

**University of Twente**  
School of Management and Governance

**“The road transport policy of the EU and fair competition in the European road  
transport sector”**

A master thesis prepared by Nikolay Kutsev,  
Master of Science Programme in Public Administration – Public Governance,  
Student number s0211532

Commission members:

1<sup>st</sup> advisor: Prof. Nico Groenendijk

2<sup>nd</sup> advisor: Dr. Luisa Marin

**August 2009**

## Table of Content

<b>1. Introduction</b>	3
1.1. Relevance of the research topic	3
1.2. Main research question	6
1.3. Sub-questions:	6
1.4. Methodology	6
<b>2. Theoretical framework</b>	8
2.1. Market and policy integration	8
2.2. Definition of fair competition	11
2.3. The problems on the EU road haulage market as discussed in the relevant scientific literature	16
2.3.1. <i>Market access</i>	17
2.3.2. <i>Social rules</i>	19
2.3.3. <i>Enlargement</i>	20
2.3.4. <i>Summary</i>	21
<b>3. The level of harmonisation of Community rules governing market access</b>	23
3.1. Directive 96/26/EC as amended by Directive 98/76/EC	23
3.2. Regulation 881/92/EEC	25
3.3. Regulation 3118/93/EEC	26
3.4. Challenges and weak points of existing legislation and in its application	28
3.5. The legislative response of the EU	32
3.6. Summary	33
<b>4. The measures undertaken at Community level in order to improve the social conditions of road transport workers and their implication for fair competition on the EU road haulage market</b>	35
4.1. Problematic issues concerning the social conditions of road transport workers	35
4.2. Legislative responses to the problems concerning the social conditions in the road transport sector	37
4.2.1. <i>Regulation 561/2006/EC</i>	38
4.2.2. <i>Directive 2002/15/EC</i>	39
4.2.3. <i>Directive 2006/22/EC</i>	40
4.2.4. <i>Regulation 484/2002/EC</i>	42
4.3. Summary	42
<b>5. The implications of the enlargement for the EU policy in the field of road transport</b>	45
5.1. Background	45
5.2. Changes in the sector brought by the enlargement	46
5.3. Summary	49
<b>6. The initiatives to promote an efficient implementation of existing legislation</b>	51
6.1. Relevance of the problem	51
6.2. European initiatives in the field of enforcement	54
6.2.1. <i>Euro Contrôle Route (ECR)</i>	54
6.2.2. <i>CORTE</i>	56
6.3. Summary	57
<b>7. Conclusions</b>	59
7.1. Answer to the main research question	59
7.2. Reflection on the methodology employed for the purposes of the current study	61
7.3. Policy recommendations	61
<b>8. Bibliography</b>	63

## 1. Introduction

### 1.1. Relevance of the research topic

The Treaty of Rome from 1957 provided for the establishment of a common European transport policy. However, it was not until the decision of the European Court of Justice from 1985, which ruled out the Council had failed to act in order to set up a common transport policy, that more concrete steps were undertaken at Community level in view of achieving that aim. The main reason for this delay had been the different role and importance individual Member States ascribed to transport in general for their national economies, hence their different and often conflicting views on whether and what kind of a common European approach should be adopted towards governing this sector of economic activity (Molle, 1994, p. 332-333).

In 1982 the European Parliament summoned the Council of Ministers before the European Court of Justice because of its failure to create a common transport policy 25 years after this was laid down in the Treaty of Rome. In its verdict from 1985 the Court stated that “... although it is true that its discretion is limited by the requirements which stem from the establishment of the common market and by certain precise provisions in the Treaty such as those laying down time-limits, the fact remains that under the system laid down by the Treaty it is for the Council to determine, in accordance with the relevant rules of procedure, the aims of and means for implementing a common transport policy” (ECJ, 1985, p. 49).

After the 1985 Court ruling an internal market of transport services was gradually established, which marked a transition from a previously heavily regulated road transport sector through national quotas and other restrictive measures to a liberalization of the market of road haulage services. This process focused on one hand on removing national quotas or permits for carrying out transport operations – this process was completed during the 1990s. On the other hand, by adopting several Regulations and Directives the Council set harmonised conditions for providing road haulage services concerning technical requirements for vehicles, professional qualification of transport workers and social rules. Other, more sensitive areas of possible harmonisation, such as taxation and user charges, remain an apple of discord among Member States until today (Pelkmans, 2006, p. 145). Due to their utmost complexity, as well as because of time and content limitations, the current research will focus on the level of harmonisation of EU road transport policy in terms of laying down common conditions for access to the market of road transport services and the social legislation in the

field. In addition, the analysis will have as subject only road haulage (transport of goods by road), since the transport of passengers by road has different specifics and broader implications for common transport policy and therefore requires another type of theoretical and empirical study and explanation.

The importance of road haulage first of all arises from its significance for the facilitation of trade within the Common market. The role of this mode of transportation has become even bigger, since the share of road haulage in the transport of goods as a whole has increased drastically over the last several decades and nowadays accounts for approximately 73 % of transported goods on land in the EU. In addition, forecasts predict an overall expansion of transport of goods among EU Member States by 20 % within the period 2000-2020 and most probably road transport will get the greatest share of it (European Commission, 2006b, p. 2).

These facts underline the importance of the road haulage sector for the European economy. Furthermore, this importance calls for the pursuit of adequate policies in order to provide for equal conditions for operating and competition of transport companies and thus to avoid distortion in this sector of the European market of services.

This became increasingly necessary after the liberalization or deregulation of road haulage during the 1990s brought alongside many positive effects also some unexpected and highly undesirable consequences for the sector (Hilal, 2008). This was mainly caused by the fact that deregulation was not accompanied by an adequate degree of harmonisation and universal implementation of rules related to the access to the market and the profession of road transport haulier, as well as certain social conditions, under which transport operators have to perform their activities. More precisely, significant differences remained between Member States regarding labour legislation, enforcement of existing social legislation (lack of uniform standards in roadside checks of vehicles and significant differences of sanctions from one country to another), rather low entry requirements for the professional qualification of drivers and transport managers.

These loopholes in European legislation were abused by a lot of companies, for example by violating rules concerning driving and resting times and sub-contracting to transport companies from countries with low wages and insufficient social and labour protection. With time this created a risk for undermining fair competition on the market. This was acknowledged as a problem that has to be dealt with at a Community level: "... some road haulage companies ... resort to price dumping and to side-step the social and safety legislation..." (European Commission, 2001, p. 13). Moreover, in this policy document,

which projected the EU's transport policy for the current decade, the Commission also stressed the need to harmonise not only legislation, but focused on the harmonisation of enforcement procedures as a means to put an end to practices threatening fair competition in the road haulage sector.

To summarise, it became apparent in the successive years after 1998 that liberalisation itself cannot provide sufficient conditions for a fair competition on the road transport market. As it was concluded in the same document, in order to meet the challenges of an ever-increasing demand for economically efficient transport services, "the Community's answer cannot be just to ... open up markets. The transport system needs to be optimized to meet the demands of enlargement..." (European Commission, 2001, p. 6).

Namely, the issue became increasingly important in light of the planned big enlargement of the EU and the accession of 10 Eastern European countries as full-fledged Member States. The necessity for increasing the degree of harmonisation by improving already existing European legislation and drafting new one, where necessary, as well to improve its implementation arose from the fact that the above-mentioned examples of fraudulent practices very often involved companies and drivers from Eastern European countries. Integrating the road transport industries of these countries into the internal EU market of transport services without making adequate legislative and policy arrangements would pose a serious risk for a distortion of the road haulage market. There have been some particularly sensitive issues in this respect, such as cabotage - a transport service between two points within a Member State provided by a transport operator from another EU country.

The establishment of a common transport policy implies among others the harmonisation of road transport policies in regard to laying down common rules governing the access to the market. Furthermore, these rules must be of a character and be implemented in such a way as to add to the attainment and further development of the internal European transport market.

The arrangements for access to the road transport market, as stipulated in Directive 96/26/EC on admission to the occupation of road transport operator and Regulation 881/92/EC on the access to the market in the carriage of goods by road, introduce freedom of provision of services without any restrictions in respect to nationality or place of establishment of the transport undertaking. Nevertheless, constant efforts are needed in order to guarantee the efficient implementation of existing legislation, especially social regulations concerning the working time of transport workers. The latter are very important in regard to

creating conditions of a fair competition, under which transport operators could do their businesses.

In relation to the aforementioned, this research will also try to examine and evaluate the role and efficiency of some initiatives at Community and international level, such as Euro Contrôle Route (ECR). ECR is an organization which unites the road transport control authorities of 14 of the EU Member States and aims at improving road safety and promoting fair competition through enhancing the quality of enforcement of Community legislation.

### 1.2. Main research question

Does the current level of harmonisation of EU road transport policy provide the necessary conditions for a fair competition between European road transport undertakings?

### 1.3. Sub-questions:

1. What is the definition of fair competition (in the European road transport sector)?
2. What are the legislative measures undertaken at Community level in order to provide harmonised rules for access to the market and profession of road transport haulier?
3. What are the steps made in order to improve the social conditions of road transport workers and does that contribute to fair competition among commercial road transport companies?
4. What are the implications of the accession of 10 new Member States from Eastern Europe for the EU's policy in the field of road transport?
5. What measures and initiatives are undertaken at Community level and in cooperation between different Member States in regard to guaranteeing an efficient implementation of existing EU legislation in this field?

### 1.4. Methodology

In order to provide an answer to the above research questions, I intend to employ a theoretical approach that combines ideas from market integration and policy integration theories, as described by Molle (1994) and Pelkmans (2006). In addition, I will also discuss some methods of integration, namely mutual recognition and harmonisation, as defined by Barnard (2007), Schmidt (2002) and Kox, Lejour (2005). Finally, I will try to define the term

“fair competition” with relevance to this particular sector of economic activity, namely road transport. In order to do this I will analyze the way, in which this term has been so far defined and discussed in the relevant scientific literature, as well as in the various policy documents of the EU.

I will make an overview of the existing literature dealing with the topic of EU road transport policy and problems in this sector. Furthermore, I will combine the definition of fair competition with certain elements of the briefly described theories and ideas of market and policy integration, as well as harmonisation as an integration approach, in order to analyze the relevant EU legislation governing the rules for access to the road transport market and social legislation (provisions for the working time of road transport workers). In doing so, I will attempt to provide an answer to what extent all these rules provide conditions for competition for the road transport operators.

Finally, I will describe the measures and initiatives undertaken at Community level and by Member States in order to implement the existing EU legislation in the field in an efficient and consistent manner and thus to create clear and uniform conditions at the European road transport market.

## 2. Theoretical framework

In the following chapter I will present the theoretical framework I intend to use in order to answer the proposed main research question and sub-questions.

Firstly, I will employ some ideas and concepts from the market and policy integration theories in order to analyze the EU policy in the field of road transport in terms of its level of harmonisation. In doing so, I will also discuss some possible approaches to economic integration, namely mutual integration and harmonisation.

Secondly, I will attempt to design a feasible definition of the term fair competition in the EU road transport sector by examining the existing concepts in the scientific literature, as well as the context within which the term fair competition is being used in the relevant EU policy documents, strategies and legislative acts. This is needed in order to give an answer to my first research sub-question, namely what does fair competition on the EU road haulage market imply.

Finally, I shall discuss some of the existing relevant scientific literature dealing with issues such as the access to the EU road transport market, the social rules in the sector and the implications of the EU enlargement for its policies in the field.

### 2.1. Market and policy integration

The issue of the conditions for operation and competition on the EU market of road haulage services can be analyzed in the broader context of European economic integration.

Molle (1994) defines the process of economic integration as a two-fold process, consisting of integration of markets, on the one hand, and the integration of policies, on the other. As Molle makes it clear, in an ideal type of economy, in which all production and distribution is left to the market mechanisms, the removal of barriers to trade and production factors would be enough in order to provide conditions for a complete economic integration. In an ideal situation market integration can be carried out without much government intervention, since it is essentially a process of liberalisation or deregulation. That is why this process is termed by many authors also as negative integration, which is mainly understood as the elimination of barriers that hinder economic integration. However, in practice modern economies demand some degree of governmental policies' integration, so that the market is regulated in a certain way (Molle, 1994, p. 10). Molle argues that in reality the final stage of market integration, namely a common market would not be achieved without an adequate



degree of policy integration. Also, market integration would not be stable enough, if some form of coordination in economic policy-making between EU Member States is not put in place (Molle, 1994, p. 12).

Similarly to the views of Molle, Pelkmans contends that economic integration cannot be completed by a purely apolitical approach, which leaves everything to the market forces. On the contrary, economic integration is always a product of political integration, which is negotiated between national governments. Moreover, greater ambitions for economic integration would always demand or be the result of a higher degree of political cooperation and integration (Pelkmans, 2006, p. 3). Pelkmans conceptualizes market integration as a state of affairs where the activities of market participants in different Member States are “geared” to the conditions of supply and demand of goods and services in the whole EU. In short, market integration involves the removal of obstacles to the movement of goods and services (Pelkmans, 2006, p. 6).

Furthermore, Pelkmans defines economic integration as “the elimination of economic frontiers between two or more economies” (Pelkmans, 2006, p. 2-3). Pelkmans elaborates on the meaning and relevance of the term “economic frontier” and explains that in the case of European economic integration economic frontiers or barriers are to be understood not simply as territorial, but rather as economic ones, which draw boundaries between national regulatory regimes of European countries. According to Pelkmans the main driving force of European economic integration is the attempt to reduce or eliminate the public role of territorial borders as economic frontiers between Member States (Pelkmans, 2006, p. 2-3).

The approaches to achieving economic integration can be different. As pointed out by some authors, the reduction or elimination of national regulatory barriers can be done in two ways – by harmonising regulations or by using mutual recognition of the different national regulatory standards (Kox, Lejour, 2005, p. 7). Mutual recognition as a principle is considered an alternative to harmonisation, since the recognition of foreign regulatory systems and practices between different countries essentially makes the harmonisation of the existing national standards and requirements unnecessary. Moreover, some authors argue that the principle of mutual recognition is perhaps a more efficient way of achieving economic integration, as it requires less coordination, in contrast to harmonisation (Kox, Lejour, 2005, p. 8).

However, this view is not completely shared by other authors. For example, Barnard also describes the principle of mutual recognition as an important instrument within the creation of a single market and an alternative to harmonisation, but she also points out some

of its limitations as an integration method. Firstly, Barnard mentions that there is often reluctance on the part of national administrators to recognize the equivalent foreign products/services. Secondly, Barnard also draws attention to several decisions of the Court of Justice, which on the one hand introduced mandatory requirements, and on the other, developed the idea of the so-called functional equivalence. For instance, in the case *Commission v. France* (woodworking) the Court permitted France to introduce its own requirements to the import of German woodworking machines, based on the idea of functional equivalence (Barnard, 2007, p. 589-590). Finally, Barnard concludes the principle of mutual recognition is “attractive” and continues to be a “key pillar” in establishing a single market, but it is not a “miracle solution”, at the same time (Barnard, 2007, p. 589-591).

