise nature and scope of the problem in the various countries.

II. IRU POSITION

1. Quality criteria of access-to-the-profession conditions in the road transport sector – proposed enhancement measures

The quality criteria of the access to the profession should always remain the core of any relevant legislation. However, as a matter of priority, its application should be much more reinforced and better harmonised.

Possible enhancement measures in this respect could, for example, be the following:

- (a) Harmonise enforcement by reducing gaps between countries in applying the quality criteria of access to the profession, in particular with regard to “good repute” or the financial standing requirement;
- (b) Improve, among other things, control and sanctioning, by properly and effectively applying the 5-year frequency of reviewing the access criteria. Random targeted inspections based on risk-rating would be acceptable in case of justified suspicion of access criteria no longer being observed by the operator in question, and/or in case of known changes in the operator’s status without, of course, causing disruption to daily company management.
- (c) Apply latest IT technologies to support information exchange on the list of licensed operators, including between control and licence-issuing authorities, and to create a solid basis of smooth control and fair sanctioning;
- (d) Insist on the permanent availability of one Certificate of Professional Competence (CPC) holder on the pay-roll and in the management of every company/undertaking;
- (e) Prevent companies and transport managers from re-entering the profession or using a “straw man” (an external CPC or good repute holder) after a licence has been *withdrawn* due to the loss of good repute or the non-compliance with any other access criteria in any country. The correct application and enforcement of current legislation in this respect would be a way forward.
- (f) Enforce the rule preventing managers from establishing new companies after a *fraudulent bankruptcy*;
- (g) Review CPC requirements at certain intervals (e.g. in the field of road safety and security or special transport activities such as transport of live animals) and harmonise, as far as possible, conditions of examinations in order to achieve a solid general EU-wide standard in this respect, thus also guaranteeing the stability of examination subjects over time;
- (h) Extend access schemes to all company segments irrespective of the maximum authorised weight of the vehicles used above 3.5 tonnes for goods transport, and the type of activity exercised on the road transport market;
- (i) Extend the scope of legislation to include access to the profession requirements for the taxi and hire-car with driver sector, following the model of existing EU legislation for goods and passenger transport operators (see Appendix 1 for details);

- (j) Study, in the framework of improving transport security and safety, the possibility of including “drug abuse and drug trafficking” and “human trafficking/sexual offences” in the list of serious infringements;
- (k) Apply the “financial standing” criterion to all public and private passenger transport enterprises active in domestic and international markets;
- (l) Apply, where necessary, appropriate periods of transition when modifying existing legislation on access to the profession, with possible temporary exceptions for those already “in the market”

However, action targeting improved legislation on, and better application of, the access to the profession criteria should be supported by flanking measures. These should become part of an integral *general economic regulation* (fiscal, social, technical, etc. conditions) of road transport targeting a level playing-field for the profession whether at national level, in the EU or anywhere else in the world.

2. Flanking measures – as part of a general economic regulation of road transport

The criteria of access to the profession should be enhanced by additional accompanying measures. Such measures could be the following:

- (a) Create an access to the profession scheme for the freight forwarding sector (“contractual transport operators”) duly bridging the differences in existing national legislation in the field, whilst preventing the creation of monopolies and harmful concentration on the forwarding market;
- (b) Apply generally available legal tools to prevent the establishment of “letter-box” companies;
- (c) Introduce and/or consolidate fragmented but existing parts of a traffic monitoring system to follow crucial developments in the road transport sector as an orientation tool for the industry, e.g. to observe traffic flow developments, changes in demand and supply, company structures, profitability levels, supply/demand of drivers on the labour market, etc.;
- (d) Check transport companies/businesses according to all rules regulating the general economic activities of any business entity in a country (e.g. application of mandatory pension and social insurance schemes), and include self-employed drivers in these checks. Elaborate / introduce / implement as necessary, further criteria of defining independent companies. Encourage schemes (e.g. through social sector dialogue or, if that does not work, through targeted auditing and sanctioning) to stop reported practices of forcing employed drivers to take self-employed (*fake independent*) status, in particular without appropriate social security coverage;
- (e) Review legislation which may contribute to abusing sub-contractual relations in road transport such as, for example, working time rules applied only in respect of *employed* drivers and not to independent ones, which may contribute to maintaining unequal conditions of competition on the market with further undesirable implications, e.g. deteriorating road safety records, etc.;
- (f) Raise awareness of and apply strict rules for shared and transparent responsibility/legal liability relations with customers/shippers. This will reduce the chances of irresponsible contracting and sub-contracting practices through which the onus of responsibility is put on the contractor at the end of the chain, who is often forced to accept the worst quantitative, qualitative and price-related conditions of *any* contract imposed. In any case, liability for actors in the chain should correspond to contractual agreements; therefore reinforce the use of contracts, as far as possible based on CMR (for goods transport). Encourage customers in passenger and goods

transport to take into account the facilities and qualities of an operator when awarding contracts.

