

**SOCIO-ECONOMIC REASONS FOR LEGAL REGULATIONS
CONCERNING ADMISSION TO THE OCCUPATION OF ROAD
TRANSPORT OPERATOR IN THE EUROPEAN UNION**

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1.INTRODUCTION

The process of European integration resulted in consolidation of socio-economic systems of member states of the European Union. Due to its course, the establishment of common rules of conduct concerning the development of transport was a crucial element. It allowed for creating an integrated system of connections in alternative branches of transport, necessary for functioning of an integrated socio-economic organism.

Conviction about the significance of transport in the process of integration was expressed in the Treaty of Rome¹. The need for establishment and realization of common transport policy, which was supposed to be a substantial impulse to achieve harmonization and increase the pace of economic development, has been acknowledged.² It was supposed to be based on three principles concerning investments in transport infrastructure, supporting free competition, which was connected with abolishment of regulations limiting supply of transport services, and working time management – shortening of delivery time. In practice, it turned out to be one of the three first sectoral policies, apart from Common Agricultural

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¹ E. Załoga, *Liberalizacja i deregulacja w koncepcji polityki transportowej Unii Europejskiej*, [in:] B. Liberadzki (ed.), *Liberalizacja i deregulacja transportu w Unii Europejskiej*, Poznań 2007, p. 63.

² E. Teichmann, *Polityka transportowa*, [in:] L. Ciamaga, E. Latoszek, K. Michałowska-Gorywoda, L. Oręziak, E. Teichmann (eds.), *Unia Europejska*, Warszawa 1998, p. 191.

Policy (CAP) and Common Commercial Policy (CCP), which were left to the exclusive competence of Community authorities.

Significance of transport has been confirmed in the next documents of treaty. In accordance with the Treaty of Lisbon, its purpose is to realize common principles concerning rules applicable to international transport on the territory of the EU, conditions of admission of transport operators from outside the EU to internal transport market, measures to increase safety³.

The development of global and European transport in the last fifty years was marked by vital dynamics, which is especially related to road transport⁴. Motor vehicles became the most common means of transport of passengers and goods in overland conditions. Due to modern road infrastructure, with complementary systems of motorways and expressways, goods are transported directly from shipper to taker. Apart from its natural function connected with translocation, road transport became a significant module of socio-economic reality of the state or integration group. This significance is the result of its share in the structure of budgetary resources and its role on labour market. It is worth mentioning that it is a driving force of automotive business, which consists of transport companies, producers of vehicles for transport of goods and their repairers. Unfortunately, the development of road transport is accompanied by unfavourable social phenomena related with road safety or pollution of natural environment.

One can propose the thesis that reasons of socio-economic nature were in the basis of legal regulations concerning admission to the occupation of road transport operator in the European Union. They obviously evolved in common legal order and adopted the present construction. It is a rational compromise between the basic function of transport, which is quick and reliable delivery of goods, and arguments of socio-economic nature.

³ Art. 91 *Traktatu o funkcjonowaniu Unii Europejskiej*, Dz. Urz. UE C115, 2008, p. 47.

⁴ By road transport the author means only transport of loads carried out within economic activity led by licensed companies.

2. EVOLUTION OF LEGAL REGULATIONS CONCERNING ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR IN THE PROCESS OF EUROPEAN INTEGRATION

Common transport policy in the process of European integration has evolved due to the creation of a uniform transport system and rules of its organization. In regard to road transport, it has been realized in two most vital spheres concerning the freedom of supply of transport services and admission to the occupation of road transport operator.

In the creation of the basis of common transport market, it was necessary to approximate the realities of its functioning in particular member states. It was a vital problem, taking into consideration socio-economic significance of transport services, especially in road transport. It was a result of its national specificity. For example, Italian and Dutch transports are two completely different kinds of transport. In Italy it is a group of small transport operators. Jokingly saying, their wives do not allow them to move further than 50 kilometres from home⁵. Dutch transport is the exact opposite. It operates on the whole continent, similarly to German transport. In the first case, there were small companies with one or two trucks and a few employees. Dutch companies were the opposite. On average, they disposed of a few hundred vehicles and engaged a few hundred employees.

System transformations, which resulted in the creation of a uniform internal market, consisted of the need to establish free movement of services and their supply on the territory of member states. Realization of this rule required abolishment of any limits and guarantee of free competition in supply of transport services, which is especially crucial in the case of road transport. This enterprise began from equating of realities concerning supply of such services in particular member states.

