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The European Commission's proposals on *Cabotage* in the road haulage market

Executive Summary

On 23rd May 2007, the European Commission adopted a new proposal for a regulation on common rules for access to the international road haulage market. The proposal combines and modifies the rules which are currently found in four different EU legal acts on market access.

The main issues which are raised in the new proposals are the further harmonisation of the Community licences and their true certified copies, the introduction of a new definition for road freight cabotage and the withdrawal of the market crisis mechanism.

BUSINESSEUROPE believes that cabotage and the freedom to provide it is an important facilitator of free movement and contributor to Europe's competitiveness. Were there to be no limitations on cabotage then we believe that:

- administrative burden would be decreased for both transport companies and the enforcement bodies (i.e. Member State Governments);
- there would be less empty trips, less trucks on the road and more efficient freight transport which would have, amongst others, a positive impact on economic growth and the environment;
- there would be a more equal competition throughout the whole European Union;
- the competitiveness of the EU would increase vis-à-vis global competitors;
- the EU would be contributing to its own objective of a single, internal transport market;
- the customers of transport companies would find a more transparent and flexible market, and;
- the lack of drivers would be reduced.

Considering the disadvantages of limiting cabotage (indicated above) the ideal solution would be to allow cabotage in all Member States (both old and new) without limitations as of 1st May 2009.

Should it prove impossible to abolish limitations on cabotage by this time then we believe that the next best option would be to fully liberalise cabotage for *hire and reward transport* using a step by step approach over a period of five years.

On a bilateral level Member States the possibility should exist to allow countries to fully liberalised cabotage immediately if they so wish.

Transport on own account (i.e. by a company of its own products) must be excluded from the cabotage regulation and should be allowed in all Member States without any limitations.



Background

Regulation 3118/93 defines cabotage as meaning: *a haulier from a Member State is entitled, provided he/she meets the conditions for admission to the occupation of road haulage operator and holds a Community licence, to operate on a temporary basis national road haulage services for hire and reward in another Member State, without having a registered office or other establishment therein.*

This regulation also allows cabotage for own account services.

The possibility to undertake cabotage was created to allow operators active in the international market, to optimise their services.

Initially, cabotage was subject to a quota system which was abolished on 1st July 1998. A 1998 Commission report on the application of this scheme¹ indicated that these quotas were by and large underused and did not in fact result in a predatory rush by unscrupulous operators to these markets as was claimed would happen by some.

Notwithstanding the opening of the cabotage market in 1998, there has been a continuous debate on how to interpret the word “temporary”. In 2004, the European Commission produced an interpretative communication in an attempt to clarify “temporary”, but did not achieve this goal. As a result, some individual Member States interpreted “temporary” in various ways leading to restrictions being introduced for cabotage in some countries.

In addition, the twelve new Member States still face restrictions on cabotage. Hauliers from Bulgaria and Romania have to wait until 1st January 2012 before they can freely undertake cabotage throughout the EU.

Today, the rate of cabotage penetration rate varies from country to country, but in general the part of the domestic market which is covered by cabotage is low. As a proportion of each country’s domestic market, cabotage accounts for roughly between 0.05 per cent of freight transport in Finland to 2.56 per cent in France. The rate of cabotage for other EU Member States falls between these two hovering just below the 2 per cent mark. Hauliers from Belgium, Germany, the Netherlands and Luxemburg are the most active caboteurs in the EU... challenging the argument that those with the most favourable fiscal and social conditions are most in demand on the cabotage market².

In fact, the most competitive operators are those that gave their clients the best quality of service.

Those who stand to benefit the most from fully liberalised cabotage are those who are the most reliable, have a good reputation, have a sound client base and use sophisticated technology³. In other words not the cheapest. Rather the best!

¹ [COM/98/0047](#)

² Trends in road freight transport up to 2003, Statistics in Focus, Eurostat, July 2005.

³ http://ec.europa.eu/transport/road/policy/marketaccess/roadhaulage/cabotage_en.htm



The European Commission's proposal

In an attempt to create clarity on the word "temporary", the EU Commission proposed a new definition for cabotage whereby this activity can only start once a full incoming load has been unloaded in the host country and is limited to 3 operations during 7 days following this incoming journey.

In doing this, it is our view that instead of removing them, restrictions on cabotage activities are imposed which in turn could most likely lead to a decrease in the efficiency of road freight transport and the entire logistics chain with a subsequent negative impact on industry and the economy as a whole. It is also our view that in practice these rules limiting cabotage to 3 operations during 7 days are impossible to control, verify or implement.

Economic growth

Economic growth is benefiting from the globalisation process. Markets are both more international and more global than ever before. These processes have and will continue to lead to a dramatic increase not only in trade but also in specific customer demand. This in turn requires better and more efficient transportation services.

In Europe, the Internal Market which enshrines the concepts of *free movement* in people, goods and services complements the globalisation trends.

On the back of these two developments industry feels compelled to highlight more and more capacity constraints in freight transport, especially in road freight transport due to driver shortage, changing production processes, trade and above all, logistics chains.

Free movement of goods and services

In limiting cabotage to three operations within a seven-day period following entry into the host country with a load, the EU Commission restricts cabotage.

The proposal does not provide sound justification for allowing only three operations during a seven day period and not some other restriction. It also does not justify why cabotage can only start once the goods carried in the course the incoming international carriage have been delivered. In fact with these proposals cabotage is not only restricted in time but also operationally.