- (g) Reinforce and harmonise controls (on the road and in company premises) checking the application of various rules by an “across-the-board” and well-coordinated control spanning from social to fiscal and vehicle safety and technical issues to ensure vehicle roadworthiness, whilst at the same time avoiding discrimination between larger and smaller companies;
- (h) Consider the application of a “black list” of companies whose licences have been withdrawn (or, on the contrary, a “white list” of companies abiding by the law);
- (i) Set up Public-Private Partnership (PPP) consultation platforms with the participation of trade associations to support fair control and enforcement; collect and make available national best control and enforcement practices.

Road transport associations may want to consider introducing quality requirements related to their membership. The IRU and its Member organisations may develop and help their Members to apply a voluntary Quality Charter (quality benchmarking) for the profession which would indicate for all, public and professional alike, the desired orientation of development (sector mission statement). This could be completed by further measures of all stakeholders to increase the image of the profession in the public eye.

Governments and road transport associations as well as the IRU should be aware and make others aware of the high level of diversity of the road transport sector ranging from a great majority of honest and genuine independent owner-drivers and SMEs to a few big conglomerates. This heterogeneous sector in its entirety, whose activities have become indispensable for people’s mobility (buses/coaches/taxis) and modern supply chain logistics, must be guided to grow into an ever more efficient and higher quality transport mode.

III. ACTION

IRU member associations will present this IRU Position to their Governments while the IRU will do the same in respect of international instances.

TECHNICAL SUPPLEMENT

IRU PROPOSAL TO EXTEND THE SCOPE OF ACCESS TO THE PROFESSION LEGISLATION FOR ROAD PASSENGER TRANSPORT OPERATORS TO INCLUDE THE TAXI AND HIRE CAR WITH DRIVER SECTOR

I. SCOPE

- Access to the profession criteria are already required for undertakings carrying out services by bus and coach.
- Access to the profession criteria should be required for taxi undertakings including “owner-drivers”.
- Access to the profession criteria should be required for undertakings carrying out hire-car services with driver including “owner-drivers”.
- Operators already active in the sector should enjoy “grandfather” rights.
- At least one person working in a responsible position in respect of transport operations in the undertaking concerned should hold the certificate of professional competence (CPC).

II. CRITERIA FOR TAXI AND HIRE-CAR WITH DRIVER UNDERTAKINGS

Undertakings should comply with three basic criteria:

1. Good repute
2. Professional competence
3. Financial Standing

1. Good Repute

- National authorities should determine the appropriate requirement conditions to be fulfilled by undertakings established within their territory.
- National authorities should stipulate that requirements are no longer satisfied if the natural person(s):
 - Have been convicted of serious criminal offences, including offences of a commercial nature, drug abuse and trafficking and sexual offences
 - Have been declared unfit to pursue the occupation of taxi or hire-car with driver operator under any rules in force.
 - Have been convicted of serious, repeated offences against the rules in force concerning:
 - pay and employment conditions in the profession,
 - social legislation and rules relating to road and vehicle safety, protection of the environment and professional liability.

2. Professional competence

- The condition relating to professional competence shall consist of the possession of knowledge corresponding to the level of training provided for in the subjects listed in item IV. It shall be established by means of a written examination which may be supplemented by an oral. Examinations are organised by national authorities according to the rules laid down in item V.
- Competent authorities may exempt holders of certain advanced diplomas or technical diplomas which provide proof of a sound knowledge of the subjects listed in item IV from taking the examination on the subjects covered by the diplomas. No candidate may be entirely exempted from the examination.
- Training courses should be organised to prepare for the examinations. They shall be independent from the examination.
- National authorities shall provide a certificate of proof of professional competence.