In the 1960s, legislative works in fiscal sphere, state and social intervention gave foundations to the creation of common transport market. This process finished in 1995, when cabotage was carried in transport on

⁵ J. Burniewicz, *Główne zasady polityki transportowej Unii Europejskiej: transport samochodowy*, [in:] J. Burniewicz (ed.), *Polityka transportowa Unii Europejskiej*, Łódź 1998, p. 69.

the whole territory of the European Union⁶. Cabotage transport includes transport by railway, motor vehicle or airplane registered in another country, or executed by a company registered in another country than the executed service⁷.

Diverse organization of road transport in particular member states, resulting from their socio-economic specificity, caused difficulties in establishment of common rules of admission to the occupation of road transport operator. According to J. Burniewicz, admission to the occupation of road transport operator is the philosophy of the creation of new jobs.⁸ This issue was crucial in the past and it is crucial at present in the European Union, considering the issue of labour market and increasing unemployment in some member states.

Council Directive 74/561/EEC of 12 November 1974 concerning the admission to the occupation of carrier in national and international transport was the directional regulation concerning admission to the occupation of road transport operator⁹. It has introduced three basic requirements, necessary for a person who wanted to become road transport operator. It has been granted in the form of concession by competent administrative authority of member state. It required good reputation, financial condition and professional competence. Establishment of the directive with such regulations assumed that national specificity of road transport will be taken into account by legislative intervention of particular member states in the process of implementing this regulation to applicable legal system¹⁰.

Three fundamental requirements – good reputation, financial condition and professional competence – were interpreted by national law of

⁶ B. Książek, *Zasady Jednolitego Rynku transportu drogowego Unii Europejskiej w Polsce: ocena procesu harmonizacji*, Wrocław 2004, p. 58.

⁷ K. Zajt, *Proces liberalizacji wybranych gałęzi transportu jako element tworzenia wspólnej polityki transportowej Unii Europejskiej*, „Studia Gdańskie” 2010, t. VII, p. 36.

⁸ J. Burniewicz, *Główne zasady polityki transportowej ...*, p. 71.

⁹ Dz. U. WE L 308, 1974, p. 18 ze zm.

¹⁰ Directives are directed to member states and need implementation to national law. Directives bind member states in regard to the result, which has to be achieved, however member states have freedom of choice of form and means. A. Szachoiń, *Źródła prawa Unii Europejskiej*, [in:] *Prawo Unii Europejskiej z uwzględnieniem Traktatu z Lizbony*, A. Kuś (ed.), Lublin 2010, p. 182.

member states. Reasons, according to which meeting these requirements was verified by people interested in conducting economic activity in road transport, were specified by mutual agreements. From the mid – 1970s to the end of the first decade of 21st century, they were the basis of granting concessions for future transport operators. Eventually, these rules were established in Council Directive 96/26/EC of 29 April 1996 concerning the admission to the occupation of road transport operator of goods and road transport operator of passengers and mutual recognition of diplomas, certificates and other documents confirming qualifications. Its purpose was to facilitate enjoyment of right to free enterprise in national and international transport¹¹.

It was necessary to introduce a clear set of negative circumstances, which caused that good reputation could not be maintained, to the directive. Good reputation could be adopted to a person who is able to work as a driver and was not punished for serious crime or crime concerning professional responsibility¹².

The condition of appropriate financial condition assumes having appropriate financial sources, which are necessary to begin and conduct transport company. At the beginning, this requirement was described in two facets – free financial sources and having tangible property. In the case of transport companies that planned to expand their activity, concessive authority approved balance sheet of the company with its financial situation based on achieved turnover in last calendar year and its wealth, e.g. workshops, garages. In the case of people, starting their activity on road transport market, who were often unemployed and without fixed assets and documented turnover, concessive authority indicated required amount on a bank account of the concerned person. This amount was 3000 ECU¹³ per vehicle for road transport or 150 ECU per ton of capacity, in the case of concession for the whole company, not for one vehicle. In

¹¹ Dz. U. WE L 124, 1996, p. 1 ze zm.

¹² J. Neider, *Transport międzynarodowy*, Warszawa 2000, p. 56.

