

Circular concerning cabotage in goods transport by road – N-1/2013

This Circular concerns the interpretation of section 2a in the Regulation on International Transport of Passengers and Goods, and Cabotage, of 26 March 2003 No. 402, which entered into force on 1 July 2011. Section 2a regulates cabotage in transport of goods by road. This Regulation is available at www.lovdata.no and on the Ministry's website.

This Circular replaces Circular N-1/2012 on the same topic. This Circular corresponds to Circular N- 1/2012, with the addition of a clarification of what is to be considered as an international transport. The clarification states that driving without an actual load, is not to be considered as an international transport that provides the basis for subsequent cabotage.

What is cabotage?

The term cabotage refers to national road transport services operated for reward or hire in a country other than the haulier's country of establishment.

Legal basis

According to the Act on Professional Transport of 21 June No. 45, section 10(3), no carrier whose place of business is outside Norway may operate goods transport services for reward or hire between locations in Norway unless permitted to do so by an international agreement to which Norway is a party.

Through the EEA Agreement Norway has implemented 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; see Decision No. 7/94 of the EEA Joint Committee. The Council Regulation is applicable as Norwegian regulation; see Regulation of 26 March 2003 no. 402 on International Carriage of Passengers and Goods, and Cabotage, section 2, second and third paragraphs.

According to Article 1 paragraph 1 of the Council Regulation, EEA carriers shall be entitled to carry out cabotage operations on a *temporary* basis in another member state. In Norway cabotage on a temporary basis has since 1 November 2009 largely been interpreted in accordance with the relevant provision of Council Regulation (EC) No 1072/2009 of 21 October 2009 on Common rules for access to the international road haulage market, Article 8; see previous circular N-2/2009.

The need for new rules

Council Regulation (EC) No. 1072/2009 of 21 October 2009 on common rules for access to the international road haulage market, Articles 8 and 9, which address cabotage, entered into force in the European Union on 14 May 2010. The Regulation has yet to be incorporated into the EEA Agreement. This Regulation is a part of the 'road package' comprising three Regulations on access to the market and access to the occupation within passenger and goods transport by road.

The new cabotage rules for transport of goods in Council Regulation (EC) No. 1072/2009 set the criteria for what is regarded as cabotage on a temporary basis, and introduces a documentation requirement for each individual cabotage operation.

Feedbacks received by the Ministry from the industry and the enforcement authorities suggest that foreign hauliers have a close focus on cabotage rights and are aware that the Norwegian rules diverge from the EU rules.

Given Norway's participation in the internal market for the transport of goods by road, it is problematic that Norwegian rules over time diverge from the EU rules. The Ministry has accordingly adopted regulatory provisions bringing Norwegian legislation into line with the new EU rules in this area. The greatest difference compared with previous rules is that hauliers engaging in cabotage are now required to present documentation for each individual cabotage operation.

Conditions for carrying out cabotage operations

This section gives an overview over the conditions for carrying out cabotage; see the regulation section 2a, cf. the regulation section 2, and Council Regulation (EEC) No 3118/93 and Council Regulation (EEC) No 881/92 with amendments. The respective conditions are elaborated on below.

Hauliers who carry out cabotage operations must hold (i) a Community authorisation. This means that they must be established in an EEA state, and that they must fulfil the requirements for access to the profession.

In addition, drivers who are not citizens of an EEA state¹ must hold (ii) a driver attestation certifying that the person concerned is lawfully employed in an EEA state.

A haulier may (iii) carry out up to 3 cabotage operations, (iv) in connection with an international transport operation, (v) with the same vehicle (vi) within a period of 7 days (vii) after the last unloading in the course of the incoming international carriage.

The new aspect of the regulation, compared with the previous state of the law, is that the haulier is (vii) required to submit documentation of the incoming international carriage, and clear evidence of each consecutive cabotage operation. Such documentation shall contain the following details:

- (a) the name, address and signature of the sender,
- (b) the name, address and signature of the haulier;
- (c) the name and address of the consignee as well as his signature and the date of delivery once the goods have been delivered;
- (d) the place and the date of taking over of the goods and the place designated for delivery;
- (e) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognised description, as well as the number of packages and their special marks and numbers;
- (f) the gross mass of the goods or their quantity otherwise expressed;

¹ Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Iceland, Italy, Latvia, Liechtenstein, Lithuania, , Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Croatia became a member of the EU 1st of July 2013, but this enlargement of the EU is not yet incorporated into the EEA-agreement.

(g) the number plates of the motor vehicle and trailer.

Clarifications of the rules – and special issues

Clarification of international transport

It is the incoming international transport assignment that forms the basis for subsequently three cabotage trips within seven days. If a transport assignment shall be considered to be an international transport, it is required that the carrier is bringing along actual cargo that is documented with a consignment note. Transport of e.g. empty pallets ect, that is carried just to achieve the right to perform cabotage, shall not be considered to be an international transport that gives the right to perform subsequent cabotage.

What is regarded as a single cabotage operation?

A single cabotage operation is considered to be a national transport operation that starts when the goods are loaded and ends when the goods are unloaded.

The basis for assessing what constitutes a single operation is the information contained in the consignment note. The assignment described in the consignment note is regarded as one operation. A single operation may comprise two or more loadings and two or more unloadings if this is stated in the consignment document.