The arguments expressed by Barnard are indirectly supported by the findings of some other authors, notably Schmidt (2002), who analyzes the consequences of the application of mutual recognition as an integration principle in the EU road haulage sector. In Schmidt’s view, mutual recognition as integration mechanism contains risks of leading to a competitive deregulation among Member States. This is because of the danger of a reverse discrimination towards domestic companies, since under the principle of mutual recognition sometimes nationals of one Member State can provide their services in another Member State under better conditions, in case the national regulatory system of the home country is more favourable in comparison with that of the host country. This characteristic of mutual recognition as an integration principle is pointed out also by Barnard, who states that the result which mutual recognition aims at is “to put the national systems of regulation into competition” (Barnard, 2007, p. 589).

At the same time, Schmidt argues the principle of mutual recognition was not always strictly observed in the case of road haulage. In order to support her argument, Schmidt points out the fact that while international and transit transport within the Community were liberalised in the early 1990s, cabotage was not fully deregulated until 1998. This means that in the case of cabotage the rules of the host country, and not of the country of establishment, had to be adhered to, which is just the opposite of what mutual recognition implies. Schmidt concludes that as a result of integrating the single market via mutual recognition the freedom to provide services has remained “much below expectations” (Schmidt, 2002, p. 935). The domestic road haulage markets of the individual Member States have become more competitive as a result of their liberalisation, but they are still mostly national markets and were not transformed into a European one (Schmidt, 2002, p. 942).

Therefore, as some authors contend, harmonisation of national regulatory systems is still needed, in order to guarantee the free movement of goods and services within the EU (Barnard, 2007, p. 591).

Harmonisation has been considered during the 1960s and 1970s as a precondition for the liberalisation of the sector, since fair competition would not be possible without at least a minimum degree of harmonisation (Molle, 2006, p. 222). According to Pelkmans, the chapter on common transport policy in the Treaty suggests a balance between harmonisation of regulatory measures and liberalisation (Pelkmans, 2006, p. 129). This view is indirectly supported by Molle, who concludes that if the goals of the Treaty in the field of transport are to be realized, the interventions of the national governments of the Member States had to be “partly harmonised and partly abolished” (Molle, 2006, p. 221). Pelkmans goes on further by defining the harmonisation of technical, professional and social conditions for entry to the market of road haulage as minimum harmonisation (Pelkmans, 2006, p. 145).

The above view is supported also by Schmidt (2002), who argue that during the 1980s the EU abandoned its previous efforts to set up a single market through a full harmonisation of national regulations and policies and replaced this approach with a combination between minimum harmonisation, where needed, and mutual recognition (Schmidt, 2002, p. 935).

Minimum harmonisation is one of the types of harmonisation. It differs from other types of harmonisation, such as full or exhaustive harmonisation for example, in the fact that it only sets minimum standards, which Member States have to comply with. However, these minimum criteria can be sometimes rather high. Also, minimum harmonisation does not preclude Member States from adopting any other regulatory measures, which could be stricter than the ones prescribed in the EU legislation. According to Barnard, minimum harmonisation is one of the most popular methods of integration, as it provides the opportunity to combine the creation of a level-playing field on the single market through the introduction of minimum standards with the national regulatory diversity (Barnard, 2007, p. 600).

In the following chapters of my thesis I will describe the existing level of harmonisation of EU policies in the road transport sector and will analyze to what extent they provide conditions for fair competition on the internal market of road haulage.

## 2.2. Definition of fair competition

Regulation 1017/1968/EEC of the Council lays down detailed rules for the application of Articles 81 and 82 of the EC Treaty in the transport sector, dealing with the prohibition of

agreements between undertakings, decisions of undertakings and concerted practices that may prevent, restrict or distort competition on the Common Market. This regulation is, nevertheless, somewhat outdated, as it was produced and entered into force long before the processes of liberalisation and the setting-up of common transport policy after 1985. In addition, the general rules of competition as defined in EU legislation on competition issues are not really relevant and of interest for the current research. This is partly due to the fact the transport sector as a whole and the different modes of transportation and road haulage in particular have their own specifics, which cannot be explained by merely using the general concepts and principles laid down in EU competition policy and legislation. These general provisions of EU competition legislation are primarily aimed at regulating some other sectors of economic activity and therefore mostly seek to prevent or solve problems such as monopolies, mergers and state aids. The latter examples of competition distortions are rarely or hardly ever a matter of concern on markets like that of road transport services. As pointed out by some authors, the road transport mode is sufficiently fragmented in terms of supply and demand in order to make rather unlikely the occurrence of problems such as monopolies, therefore in practice it doesn't really fall within the scope of application of the Community's general competition rules (Wood, 2001, p. 1).

That is why for the purpose of the current study and in view of the formulated research questions, as well as considering the importance of fair competition for the creation of the internal road haulage market, one should try to investigate whether there is a definition of the term fair competition that is specific for the sector and is related to the peculiarities and problems that occur on this market. One way to do so is to try to find such a definition in the existing EU legislation and policy documents in the field of road transport, as well as in the relevant scientific literature.

The term fair competition pops up in numerous EU policy documents and pieces of legislation. In its Communication to the European Parliament and the Council "Towards a safer and more competitive high-quality road transport system in the Community" from 2000, the Commission underscores the necessity to avoid distortions of competition and to strengthen the conditions of fair competition between transport operators. In this regard the Commission points out the importance of ensuring equal employment and working conditions, as well as standards for the training of drivers (European Commission, 2000, p. 1).

Regulation 561/2006/EC of the Council and Parliament lays down rules governing the driving and resting times of drivers in order to harmonise the conditions for competition between different modes of inland transport and to improve the working conditions of drivers

and road safety in general. Directive 76/1998/EC of the Council stresses the importance of harmonising the conditions for admission to the occupation of road transport operator and the mutual recognition of diplomas and qualifications in order to avoid distortions of competition. Regulation 881/92/EEC of the Council, dealing with the access to the market of transport of goods by road within the Community links ensuring the equality of conditions between Community carriers with the principle of non-discrimination.

In its White Paper “European transport policy for 2010: time to decide” (2001, p. 7) the Commission points out that the opening up of the market of transport services was undoubtedly a positive and successful step towards the establishment of a common market in this sector. Nevertheless, it also admitted there was a certain lack of fiscal and social harmonisation in the field, which distorted competition and therefore created obstacles to the completion of the internal market of transport services (European Commission, 2001, p. 7). In regard to the road haulage sector in particular, this document underscores the importance of harmonising and improving the inspection procedures and practices of EU Member States’ control authorities as means of eliminating practices preventing fair competition (European Commission, 2001, p. 13). It is also stressed that the promotion of fair competition requires not so much any further measures aimed at improving regulation, but rather a more efficient enforcement of already existing regulation. The document, however, fails to list and specify the exact nature of the practices threatening the competition on the market of road transport services.

In conclusion, none of the EU policy documents and legislative acts in force provides a legal definition of the term “fair competition” in road transport, although many of the policy actions undertaken at Community level are explained and justified by the aim to ensure fair competition on the internal market of road transport services.

A review of the existing scientific literature in the field reveals some studies contain indirect explanations what fair competition in road transport is, although there is again a lack of a comprehensive and explicit legal definition of this term.

For instance, Van Vreckem points out the importance of the harmonisation of conditions of competition in the road transport sector and its implications for the common EU transport policy. According to Van Vreckem this harmonisation is prompted by the opening-up of national road transport markets to companies from all EU member states and has several main aspects – technical, social and fiscal. Van Vreckem argues that “if ... competition is to be fair, operators must be subject to the same (or at least comparable) conditions” (Van Vreckem, 1993, p. 1).

Button mentions the need for a “level playing field” as a prerequisite for fair competition in the sector. According to him this can be achieved through a “commonality of policy across countries” and “greater harmonisation” (Button, 1993, p. 18).

According to Bonnafous, there are three conventional instruments of transport policy, namely investment in infrastructure, regulation/enforcement and funding/pricing the system. Despite the fact the system of road transport in the EU has been a subject of gradual deregulation since the early 1990s, governments still have at their disposal these instruments in order to influence to some extent the formation of costs for transport companies and thus to influence also the terms of competition. Certain regulatory policies, for example imposing limits on working time for drivers, are necessary to be implemented in order to control some of the external effects associated with road transport, such as traffic safety and pollution (Bonnafous, 2003, p. 2-3).

Boylaud and Nicoletti provide a definition of the road freight industry, which according to them consists of transportation of goods between firms (or transport for own account) and between firms and consumers (transport for hire or reward) (Boylaud, Nicoletti, 2001, p. 230). These two authors elaborate on the relation between market regulation, in particular national restrictions of market entry, and competition and performance of the industry. While many other authors focus on the competition between the different modes of transport, Boylaud and Nicoletti analyze primarily the various regulatory approaches towards the industry and their implications for the competition within the sector of road haulage and its performance.

They outline two broad categories of regulations in road transport – regulations on traffic and vehicles (e.g. labour regulations), on one hand, and market access requirements and price regulations, on the other. Similarly to previously mentioned authors, Boylaud and Nicoletti also justify the different forms and degrees of intervention of governments into the industry with the need to address certain problems, which have arisen as result of the external effects of the road freight sector, such as traffic safety, air pollution and road congestions. These concerns have led to the introduction of the regulatory measures of the first type, among them regulation of the working time of road transport workers. Apart from the already mentioned reasons for regulating this aspect of the road transport operators’ activities, another very important argument in favour of the regulation of the working time of drivers is related to the economic implications it has for each company. These economic implications are mainly expressed in the fact that the working time of drivers determines the operating conditions and the productivity of the companies as a whole, which influences directly the

degree and the character of competition. The introduction of restrictions in terms of certain labour legislation is therefore an important step in creating a level-playing field in the sector. That is why not only EU countries, but almost all OECD members have specific regulations concerning driving and resting times, as pointed out by Boylaud and Nicoletti (Boylaund, Nicoletti, 2001, p. 238).

The second kind of regulation, namely market access conditions, are implemented for the reason the liberalisation of the industry during the 1990s had to be accompanied by the adoption of legislation, which would bring about a certain degree of harmonisation, in order to prevent “cut-throat competition” between companies, established in different EU member states and having a different size (Boylaund, Nicoletti, 2001, p. 234). This has been achieved by removing previously existed national barriers, such as quotas of permits for foreign hauliers, and replacing these quantitative restrictions with qualitative requirements (or minimum standards), related to the financial standing and good repute of firms and to the qualification criteria for drivers and transport managers. This means a transport operator has to meet all these criteria in order to receive the approval of the governmental regulator and to be granted a license or authorization, which would allow this company to start carrying out its activities. The last was seen as a way to cope with challenges, which emerged as a result of the setting-up of the Common Market, in particular the opening up of the domestic markets of EU Member States with the liberalisation of cabotage in 1998 (Boylaund, Nicoletti, 2001, p. 234-235).

All in all, it seems that an explicit and comprehensive definition of fair competition is absent both in the EU legislation in force and in scientific literature dedicated to this topic. Therefore it might be interesting and useful to employ definitions present in other sectors with similar patterns of functioning and scope of activity, such as the telecommunication sector. In 2004 a conference organized by the International Telecommunication Union, taken place in Oslo, was dedicated to defining and measuring the term fair competition in the telecommunication sector. One of the main conclusions was that “fair competition does not simply mean free competition in the absence of rules, but requires a market open to all which is regulated” (International Telecommunications Union, 2004). This short, but clear definition could be applied also to the market of road transport services.

Considering all the aforementioned and by employing the knowledge and expertise generated in the policy documents and scientific research produced so far, the following definition of fair competition in road transport could be formulated and used for the purpose of the current study:

**Fair competition** on the EU Common Market of road transport services implies **the creation of a level-playing field** in the road transport sector, **an open market**, which is however **regulated**, in order to guarantee **equal conditions for operation for all transport undertakings**. The most important regulatory measures that need to be designed and implemented in order to achieve that aim are the following:

- **Harmonisation of the conditions for access to the market and to the occupation** through the introduction of specific, primarily **qualitative standards** (professional, legal, financial and others) for the European transport companies and their personnel;
- **Harmonised employment and working conditions** for road transport workers, thus guaranteeing **equal conditions for operation** of all transport undertakings;

The above-mentioned measures can be implemented through an efficient enforcement, which is reiterated in many of the EU policy documents, such as the White Paper from 2001 (European Commission, 2001, p. 22). Other regulatory measures, which have implications for the internal market of road transport services and are therefore analyzed by some scholars, are related to the regulation of prices and taxation of fuels, road user charges and similar. These measures will not, however, be a subject of analysis in this research.

### 2.3. The problems on the EU road haulage market as discussed in the relevant scientific literature

A closer study of the existing literature reveals that various authors have different approaches towards the problem of competition in road transport. A large amount of the scientific articles dedicated to the topic are not quite up to date. In addition, the majority of the authors treat the issue of competition in road haulage rather indirectly, in the context of the overall regulatory changes taken place in the sector during the 1990s and afterwards. This could be partly explained by the dynamic character of the road haulage sector, which underwent significant changes not only because of the liberalization from the 1990s, but also as a result of the EU enlargement from 2004 and 2007. These developments subsequently



called for adequate changes in the EU regulatory framework. Moreover, these legislative novelties have been rather often in the last couple of years and probably this explains to a certain extent the absence or lack of a more up-to-date analysis done by academic researchers.

At this stage of my research I will provide an outline of the relevant literature in the field dealing with the market access, the social rules and the implications of the 2004 enlargement for the EU road transport policy. Some of the studies will be analyzed additionally in a more detailed way in the respective chapters of my thesis.

### *2.3.1. Market access*

The issue of competition in the European road transport has been usually addressed within the context of national regulatory reforms of the sector. The latter were prompted or inspired by the changes introduced at EU level after the European Court of Justice's verdict from 1985 on the inactivity of the Council to set-up a common transport policy.

Heritier (1997) analyzes the changes that occurred in the national regulatory frameworks and policy-making approaches in several EU countries in the light of the deregulation of the road haulage sector during the 1990s. In doing so, Heritier provides a comparative analysis between the UK and the Netherlands, on one hand, which have traditionally been in favour of liberalizing the sector, and Germany and Italy, opponents of opening-up their markets to competition from hauliers of other EU countries.

Heritier uses the examples of regulatory reforms (or lack thereof) in these countries in order to demonstrate it would be a mistake to assume the creation of a common policy in the field has been a smooth process that automatically led to a total harmonization and convergence of policies in all EU Member States. On the contrary, the changes initiated at supranational level met significant resistance in some countries. The reason for this opposition was the fear that liberalization of road haulage services, especially cabotage, would result in a "ruinous competition", which in turn would seriously affect national transport undertakings, especially smaller enterprises and would thus lead to a market concentration (Heritier, 1997, p. 540).

