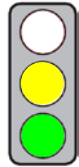


## KEY ISSUES

**Objective of the Report:** The Report identifies the developments and problems of road haulage in general and the cabotage rules in particular.

**Affected parties:** Hauliers, road haulage sector



**Pro:** (1) There is no ordoliberal argument for maintaining cabotage restrictions.

(2) Relaxing cabotage restrictions strengthens the internal market, brings down the price of road haulage and reduces CO<sub>2</sub>-emissions in the road transport sector.

(3) A uniform application and implementation of the Cabotage Regulation creates a level playing field for hauliers.

**Contra:** The Commission should argue not only for the "relaxation" of cabotage restrictions but for their abolition.

## CONTENT

### Title

**Report COM(2014) 222** of 14 April 2014 from the Commission to the European Parliament and the Council on the **State of the Union Road Transport Market**

### Brief Summary

#### ► Background

- Road haulage in the EU
  - accounts for over 70% of all EU inland transport activity and
  - is made up of
    - two thirds domestic freight transport and
    - one third international freight transport.
- The report deals with questions relating to the Cabotage Regulation and the Admission Regulation.
  - The Cabotage Regulation [(EC) No. 1072/2009] regulates international transport and cabotage. Cabotage refers to domestic commercial haulage operations carried out by a haulier established in another Member State.
  - The Admission Regulation [(EC) No. 1071/2009] regulates admission to the occupation of road haulage operator.
- Cabotage is only allowed in the EU as an exception (Cabotage Regulation Art. 8 et seq.). Therefore, as regards domestic freight transport (p. 5)
  - 97.5% is carried out by domestic hauliers and
  - 2.5% by non-resident hauliers.
- Cabotage checks only find "a low level" of infringements (e.g. 1.7% of all vehicles checked in Denmark; p. 17).
- The proportion of empty runs made by heavy goods vehicles (HGVs) in the EU is
  - 23% overall,
  - 25% for domestic haulage operations carried out by domestic hauliers,
  - 10% for international haulage operations and
  - 50% for non-resident HGVs carrying out domestic freight transport in another Member State.
- The Commission had to prepare a report on the status of the EU road transport market by the end of 2013, in which it was to evaluate whether the domestic road haulage markets should be opened further (Cabotage Regulation, Art. 17 (3)). This report fulfils its obligation.

- ▶ **Current provisions on pursuing the occupation of road transport operator (Admission Regulation)**
  - Hauliers carrying out commercial haulage operations must have "an effective and stable establishment" in a Member State (Admission Regulation Art. 3 (1)). For this to be the case they must (Admission Regulation, Art. 5)
    - have premises in the respective Member State in which they keep their "core business documents",
    - have vehicles which are registered or "otherwise put into circulation in conformity with the legislation of the respective Member State", and
    - conduct their haulage operations "effectively and continuously" in the respective Member State.
- ▶ **Current provisions on international transport and cabotage (Cabotage Regulation)**
  - International transport can be carried out by any haulier established in the EU (Cabotage Regulation, Art. 4 and 5).
  - Cabotage operations are currently only allowed if they (Cabotage Regulation, Art. 8 (2))
    - take place in connection with an international haulage operation from another Member State or from a third country,
    - take place within seven days of the international haulage operation having taken place and
    - do not involve more than three domestic haulage operations.
- ▶ **Problems of road haulage**
  - The Cabotage provisions "are difficult" (p. 26) because they
    - limit hauliers in "further increasing their efficiency" (p. 9),
    - restrict the markets accessible to hauliers (p. 27) and
    - increase the level of empty runs which have a negative impact on fuel consumption, CO<sub>2</sub>-emissions and costs to the hauliers.
  - The Cabotage Regulation is interpreted and implemented differently by the various Member States.
    - Some Member States (e.g. Finland) regard operations in which a haulier drops off parts of a single load at several destinations (multi-drop operations) as several transport operations. Other Member States consider such operations to be a single transport operation.
    - In the case of checks, some Member States (e.g. Denmark) demand evidence of cabotage operations on the spot. Other Member States allow hauliers to submit this later.
  - Some Member States discriminate against foreign vehicles by applying "restrictive provisions" to goods that are mainly transported by non-resident hauliers (p. 17).
  - There are differences between the Member States in the way they monitor compliance with driving time and rest periods.
  - Hauliers establish themselves for tax purposes in a Member State in which they do not carry out any transport operations ("letterbox companies"). This is prohibited (Art. 3 and 5 Admission Regulation) but goes unpunished "in certain Member States".
  - There is an increasing lack of HGV drivers because
    - the road haulage sector is unattractive,
    - the increased use of technology has placed new requirements on the driver's job and
    - due to the rising average age, more and more HGV drivers are retiring.
- ▶ **Possible changes to the Cabotage Regulation**
  - The Commission is considering a "relaxation" of the cabotage provisions in order to
    - reduce the level of empty runs by non-resident HGVs in domestic transport and
    - contribute to a "more economical and resource-efficient" road haulage market (p. 27).
  - The Cabotage Regulation should be applied uniformly in all Member States.
  - The Commission wants to introduce binding provisions on the number and frequency of cabotage checks.
- ▶ **Additional proposals**
  - To combat letterbox companies, the Commission wants
    - to tighten the provisions on checking the admission requirements and
    - to strengthen cross-border cooperation.
  - The enforcement of rules on driving time and rest periods will be improved.
  - In order to make the job of HGV driver more attractive, the Commission is considering measures
    - to monitor, check and combat fiscal and social fraud as well as
    - to improve training and skills.
  - In order to reduce CO<sub>2</sub>-emissions from HGVs, the Commission wants to propose procedures for measuring fuel consumption and CO<sub>2</sub>-emissions.