It is questionable whether this is compatible with the freedom to provide services and the free movement of goods as laid down in the Treaty.



Administrative burden

The extent to which the new definition will really facilitate enforcement remains to be seen. Practical experience with applying rules implemented within the ECMT⁴ multilateral quota system of goods transport licences, shows that the results of trip-based restrictions and their control efficiency have been contentious and even controversial. This includes a reduction of the efficiency of the transport operation itself.

The use of an original consignment note, as required by administrative law in the majority of EU Member States, to provide the necessary evidence for cabotage operations, will further increase the importance of the transport contract and related documents (e.g. the consignment note) needed to reinforce transparent and enforceable market relations.

However, the UN CMR⁵ Convention does not refer to any standardized consignment letter. Consequently Member States will not exercise their controls on a single standardized document, but on various types of consignment letters and transport documents, which will inevitably lead to higher administrative burden and a further discouraging of the provision of cabotage.

Efficient transport

Cabotage can only start once the goods carried in the course the incoming international carriage have been delivered. This means that cabotage is not allowed by a vehicle carrying a partial load during an incoming international journey until that partial load has been delivered and offloaded.

Cabotage is also not allowed when on an outgoing journey to pick up a load or on the return from an international journey, a haulier enters a country with an empty load. This will lead to a decrease in flexibility and efficiency, operational losses and could generate more instead of less empty runs, a claimed objective of the proposal. If efficiency is not increased and empty runs not reduced, the sustainable character of the new definition can also be questioned.

This will result in even more heavy goods vehicles on roads at a time when increasing and serious efforts are being made to reduce Co2 emissions from transport.

It is also the case that there exists a lack of clarity in this proposal about the extent to which the first and final leg by road of an intermodal operation is considered cabotage. Directive 92/106 on combined transport provides a definition of a combined transport operation but leaves too much leeway for national interpretation by Member States.

This has led to a wide variety of interpretations whereby some have interpreted the first and last legs of a combined transport operation as cabotage. The new proposed

⁴ European Conference of Ministers of Transport.

⁵ Contract for the International Carriage of Goods by Road (1954).



restriction may lead to a reduced facilitation and efficiency of combined transport operations with knock on implications logistics (another area that the Commission and Europe is looking at).

Transport on own account

Companies transporting products on their own account will also encounter difficulties with the cabotage rules outlined in this proposal. In particular they will encounter problems when transporting products between their own sites in different Member States to that which they consider their base of operations.

Possible Solutions

In our opinion the proposal the European Commission made in 2007 to harmonise the rules for cabotage (3 trips within 7 days) is too restrictive to have any useful effect. It stands in sharp contrast to efforts of Member States to stimulate more efficient transport and the European Single market. It also decreases the competitiveness of Europe.

The ideal solution in our view would be one which allows for cabotage in all Member States (both old and new) without limitations as of 1st May 2009 or at the very least maintains the cabotage definition which is currently in force in the EU.

Should this prove impossible then we believe that the next best option would be to fully liberalise cabotage for *hire and reward transport* using a step by step approach over a period of five years.

On a bilateral level Member States should have the possibility to skip steps. For example, if two countries do not see any trouble in a fully liberalised cabotage they can implement step 4 immediately.

In this way we achieve a harmonisation of cabotage and offer the Member States the possibility to implement the final stage earlier if they want to. We think there is no need to have different approaches for old and new Member States.

Transport for own account must be excluded from cabotage regulation and be allowed in all Member States without any limitations.



COMMENTS ON THE DRAFT REPORT TABLED IN THE EUROPEAN PARLIAMENT

Responding in particular to the draft report produced by rapporteur Mathieu Grosch, we believe that the following points can be improved upon:

- **NEIGHBOURING COUNTRIES – AMENDMENTS 2 AND 14**
BUSINESSEUROPE supports the amendments giving Member States the possibility to allow cabotage on a larger scale with neighbouring countries. We think, however, that the requirement outlined (e.g. that Member States should be physically neighbouring countries) is somewhat limited. Countries with few neighbouring countries (e.g. Ireland and Portugal) would otherwise be placed at a disadvantage compared to countries with many neighbouring countries. We would suggest that this amendment is revised as follows: Member States are free to allow cabotage on a larger scale on a *bilateral level*.
- **THIRD COUNTRY TRANSPORT – AMENDMENTS 3 AND 10**
We believe that third country transport should be allowed without restrictions because it is in line with the principles of the free movement of goods and services. Third country transport is not a threat to the transport market. It only amounts to roughly 4.5 per cent of all road transport. It should be seen as an opportunity and not as a threat. Competition between transport companies whether they are based in one Member States or another is a very healthy situation. Free and fair competition within the European Union is absolutely not the same as harmonised wages and should not be treated as such. Amendments in this report which mix up the two should not be supported.
- **INFRINGEMENTS – AMENDMENT 4**
Only ‘serious’ infringements should be registered. On a European level the definition of what constitutes a “serious infringements” needs to be harmonised. Otherwise we risk increasing bureaucracy, paper work, etc. and slowing down efficiency (both on the part of companies and on the part of agencies tasked with dealing with infringements).
- **TERMINATION DATE OF CABOTAGE RESTRICTIONS – AMENDMENT 15**
We agree with the statement that the cabotage regulation must be temporary. We believe however that an earlier date coupled with a more detailed plan to achieve full liberalisation of cabotage (a phase-out) would be a stronger statement of intent.