Countries like Germany, France and Italy demanded certain aspects of the road haulage industry, such as technical and social regulations, are harmonised at EU level before they open up their national markets. In short, a European level-playing field had to be created as a pre-condition before the sector is liberalized (Heritier, 1997, p. 541).

Previous quantitative restrictions to market access, such as bilateral quotas of permits could not be simply abolished, as the total deregulation of the access to the market would be fiercely opposed in some of the above-mentioned states. The majority of EU countries had traditionally resorted to instruments such as regulating the market access through a set of quantitative and sometimes qualitative limitations. Since quantitative regulations led to regulatory failures (such as illegal trading of permits) in countries like the Netherlands, on one hand, and were not in compliance with the free movement of services provided for in the Treaty, on the other, these could no longer be sustained, despite the opposition of some state and non-state actors in certain countries (German road haulage operators for instance). As a result, the Commission initiated a process of a gradual replacement of bilateral quotas with a common Community authorization or license. The criteria for granting this Community license are qualitative and are based on three main requirements that need to be met by road hauliers – professional qualifications, good reputation and sound financial standing of the company. As these conditions for market entry were already generally introduced in countries like the United Kingdom and the Netherlands, the Europeanization of the sector did not cause significant changes in the national regulatory policies. Consequently, it did not take much effort of the national road haulage sectors of these two countries to adapt to the new developments on their national and European markets (Heritier, 1997).

Similarly to Heritier, Schmidt (2002), whose findings were already discussed more in detail previously, examines the effect of European policies in the road haulage sector on the national markets of some individual Member States, Germany and France in particular. According to Schmidt, in the sector of road transport the use of the freedom to provide services has stayed below expectations. Therefore Schmidt argues although the national markets of EU Member States have been liberalized and have become more competitive as a result, they have remained largely domestic markets at the same time.

Likewise, Kerwer and Teutsch (2000) claim Europeanization of road transport services has been “elusive”, since the impact of EU policies were restricted by national institutional mechanisms of policy-making (Kerwer, Teutsch, 2000, p. 1).

Furthermore, Thatcher comes to much the same findings by analyzing the regulatory reforms in several sectors in Europe, including road haulage. In doing so, Thatcher outlines several types of regulatory regimes, among them the so-called “protected competition”. According to Thatcher there was an attempt to create such a model of regulation in Germany. In this case the sector of road haulage was formally, legally liberalized. However, this was accompanied by the introduction of certain new regulatory tools which sought to protect the

national road haulage sector and thus could prevent effective competition at the European level (Thatcher, 2002, p. 870).

In 2005 NEA (2005: *ibid*), a research institute in the field of transport based in the Netherlands published a comprehensive study of the EU legislative framework regulating the admission to the profession of road transport operator. This study is a very valuable source of information, as it was carried out as a result of visits in several countries during the process of the practical expansion of the European transport market during the big EU enlargement to Eastern Europe, taken place in 2004. On the other hand, the study focused on the practical implementation of the existing legislation and thus identified certain loopholes in the legislation, as well as some failures in its enforcement (NEA Transport research, 2005: *ibid*). The conclusions and recommendations, made as a result of the study done by NEA, will be analyzed in a more detailed way in the following chapter of my thesis, which deals with the conditions for market entry and their implications for the competition on the EU road haulage market.

### 2.3.2. *Social rules*

The problem of imposing stricter social rules in the European road haulage market has gained importance as a consequence of the liberalisation of the sector. Therefore certain studies pay a special attention to the issues dealing the social legislation and its enforcement in road haulage.

According to Hamelin (2000) and Hilal (2008), deregulation of road haulage services after 1993 and especially the liberalization of cabotage in 1998 increased considerably the international competition in the sector.

Hamelin argues labour costs remained the only significant difference in the formation of production costs between transport undertakings from different EU Member States, whereas competition conditions between hauliers in terms of purchasing and maintaining vehicles and their equipment tend to be comparable. Therefore Hamelin attempts to give an answer to the question what is the real importance of working time of professional drivers for the competitiveness of European road haulage companies (Hamelin, 2000).

On the other hand, Hilal (2008) focuses on some of the “*unintended*” effects of the liberalization of the road haulage market, due to the insufficient level of harmonization of tax and labour legislation in some Member States before they opened up their national markets.

Hilal points out this produced several negative consequences for fair competition on the market, namely social dumping and fraudulent practices.

Both Hamelin and Hilal underscore the necessity to fill in some of the gaps in existing EU legislation, as well as the possible measures that could make its enforcement more efficient.

The findings of Hermann (2003) are generally in line with those of Hamelin and Hilal, but they go a bit further in explaining the problems of enforcement of social rules and their implications for fair competition in the sector. Taking the Austrian road haulage sector as a case study, Hermann provides a detailed picture of the labour conditions of Austrian professional drivers. Increased competition after Austria's accession to the EU had forced many companies to decrease their profit margins, in most cases by lowering the remuneration of their drivers. As mentioned also by Hilal, in some instances companies minimized their costs by committing unfair or illegal practices, such as false self-employment and illegal hiring of third-country nationals. Furthermore, many employers introduced the so-called performance-based bonuses, which put their drivers under constant time pressure and are the most often reason for committing infringements of driving and resting times. Therefore the study of Hermann once again stresses the importance of a more effective implementation of existing regulations.

The studies of some of the above-mentioned and other authors, as well as the current social rules at EU level, will be analyzed more in detail in the chapter dealing with EU social legislation in the field of road transport.

### *2.3.3. Enlargement*

The 2004 and 2007 enlargement of the EU has undoubtedly had significant implications for the EU policy in the field of road transport and the internal market of road haulage. Moreover, the enlargement caused certain changes in the regulatory framework, including specific legislative arrangements, such as transitional rules for the access to cabotage services for hauliers from the new Member States. Therefore the issues of this enlargement and its effects on the EU policies in the domain deserve a special attention and will be analyzed briefly in a separate chapter.

Here I would only like to outline some relevant studies, which focus on this issue. First of all, I will analyze and use a study carried out by the Dutch research institute NEI and published by the International Road Transport Union, in short IRU (2001: *ibid*), in 2001 in

order to explain the relevance of the issue of enlargement and its impact on the European internal market of road haulage. This study provides an insight into the specific features and differences between the road transport operators from old and new Member States. This information was necessary so that policy makers in the EU could make a forecast for the implications of enlargement and to design the adequate policy actions in order to meet the challenges for competition that would occur on an expanded internal market.

In addition to the above, in 2007 a group of research consultancies (Rebelgroup Advisory, 2007: *ibid*) carried out a study on the impacts of the 2004 enlargement in the area of transport, commissioned by the Directorate General for Transport and Energy of the European Commission. The overall aim of this research project was to provide a better insight into the consequences of the enlargement, as well as to produce recommendations for further actions for better integration of the newly joined Member States in the field of transport. The study emphasizes the regulatory changes brought about by the process of alignment of national legislative frameworks with the transport *acquis communautaire*.

The findings of the above-mentioned studies will be presented and analyzed in a more detailed way in that chapter of my thesis, which will deal specifically with the enlargement and its implications for the EU policy in the field of road transport.

#### 2.3.4. Summary

In the above chapter of my thesis I attempted to design a theoretical framework for my research, which would help me provide answers to my main research questions and sub-questions.

In regard to my first research sub-question, I can draw the following conclusion. Fair competition on the European internal market of road haulage services implies the creation of a level-playing field, that is to say providing equal conditions for market entry and for operation for all European road transport companies. This goal can be achieved through an adequate degree of harmonisation of the EU legislation governing the access to the market and the social conditions of road transport workers, as well as by an efficient implementation of this legislation.

In the following chapters of my thesis I will use the above definition of fair competition in order to analyze the level of harmonisation of the EU policies in regard to the market access and social rules, as well as how the legislative framework created at

Community level corresponds and provides solutions to some of the problems in the sector, which are detected in the relevant scientific literature.

### 3. The level of harmonisation of Community rules governing market access

In the following chapter I will attempt to analyze the current legislative framework, which regulates the access to the road haulage market in the EU. Moreover, I will try to answer my second research sub-question, namely what are the legislative measures undertaken in this respect at Community level, which aim at ensuring a fair competition on the EU road haulage market.

Currently there are several main EU regulations and directives in force, which lay down the common rules on access to the EU road haulage market. These are Directive 96/26/EC on admission to the occupation of road transport operator; Regulation 881/92/EEC on access to the market in the carriage of goods by road within the Community; Regulation 3118/93/EEC on cabotage services; Regulation 484/2002 establishing a driver attestation. These legislative acts are considered to form the pillars of the internal market in road transport of goods. The directive introduced minimum qualitative standards, which must be met in order to enter the profession, while the three regulations liberalised international road haulage and provided for cabotage operations by non-resident transport companies.

I will first present and analyze the main legal provisions establishing harmonised qualitative criteria for access to the market. Afterwards I will discuss some potential challenges and loopholes in the existing legislation, which need to be addressed.

#### 3.1. Directive 96/26/EC as amended by Directive 98/76/EC<sup>1</sup>

This Directive provides definitions of basic terms, such as “occupation of road haulage operator” (the activity of any undertaking transporting goods for hire or reward); and “undertaking” (in general, any natural or legal person, whether profit-making or not).

Furthermore, the Directive lays down three main qualitative requirements that must be met by transport operators at the EU road haulage market:

- good repute (Article 3.1., 3.2.);

---

<sup>1</sup> Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, OJ L 124, 23.5.1996, as amended by Council Directive 98/76/EC, OJL 277, 14.10.1998

- appropriate financial standing (Article 3.3);
- professional competence (Article 4).

Regarding the good repute criterion, the Directive provides only basic guidelines as to what conditions should be satisfied so that a transport operator is considered to be of a good repute. It is left at the discretion of the individual Member States to determine the conditions for good repute, which must be fulfilled by the transport undertakings established within their territory. In general, the Directive only stipulates one basic circumstance under which the good repute requirement cannot be met, namely in the case of a conviction of serious criminal offences and/or serious repeated offences of the rules concerning employment conditions, driving and resting times of their drivers, technical requirements for the vehicles and road safety.

The Directive defines the criterion appropriate financial standing as possessing sufficient financial resources to guarantee a proper launching and administration of the transport undertaking. Currently a transport undertaking must prove it has 9 000 Euros for its first vehicle and 5 000 per each following vehicle. In that respect the Directive provides some guidelines in regard to assessing the financial standing of transport undertakings, such as annual accounts, available funds, assets, property, as well as all operation costs.

As for the professional competence, the Directive defines this requirement as the possession of skills to run a transport undertaking, demonstrated by passing a written exam. The Directive does not determine the exact form of the examination in question, but on the other hand it provides in a special Annex a rather exhaustive list of the subjects, in which knowledge is required for road transport operators willing to engage in international carriage of goods.

Lastly, the Directive also arranges the mutual recognition of diplomas, certificates and other evidence of formal qualifications.



### 3.2. Regulation 881/92/EEC<sup>2</sup>

This Regulation lays down the rules concerning the access to the market in the carriage of goods by road within the Community. It is the legislative act, by which the Council abolished the quantitative restrictions imposed on transport undertakings based on their nationality.

In relation to the above Regulation 881/92/EEC puts an end to the bilateral quotas of permits for bilateral and transit transport operations between Member States and creates a so-called Community authorization. This Community authorization is quota-free, which means that from the moment of entry into force of this Regulation all previous quantitative Community authorizations, exchanged between Member States, were abolished and all international carriages of goods within the Community are carried out with this authorization.

This Community authorization or Community license is issued by the competent authorities of the country of establishment of the transport company, which carries out transport of goods by road for hire or reward. The community license is issued in accordance with the legislation of the Community and the Member State, in regard to the admission to the occupation of road transport operator to carry out international transport of goods by road. In practice this means that transport operators have to fulfill the conditions concerning good repute, financial standing and professional competence, as defined in Directive 96/26/EC.

Regulation 881/92/EEC provides in an Annex a model of the Community with all the obligatory information it must contain. Furthermore, the Community license is issued in one original and a certain number of certified copies, which correspond to the number of vehicles a transport company has at its disposal, whether these vehicles are owned, or are, for instance, under hire purchase, hire or leasing contracts.

The Community license is issued for a period of five years. At least once every five years the competent authorities of the Member State that issued the license should examine whether the haulier still meets the requirements for admission to the profession in terms of financial standing, good repute and professional competence. If this is no longer the case, the Community license should be withdrawn. Also, in the case of serious infringements or

---

<sup>2</sup> Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, OJ L 95, 9.4.1992

repeated minor infringements by a transport operator, the competent authorities of the respective Member State of establishment of the operator might temporarily or partially suspend the certified copies of the Community license. In practice this would mean the transport undertaking in question would be banned to carry out transport operations for a certain period of time.

Finally, Regulation 881/92/EEC stresses the importance of and provides arrangements for the exchange of information about infringements between the control authorities of Member States. This is necessary in order to ensure efficient enforcement of the rules governing the admission to the occupation of road transport operator and the access to the internal market of road haulage services.

### 3.3. Regulation 3118/93/EEC<sup>3</sup>

This Regulation lays down the conditions, under which a transport company established in one Member State may perform domestic transport operations within the territory of another Member State. These are the so-called cabotage operations. According to Regulation 3318/93/EEC only hauliers, who hold a Community license under the provisions of Regulation 881/92/EEC on access to the market, are permitted to carry out cabotage services for hire and reward on a temporary basis.

Allowing cabotage services is done in the overall context of attaining a common internal market of road haulage services and in accordance with the principle of non-discrimination based on nationality. Thus it becomes possible for a transport company registered in one Member State to provide its services to customers in other Member States. Nevertheless, Article 6 of Regulation 3118/93/EEC stipulates the performance of cabotage services shall be subject to the legislation in force in the host Member State in several areas – rates and conditions governing the transport contract; some technical requirements (weights and dimensions of the vehicle); the transport of some specific categories of goods (dangerous goods, perishable food products, live animals); driving and resting times; value-added tax on transport services.

---

<sup>3</sup> Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, OJ L 279, 12.11.1993

Article 7 of the Regulation provides the adoption of so-called safeguard measures, in case the national transport market in a given geographical area has been disturbed as a result of liberalizing cabotage services. In this particular case a serious distortion of the national market is understood as a situation of excessive supply over demand of transport services, which may threaten the financial stability of a large number of undertakings. In that case the affected geographic area, which could be the whole territory of a country or only a part of it, might be temporarily excluded from the scope of application of the Regulation. In other words, cabotage operations would not be allowed on that territory for a period of up to six months.