¹³ ECU – European Currency Unit, created in 1979 when European Monetary System entered into force, was not separate currency but a unit consisting of so called monetary basket of some states. Their participation in basket depended on economic power of a state. portalwiedzy.onet.pl, 30 July 2014.

the mid – 1990s there was a financial requirement expressed in reserve of tender: minimum 9000 EUR for the first vehicle and 5000 EUR for each next motor vehicle¹⁴.

According to the regulations, the criterion of professional competence was met when at least one person managing road transport company had certificate of professional competence. Certificate of professional competence is a document which confirms that transport operator has qualifications and knowledge necessary to conduct economic activity in road transport.¹⁵ It has been issued by a certificate institution indicated by the competent authority of member state.

Admission to the occupation of road transport operator has been subjected, in a gradual process of European integration, to multidimensional transformations resulting from the creation of internal market of the European Union. It changed from an instrument that considered only valid requirements in particular nation-states, to a common regulator in all member states. Regulations in this field, as well as Union *acquis*, were adopted in the states aspiring to the accession to the European Union. As a result, they stimulated the development of road transport services market on their territories. It is worth mentioning that transnational, intercontinental and global development of transport market, including road transport, required more precise legal regulations, applicable in all member states of the European Union.

3. MODERNIZATION OF LEGAL REGULATIONS CONCERNING ADMISSION TO THE OCCUPATION OF ROAD TRANSPORT OPERATOR AFTER THE TREATY OF LISBON

Transformations of realities of conducting road transport services required precise application of rules concerning road transport market, including regulations concerning admission to the occupation of transport

¹⁴ P. Skulski, *Transport i spedycja w obrocie międzynarodowym*, [in:] J. Rymarczyk (ed.), *Handel zagraniczny. Organizacja i technika*, Warszawa 2005, p. 319.

¹⁵ P. Witkowski, *Procedury celne i transport w handlu zagranicznym*, Lublin 2012, p. 356.

operator. It was necessary that application of these rules could not have any interpretative doubts. According to the Treaty of Lisbon, these rules were supposed to provide common rules of conducting international transport services, requirements of participation of transport operators from outside the EU in cabotage transport and guarantee the possibility of applying means that improve safety of transport.

A significant element of modernised organization of road transport services in the European Union is complete uniformity of legal regulations in this field. They have been established as regulations. Regulation is a legal act of general scope, binding in its entirety and it is directly applicable. It binds all member states and does not require implementation to national legal systems. As a result, member states cannot apply them selectively¹⁶. Establishment of this resolution has been influenced by experience and evaluation of previous directives concerning admission to the occupation of road transport operator. They indicated lack of their uniform application in particular member states. These differences had negative consequences. They led to distortion of free competition, lack of market transparency and in practice to a different level of system controlling companies conducting road transport services. Appearance of these circumstances resulted in increasing risk that entrepreneurs would hire poorly qualified employees. It could lead to violation of the rules concerning road safety and social policy.

The significant regulation of the European Union for people interested in conducting road transport services is the regulation of the European Parliament and of the Council (EC) number 1071/2009 of 21 October 2009, which establishes common rules concerning requirements of the occupation of road transport operator and repealing the directive of the Council 96/26/EC¹⁷.

Concessions for the occupation of road transport operator apply to entrepreneurs conducting road transport services with vehicles of a gross vehicle weight exceeding 3,5 tons. They are not applied in the transport of goods for personal needs. It is enough to have certificate about transport services for captive use, which is issued by a competent authority of mem-

¹⁶ A. Szachoiń, *op. cit.*, p. 181.

¹⁷ Dz. U. UE, 2009, L 300, p. 51 ze zm.

ber state¹⁸. It is irrelevant if someone has 50 modern tractors with trailers or one shabby truck.

This regulation maintains requirements from previous directives: good reputation, good financial condition and professional competence. The new resolution is an obligation of having permanent headquarters¹⁹ and operating centre²⁰.

Requirements specified in the regulation are detailed in acts of national law, in accordance with the rules of law of the European Union.²¹ The first, which requires good reputation, is acknowledged as lack of punishment of the concerned person,²² by final judgement for deliberate crime and not being punished with a sanction, including administrative sanctions²³. The requirement of good reputation will not be met if sanction is the result of violating commercial law, bankruptcy law, road traffic law or it is related to wages, conditions of employment, professional responsibility, human or drugs trafficking.