The consignment note is documentation for the agreement between the ordering of the transport and the haulier performing the transport. It is not essential to what constitutes one cabotage trip if the consignment note is signed on behalf of one or more underlying shippers of freight. An agreement between a forwarding agent and a haulier about the carrying of goods (collect freight) is to be considered as one cabotage trip when the documentation is in accordance with Regulation on International Transport of Passengers and Goods, and Cabotage art. 2a. It is recommended to use a joint consignment note in such situations. It should be noted that a forwarding agent will not be allowed to carry out cabotage operations ongoing and on a permanent basis.

Three cabotage operations may be carried out in accordance with the above.

When a cabotage operation may start

Cabotage may not be commenced until all the goods carried in the course of the incoming international carriage have been unloaded.

Time limit for carrying out the three cabotage operations

The time limit of 7 days for cabotage starts at midnight (00:00hrs) after the goods carried in the course of the incoming international carriage have been delivered. If the incoming goods are unloaded at 14:00hrs on 1 June, the time limit will start at 00:00hrs on 2 June. Unloading of goods in the final cabotage operation must take place before 00:00hrs on 9 June.

Cabotage may only be carried out for a limited period, and must not be carried out in a manner that creates a permanent or continuous activity

Cabotage may not be carried out in a way that creates a permanent or continuous activity. Hauliers who wish to engage in permanent or continuous transport in

Norway must be established in Norway and hold a licence for national transport operations.

What constitutes the same vehicle?

Cabotage operations may be carried out by the vehicle that carried out the international transport into Norway with a basis in the same Community authorisation. Where the transport is carried out using a traction vehicle with one or more trailers, the traction vehicle is regarded as the vehicle that can carry out the cabotage operation.

May the same haulier carry out several cabotage operations at the same time?

A haulier may carry out several cabotage operations at the same time provided that each cabotage operation is carried out by one vehicle that has carried out an international carriage into Norway.

What is valid documentation?

A Community authorisation and, if appropriate, a driver attestation if the driver is a citizen of a third country (a country outside the EEA), must be presented.

The incoming international carriage must be documented by means of a CMR note.

For the ensuing cabotage operations, all documents that fulfil the requirements posed in the Regulation will be accepted as valid documentation. The requirements will for example be met by presenting a CMR note, supplemented by other documentation in respect of data that are not shown in the CMR note. Other documents will also be accepted. It is not required that all data must be shown in one single document.

Documentation beyond what is described above cannot be required for cabotage operations. However, the controllers are fully entitled to check the data in the documents concerned against information that has to accompany the vehicle under other legislation, for example regarding recording equipment². The controllers can also check the data by contacting the principal.

To ease the task of verifying that the conditions for cabotage are met, the haulier may opt to present documentation confirming the kilometre readings upon loading and unloading in the course of the incoming international carriage and of the ensuing cabotage operations.

Which country's rules apply to cabotage operations?

Council Regulation (EEC) no. 3118/93 Article 6, which lists those areas where the host state's rules shall apply to the performance of cabotage operations, still apply; see section 2 of the Norwegian regulation.

If a foreign haulier fails to abide by the rules for cabotage operations, a carriage between two locations in Norway will be deemed a national carriage carried out without authorisation. All violations of Norwegian rules and regulations may be liable for prosecution.

² Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport

The documents must be kept in the vehicle

According to the Professional Transport Act section 38, the driver of a motor vehicle engaged in licensable transport services must have with him on each individual journey such identification as he is required to present in the event of a roadside checks by the police or the Public Roads Administration.

This means that a Community authorisation, the driver attestation if applicable and documentation of the incoming international carriage and documentation for all ensuing cabotage operations, must be present in the vehicle for inspection.

Special rules for transport for own account and combined transport

Transport for own account may be carried out without a Community authorisation. There are accordingly no restrictions on the right to carry out transport for own account in the form of cabotage.

The rules on cabotage are not applicable to combined transport covered by Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States. This includes transport of goods where the initial and final legs are by road, but where the intervening leg is by rail or by sea.

Cabotage beyond the frames of the EEA Agreement

The basic rule in bilateral road transport agreements with countries outside the EEA is that cabotage is not permitted without a special permit. Such permits are rarely, if ever, granted. However, there might be cases where the Norwegian Public Roads Administration as the responsible authority would grant such a permit, for example for special transport operations that must be carried out using vehicles that are not available in Norway. Details of the time and place of the transport operation, and the name of the operator should in such cases be made clear in the cabotage permit.

Enforcement authorities

The Police and the Public Roads Administration are the authorities responsible for enforcing the rules governing cabotage.

Sanctions

A foreign haulier who carries out national transport operations without meeting the conditions for cabotage is effectively performing an unlawful national transport operation in contravention of the rules of the Professional Transport Act.

Pursuant to the Professional Transport Act section 40, controllers may prohibit the use of a vehicle on the spot.

Anyone who through intent or negligence contravenes or assists in the contravention of the Professional Transport Act or of regulations or conditions laid down pursuant to that act, is liable to punishment by fine; see section 41 of the Professional Transport Act. This provision is in the first instance aimed at hauliers, but will also impact on for example principals who aid and abet breaches of the cabotage rules.

The Ministry urges the enforcement authorities to maintain close supervision of cabotage services with a view to preventing breaches and circumvention of the rules.

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Identically worded letters sent to:

National Police Directorate

Public Roads Administration

Transport administrations at county level incl. the City of Oslo

Copy to: Norwegian Hauliers Association