

AIJA Prague Annual Congress 2014, TLC

Answers to Questionnaire (by Sarah Wolf)

2 June 2014

2) Regulatory

In the light of the EU Regulations:

2.1. Which rules road carriers have to comply with in order to be admitted in the market of road carriage of goods?

In Germany, the admission to the market of road carriage of goods is governed, in particular, by the German Law on Road Carriage of Goods (“Güterkraftverkehrsgesetz”). This law sets the basic requirements for the admission and refers, in particular, to Reg. 1071/09/EC, Reg. 1072/09/EC and the Community license.

The German Law on Road Carriage of Goods is specified by, inter alia, the German Regulation on the International Road Carriage of Goods and Cabotage (“Verordnung über den grenzüberschreitenden Güterkraftverkehr und Kabotageverkehr”), the German Regulation on the Admission to Road Carriage (“Berufszugangsverordnung für den Güterkraftverkehr”) and by the General Administrative Regulation on Law on Road Carriage (“Allgemeine Verwaltungsvorschrift zum Güterkraftverkehrsrecht”).

2.2. Does national rules provide more restrictive requirements than EU Regulation for the admission to the market of domestic road carriage? In the affirmative, is there an issue of conflict between EU and national legislation?

According to Sect. 3 Subsect. 1 German Law on Road Carriage of Goods the carrying of goods by road for hire or reward is subject to authorization unless directly applicable EU law does state otherwise. Sect. 3 Subsect. 2 German Law on Road Carriage of Goods states that the license is granted to a company which has its seat in Germany for the duration of up to ten years if the company fulfils the requirements of Art. 3 Para. 1 Reg. 1071/09/EC (effective and stable establishment; good repute; appropriate financial standing; requisite professional competence).

However, according to Sect. 5 German Law on Road Carriage of Goods, a company which has its seat in Germany and which has a Community license according to Art. 3 and 4 Reg. 1072/09/EC does not need a separate (German) license unless the carriage is between Germany and a state which is neither an EU Member State nor contracting party to the Agreement on the European Economic Area nor Switzerland.

Cabotage is governed by Sect. 17a German Regulation on the International Road Carriage of Goods and Cabotage. According to Sect. 17a Subsect. 1 cabotage shall be permitted only on the basis of EU regulations or due to a special permit according to Sect. 17a Subsect. 2 to 4. According to Sect. 17a Subsect. 2 a road haulage company which has neither its seat nor a branch in Germany may, following an international transport to Germany, after the first partial or total discharge of the goods perform up to three cabotage operations with the same vehicle. The last discharge before German territory will be left has to be carried out within seven days after the first partial or total discharge. Sect. 17a Subsect. 3 contains the same evidential details the foreign road haulier has to comply with as Art. 8 Para. 3 1072/09/EC.

According to Sect. 7a German Law on Road Carriage of Goods, a road haulage company (whether German or foreign) is obliged to have liability insurance (at least EUR 600,000.00 per incident) covering damages to goods and losses due to delay during transport where the place of loading and unloading is in Germany. Sect. 7a German Law on Road Carriage of Goods applies also to foreign companies that are engaged in cabotage operations in Germany.

2.3. Which are the relevant sanctions in case of breach of EU and/or national legislation regarding the admission to the market of domestic road carriage? And which are the remedies, if any?

As regards the sanctioning of infringements by the Member State of establishment (see Art. 12 Reg. 1072/09/EC), the same rules apply in relation to a German road haulier which has a German license and which has a Community license (for the latter via Sect. 1 Subsect. 1 German Regulation on the International Road Carriage of Goods and Cabotage): The license has to be withdrawn in certain cases (see Sect. 3 Subsect. 5 German Law on Road Carriage of Goods) or the competent German authority may prohibit the road haulier the business of road haulage.

The obligation of Member States to lay down penalties in case of infringements of the respective provisions (Art. 22 Reg. 1071/09/EC and Art. 16 Reg. 1072/09/EC) is implemented in Germany by long catalogues in Sect. 19 German Law on Road Carriage of Goods (e.g. engaging in road haulage business without a licence, driving without an admission) and in Sect. 25 German Regulation on the International Road Carriage of Goods and Cabotage with administrative offences and monetary sanctions. The fines / monetary sanctions depend on the gravity of the administrative offence and may amount to up to EUR 200,000.00. According to the German Administrative Offense Act (“Ordnungswidrigkeitengesetz”), the person concerned may file an objection to the regulatory fining notice within two weeks after service either in writing or for the record with the administrative authority that issued such notice.

As regards cabotage, Sect. 19 Subsect. 2a, 3 and 4 German Law on Road Carriage of Goods sets administrative offences and monetary sanctions for infringing cabotage regulations of Reg. 1072/09/EC.

Further, according to Sect. 18 German Law on Road Carriage of Goods German border authorities may send vehicles back in case the necessary and obligatory documents are not shown.