## Policy Context

In its Transport White Paper [COM(2011) 144, see [cepPolicyBrief](#)] the Commission has already called for a further opening of the road transport market and the removal of the existing restrictions on cabotage. In its Communication on the regulatory fitness of EU legislation [COM(2012) 746], the Commission launched a Regulatory Fitness and Performance Programme (REFIT). This will make EU legislative provisions clearer and reduce the administrative burden. In this regard, revision of the Admission and Cabotage Regulations was identified as a priority task.

## Options for Influencing the Political Process

Leading Directorate General: DG Mobility and Transport

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

The Commission clearly identifies the main disadvantages of the current Cabotage Regulation – lost efficiency, market foreclosure, higher CO<sub>2</sub>-emissions. **There is**, as the Commission also discovers, **no ordoliberal argument for maintaining the cabotage restrictions. Regrettably, however, the Commission fails to put forward a clear argument in favour of their abolition but simply looks at "relaxation"** (p. 27). This is undoubtedly due to massive political resistance from the Member States – e.g. Denmark, Sweden, France – who wish to continue this protectionist approach.

Irrespective of this, it is the case that: an EU-wide harmonised application and implementation of the Cabotage Regulation will even out the degree of market openness in the individual Member States thus creating a level playing field for the hauliers. This is because it will prevent the Member States from closing off their domestic road haulage markets, even further than was already possible under the cabotage restrictions, by way of a creative interpretation of the law such as allowing a "multi-drop" transport operation to be counted as several operations.

Stricter enforcement of the rules on driving times and rest periods as well as more effective checks, prevent over-tired HGV drivers from participating in road traffic and stop companies from burdening their drivers with unreasonable driving times in order to gain a competitive advantage. This increases road traffic safety, helps to protect (innocent) third parties and improves the working conditions of professional HGV drivers.

Fuel consumption – as the Commission itself points out (p. 10) – is one of the main cost drivers for hauliers. They themselves therefore have sufficient incentive to measure fuel consumption and keep it as low as possible. The procedures presented by the Commission for measuring fuel consumption and CO<sub>2</sub>-emissions are only necessary if the Commission intends to introduce measures to reduce fuel consumption or CO<sub>2</sub>-emissions. It should therefore refrain from introducing them in view of the aforementioned incentives for reducing fuel consumption.

### Impact on Efficiency and Individual Freedom of Choice

**The relaxation – or better still: the complete abolition – of cabotage restrictions, has several positive effects: Firstly, it strengthens the internal market** by opening up the domestic haulage market and allowing hauliers to offer their services in all Member States. **Secondly, the price of road haulage will tend to drop** because, on the one hand, competition will increase and, on the other, the number of empty runs by non-resident HGVs in domestic traffic will fall. **Thirdly, due to the lower level of empty runs, CO<sub>2</sub>-emissions in the road transport sector will be reduced** at no extra cost. These positive effects would be reinforced by a complete abolition of all cabotage restrictions.

### Impact on Growth and Employment

More efficient road haulage as a result of greater competition tends to have a positive impact on growth and employment.

Fewer empty runs will also result in less traffic. This has a positive effect on traffic flow resulting in fewer traffic jams and thus allowing for the avoidance of the costs which they involve. This is also likely to give rise to positive impulses for growth. These effects will be reduced but not completely nullified where, as a result of the lower price of road haulage, the demand for it increases thereby increasing traffic volume.

### Impact on Europe as a Business Location

More efficient road haulage within the EU resulting from the relaxation of cabotage restrictions, increases Europe's attractiveness as a business location.

## Legal Assessment

### Legislative Competency

Unproblematic. The EU is empowered to adopt common EU-wide rules for international transport from or to a Member State as well as for transport passing through a Member State (Art. 91 (1) (a) TFEU). In addition, it can lay down the conditions under which non-resident hauliers may operate transport services including cabotage within a Member State (Art. 91 (1) (b) TFEU).

### Subsidiarity

Unproblematic. The relaxation of cabotage rules, being considered by the Commission, as well as the questions on the admission of hauliers and on driving times and rest periods, relate to cross-border freight transport within the EU. They are therefore appropriately regulated at EU level.

## Conclusion

There is no ordoliberal argument for maintaining cabotage restrictions. Regrettably, however, the Commission fails to put forward a clear argument in favour of their abolition but simply looks at "relaxation". The relaxation – or better still: the complete abolition – of cabotage restrictions, has several positive effects: it strengthens the internal market, brings down the price of road haulage and reduces CO<sub>2</sub>-emissions in the road transport sector. An EU-wide uniform application and implementation of the Cabotage Regulation creates a level playing field for transport companies.