The requirement of appropriate financial condition is met when a person has an appropriate amount of financial resources necessary to begin and conduct road transport company. It is necessary to have financial reserves of at least 9000 EUR for the first vehicle and 5000 EUR for

¹⁸ In Poland it is a foreman competent to the area of entrepreneurs' headquarters.

¹⁹ So far, the concept of headquarters of person conducting economic activity was defined for tax provisions. It was assumed that there is a place where functions of chief management of the company are conducted. One has to establish the place where vital decisions, concerning management of the company, are being made. Moreover, the address of registered headquarters of the company and the place where board meetings are being held have to be established. Art. 10 Rozporządzenia wykonawczego Rady (UE) nr 282/2011 z dnia 15 marca 2011 r. ustanawiające środki wykonawcze do dyrektywy 2006/112/WE w sprawie wspólnego systemu podatku od wartości dodanej, Dz. U. UE L 771, 2011, p. 1, ze zm.

²⁰ The concept of operating centre was not previously defined in legal regulations applicable in the European Union and Poland. This issue will be presented in the further part, in accordance with the amended act on road transport.

²¹ In Poland this regulation is: Ustawa z dnia 6 września 2001 r. o transporcie drogowym. Tekst Jednolity, Dz. U., 2004, Nr 204, poz. 2088 ze zm.

²² These people are entrepreneurs, members of managing authority of legal person, people managing general or limited partnership, transport managers.

²³ J. Neider, *op. cit.*, p. 56.

each next vehicle²⁴. It is documented by annual accounts, confirmed and certified by auditor, or by consent of the authority issuing security permit in the form of guarantee or insurance, issued by a bank, financial institution or insurance company.

In accordance with the regulation of the EU, the requirement of professional competence is fulfilled if a person managing transport in road transport company has a certificate of professional competence. The certificate of professional competence is a document confirming that road transport operator has qualifications and knowledge necessary to conduct economic activity in road transport. The person managing transport operations can be an employee, manager, shareholder, owner, entrepreneur, the member of authority managing the company, the person assigned by civil-law agreement, complying with additional requirements. The person, who has been assigned by an entrepreneur by means of civil-law agreement, has to comply with several requirements. Such a person has to live on the territory of the European Union; comply with requirements of good reputation and professional competence; specify tasks in agreement, which a person has to implement in an effective and continuous way; specify range of duties concerning the function of transport manager; guarantee independence of this person from transport operators' contractors; restrict number of transport companies managed by this person to 4; restrict the fleet of vehicles, which are managed by this person to 50, in all companies²⁵. Managing transport operations includes tasks such as maintenance and conservation of vehicles; checking contracts and transport documents; basic accounting; assigning loads or services to drivers and vehicles; checking safety procedures.

Companies, which apply for conducting services on road transport market, get a licence when they comply with the above mentioned requirements. They are issued by authorities of a member state for five years with the possibility of renewal. Licensing authorities are supposed to control transport companies at least once in 5 years.

²⁴ P. Skulski, *Transport i spedycja w obrocie międzynarodowym*, [in:] J. Rymarczyk (ed.), *op. cit.*, p. 319.

²⁵ K. Laskowska-Woś, *Zmiany w ustawie o transporcie drogowym 2013*, Warszawa 2013, p. 44.

The legal regulation in Poland, which specifies admission to conducting road transport activity, is the act on road transport of 6 September 2001²⁶. This legal act in a complex way regulates the rules of conducting national and international road transport of passengers and goods, in accordance with the regulation of the European Parliament and of the Council (EU) number 1071/2009 of 21 October 2009, establishing common rules concerning requirements conducting the occupation of road transport operator and repealing the directive of Council 96/26/EC. The crucial issue is the specification of the EU regulation entries concerning permanent headquarters and operating centre.

Permanent and actual headquarters have to consist of appropriate premises to keep and store accounting documents, personal files of employees, documents that include data about time of driving and rest. Other necessary documents have to be kept in headquarters and made available to the authorities entitled to supervision and control of transport operator. In accordance with established entries, keeping accounts and other documentation by separate entity with separate contract does not violate the obligation of keeping them in permanent and actual headquarters.