Liberalising cabotage implied the differentiation between domestic and international transport of goods would gradually diminish, while at the same time the competition between national and non-resident (from other EU countries) carriers might increase. In principle this was made possible by the constant improvement of technical equipment allowing some transport companies to optimize their loading, timing and routing processes and thus enabling them sometimes to match international with domestic routes and in this way to offer domestic transport services at barely more than their marginal costs (Pelkmans, 2006, p. 146). Therefore when this Regulation was adopted and entered into force in 1993, a five-year transitional period was envisaged, during which a temporary quota system of cabotage authorizations was put in place. This measure was undertaken in order to make the process of liberalisation of cabotage services smoother and thus to avoid distortions on the national markets of Member States. Nevertheless, the quota system for cabotage operations was abolished as of the 1<sup>st</sup> July 1998. From that date on, any non-resident haulier is allowed to perform cabotage services in another Member State without having a registered office or any other type of establishment in the host Member State.

In the context of the enlargement of the EU to Central and Eastern Europe, taken place in 2004 and 2007, specific arrangements were made through the introduction of transitional periods before transport undertakings established in these new EU countries are permitted to carry out cabotage operations in the old Member States. This issue will be discussed more in detail in one of the following chapters of my thesis, which will analyze the implications of the enlargement for the EU policy in the field of road transport.

### 3.4. Challenges and weak points of existing legislation and in its application

After having an overview of the existing EU legislation governing the access to the market of road haulage, one could notice one general weak point of the current regulatory framework. This is above all the fact that the main qualitative criteria on admission to the occupation of road transport operator have been laid down in a directive, and not in a regulation. As it is known, a directive is an EU legislative act, which unlike the regulations does not have a direct applicability in the national legal orders of the individual Member States, but it needs to be transposed in the national legislations. The directive sets only the results that need to be achieved, and it leaves at the discretion of the Member States to select the means and instruments for achieving the set policy goals. As a result, many provisions are often interpreted quite widely and thus also implemented in various ways in the different Member States. Consequently, this poses some obstacles to the creation of a level-playing field on the EU road haulage market.

In the case of Directive 96/26/EC as amended by Directive 98/76/EC, a closer look at the existing legal provisions reveals numerous ambiguities and loopholes. These are clearly indicated and thoroughly analyzed in a comprehensive study of this Directive and its implementation, carried out in 2005 by the Dutch research institute in the field of transport NEA (2005: *ibid*), in cooperation with Transport Innovation Systems (TIS) from Portugal and T. M. C. Asser Instituut, based also in the Netherlands.

When it comes to the **good repute** requirement, the study carried out by NEA points out several main weaknesses of Directive 96/26/EC. Firstly, because of the different approaches of transposition of the Directive in the individual Member States, its provisions are sometimes dispersed in several legislative acts and the competencies of involved state actors are not always clearly defined. As a result of this there are certain difficulties in the practical enforcement of the Directive (NEA Transport research, 2005, p. 57).

For instance, there is some lack of clarity regarding the implementation of certain provisions of the Directive, due to the absence of definitions of some important terms, such as seriousness of the offences, which might prevent a road transport operator from meeting the criterion of good repute. As a result, Member States tend to interpret this concept in a rather wide way, thus posing obstacles to the creation of a uniform enforcement. In addition, the exchange of information between countries as envisaged in the Directive has proved to be not quite efficient. This limits the coordination between control authorities of Member States when it comes to sanctioning companies that have committed infringements in one or more

Member States, different from their country of establishment. Consequently, the phenomenon of “a race to the bottom” occurred, where hauliers sought to establish their companies in those Member States, in which enforcement is not so strict. In this respect the report prepared by NEA recommends a higher degree of harmonisation of these procedures, as well the improvement of the training of competent national authorities as a means of guaranteeing a level-playing field and thus conditions for fair competition on the EU road haulage market (NEA Transport research, 2005, p. 57-59).

Regarding the requirement for sound **financial standing** there are several points that deserve attention and are therefore mentioned in the study conducted by NEA. In general, the analysis of NEA, TIS and T.M.C. Asser Instituut reveals a rather different situation from one Member State to another in terms of practices and approaches of assessing the financial stability of transport undertakings (NEA Transport research, 2005, p. 60-62). Once again this is a consequence of the vagueness of some legal provisions of Directive 96/26/EC, which subsequently results in diverse interpretations and enforcement methods (NEA Transport research, 2005, p. 60-62).

Firstly, the 5-year period between compulsory checks of the financial accounts of undertakings is considered inappropriate to control the compliance of hauliers. What is more, this very broad requirement leads to different practices in the individual Member States. In fact the real financial standing of transport undertakings is in some countries controlled only once every five years, when the validity of their Community license has to be prolonged. As a result the control authorities in these countries do not have adequate, up-to-date information concerning the actual financial standing of road hauliers. At the same time practice in other countries shows the financial accounts of transport operators are checked on a more regular basis (for example once every two years).

Furthermore, it seems there is also a lack of clarity of some provisions and legal concepts in the Directive, such as “capital and reserves”. Sometimes this leads to the acceptance of different kinds of proof of financial stability in the various Member States. In other cases, even if the assets of the companies accepted as proof for financial soundness are the same, the procedures for their assessment differ.

The last is due to some inconsistency between two provisions of the Directive. Article 3.3.b of the Directive lists several different categories of assets and funds the competent authorities have to focus on in order to assess the financial standing of transport companies, whereas Article 3.3.c defines a minimum amount of capital and reserves a transport undertaking must have at its disposal in order to fulfill the criterion for financial standing. In

practice this once again leads to a variety of approaches and practical procedures in determining the financial soundness of road haulage firms. While in some countries like the UK an immediate availability of own capital reserves in the form of bank deposits is required, in other Member States like Poland the required capital can be shown through the value of the vehicle fleet, taken from the insurance documents of the trucks (NEA Transport research, 2005, p. 60-62).

As for the requirement for **professional competence** of the road transport operator, the Directive again leaves a lot of room for interpretation and therefore also for different implementation procedures, in particular in regard to the examination in case of experience and the exemptions from the need to pass such an examination. On the other hand, the study conducted by NEA in all the 25 Member States concludes the level of difficulty of the examination varies greatly from one country to another. This is a consequence of the different approaches towards training and exams in the various Member States. While in some countries training prior examination is compulsory, in others it is not. In addition, there is an absence of a harmonised system for accreditation of training centres, which results in different criteria for training and examining of candidates for acquiring certificates for professional competence. Therefore the passing rate at the examination in countries like France is very low, whereas that in Cyprus or Portugal is much higher (NEA Transport research, 2005, p. 62).

Another source of ambiguity is the provision determining which person in the transport company should be the holder of a certificate for professional competence. Directive 96/26/EC as amended by 98/76/EC stipulates the holder of such a certificate should be the person who continuously and effectively manages the company (Article 3.c). This rather broad definition has allowed countries to introduce varying national criteria as to who in a transport undertaking should possess a certificate of professional competence. For example in Austria this is the person “in charge of daily operations”, in Denmark the holder must work at least 70 % of his/her time at the respective company, in the Netherlands this is the person who gives “permanent and actual guidance”. Moreover, there is not a uniform, Community requirement in regard to how many companies a professionally competent road transport operator is permitted to work for. In Ireland a professionally competent person is allowed to represent only one company, in other countries, however, he/she can represent more than one transport operators. (NEA Transport research, 2005, p. 63).

This might pose a problem similar to the previously mentioned one concerning the financial stability – many companies might only on paper satisfy the criteria for professional

competence, when for example a professionally competent person is in practice permanently employed by one haulier, but theoretically represents also others and thus enables them to meet the criteria for access to the EU road haulage market. This effectively creates different conditions for operation of hauliers in the individual Member States and at the internal EU market of road haulage services.

In conclusion, the fact that the most important criteria, which are the basis for issuing Community licenses in accordance with Regulation 881/92/EEC, are in fact laid down in a Directive and that some of the provisions of this Directive are lack a certain clarity, pose some problems in the practical implementation of the EU legislation governing the access to the market. Consequently, this creates obstacles to the creation of a level-playing field on the EU road haulage market, where all European transport undertakings should operate under equal conditions.

Furthermore, apart from the loopholes in Directive 96/26/EC as amended by Directive 98/76/EC, a closer look at the Regulations governing the access to the market also reveal some weaknesses and challenges, which need to be adequately addressed.

For example, rules concerning transport operations between Member States and third countries as laid down in Regulation 881/92/EEC should be updated.

In the field of cabotage the definition provided by Regulation 3118/93/EC should be clarified, as the current concept of “temporary” cabotage operation is not clear and thus poses difficulties both for the transport companies and the competent enforcement authorities in the individual Member States.

Regulation 881/92/EEC provides in an Annex the necessary information and attributes a Community license should include. However, the Regulation does not arrange for a unified specimen for all Member States, which would have the same graphic design and layout. As a result the current great number of control documents (Community license, certified copies, driver attestation) and more importantly, the great diversity of different specimen of these documents depending on the country of establishment (different colours and layout) very often create problems both for the control officers carrying out roadside checks and for the transport operators who are subject to control.

On the whole, problems in enforcement practices show that the information exchange between the competent control authorities of the Member States must be improved, in order to provide for a more uniform enforcement of legislation and thus to ensure conditions of fair competition on the internal market of road haulage services.

### 3.5. The legislative response of the EU

In reply to all the challenges described above, in 2007 the Commission presented a proposal for a Regulation that will replace Directive 96/26/EC. The reason for this proposal is some of the measures envisaged in the legislative framework are not applied and enforced uniformly and efficiently. The report forwarded by the Commission to the Parliament and Council states “the different ways in which the Directive is being applied are detrimental to fair competition” (European Commission, 2007b, p. 2).

In short, the aim of this proposal is on one hand to make some of the provisions already existing in the Directive clearer and more comprehensive, on one hand, and to make these provisions directly applicable in all Member States by turning the Directive in a Regulation.

In summary, the most important measures that will be introduced with this new Regulation are the following:

- responsibility of the transport manager who lends his or her professional competence certificate to a company to enable it to obtain an authorisation;
- criteria to be met to ensure that a company is actually stably established in a Member State;
- comparable financial indicators to measure a company's financial standing;
- compulsory minimum training of 140 hours prior to the examination to test professional competence which, as well as the accreditation of training centres and examination centres;
- the obligation for authorities, in the case a transport operator no longer satisfies the good repute, financial standing or professional competence conditions, to warn this operator and, if no corrective measures are taken within a specified period, to impose adequate administrative sanctions;
- mutual recognition between Member States of infringements of EC road transport rules, no matter in which Member State these infringements have been committed. Once the number of serious repeated infringements passes a certain threshold, the operator will lose his good repute;



- electronic registers interconnected between all Member States, in order to facilitate the exchange of information between Member States and thus to improve enforcement on the whole (European Commission, 2007b, p. 6-7).

In addition to the above, in 2007 the Commission also put forward a proposal for a new Regulation, which aims at revising and consolidating Regulation 881/92/EEC and Regulation 3118/98/EEC. This proposal was justified with some inconsistencies of the current legislative framework, which led to the following main problems – problems with the application of Regulation 881/92/EEC concerning the international transport of goods to/from and in transit third countries; unclear definition of cabotage, which had led to problems in its application; ineffectiveness in the exchange of information between Member States; the great variety of control documents and of their samples created difficulties during enforcement procedures (European Commission, 2007c, p. 2-3).

This new proposal, if adopted would bring about the following most important changes:

- a simpler and thus clearer definition of cabotage, which would permit for up to three transport operations to be carried out consecutive to an international journey and within seven days;
- a standardized design for the Community licence, certified copies and the driver attestation, which would facilitate enforcement procedures, particularly during road side checks;
- the obligation for a Member State to act, when requested to do so by another Member State, when a haulier to whom it delivered a Community licence commits an infringement in the Member State of establishment or in another Member State. Such action should take the form of at least a warning. (European Commission, 2007c, p. 6).

### 3.6. Summary

A closer analysis of the existing legislation regulating the access to the market of road haulage shows that in general the regulatory framework provided the basis for establishing an internal market of road haulage services, after the deregulation of the sector in the beginning of 1990s. Nevertheless, some challenges remained to be addressed, related primarily to certain inconsistencies in the legislation, which led to problems in the

interpretation and thus also in the enforcement of some legal provisions. In turn this challenge created difficulties for establishing a level-playing field in the road transport sector, in which all businesses would operate under equal conditions.

The two new legislative proposals of the European Commission from 2007 concerning the transformation of Directive 96/26/EC into a new Regulation on admission to the profession and the draft new Regulation consolidating Regulation 881/92/EEC and 3118/98/EC are aimed at bringing about more clarity and consistency in the EU road transport acquis in general. Especially the new Regulation on admission to the occupation of road transport operator would add significantly to the creation of conditions of fair competition on the market, as it would make the legal provisions governing the admission to the profession and thus also to the market more simplified and, above all, directly applicable in all 27 EU Member States. As a consequence, the implementation of the legislation would become more uniform in general.

Nevertheless, in accordance with the principle of subsidiarity the practical enforcement of all legal provisions lies within the competence of the national enforcement bodies of the Member States. This circumstance would always pose a challenge to the efficiency, the strictness and precision, with which the control authorities of the individual countries apply the legislation in force, no matter how clear and simplified the legal provisions are. Therefore in one of the following chapters I will attempt to analyze some of the initiatives at EU level, which aim at facilitating the cooperation between competent authorities of Member States in view of achieving a more efficient and uniform enforcement of Community rules.

#### **4. The measures undertaken at Community level in order to improve the social conditions of road transport workers and their implication for fair competition on the EU road haulage market**

##### 4.1. Problematic issues concerning the social conditions of road transport workers

Before analyzing how the EU legislation deals with problems with the labour conditions that occurred in the road transport sector, one should first try to explain to what extent the working conditions of professional drivers impact the competitiveness of transport operators, and in this way also the conditions for fair competition on the internal market.

Authors like Hamelin (2000) argue the deregulation of road haulage services after 1993 increased significantly the competition on the market. This forced companies to optimize their operational costs, which was often expressed in decreasing labour costs. This led to large disproportions in the labour costs between undertakings, which in turn damaged “healthy competition” between firms on the liberalised road haulage market (Hamelin, 2000, p. 3). In addition, the variety and quality of road haulage services to a great degree depend on the “flexibility” of drivers’ working hours (Hamelin, 2000, p. 11). Therefore Hamelin states that “competition between hauliers has always been fierce, and is instrumental in making unsocial working hours the norm for drivers” (Hamelin, 2000, p. 5). Finally, Hamelin also points out that different labour history and employment legislation in the individual Member States added to the variety of pay levels, on one hand, and enforcement practices, on the other, which was often a reason for complaints from national road transport lobbies (Hamelin, 2000, p. 25).