2.4. Does national rules provide more restrictive requirements for the admission to the market of international road carriage? In the affirmative, is there an issue of conflict between EU and national legislation?

As regards German road haulage companies, principally the same German rules apply for domestic German and international road carriage. According to Sect. 3 Subsect. 1 German Law on Road Carriage of Goods the carrying of goods by road for hire or reward is subject to authorization unless directly applicable EU law does state otherwise. Sect. 3 Subsect. 2 German Law on Road Carriage of Goods states that the license is granted to a company which has its seat in Germany for the duration of up to ten years if the company fulfils the requirements of Art. 3 Para. 1 Reg. 1071/09/EC (effective and stable establishment; good repute; appropriate financial standing; requisite professional competence).

However, according to Sect. 5 German Law on Road Carriage of Goods, a company which has its seat in Germany and which has a Community license according to Art. 3 and 4 Reg. 1072/09/EC does not need a separate (German) license unless the carriage is between Germany and a state which is neither an EU Member State nor contracting party to the Agreement on the European Economic Area nor Switzerland.

A foreign company (which does not have its seat in Germany) does not need a separate (German) license for the international carrying of goods by road for hire or reward if it has the necessary license, *inter alia*, the Community license, CEMT license, Swiss license, third state license (see Sect. 6 German Law on Road Carriage of Goods).

2.5. Which are the relevant sanctions in case of breach of EU and/or national legislation regarding the admission to the market of international road carriage? And which are the remedies, if any?

As regards the sanctioning of infringements by the Member State of establishment (see Art. 12 Reg. 1072/09/EC), the same rules apply in relation to a German road haulier which has a German license and which has a Community license (for the latter via Sect. 1 Subsect. 1 German Regulation on the International Road Carriage of Goods

and Cabotage): The license has to be withdrawn in certain cases (see Sect. 3 Subsect. 5 German Law on Road Carriage of Goods) or the competent German authority may prohibit the road haulier the business of road haulage. Again here, principally the same German rules apply to domestic and international road haulage if the road haulier is a German company.

The obligation of Member States to lay down penalties in case of infringements of the respective provisions (Art. 22 Reg. 1071/09/EC and Art. 16 Reg. 1072/09/EC) is implemented in Germany by long catalogues in Sect. 19 German Law on Road Carriage of Goods (e.g. engaging in road haulage business without a licence, driving without an admission) and in Sect. 25 German Regulation on the International Road Carriage of Goods and Cabotage with administrative offences and monetary sanctions. The fines / monetary sanctions depend on the gravity of the administrative offence and may amount to up to EUR 200,000.00. According to the German Administrative Offence Act (“Ordnungswidrigkeitengesetz”), the person concerned by a fine may file an objection to the regulatory fining notice within two weeks after service either in writing or for the record with the administrative authority that issued such notice.

As regards international road carriage by foreign EU companies, Sect. 19 Subsect. 1a German Law on Road Carriage of Goods sets administrative offences and monetary sanctions for infringing the relevant regulations of Reg. 1072/09/EC (e.g. carrying out haulage business without the respective Community license).

Further, according to Sect. 18 German Law on Road Carriage of Goods German border authorities may send vehicles back in case the necessary and obligatory documents are not shown.

2.6. In case your Country is not an EU member, which are the relevant requirements that law provides in order to admit haulers to run the business of road carriage?

Question not applicable to Germany as EU Member State.

2.7. Do the road carriers have to comply with particular rules to grant safety and security during trips?

Road carriers to which German law is applicable have to comply with various special rules to grant safety and security during trips, *inter alia*, Sect. 21a of the German Law on Working Time (“Arbeitszeitgesetz”) which sets forth, *inter alia*, special rest periods for road transportation. Moreover, Sect. 4 and 5 of the German Law on the Working Hours of Carriers (“Gesetz zur Regelung der Arbeitszeit von selbständigen Kraftfah-

ren”) set forth further provisions for self-employed road carriers. Further, there are various other German rules which refer to safety and security during road carrier operations such as the German Road Traffic Regulations (“Straßenverkehrs-Ordnung”) etc.

2.8. Are the road carriers entitled to pretend extra costs over the agreed freight for, as example, fuel surcharge and/or other costs?

German law does not provide for any specific rules as to the extra costs road carriers may claim. Thus, when German law is applicable, any claim for extra costs is governed by German general civil, commercial and transport law. According to Sect. 407 Subsect. 2 German Commercial Code (“HGB”) the sender is obliged to pay the agreed freight. According to Sect. 412 Subsect. 3 HGB the carrier may claim adequate demurrage. Further, the carrier may demand compensation for certain expenses, e.g. if he examines the weight, quantity or content of the goods (Sect. 409 Subsect. 3 Sentence 2 HGB) or if the sender gives orders (Sect. 418 Subsect. 1 Sentence 4 HGB).