It was indicated that operating centre has to be equipped with appropriate devices and technical equipment, which allows for conducting activity related with vehicles in an actual and continuous way. Operating centre has to include at least one of three elements of parking space, place of loading, unloading, combining of loads, place of conservation or repair of vehicles²⁷.

There is an obligation, complementary with the above mentioned requirements, that owner of the company who conducts transport and employed drivers has to comply with requirements described in the act of 20 June 1997 concerning road traffic law²⁸ (they correspond to the requirements of good reputation) and possesses the title to dispose of vehicle or motor vehicles, which comply with technical requirements described in appropriate regulations.

²⁶ Official codification, Dz. U., 2004, Nr 204, poz. 2088 ze zm.

²⁷ G. Lubieńczyk, K. Sikora, *Ustawa o transporcie drogowym. Komentarz*, Warszawa 2013, p. 32.

²⁸ Tekst Jednolity, Dz. U., 2005, Nr 108, poz. 908 ze zm.

In Poland, licence for national transport services is issued by foreman in the place of company headquarters. National road transport is described as conducting economic activity in transport of passengers or goods with motor vehicles, authorized to traffic in the country, including combination of vehicles with trailer or semi-trailer, on the territory of the Republic of Poland, drive of vehicle, place of beginning and ending of travel and road are situated on the territory of the Republic of Poland.

The licence for international transport in Poland is issued by principal road transport inspector. Conducting international road transport services requires community licence²⁹. International road transport is described as conducting economic activity in transport of passengers or goods with motor vehicles, including combination of vehicles with trailer or semi-trailer, when crossing the border takes place between initial place and destination. The concept of international transport is understood as supply of road transport services outside the borders of Poland, also in relations other member states of the European Union.

SUMMARY

Regulations of the European Union law concerning admission to the occupation of road transport operator have evolved in several dimensions. This evolution was a result of requirements concerning internal market of the EU, which provides free movement of goods, services, capital, people and uniform rules of taking up and conducting economic activity.

The creation of a uniform internal market of road transport organization took into account diverse socio-economic conditions of supply of road transport services in particular member states. Such conditions were the result of history of road transport services market, its volume, turnover and revenue, size of employment in road transport, investments in transport infrastructure, presence and influence of transport sector on regional development and international traffic in transit processing.

Political and socio-economic transformations at the turn of 20th and 21st century and the phenomena of economic globalization and internali-

²⁹ In Poland it is issued by principal road transport inspector.

zation posed new challenges for road transport. These challenges concern effective, harmonious and quick transport of goods. They generated new tasks to the organization of road transport. On the one hand, it provided free and equal admission to the occupation of road transport operator, and at the same time it maintained competitiveness of EU entrepreneurs on international markets. On the other hand, accomplishment of tasks posed for road transport in the realities of transnational economy required ensuring basic values, such as road traffic safety and minimizing of its negative influence on natural environment.

It can be assumed that modernization of legal regulations, establishing conditions of admission to the occupation of road transport operator after the Treaty of Lisbon, is focused on these issues. The crucial part of legal regulations established in regulation describing rules concerning conditions of occupation of road transport operator, is devoted to social issues related to minimizing dangers. Entries concerning permanent headquarters and operating centre can be pointed out as a requirement of granting licence for conducting road transport services. Their purpose is to eliminate accidental people and companies, which are unable to conduct stable activity. Permanent and actual usage of operating centre should influence efficiency of vehicles, increase road safety and comply with ecological requirements.

Regulations concerning transport managers provide standards of safety. Managers have to provide permanent and actual supervision on work of drivers and technical conditions of vehicles. It is worth indicating that increased responsibility of transport manager concerns the loss of good reputation. It can happen when drivers, supervised by this person, are punished with administrative sanctions. Transport managers can employ at most 4 companies or 50 vehicles. This regulation provides permanent and actual supervision.

It is worth recognizing that legal regulations concerning admission to the occupation of road transport operator, which have been established in the modernized form, respond to new challenges. They give the authorities of member states the possibility of uniform and transparent evaluation of conditions necessary to get a licence. What is equally important, they provide appropriations for permanent and actual supervision of road transport activity and continuity of maintaining concessive requirements.

Transport, including road transport, is a socio-economic phenomenon which has influence on civilization and economic development of nations and states. It is understandable and natural that instruments which create transport, especially applicable legal regulations describing its organization, are created on the basis of socio-economic reasons.