Some of the observations made by Hamelin are similar to the ones found in the study of the working conditions of Austrian road transport workers, done by Hermann in 2003. Hermann also argues that increased competition on the EU road haulage market after the deregulation introduced by Regulation 881/92/EEC and Regulation 3118/98/EC led to an increased competition between hauliers, who were compelled to lower carriage prices in order to remain competitive. Nevertheless, the decreased profit margins of transport operators had to be compensated somehow, and this was usually done by lowering the salaries of employed professional drivers. The study of Hermann provides some statistical information, which shows that in the late 1990s only 20 per cent of Austrian truck drivers received fixed hourly wages, in accordance with the agreement between the Chamber of Commerce (representing the interests of employers) and the trade unions. At the same time more than 60 per cent of

the drivers were receiving the so-called performance-based bonuses, which essentially made many of them work for long hours without any breaks and/or rests, thus violating social rules and endangering road safety. Apart from this, other unfair employment practices included some forms of self-employment, as well as hiring third-country nationals without proper work authorisations. In this respect Hermann gives an example with the wide-spread practice among Austrian road hauliers to hire formally as trainees drivers from neighbouring countries like Hungary (which at that time was not an EU Member State) (Hermann, 2003, p. 60-61).

All the above-mentioned employment and payment practices made it possible for some transport undertakings to avoid regular employment of their drivers and thus to save costs. For example, in the case of drivers, who received lower hourly wage and compensated this with performance based bonuses, employers were saving a lot because they had to pay much lower social security contributions. Self-employed drivers, on the other hand, had to ensure themselves on their own, which many of them often did not do. This was the case also with illegally employed third country nationals (Hermann, 2003, p.60-61). What is more, according to Directive 2002/15/EC self-employment drivers were excluded from the scope of its application for a transitional period of up to March 2009. The fact self-employed drivers did not have to observe social rules dealing with maximum working time had been often abused by some transport companies, which subcontracted some of their transport operations to such self-employed drivers. Such a situation presented certain obstacles to ensuring fair competition on the market.

In general, Hermann stresses the necessity for clearer and stricter social provisions setting maximum working time for professional drivers, as well as for a more efficient enforcement of already existing rules. In that respect he points out the ineffectiveness of enforcement practices in Austria, due to the fact the competences for this are spread among too many authorities from different branches of government (Hermann, 2003, p. 60-61).

Hilal (2008) describes some of the negative consequences of the deregulation of the road transport sector after 1998. According to her these negative effects occurred as a result of the insufficient level of harmonisation of the social legislation at Community level. Hilal mentions as problematic approximately the same phenomena, already discussed by authors like Hermann, such as subcontracting of activities to self-employed drivers and illegal employment of third-country nationals, mainly drivers from Eastern Europe.

In doing so, Hilal lists some extreme examples of fraudulent practices, committed by companies officially registered in Germany and Austria. Using the cheap labour of drivers from Poland, Bulgaria (prior to their accession to the EU) and countries of the former USSR,

these companies performed essentially illegal cabotage operations on the territory of several EU Member States, by committing severe violations of the EU social rules in the field. In one of the cases described by Hilal a driver employed by such a company testifies he works 19 hours a day. In another example a group of drivers were abandoned for weeks by their Austrian employer on a parking place in Luxembourg, where their vehicles were immobilized by the local control officers due to serious violations of the rules governing driving times (Hilal, 2008, p. 23).

Hilal terms these fraudulent practices as “social dumping” and cites one of the reports of the former European Conference of the Ministers of Transport (currently International Transport Forum) from 2002, in which it is stated that the economic effect in terms of lower wages in the sector is significant, therefore some transport undertakings deliberately commit infringements of the social legislation in force, in order to get an advantage over their market competitors (CEMT, 2002:2, as cited in Hilal, 2008, p. 22).

#### 4.2. Legislative responses to the problems concerning the social conditions in the road transport sector

The EU legislation regulating the social conditions in the road haulage sector is laid down in several Regulations and Directives. Regulation 561/2006/EC and Directive 2002/15/EC determine the social conditions for road transport workers by introducing rules on driving time, working hours and rest periods. Regulation 3821/85/EEC and Directive 2006/22/EC set the technical standards and requirements for the implementation and enforcement procedures of the EU social legislation in the road haulage sector, e.g. the introduction of a digital tachograph system, the number and the nature of roadside checks and checks at the premises of undertakings etc. Regulation 484/2002/EC arranges for a driver attestation of third-country nationals employed by EU based transport operators.

In the following I will try to present the most relevant provisions in these Regulations and Directives, which provide legal basis for solving some of the most acute problems pointed out in the scientific literature.

#### 4.2.1. Regulation 561/2006/EC<sup>4</sup>

Regulation 561/2006/EC is aimed at the harmonisation of certain social legislation in view of improving the working conditions in the sector. As shown in the relevant literature, the main concerns in regard to the labour conditions in the sector are related to the driving time, break and rest periods of drivers engaged in carrying out international transport of goods by road within the Community.

Provisions governing the rules concerning the labour conditions of drivers were adopted in Regulation 3820/85/EEC. However, practice showed there were some difficulties in the interpretation and implementation of the provisions regulating daily and weekly driving time, break and rest periods for drivers. Similarly to some of the legislation dealing with market access discussed in the previous chapter, the vagueness of the provisions determining the working conditions in the sector resulted in different enforcement practices. In addition, the lack of clarity of the provisions in Regulation 3820/85/EEC, as well as some loopholes in this Regulation in terms of calculating and splitting consecutive driving and resting periods, enabled drivers to work for too long without a full break. As discussed in the literature (Hilal, 2008 and Hermann, 2003), this was often abused by some companies. Apart from the serious implications this phenomenon might have for road safety, by worsening the working conditions of drivers (and thus enabling companies to reduce both their operational costs and improve their delivery times, for example), it indirectly creates risks for distorting the competition on the market and prevents the creation of a level-playing field.

In order to remedy this, Regulation 561/2006/EC repealed Regulation 3820/85/EEC and introduced clear and simplified definitions of important terms, such as driving time, rest, break etc. Secondly, it sets a maximal number of hours of driving time on a daily, weekly and bi-weekly basis. Furthermore, the Regulation also sets clear minimum daily breaks and rest period, as well as minimum weekly rest period.

The most important thing is that the Regulation provides a thorough clarification about how all these driving times, breaks and rest periods should be calculated, so that hauliers can have the necessary information in order optimize their business processes, while complying

---

<sup>4</sup> 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 (Text with EEA relevance) – Declaration, OJ L 102, 11.4.2006

with the rules. For example, the daily driving time should not exceed nine hours and after a driving period of four and a half hours a driver must take an uninterrupted break of at least 45 minutes. The weekly driving times should not exceed 56 hours, and the total driving time for two consecutive weeks – 90 hours. These detailed provisions provide a clearer legal basis for regulating the labour conditions in the sector, in comparison with previous Community legislation regulating these matters.

Moreover, Regulation 561/2006/EC also regulates the liability of transport undertakings, by obliging them to organize their work in such a way that their employees can comply with the requirements of the legislation. Also, a transport undertaking is to be held liable for an infringement committed by its driver(s), even if it is committed in another Member State or a third country.

Regulation 561/2006/EC also provides some amendments to Regulation 3821/85/EEC, dealing with the recording equipment used for enforcement in road transport (digital tachographs). In this aspect Regulation 561/2006/EC defines that all data from digital tachographs should be downloaded and kept for at least a year, in order to facilitate checks done at the premises of firms and thus to make enforcement more efficient as a whole.

Another important part of Regulation 561/2006/EC is Chapter V, dealing with control procedures and sanctions. It envisages that every two years the Member States should inform the Commission about the implementation of the Regulation. Apart from that, the Regulation stipulates Member States should lay down the rules on penalties, which their control authorities will impose on transport operators that committed infringements. In this respect Member States should regularly exchange information regarding committed infringements and imposed penalties on non-resident hauliers, as well as about penalties imposed on domestic hauliers for infringements committed in another Member State.

#### *4.2.2. Directive 2002/15/EC<sup>5</sup>*

Directive 2002/15/EC aims at establishing minimum requirements concerning the organisation of working time of persons performing mobile road transport activities, in order to improve the labour conditions, as well as to create equal conditions of competition. The

---

<sup>5</sup> Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, OJ L 80, 23.3.2002

importance of this Directive arises from the fact it provides a comprehensive definition of working time in the road transport sector.

According to this definition working time includes not only driving, but also other activities, such as loading/unloading, cleaning and technical maintenance of the vehicle and others. The Directive sets an average weekly working time of 48 hours, which under certain circumstances might be extended up to a maximum of 60 hours. It also lays down rules concerning breaks and rest periods, as well as specific arrangements concerning night work. What is important to note is that under the scope of application of this Directive fall also trainees and apprentices, which enables this category of employees to have a certain level of social protection.

As already pointed out, the Directive envisages a transitional period until 23 March 2009 before the category of self-employed drivers is included in the scope of its application. According to this provision of the Directive, at the latest two years before this date the Commission should come up with a report, which should either propose the appropriate measures to be undertaken in order to include self-employed drivers within the scope of the Directive, or not to include them. This issue will be further addressed in the summary of this chapter.

#### *4.2.3. Directive 2006/22/EC<sup>6</sup>*

Directive 2006/22/EC establishes minimum standards for the uniform implementation of the relevant provisions of the social legislation. In accordance with the measures envisaged in the Commission's White Paper "European transport policy for 2010: time to decide" (European Commission, 2001, p. 22-25), the Directive focuses on setting a minimal number and requirements for the control of transport undertakings; a more systematic exchange of information between Member States; coordination of inspection activities; and training of enforcement officers. If achieved, all these goals would undoubtedly contribute to the promotion of a level-playing field on the EU market of road haulage.

---

<sup>6</sup> Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (Text with EEA relevance) – Declarations, OJ L 102, 11.4.2006



Formally, the Directive lays down minimum conditions for the practical application of Regulation 3820/85/EEC (repealed and replaced by Regulation 561/2006/EC) and Regulation 3821/85/EEC, dealing with the use of recording equipment in road transport. The Directive obliges Member States to create systems of regular checks of undertakings both at the road side and at their premises. In relation to this, the Directive specifies a minimum percentage of days worked by drivers, which must be checked by the competent authorities. This percentage is 1 % of days worked by drivers as of May 2006 and will be gradually increased to at least 3 % as of 1 January 2010. Out of all these checks at least 30 % should be carried out at the roadside and at least 50 % at their premises. The Directive also provides also clear detailed instructions in regard to the content of these checks (daily, weekly driving times, breaks and rests, functioning and/or possible misuse of recording equipment, record sheets and others).

Moreover, in view of enhancing the efficiency of enforcement procedures, Directive 2006/22/EC introduced a unique practice, namely the co-called concerted checks. This means that the competent authorities of two or more countries coordinate the carrying out of checks of a specific categories of vehicles, type of load etc (for example transport of dangerous goods). The control officers set a specific period of time, when they focus on the control of such kind of transport on their own territory. Later on the information about committed infringements and imposed penalties is exchanged between Member States. The Directive envisaged such concerted checks to be undertaken at least six times per year.

In order to facilitate the exchange of information, the Directive stipulates that each Member State should designate a competent body as a point of contact, responsible for forwarding statistical information to the Commission and to its counterparts in the other countries.

Lastly, Directive 2006/22/EC envisages the creation of risk-rating systems by Member States, which will evaluate the infringements committed by undertakings according to their number and severity. This information will be used in order to check undertakings with a higher risk on a more regular basis.

#### 4.2.4. Regulation 484/2002/EC<sup>7</sup>

Regulation 484/2002/EC amends Regulation 881/92/EEC by introducing driver attestation for third-country nationals, employed as drivers by EU-based transport undertakings. This driver attestation is to guarantee that a citizen of a non-EU country is employed by an EU transport company in accordance with the laws, regulations and administrative provisions of the respective EU Member State.

The adoption of this Regulation was a first step towards enhancing the enforcement of social rules, in response to the problems with third-country nationals hired by Western European companies, as described by Hermann (2003) and particularly by Hilal (2008). Prior to the adoption of this Regulation the checks of such drivers by the control authorities of EU Member States was virtually impossible, on one hand because of the differences in the employment legislations of EU Member States in regard to third-country nationals, and due to the great diversity of the documents of such drivers and the different languages these documents were written in, on the other. Therefore Regulation 484/2002/EC introduced such a uniform document, which significantly facilitates the work of enforcement authorities within the EU.

#### 4.3. Summary

As shown, the current EU legislation governing the social conditions in the road transport sector on the whole provides a legal basis for setting uniform standards and therefore for contributing to the promotion of equal conditions of operation for European transport undertakings. Currently the regulatory framework at Community level on the whole contains detailed legal provisions dealing with the maximum working time of drivers, standardizing the technical requirements for control, determining the employment conditions for non-EU citizens.

There are, however, a couple of problematic issues that still need to be addressed.

---

<sup>7</sup> Regulation (EC) No 484/2002 of the European Parliament and of the Council of 1 March 2002 amending Council Regulations (EEC) No 881/92 and (EEC) No 3118/93 for the purposes of establishing a driver attestation, OJ L 76, 19.3.2002

Firstly, the issue with the self-employed drivers who are not subject to control according to the exemption laid down in Directive 2002/15/EC remains unresolved. The definition provided by the Directive states that a self-employed worker is entitled to work for himself, is not tied to an employer by an employment contract; is free to organize the relevant working activities and to have commercial relations with several customers. This means that essentially this category of drivers can work without complying with any of the rules laid down in Directive 2002/15/EC. What makes this issue really problematic is the number of self-employed drivers in the sector, which is quite high (Hilal, 2008, p. 21).

As already mentioned, the Directive envisages a transitional period until 23 March 2009 before the category of self-employed drivers is included in the scope of its application. At the latest two years before this date the Commission should present a proposal, which should either include self-employed drivers within the scope of the Directive, or not. Such a proposal was drafted by the Commission and it envisaged that self-employed drivers should remain outside the scope of the Directive. Instead, it proposed the inclusion of a new definition of so-called “falsely self-employed” workers, which should be covered by the Directive. In May 2009 the European Parliament rejected at first reading the proposal of the Commission, insisting on amendments in the Directive that would provide for the inclusion of self-employed workers within its scope. Consequently, this issue is still unsettled (European Parliament, 2009).

Another problematic matter is the provision in 561/2006 concerning performance-based bonuses. Article 10.1 of the Regulation forbids undertakings to give their employees payments in the form of bonuses or wage supplements, related to traveled distances or carried goods, in case this payment is of such kind as to endanger road safety and/or encourages them to commit infringements of the Regulation. In the first place, the provision links the prohibition of performance-based bonuses on the condition they might encourage drivers to work long hours and thus to violate the social legislation. In this sense the provision is not strict enough. Secondly, it is also somewhat vague, as it does not specify in a more detailed way the hypothetical conditions, under which such performance-related payments could be considered as encouraging non-compliant behaviour among drivers. Therefore it leaves Member States a lot of room for interpretation and thus would make the enforcement of this particular provision of the Regulation quite difficult.