3. Financial Standing

- Appropriate financial standing shall consist of having available sufficient resources to ensure proper launching and proper administration of the undertaking.
- For the purpose of assessing financial standing, national authorities shall have regard to annual accounts of the undertaking, if any; funds available, including cash at the bank, overdraft and loan facilities; any assets including property, which are available to provide security for the undertaking; costs, including purchase cost or initial payment for vehicles, premises, plant and equipment, and working capital.
- Undertakings must have available capital and reserves of at least EUR 7500 per vehicle.
- National authorities must accept a permanent bank guarantee as proof.
- Operators already active in the market should enjoy "grandfather rights".

III. ENFORCEMENT

- A real and effective monitoring system to reinforce the implementation of requirements should be introduced and/or maintained. Infringements leading to sanctions should be tracked and/or notified if justified.
- Re-establishing good repute in a country if it is lost in another country should be prohibited.
- If there are problems with financial standing, authorities may decide to grant extra time to comply, not exceeding one year, provided that there are sufficient grounds to believe that the undertaking in question will be able to fulfil financial standing in the foreseeable future.
- An effective and efficient system to monitor financial standing and capital availability, which does not disturb daily business, should be put in place.

IV. SUBJECTS TO BE EXAMINED FOR PROFESSIONAL COMPETENCE

- 1. Civil, social, commercial and tax law in relation to important aspects for the setting up and running of a road transport undertaking:**
 - Operator liability;
 - The principles of company law and knowledge about operating a company;
 - Record keeping;

- The principles of civil and general commercial law (especially damage compensation and liability towards third party hiring services);
- Social Security law;
- Employment law especially collective agreements, work contracts for the various categories of workers employed by road transport undertakings (form of contract, obligations of parties, working conditions and working hours, paid leave, remuneration, breach of contract);
- Fiscal law (VAT, motor vehicle tax, special taxes on certain categories of vehicles, tolls, income tax).

2. Business and financial management of the undertaking:

- Calculations (prices, salaries, turnover, taxes);
- Payment modalities (bills of exchange, promissory notes, credit cards and other methods of payment);
- Various forms of credit and charges and obligations arising therefrom;
- Tariffs, prices and negotiations;
- Accounting, knowledge about balance sheets and invoicing, interpretation of a profit and loss account, budget preparation, cost elements (especially the ability to calculate costs per vehicle, per kilometre, per journey);
- Management, drawing up of organisation charts and work plans;
- Insurance (liability, accidental injury/life insurance, non-life insurance) and guarantees and obligations arising therefrom;
- Marketing, publicity, public relations (preparation of customer files, etc);
- Human resource management.

3. Knowledge about the functioning and operation of the passenger transport market (access to the market of different passenger transport services, drawing up of transport plans).

4. Technical standards and aspects of operation:

- Choice of vehicles;
- Type approval and registration;
- Vehicle maintenance;
- Electronic data transmissions in road transport and the operation of call and booking centres, radio and electronic transmissions.

5. Road Safety:

- Driver qualifications;
- Rules and measures to improve road safety (compliance of drivers with traffic rules, drafting of driver instructions and checklists to verify compliance with the safety requirements of the vehicle and equipments and concerning preventive measures to be taken);
- Accident prevention and actions to take in case of accidents;
- Environmental performance of vehicles;
- Drawing up of maintenance plans.

V. ORGANISATION OF THE EXAMINATION

1. **National authorities shall organise a compulsory written examination**, which they may supplement with an optional oral examination to establish whether applicant road transport operators have achieved the required level of knowledge in the subjects listed in part IV, in particular their capacity to use the instruments and techniques relating thereto and to fulfil the corresponding executive and coordination duties.

The compulsory written examination shall involve two tests, namely:

- Written questions consisting of either multiple choice questions (with 4 possible answers), questions requiring direct answers or a combination of both systems;
- Written exercises/case studies.

The minimum duration of each test is two hours.

Where an oral examination is organised authorities may stipulate that participation is subject to successful completion of the written examination.

2. **Where authorities also organise an oral examination**, they must provide, in respect of each of the three tests, for a weighting of marks of a minimum of 25% and a maximum of 40% of the total number of marks to be given.

Where authorities organise only a written examination, they must provide, in respect of each test, for a weighting of marks of a minimum of 40% and a maximum of 60% of the total number of marks to be given.

3. **With regard to all the tests**, applicants must obtain an average of at least 60% of the total number of marks to be given, achieving in any given test not less than 50% of the total number of marks possible. In one test only, an authority may reduce that mark from 50% to 40%.
-