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Road Cabotage in the Freight Transport Market: Opportunities and Obligations

Cabotage is national road transport by non-resident hauliers. It is evident that the ability to compete essentially depends on the rate of capacity utilisation. In international transportation, the moving of transport resources without cargo can be avoided by cabotage transports only. In the relation between the old EU Member States, road cabotage in the movement of freight has been fully liberalised. With regard to the new EU Member States, transitory periods are still running. However, at the latest in 2010 the single road cabotage market will be a reality.

The single road cabotage market in the EU means that a haulier from any EU Member State can transport goods between destinations anywhere in the European Union, provided he or she meets the conditions for admission to the occupation of road haulage operator and holds a community licence. However, cabotage transports are – as stipulated in Council Regulation 3118/93 – not only subject to Community regulations (e.g. use of tachographs), but also to the laws, regulations and administrative provisions in force in the host Member State, especially in the fields of:

- conditions governing the transport contract;
- driving and rest time; and
- VAT on transport services.

As a consequence of the Posted Workers Directive, the employer has to grant certain minimum working conditions in force in the host state where cabotage transport occurs. Many of the Member States have also enacted administrative provisions, which contain obligations to file certain in-

formation or to register with their authorities for control purposes. Enterprises involved in cabotage transport cannot avoid the necessity of familiarising themselves with the regulations in force in the relevant host state.

Temporary nature of road cabotage in the movement of freight

Article 1 of Council Regulation 3118/93 entitles roads haulage carriers to operate national road haulage services in another Member State on a temporary basis without having to register an office or another establishment in that country. However, great uncertainty and divergence of practice prevails on what should be regarded as 'temporary'.

Some Member States (UK and Greece) have brought in regulations governing cabotage transport. Others, such as Austria, France and Italy, have introduced time restrictions: in Austria and Italy, cabotage transports are limited to a maximum of 30 days within a 60-day period. In France, the limit is 45 days per year. In

Finland, a time restraint follows from registration requirements, as transport vehicles may be used without local registration for a maximum of only 30 days. For control purposes, record sheets must be filled in and produced whenever required by authorised inspecting officers.

The European Commission has now prepared a new directive, which will bring about more unified practice regarding the time restrictions applicable to cabotage transportation. In future, only up to three subsequent cabotage transports will be permitted within a maximum period of seven days.

Conditions of the transport contract

Many of the conditions of the transport contract follow the law of the relevant host state. Such conditions include, in particular, issues such as statutory liability amounts for damage of goods or loss in transit. Each national law also applies with regard to the requirements for effective reservations and complaints, on

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time limits and on whether or not a country's local courts are competent to deal with the dispute at hand. Transport documents have to comply with local requirements, which may have an effect on who – the forwarder or the recipient – has the right of disposal over the goods in any given phase of the transport.

In case of dispute, the local statutory law will have an important impact on such issues as the levying of freight charges or liability for damage of goods. Such local conditions are often compulsory in nature.

Driving and rest time

In principle, the maximum driving and the minimum rest times are unified within the EU. In implementing EU law into national law, however, discrepancies arise now and then. Recently enacted provisions in the Netherlands allow for longer working times than would be permitted under the relevant EU directive.

Shorter maximum driving times might be applicable locally due to applicable collective agreements. Insofar as such collective agreements are generally binding (as is the case, for example, in Finland), one is obliged to observe such provisions directly as minimum employment conditions on the basis of the Posted Workers Directive.

Minimum salary

The Cabotage Regulation (EEC 3118/93) does not deal directly with minimum standards for employment conditions. Such minimum standards have to be observed, however, as part of the

compulsory provisions of the host state's legislation.

According to the Posted Workers Directive, one has to comply with the minimum standards of the host state regarding working time, salary, vacation etc. Whether or not cabotage will be considered a posting of workers is to be decided by each Member State, and to date no uniform practice has emerged.

Austria requires compliance with its minimum employment standards for cabotage transportation in general. In France, drivers are considered to be posted workers if a period of seven days is exceeded. Various other states have brought similar regulations into force. In other Member States, it will be left to the courts to develop nationally applicable criteria. In Germany, for example, there is no statutory minimum salary, nor are collective agreements in the transport sector generally binding. However, according to a court precedent that is generally applied, salary dumping is presumed to exist if the agreed salary is less than two-thirds of the relevant collective agreement salary; and the agreement will be declared void if salary dumping is considered to have occurred. The invalid salary is replaced by the level of salary that is locally customary in the relevant sector. The salary provided for in the collective agreement will often also be equivalent to the salary that is customarily paid, but this is not an upper limit: the level of salary customarily paid may also be higher in the territory in question.

To date, there is still a considerable lack of clear legal guidance.

VAT on transport services

According to generally applied VAT concepts, international transport services are performed, and are therefore subject to VAT, in the place where the recipient is situated. The transport operator issues a net invoice without VAT and the recipient files information about the turnover and simultaneously deducts the prior VAT, if he or she qualifies for deduction of prior VAT in his or her domicile and the transport operator is not registered there.

Where the services are not provided to consumers, the freight operator does not need to register for VAT purposes in the host state. There are also exceptions in this regard. In France, for instance, the provider of cabotage services is obliged to register for VAT purposes. As a consequence of this, the local VAT has to be invoiced.

Filings, control and permissions

The formalities to be complied with are unified to a great extent, but not completely. Wherever transportation is carried out, the driver has to produce the Community licence and the book of record sheets for national cabotage operations. Further, he or she must prove that the vehicle is being used by the licence-holder (Registration Certificate Part I). A driver who is not a resident of one of the EU Member States must carry a driver attestation on his or her person. The driver attestation is a uniform document certifying that the driver is lawfully employed by the Community



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transport operator concerned in the Member State in which the operator is established.

In addition to the uniform requirements, each Member State may stipulate additional filings and use of documents for implementing local administrative provisions and related controls. For example, in Austria and Belgium notice of the commencement of work, in the case of cabotage transportation, has to be filed in advance with the competent authorities. This applies even if the driver is resident in another EU Member State so that a work permit is not required.

Community licence holders who repeatedly infringe relevant administrative provisions should note that the sanctions available against them for such infringement include restricting their rights to participate in the freight market. Such restriction could go as far as a ban on cabotage transport.