Finally, one general problem, which remains to be addressed is namely the one related to the efficient and uniform enforcement of existing legislation. Most of the important legal provisions concerning driving time, breaks and rest periods of drivers, technical equipment

for carrying out checks etc. are laid down in Regulation 561/2006/EC and Regulation 3821/85/EEC respectively. Although in this way the rules laid down in these regulations become directly applicable in the national legal orders of all 27 EU Member States, it is the task and responsibility of the individual countries to enforce that legislation, in accordance with the principle of subsidiarity. Therefore the practical implementation of all these rules depends largely on the administrative capacity and expertise of the competent control authorities of each Member State.

Practice shows the enforcement of the relevant legislation is stricter in some EU Member States than in others (Hilal, 2008, p. 27). That is why in one of the next chapters I will try to present and analyze the initiatives undertaken within the EU in view of ensuring a more efficient and more uniform application of the road transport *acquis communautaire*.

## **5. The implications of the enlargement for the EU policy in the field of road transport**

In the following chapter I will discuss the changes in the European road haulage market and in its regulatory framework, brought about by the enlargement of the EU to Central and Eastern Europe in 2004 and 2007. In doing so I will try to provide an answer to my next research sub-question, namely what were the implications of the accession of ten new Eastern European countries for the policy of the EU in the road transport sector.

### **5.1. Background**

The significant changes that occurred in the EU road transport sector during the 1990s, as a consequence of its liberalisation, were complimented by some new developments on the European continent in a broader political and economic context, namely the enlargement of the Union to the East. This process posed some challenges, which had to be dealt with by policy makers at Community as well as at national level. In particular, there were some concerns the integration of the road transport industries of the new Member States might have among many positive effects also certain negative implications for the conditions of fair competition on the internal European transport market.

In the IRU study (2001: *ibid*) some characteristics of the road transport operators from old and new Member States are examined in order to provide a forecast for an enlarged and integrated European road haulage market and to draw some conclusions for the future conditions of competition, as well as recommendations for the policy makers and representatives of the industry.

Firstly, this study discusses some of the competitive advantages and disadvantages of Western- and Eastern European road hauliers in the second half of the 1990s that could either facilitate or hinder the convergence of the already relatively established EU road haulage market and the national markets of the new Member States. The study points out the activities of transport operators from Eastern Europe were mainly characterized with lower operation costs and a specialization in traditional road haulage operations (transporting goods from point A to point B). At the same time in the late 1990s EU transport undertakings were having higher operational costs, but they were also offering specialized high quality services, such as warehouse distribution and supply chain management. At this moment Eastern European road transport operators were lacking the organizational and professional capacity of their EU counterparts in order to compete with them in the same market niche. In this way Western

European hauliers gained at that time a relative advantage over their competitors, as the varying levels of productivity and diverse organizational strengths and weaknesses resulted in a different market specialization of EU and Eastern European transport companies respectively (IRU, 2001, p. 4).

Nevertheless, the report admits that the accession of the Central and Eastern European countries to the EU will lead to a gradual increase in the performance of Eastern European hauliers, as a consequence of the inevitable convergence of operational conditions and the markets. Although this higher productivity is among other things always also a result of increased operational costs, the Eastern European transport undertakings will still maintain considerably lower operational costs when compared with their competitors from the old EU Member States. For example, in the late 1990s and early 2000s the average costs of a road transport operator from Eastern Europe were approximately 60 per cent these of a Western European haulier, while the difference in their productivity was only 25-30 per cent (IRU, 2001, p. 6-7). All in all, the competitive advantage of road hauliers from the new Member States will increase, at least in the segment of traditional road haulage operations, but later on possibly also in other market areas.

The report conducted by NEI concludes that a closer monitoring of the developments in the sector is needed, in order to detect potential market distortions such as oversupply and price dumping at an earlier stage and thus to enable policymakers to design the necessary adequate countermeasures. In this respect the authors of this study stressed the importance of a further harmonisation as a means to guaranteeing the creation of a level-playing field on the EU road haulage market (IRU, 2001, p. 9).

## 5.2. Changes in the sector brought by the enlargement

In general, the accession of 12 new Member States to the EU in 2004 and 2007 led to a significant growth of international road transport on the enlarged European market. This was primarily due to the fact there were no longer any quantitative restrictions in the form of bilateral quotas of permits, which previously limited the amount of transport operations carried out between EU Member States and candidate countries. As a result of the enlargement, the road haulage industry rapidly developed in some of the new Member States. For example, in Poland the number of heavy goods vehicles in practice doubled only within a period of one year immediately after its accession to the Union. A similar situation was observed in Hungary as well (Rebelgroup Advisory, 2007, p. 40).

This could be explained above all with the general increase in trade within the enlarged Union. Many companies from the new Member States could now perform bilateral and transit transport operations within the whole EU without any permits. On the other hand, some big logistics companies from the old Member States established their bases in Eastern Europe, or acquired smaller local companies, which had emerged as a result of the privatization of large previously state-owned transport firms (Rebelgroup Advisory, 2007, p. 41).

However, statistics showed that operators from the new EU countries took the biggest market share in the expanded European road transport sector. On some transport relations their market share reached 90 per cent, a drastic increase in comparison with the previously limited 50 per cent, according to the reciprocal bilateral quotas of permits (Rebelgroup Advisory, 2007, p. 40).

These developments, alongside their overall positive effect on commerce within the EU, raised some concerns about the conditions of competition on the road haulage market. Some of the old Member States feared their national markets would be flooded by low-paid Eastern European hauliers, which would cause market distortions. These fears proved to be partly justified. On the whole, the number of drivers from old EU countries involved in the international transport of goods between old and new Member States fell considerably. On the other hand, these developments made road hauliers from old Member States turn to their domestic markets, which increased the competition on the national level. On the whole, the expected social consequences of the enlargement on the road transport sectors in the old Member States were not as so negative as feared. This was partly due to the fact the increase in trade flows led to a higher demand for drivers both in new and old Member States. Moreover, practice showed drivers from old Member States were reluctant to work internationally on long distances, as opposed to their Eastern European colleagues. As a consequence, the drivers from the new Member States turned out to be a solution to the shortage of drivers that occurred in some old Member States right after the enlargement (Rebelgroup Advisory, 2007, p. 42).

Nevertheless, in the process of negotiation prior accession certain transitional periods were agreed upon, in order to provide for a smoother expansion of the transport market. The most important of them, which is also relevant for the current study, concerns the cabotage transport operations. In short, cabotage operations between old and some new Member States were restricted on a bilateral reciprocal basis for periods between two and three years. These restrictions could be prolonged for a maximum of two more years. During these transitional

periods old and new Member States might exchange authorisations for performing cabotage operations on a bilateral basis. At the same time the opportunity was provided for old Member States to liberalize fully or partly their domestic road haulage market before the transitional period expires.

Other transitional periods negotiated during the enlargement were related to the implementation of some of the road transport *acquis*, such as transitional periods for the introduction of digital tachograph systems and for fulfilling the criteria of financial standing for access to the market. These measures were undertaken in order to allow new Member States to align certain elements of their regulatory frameworks with the relevant EU legislation. This fact shows the process of integration was not always as smooth and quick as expected.

For example, some countries faced difficulties in applying in full the provisions governing the access to the market, particularly in terms of meeting the requirements for financial standing and professional competence. This was on one hand caused by the fact their road transport sectors needed some more time in order to adjust to the new criteria. That was the case with Latvia and Lithuania, who were granted transitional periods until the end of 2006 before they began applying in full the provisions for financial standing in Directive 96/26/EC (Rebelgroup Advisory, 2007, p. 42). Data from other countries reveal that the road hauliers in other Eastern European countries also experienced difficulties in meeting the EU requirements. For instance, in the beginning of 2003, just a year before the accession to the Union, only a little over 40 per cent of Polish transport undertakings were in the capacity to fulfill the criteria for access to the market (Ksiazek 2004).

Furthermore, at the time prior their accession some of the Eastern European countries lacked certain institutional capacity in order to be able to meet the challenges of the enlargement. In the case of Poland a whole new body had to be set up, a road transport inspectorate, responsible for the practical implementation of the legislation.

Indeed, the practical every-day enforcement of the existing EU rules in the field of road transport remained a challenge for the new EU Member States, although their national legal frameworks were in general approximated with the *acquis communautaire* by the time they officially joined the Union. This was quite a challenging task for all the candidate countries, once because the transport legislation and the one dealing with road transport in particular is rather large in terms of volume (the transport *acquis* account for approximately ten per cent of the entire EU legislation). Secondly, some amendments were made in the already existing regulatory framework during the processes of preparation and negotiation



prior the formal accession taken place in 2004. This process, as it is well known, began long before the formal EU membership of the Central and Eastern European countries. Therefore there was quite a significant time span, within which many new legislative arrangements were introduced at Community level. This posed some additional difficulties to the national governments of the candidate countries in their efforts to bring their national legal orders in line with the existing Community rules.

In addition to the above, in analyzing the implications of enlargement in the context of creating a level-playing field on the internal road haulage market, one should point out another issue discussed in the literature. The integration process was seen mainly as a legislative one, thus focusing mostly on procedural transposition of Community rules into the national regulatory frameworks of the new Member States. As a result, the practical implementation of the transposed legislation was somewhat neglected. The difficulties faced by some of the new Member States in this respect show that the EU failed to render them the necessary amount of technical and expert assistance during the enlargement process, which would have facilitated the building of administrative and institutional capacity in order to enable them to apply the formally adopted EU rules. As mentioned in one of the already cited studies dedicated to this topic, “the level-playing field – the main aim of European legislation – is no more than a paper reality for certain issues” (Rebelgroup Advisory, 2007, p. 6).

### 5.3. Summary

The enlargement of the EU to the East, which included 12 new Member States, had significant implications for the European economy as a whole and on the internal road transport market in particular.

In the first place, the common market for road transport services expanded significantly, not merely in terms of territory, but in terms of volume, as a result of the intensified trade exchange between old and new Member States. As shown in some studies, before the integration in the mid- and late 1990s there were some differences between road hauliers from EU-15 and Eastern European countries, when it came to market specialization and productivity levels. In general, the road hauliers from Eastern Europe had a lower productivity and therefore less capacity to provide more sophisticated services than the traditional road haulage. Nevertheless, their operational costs were at the same time much lower, which provided them with a considerable competitive advantage in certain segments of the market. Moreover, with time Eastern European transport companies were gradually

improving their operational efficiency, while at the same time preserving a considerable cost advantage in comparison to their Western European competitors.

Since the European integration aimed at the convergence of the national markets of the countries from Central and Eastern Europe with the already established common market of road haulage services, the necessary regulatory arrangements had to be put in place in order to allow for a smooth market convergence. The first step in this respect was to align the legislation of the candidate countries with the already existing EU regulatory framework governing the sector. In this aspect the enlargement process proved to be rather a success story, as long as the new Member States managed to transpose the relevant EU provisions in their national legal frameworks.

The main remaining problem, however, is related to the uniform and efficient implementation of the harmonised legislation. As shown in the relevant literature, this proved to be more problematic than the merely formal, legal alignment of national rules with Community ones. This issue emerged as a consequence of the insufficient administrative and institutional capacity some of the new Member States had at the moment of their accession. Essentially this problem questions the ability of some of the new Member States to create conditions for operation on their domestic markets, equal or at least comparable with those in the already established common EU market. Consequently, this situation creates obstacles to the establishment of a level-playing field in this sector. This has been partially acknowledged also in some of the studies on this issue (Rebelgroup Advisory, 2007, p. 6). Hence, the issue of uniform implementation of the existing rules becomes even more relevant.

Therefore in the following chapter of my study I will try to present and analyze the steps that have been already made in view of increasing the efficiency of enforcement procedures, as well as the possible further actions in the field of enforcement that could contribute to the promotion of conditions of fair competition on the internal market of road haulage.

## 6. The initiatives to promote an efficient implementation of existing legislation

In the following chapter I will discuss the problem of ensuring uniform application of EU rules in the road transport sector. This issue is of a vital importance for the creation of a level-playing field on the internal market of road haulage. Whether enforcement is efficient or not defines the extent to which the legal provisions governing this field, which are laid down in EU regulations and directives, are turned into a practice and, above all, implemented in a standardized way in all Member States.

### 6.1. Relevance of the problem

If some of the elements of market and policy integration theories are to be used in order to assess the level of harmonisation of EU legislation in the field of road transport, on one hand, and the extent to which it has been implemented in an uniform manner, on the other, one could draw the following main conclusions.

In general, from the perspective of market integration, the existing EU legislation provided the basic legal framework for a removal of the national economic barriers, by replacing the previously existed quantitative bilateral restrictions for access to the market with harmonised qualitative Community criteria. Thus the formal preconditions were laid down so that a common market of road transport services could be set up.

When evaluating the degree of harmonisation between Member States' policies, one could conclude that in terms of legislation the policies of the 27 Member States in the field of road transport are to a large degree integrated, since at least formally their national regulatory frameworks were gradually unified in one common, Community one.

However, the positive integration principle, which is characteristic in the case of harmonising legislation, cannot be applied fully when it comes to the application of this legislation. This is due to the fact positive integration of policies always involves the transfer of competences from the national authorities to institutionalized decision-making and implementation mechanisms set-up at Community level.

Regarding the implementation of the *acquis communautaire*, the Commission in principle has competences in regard to ensuring the correct application of EU legislation in the national legal orders of the 27 Member States. More precisely, the Commission has the right to initiate a so-called infringement procedure against a Member State that has breached the Community law, under Article 226 of the Treaty of Rome. This infringement procedure is

a three-stage process, beginning with a letter of formal notice, in which the Commission invites the Member State in question to present its position on the infringement observed. In case no reply is received from the respective Member State, or if the reply is judged by the Commission as unsatisfactory, then the Commission can send its so-called reasoned opinion to the Member State. In case no corrective measures are undertaken on the part of the Member State as a result of the Commission's reasoned opinion, the Commission has the right to bring the case to the European Court of Justice (European Commission, 2009b).

When it comes to the access to the market and the social rules in road transport, practice shows there were a couple of cases the Commission had to bring the cases of breaching EU law to the Court of Justice. For example, in 2007 the Commission took Greece to the Court of Justice for failing to introduce the digital tachograph system (European Commission, 2007a). In 2008 the UK was also brought to the Court of Justice for failure to comply with certain social rules in the field of transport, more precisely some provisions of Directive 2006/22/EC (European Commission, 2008).

Apart from that, infringement procedures are also initiated when a Member State has failed to communicate to the Commission the national measures it has undertaken in order to transpose a certain Directive into its national legislation. For instance, currently there are ongoing infringement procedures against two Member States (Greece and Portugal) as a result of non-communicating their national transposition measures in regard to Directive 2006/22/EC (European Commission, 2009c).

Finally, there are also some examples of infringement procedures for an incorrect application of European Directives. In 2009 the Commission sent its reasoned opinion to the Netherlands for failure to comply with the rules for a maximum working time for drivers as laid down in Directive 2002/15/EC, because the Dutch piece of legislation transposing the Directive allowed for longer working hours for lorry and coach drivers (European Commission, 2009a).

Nonetheless, the day-to-day enforcement of EU legislation in the field of road transport remains within the sphere of responsibilities of the national governments, in accordance with the principle of subsidiarity. In practice this means that there is not a supranational authority of some kind, which is competent for the implementation of the road transport *acquis communautaire*. This very important task depends entirely on the expertise and administrative capacity of the competent national authorities in each of the 27 Member States.

The successful completion of this task has always been problematic, due to several main reasons. Firstly, the whole road transport *acquis* are rather voluminous. Moreover, the legislation in this sector has been constantly a subject of amendments, as a result of efforts to improve its consistency and to make it more comprehensive at the same time, as well as to adjust it to new realities on the European common market of road haulage (such as the accession of new Member States). The above-mentioned circumstances already make the practical application of the relevant legislation a challenging task. In addition, some countries experienced a fast and simultaneously a significant growth in their road haulage industries, as a consequence of the overall increase in trade and the expansion of the internal market. This was particularly valid for most of the new Member States, as already discussed in the previous chapter. This increase in the number of new transport undertakings and number of vehicles respectively demanded even bigger administrative efforts on the part of the national enforcement bodies in order to carry out their duties.

In relation to the above-mentioned, some authors point out the differences in the enforcement practices between Member States existed even before the enlargement of the EU to Central and Eastern Europe. Some authors argue that “oversight of truck transport activity on Europe’s highways is more rigorous in Germany, the Scandinavian countries and the Netherlands, for example, than in other countries” (Hilal, 2008, p. 28). Hilal draws a comparison between these several old Member States and others, such as France, Italy, Greece and Spain, where the number of checked vehicles is lower and it was sometimes not even in compliance with the Community requirements for a minimum percentage of checked vehicles (Hilal, 2008, p. 28).

Similar observations are made also in other studies (NEA Transport research, 2005, p. 57-64). They concern not so much the roadside checks of heavy goods vehicles, during which the control officers of the respective national enforcement authority usually check the documents, the working time of the drivers and the technical conditions of the vehicle. The above-mentioned study gives some concrete examples of less strict application of Community rules, or at least a non-uniform one, when it comes to the implementation of the transposed general rules for access to the market and the occupation of road transport operator (NEA Transport research, 2005, p. 57-64). Some of these instances were already discussed in the chapter dealing with the legislation governing the access to the internal market of road haulage and they are related primarily to the fulfillment of the criteria of financial standing, good repute and professional competence of road transport operators.

These examples of inefficient implementation of EU legislation give ground to a lot of authors to call for more intensive and persistent efforts both on the part of the EU and its Member States in order to make the application of existing rules more efficient and uniform. In this respect some studies (Rebelgroup Advisory, 2007) mention the importance of several initiatives for the improvement of cooperation and coordination of activities between the national enforcement authorities of individual Member States, such as Euro Contrôle Route (ECR) and the Confederation of Organisations in Road Transport Enforcement (CORTE). In the following I will outline the activities of these two organisations and describe their role in enhancing the efficiency of enforcement practices within the EU.

## 6.2. European initiatives in the field of enforcement

### *6.2.1. Euro Contrôle Route (ECR)*

ECR emerged in 1994, initially as a joint effort undertaken between Belgium, the Netherlands and Luxembourg. These three countries initiated a process of consultation among themselves in regard to controlling the commercial transport of goods and passengers. A couple of years later, in 1997, France joined this consultation process (ECR, 2007a, p. 4).

The beginning of such consultations was inspired by the new realities on the internal market of road transport services – the sector was liberalised, which resulted in an ever growing trade exchange and volume of transportation. As already pointed out previously, this posed a significant challenge to the enforcement bodies of Member States, among others also because from that moment on they were to encounter foreign trucks on their national roads much more often. In addition, Council Directive 88/599/EEC dealing with procedures for checking driving and resting times envisaged that joint inspections between at least two countries should take place at least twice a year, as well as an exchange of information on an annual basis (ECR, 2007a, p. 4-5).

In the beginning the four countries participating in the ECR initiative set several main goals that they wanted to achieve within the framework of their cooperation – to intensify the consultation on enforcement matters between them; to exchange information, particularly about transport operators committing infringements; to carry out joint and coordinated checks; to improve their cooperation in regard to the training of the personnel engaged in enforcement activities; to develop uniform standards for check procedures; to exchange information on good practices, new technologies etc. In order to facilitate the achievement of

the above set objectives, in 1999 an administrative arrangement was adopted and approved by the competent authorities (Ministers of transport) of the four participating countries. The administrative arrangement provided a legal basis for the institutionalization of ECR, as well as the administrative and decision-making mechanisms necessary for its functioning (ECR, 2007a, p. 5).

Since then, ECR has expanded significantly and today includes 14 full members, namely: Belgium, the Netherlands, Luxembourg, France, Germany, Romania, Bulgaria, Italy, Ireland, Lithuania, the United Kingdom, Spain, Austria and Poland. Apart from that, six other countries participate as observers in the activities of the organisation (ECR, 2009b). The actual members in ECR are in fact the respective competent national bodies of the above-mentioned countries, which are responsible for the enforcement of the EU legislation in the field of road transport.

The main decision-making body of ECR is the so-called steering committee, which comprises representatives of the member countries and observers. The steering committee has a presidency, which rotates between members on an annual basis. Similarly to the presidency of the Council of the EU, ECR also has the so-called troika, consisting of the previous, current and following presiding country. The troika forms the so-called executive committee, which is responsible for the practical implementation of the decisions taken by the steering committee. The executive committee also maintains the relations of ECR with other organisations, as well as with EU institutions and bodies (ECR, 2007b, p. 5-6).

The practical importance of ECR for increasing the efficiency of the enforcement of road transport regulations is expressed through the activities carried out by several working groups, set up by the steering committee of the organisation. These are the group dealing with matters of operational and data exchange; the working group responsible for training exchange; and the harmonisation working group, which in its activities aims at the creation of unified enforcement standards and practices. These working groups consist of national experts representing the enforcement authorities of the ECR member countries, who meet usually several times a year (ECR, 2009c).

The operational and data exchange working group is responsible for organizing the most visible aspect of the ECR activities, namely the coordinated international roadside checks. In addition to this, it is also working on improving the process of data exchange concerning violations, risk companies and fraud. For example, in the year 2006 ten coordinated controls were organized within the framework of ECR. During these inspections from the various ECR member countries checked more than 135 000 vehicles (ECR, 2007a,

p. 10). These coordinated roadside checks also served as a basis for the intensification of contacts between the enforcement bodies of the ECR members. This provided a good basis for the improvement of the exchange of data and information.

The training exchange working group focuses primarily on the improvement of the training of control officers from the different countries by organizing multilateral and bilateral exchanges on a regular basis. In 2006 four multilateral and a lot more bilateral training exchanges were organized (ECR, 2007a, p. 11). The main objectives of these activities are to increase the knowledge of control officers about inspection procedures and national and international regulations in order to contribute to the exchange of good practices and new technological know-how between the enforcement bodies of the members of ECR and thus to create a basis for more uniform enforcement standards in the ECR countries.

In the harmonisation working group attention is primarily paid to streamlining inspection procedures, sanctions and techniques and the transposition of European regulations. The results of this work aim at easing the tasks of the inspectors and ensuring uniformity of enforcement procedures. Through the work of the harmonisation working group ECR attempts to contribute to the work of the European Commission in view of making some of the EU legislation in the road transport field more consistent and comprehensive. For instance, in January 2009 the Commission adopted Directive 2009/5/EC amending one of the annexes to Directive 2006/22/EC. This new Directive introduced a categorization of infringements of the social rules in road transport and should serve as a basis for the creation and implementation of a risk-score system in all EU Member States. In its work on this new Directive the Commission took use of the expertise and achievements of ECR in this respect, since it accepted an already developed risk-rating classification of infringements drafted by ECR as a basis for the introduction of a risk-score system in those EU countries that still have not done it (ECR, 2009a).

#### 6.2.2. *CORTE*

The Confederation of Organisations in Road Transport Enforcement (CORTE) was established in 2004 in view of improving the cooperation between the national enforcement bodies of EU Member States. Today CORTE includes as members the enforcement institutions of all EU countries, as well as some of non-EU Member States. In addition, the organisation has numerous associated members and observers. In its activities CORTE is dedicated above all to issues related to road safety. However, the organisation is also active in



exchanging good enforcement practices between its members, particularly in regard to the introduction of new technologies and their implementation in the work of enforcement officers throughout Europe (Sitran, 2007, p. 5).

CORTE played an important role in the practical implementation of the digital tachograph system in all 27 EU Member States, by carrying out a project for monitoring of the implementation of digital tachographs throughout the EU. The introduction of digital tachograph systems in all EU Member States was a very important step towards improving the efficiency of enforcement procedures in general, especially in regard to the social rules. The technology introduced with the digital tachographs facilitates significantly the work of inspectors, as it allows them to detect faster and easier any non-compliance on behalf of drivers with the rules governing their working time. Previously inspectors had to fulfill this task manually, which was time-consuming and at the same time not always reliable and precise enough. What is more, the introduction of digital tachographs was made mandatory for all EU Member States as of 1 May 2006, in accordance with the provisions of Regulation 561/2006/EC.

At the same time, the introduction of this system demanded an adequate amount of administrative capacity and expertise from the national enforcement authorities, as it was rather complex in nature. This process implied the creation of entire new administrative units within enforcement bodies, dealing with the issuance of driver cards and the maintenance of the whole digital tachographs system, as well as drafting and/or amending legislation governing data management and protection and other similar issues. Moreover, this process involved the efforts not only of road transport enforcement institutions, but also of other stakeholders, such as representatives of the industry and producers of vehicles and digital tachographs (CORTE, 2009). This project was particularly beneficial for some of the new EU Member States that joined the Union in 2004 and 2007. Their membership in CORTE enabled them to take advantage of the experience and good practices of old Member States and thus to implement the digital tachographs system in their countries in a faster way.

### 6.3. Summary

If the character and degree of coordination between Member States in the field of enforcement of road transport legislation is to be evaluated, one can conclude that the policies of the individual Member States are coordinated to the extent of exchanging of information, good practices and expertise, in order to achieve a certain degree of coherence between their

national policy regimes. Nevertheless, the national competences of the countries in this field remain intact, in accordance with the principle of subsidiarity.

The examples of cooperation in the field of enforcement described above indeed show some positive achievements as a result of the efforts made by the individual Member States to ensure a uniform application of the existing rules within the EU. One point of criticism in this respect could be that only 14 out of 27 EU countries participate in ECR, for example. Apart from that, the existence of two or more organisations and initiatives in the field of enforcement could make it more difficult, if the processes of cooperation between Member States are to evolve into a more institutionalized form of policy consultation.

In the end, the efforts of the EU and the individual Member States to improve the implementation of existing legislation should continue in order to achieve an enforcement as uniform as possible in all Member States and thus to contribute to the creation of a level-playing field on the internal road haulage market. In this respect the instances of collaboration between the Commission and other EU institutions, on one hand, and organisations such as ECR and CORTE, on the other, are a good basis for a higher degree of harmonisation of enforcement procedures. The greater involvement of such organisations in the processes of establishing new rules or the improvement of old ones would provide an opportunity for the legislators in Brussels to take into account the problems faced by national governments and to use their experience in dealing with these issues in order to undertake appropriate policy measures.

## 7. Conclusions

### 7.1. Answer to the main research question

In my research on the EU policy in the field of road transport I tried to examine the existing legal framework in the road transport sector in regard to the rules governing the access to the market and occupation, as well as the social conditions of road transport workers. In doing so I attempted to answer the question whether the existing degree of harmonisation of this legislation provides conditions for fair competition between EU road transport operators.

After analyzing the EU policies in the field of road transport of goods, I would like to draw several main conclusions.

Firstly, in general the existing regulatory framework formally provides the necessary legal arrangements that allow the creation of a common internal market of road haulage services, on which European transport undertakings could compete under relatively equal conditions. Directive 96/26/EC laid down harmonised Community requirements for market entry for all EU road hauliers, while Regulation 881/92/EEC and Regulation 3118/93/EEC provided the legal conditions for the liberalisation of the European road transport market. These regulations effectively removed the previously existed economic barriers in the form of quantitative bilateral quotas and the national road haulage markets of EU countries were opened. As a result, this spurred the competition between operators and in general led to the development and diversification of road haulage services.

Nevertheless, the experience of applying in practice these rules revealed two problematic tendencies. On one hand, despite the fact the legislative framework defined the most important conditions for operation and competition on the road haulage market, with time it became clear it has some inconsistencies and even loopholes. These problems need to be addressed, in order to prevent distortions of competition on the internal market, particularly in view of its expansion as a consequence of the enlargement of the EU to Central and Eastern Europe. Moreover, the above-mentioned inconsistencies in some of the legal provisions, notably in Directive 96/26/EC, led to different interpretations and therefore also to rather diverse implementation approaches and practices in the individual Member States. This lack of uniformity in the enforcement of legislation effectively hinders the creation of a level-playing field on the EU road haulage market.

Certain challenges of the same nature exist also when it comes to the social legislation in the field of road transport and its application. The issue of the category of self-employed drivers remains unresolved. Until today this group of road transport workers does not fall within the scope of application of the relevant regulations and directives, governing the social conditions of employees hired on regular labour contracts. Given the fact the self-employed drivers have a significant share of the road haulage market in many Member States, due to the widespread practice of sub-contracting of road haulage operations, this issue poses considerable risks for distortion of the competition, as in the current situation some drivers have different working conditions than others. This in turn results in different operational costs and profit margins and, in general, in unequal conditions for operation and competition between European road haulage firms.

On the whole, the problem of efficient enforcement of the existing legal framework stands out as the main challenge to the creation of a real level-playing field on the EU road haulage market. In regard to the implementation of the road transport legislation the potential for harmonisation is restricted, since this very important task remains a competence and responsibility of the national governments of the Member States. The lack of uniform enforcement of the road transport *acquis* essentially means that the principal conditions for fair competition provided for in the legislation would remain a “paper reality”, as noted in some studies (Rebelgroup Advisory, 2007, p. 6).

In conclusion, the current level of harmonisation EU policies in this domain provides the general formal conditions for fair competition on the EU internal market of road transport, although some of the existing legal provisions need to be simplified and improved in order to become more consistent, comprehensive and thus easy applicable. As pointed out in some of the previous chapters, particularly in those dealing with the access to the market and the social legislation, the Commission has already undertaken some efforts in that direction. Any further developments in this respect should be followed and analyzed in order to determine whether the changes in the legislation would address some of the detected problematic issues in the sector.

Apart from that, a large number of instances of inefficient and/or non-uniform implementation of the existing rules, as discussed in the literature, still jeopardize the efforts aimed at the creation of a European level-playing field not only formally, but in reality too. Therefore any future policies in the field of road transport, both at Community and national level, should focus primarily on the possible ways to increase the efficiency and uniformity of enforcement practices throughout the EU. This is an absolutely necessary requirement to be

fulfilled in order to allow EU road transport companies to perform their activities on the common market if not under perfectly equal conditions, at least under comparable ones.

## 7.2. Reflection on the methodology employed for the purposes of the current study

The methodology I used in my research was above all focused on defining the term “fair competition” in a way that is relevant for this particular sector. Secondly, I employed this definition, together with elements of market and policy integration theories, in order to analyze the existing EU legislation in the road transport sector and to explain whether it provides the necessary legal arrangements for solving the problems that occurred in the sector as a result of its liberalisation and the expansion of the internal market of road haulage services. In doing so, I also made an overview of the existing scientific studies dedicated to this topic.

Any future studies of these issues could focus not only on the analysis of the legislation and the relevant literature, but they could also go beyond that by conducting field research in order to gather some first-hand and more up-to-date empirical evidence. This evidence could be in the form of interviews conducted with representatives of the EU institutions, national governments and the road haulage industry. The collected information would be useful in providing a better understanding of the relevant problems in the sector, especially in regard to the implementation of the EU legislation. This kind of research could be particularly useful in light of the last proposals for amendments in the road transport *acquis*, which are expected to enter into force in the next couple of years. A field research focused on the implementation of the package of new regulations in the individual Member States in the course of the following several years could provide very valuable insight into the real effects of the latest legislative initiatives at Community level and whether they contribute to the promotion of fair competition on the internal road haulage market.

## 7.3. Policy recommendations

There are a couple of very concrete policy recommendations I would allow myself to make on the basis of the conclusions I came to while conducting my study.

Firstly, in the field of social legislation the competent EU institutions, namely the Commission and the Parliament, should make the necessary arrangements in order to include the category of self-employed drivers within the scope of application of Regulation

561/2006/EC and Directive 2002/15/EC. This is absolutely necessary if a real level-playing field is to be created on the EU road haulage market.

Secondly, in the field of enforcement further efforts should be put in place in order to improve the cooperation between the competent control authorities of the individual Member States. For instance, organisations such as ECR should attempt to attract as their members all EU countries, not only 14, as it is now.

Furthermore, the cooperation between various organisations in the field of enforcement such as ECR, CORTE and TISPOL should be intensified and perhaps even institutionalized in some way, so that it would be also easier for the policy makers representing the competent EU bodies to consult and use the expertise of these organisations when designing their future policies in the road transport sector.

## 8. Bibliography

### Scientific literature

- Barnard, C. (2007). *The Substantive Law of the EU*, Oxford University Press
- Bonnafeous, A. (1993). "Chapter 8: Summary and Conclusions", *Internalising the Social Costs of Transport*. OECD/CEMT Seminar, Paris. At URL: <http://www.internationaltransportforum.org/europe/ecmt/taxes/pdf/94socCosts9e.pdf> (27 April 2009)
- Boylaud, O., & Nicoletti, G. (2001). "Regulatory Reform in Road Freight", *OECD Economic Studies* 1(32): p. 230-248
- Button, K. (1993). "Chapter 1: Overview of Internalising the Social Costs of Transport", *Internalising the Social Costs of Transport*, OECD/CEMT Seminar, Paris. At URL: <http://www.internationaltransportforum.org/europe/ecmt/taxes/pdf/94socCosts2e.pdf> (27 April 2009)
- Button, K. J., & Keeler, T. E. (1993). "The Regulation of Transport Markets", *The Economic Journal*, 103 (419): p. 1017 – 1027
- Canoy, M. & Smith, P. M. (2008). "Services and the Single Market", *J Ind Compet Trade*, (8): p. 319 – 347
- Jones, C. B., Dorrian, J., Rajaratham, S. M. W., Dawson, D. (2005). "Working Hours Regulations and Fatigue in Transportation: A Comparative Analysis", *Safety Science*, (43): p. 225-252
- Heretier, A. (1997). "Market-making policies in Europe: its impact on member state policies. The case of road haulage in Britain, the Netherlands, Germany and Italy", *Journal of European Public Policy*, (4): p. 539-555
- Hermann, C. (2003). *Branch Survey on Working Conditions: Freight Road transport: National Report Austria* (p. 1-69). FORBA (Working Life Research Center), Vienna. Project No. 0262/Contract No. 02-3030-53.
- Hilal, N. (2008). "Unintended Effects of Deregulation in the European Union: The Case of Road Freight Transport", *Sociologie du travail* 50S, p. 19-29
- Karis, B., & Dinwoodie, J. (2005). "Impact of the Road Transport Directive: a Survey of Road Hauliers in the Netherlands", *Transport Policy* 12 (1): p. 79-88
- Kerwer, D., & Teutsch, M. (2001). "Elusive Europeanisation – liberalizing road haulage in the European Union", *Journal of European Public Policy*, 8 (1): p.124-143
- Knill, C., & Lehmkuhl, D. (2002). "The National Impact of European Union Regulatory Policy: Three Europeanization Mechanisms", *European Journal of Political Research*, 41(2): p. 255-280
- Kox, H., & Lejour, A. (2005). "Regulatory heterogeneity as obstacle for international services trade", *CPB Discussion Paper No. 49*, p. 3-45
- Ksiazek, B. A., (2004). *The Current State of the Adaptation of Polish Road Transport Market to Challenges of the European Union Single Market* (1–8). Research and Documentation Centre of the European Union. Wroclaw University, Poland.

At URL: <http://konferencja.edu.pl/ref8/pdf/en/Ksiazek-Wroclaw.pdf> (17 June 2009)

- Lahounik, G. (2004). "Die Wettbewerbspolitik der EU im Verkehrssektor", *Wirtschaft und Gesellschaft*, (2): p. 1-31
- Molle, W. (1994). *The Economics of European Integration. Theory, Practice, Policy*. Aldershot: Dartmouth Publishing Company.
- Molle, W. (2006). *The Economics of European Integration. Theory, Practice, Policy*. Aldershot: Ashgate Publishing Limited.
- Pelkmans, J. (2006). *European Integration. Methods and Economic Analysis*. Harlow: Pearson Education Ltd.
- Schmidt, S. K. (2002). "The Impact of Mutual Recognition – Inbuilt Limits and Domestic Responses to the Single Market", *Journal of European Public Policy*, 9 (6): p. 935-953
- Thatcher, Mark (2002). Analysing regulatory reform in Europe. *Journal of European Public Policy* 9 (6): p. 859-872
- Van Vreckem, D. (1993). "Chapter 7: European Union Policy on Taxes and Charges in the Road Transport Sector", *Internalising the Social Costs of Transport*, OECD/CEMT Seminar, Paris. At URL: <http://www.internationaltransportforum.org/europe/ecmt/taxes/pdf/94socCosts8e.pdf> (27 April 2009)
- Wood, D. (2001). *Competition and Networks in the Transport Sector*. Inter-American Development Bank: Infrastructure and Financial Markets Division. No. IFM-124

#### Other studies

- Committee on Competition Law and Policy (2001) *Competition Issues in Road Transport*. OECD: Directorate for Financial, Fiscal and Enterprise Affairs. DAFPE/CLP (2001) 10
- NEA Transport research and training, Transport Innovation and Systems (TIS), T.M.C. Asser Instituut (2005) *FINAL REPORT: Study on admission to the occupation of road transport operator: review of current arrangements in member states and acceding countries*. R20050035/30080/rsc/ljo
- International Road Transport Union (IRU) (2001) *Competition in East-West Road Transport Markets – Providing Opportunities for All*. At URL: [http://www.iru.org/index/cms-filesystem-action?file=en\\_Publications/Competition.pdf](http://www.iru.org/index/cms-filesystem-action?file=en_Publications/Competition.pdf) (17 June 2009)
- Rebelgroup Advisory, COWI and Transport & Mobility Leuven (2007) *The Impacts of the 2004 Enlargement in the Area of Transport*. At URL: [http://www.tmleuven.be/project/enlargement/Impacts Enlargement Annex1.pdf](http://www.tmleuven.be/project/enlargement/Impacts%20Enlargement%20Annex1.pdf) (17 June 2009)



### Press releases

International Telecommunications Union (2004) *European Regional Meeting on Fair Competition and Interconnection* (press release), retrieved on 27 April 2009 from <http://www.itu.int/ITU-D/treg/Events/Seminars/2004/Oslo/index.html>

European Parliament (2009) *Working time for road transport workers rejected by MEPs*, (press release), retrieved on 28 May 2009 from [http://www.europarl.europa.eu/news/expert/infopress\\_page/048-54949-124-05-19-908-20090504IPR54948-04-05-2009-2009-false/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/048-54949-124-05-19-908-20090504IPR54948-04-05-2009-2009-false/default_en.htm)

European Commission (2007a) *Digital tachograph for road transport: Commission takes Greece to the Court of Justice* (press release), retrieved on 9 August 2009 from <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1538&format=HTML&aged=1&language=en&guiLanguage=en>

European Commission (2008) *Commission takes the United Kingdom to the Court of Justice for infringing EU employment rules for road transport* (press release), retrieved on 9 August 2009 from <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/892&format=HTML&aged=0&language=en&guiLanguage=fr>

European Commission (2009a) *Working time of lorry and coach drivers: Commission sends reasoned opinion to the Netherlands* (press release), retrieved on 9 August from <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/179&format=HTML&aged=0&language=en&guiLanguage=fr>

Euro Contrôle Route (ECR) (2009a) *An important step towards harmonised enforcement procedures* (press release), 16 February 2009, retrieved on 16 June 2009 from [http://www.euro-contrôle-route.eu/cms/index.php?option=com\\_content&task=view&id=88&Itemid=87](http://www.euro-contrôle-route.eu/cms/index.php?option=com_content&task=view&id=88&Itemid=87)

### Policy documents

European Commission (2001) White Paper: European transport policy for 2010: time to decide. Brussels: European Commission. COM (2001) 370 final

European Commission (2006a) Communication from the Commission to the Council and the European Parliament. Keep Europe moving - Sustainable mobility for our continent: Mid-term review of the European Commission's 2001 Transport White paper. Brussels: European Commission. COM(2006)314 final

DG for Energy and Transport of the European Commission (2006b) *Road transport policy – open roads across Europe*. Brussels: European Commission. At URL:

[http://ec.europa.eu/transport/road/doc/road\\_transport\\_policy\\_en.pdf](http://ec.europa.eu/transport/road/doc/road_transport_policy_en.pdf) (19 February 2009)

European Commission (2000) Communication from the Commission to the European Parliament and Council. Towards a safer and more competitive high-quality road transport system in the Community. Brussels: European Commission. COM/2000/0364 final

European Commission (2007b) Communication from the Commission to the Council and the European Parliament. Proposal for a Regulation of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator. Brussels: European Commission. COM (2007) 263 final

European Commission (2007c) Communication from the Commission to the Council and the European Parliament. Proposal for a Regulation of the European Parliament and of the Council on common rules for access to the international road haulage market. COM (2007) 265 final/3

Euro Contrôle Route (ECR) (2007a) *Annual Report 2007*. At URL: [http://www.euro-controle-route.eu/cms/files\\_public/Annualreports/Annual\\_Report\\_2007\\_EN.pdf](http://www.euro-controle-route.eu/cms/files_public/Annualreports/Annual_Report_2007_EN.pdf) (15 June 2009)

Euro Contrôle Route (ECR) (2007b) Administrative Arrangement. At URL: [http://www.euro-controle-route.eu/cms/files\\_public/Microsoft%20Word%20-%2006-ECR-AA\\_NO-005\\_EN%20DEF.pdf](http://www.euro-controle-route.eu/cms/files_public/Microsoft%20Word%20-%2006-ECR-AA_NO-005_EN%20DEF.pdf) (15 June 2009)

Sitran, Alessio (2007) *CORTE Annual Activity Report 2007*. Brussels: Confederation of Organizations in Road Transport Enforcement (CORTE). COM003-2007. At URL: <http://www.corte.be/ActivitiesDetails.asp?ID=18> (15 June 2009)

#### Relevant EU legislation

##### *Access to the market*

Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations, OJ L 124, 23.5.1996, as amended by Council Directive 98/76/EC, OJL 277, 14.10.1998

Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, OJ L 95, 9.4.1992

Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, OJ L 279, 12.11.1993

### *Social legislation*

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 (Text with EEA relevance) – Declaration, OJ L 102, 11.4.2006

Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, OJ L 80, 23.3.2002

Regulation (EC) No 484/2002 of the European Parliament and of the Council of 1 March 2002 amending Council Regulations (EEC) No 881/92 and (EEC) No 3118/93 for the purposes of establishing a driver attestation, OJ L 76, 19.3.2002

Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport, OJ L 370, 31.12.1985

Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (Text with EEA relevance) – Declarations, OJ L 102, 11.4.2006

Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC, OJ L 226, 10.9.2003

Court of Justice of the European Communities (1985) Judgment of the Court of 22 May 1985.  
- European Parliament v Council of the European Communities. - Common transport policy - Obligations of the Council. - Case 13/83

### Web-pages

Official web-site of Euro Contrôle Route (ECR) (2009b), Members and observers, 15 September 2008, retrieved on 16 June 2009 from [http://www.euro-contrôle-route.eu/cms/index.php?option=com\\_content&task=view&id=44&Itemid=71](http://www.euro-contrôle-route.eu/cms/index.php?option=com_content&task=view&id=44&Itemid=71)

Official web-site of Euro Contrôle Route (ECR) (2009c), ECR Structure, 10 April 2008, retrieved on 16 June 2008 from [http://www.euro-contrôle-route.eu/cms/index.php?option=com\\_content&task=view&id=15&Itemid=70](http://www.euro-contrôle-route.eu/cms/index.php?option=com_content&task=view&id=15&Itemid=70)

CORTE (2009) Monitoring of the Implementation of Digital Tachograph, Project Presentation, retrieved on 16 June 2009 from <http://www.eu-digitaltachograph.org/PresProject.asp>

DG for Energy and Transport of the European Commission (2009b), Transport: infringement procedures, retrieved on 9 August 2009 from [http://ec.europa.eu/transport/infringements/proceedings/proceedings\\_en.htm](http://ec.europa.eu/transport/infringements/proceedings/proceedings_en.htm)

DG for Energy and Transport of the European Commission (2009c), Infringement procedures open for non-communication national measures, retrieved on 11 August 2009 from [http://ec.europa.eu/transport/infringements/directives/doc/infringements\\_transport.pdf](http://ec.europa.eu/transport/infringements/directives/doc/infringements_transport.pdf)