



OECD Competition Assessment Reviews

PORTUGAL

VOLUME I - INLAND AND MARITIME TRANSPORTS
AND PORTS



OECD Competition Assessment Reviews: Portugal

VOLUME I - INLAND AND MARITIME
TRANSPORTS AND PORTS

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Preface

by

Margarida Matos Rosa
President of the Board of the Portuguese Competition Authority

Ensuring compliance with the Portuguese competition law and advocating in favour of competition in the Portuguese economy is the core mission of the Autoridade da Concorrência (AdC) - Portuguese Competition Authority. The work of the AdC includes fostering healthy competition among market players and raising awareness among economic agents and relevant authorities about the benefits of competition.

In that context, the AdC is increasingly involved in contributing to the continued improvement of Portugal's regulatory environment through the use of competition impact assessment of legislation and regulation that may affect competition in all economic areas, in cooperation with public and private stakeholders.

The AdC's experience in this field has shown the importance of having the analytical capacity to assess the impact on competition of existing legislation and regulation, while also promoting the assessment of new public policies, *ex ante*, across the relevant bodies and institutions.

Ensuring that regulation is not needlessly burdensome is crucial to the dynamic and efficient functioning of markets, while giving effective responses to public needs. Good regulation of markets supports and enables wider consumer choice, which in turn generally leads to lower consumer prices and faster adoption of innovations.

In light of the longstanding experience of the OECD in assessing the regulatory impact of competition, the AdC embarked on a collaborative project with the OECD to carry out an in-depth competition assessment of regulations in two major sectors of the Portuguese economy. The project was based on the competition assessment methodology developed by the Competition Committee of the OECD.

The sectors chosen for analysis were transport (land and maritime), and 13 self-regulated (liberal) professions. This report is the result of this analysis which identifies and assesses the impact of existing regulatory barriers to competition in these two sectors. Based on the findings, the report sets out 765 recommendations for change to Portuguese regulations.

In addition to the recommendations, capacity-building was also a central objective of the project, both for the AdC, as well as the experts from sector regulators and Government that participated in the project. Indeed capacity-building within the institution and in the wider Portuguese institutional framework in reviewing competitive effects may ultimately prove to be one of the main benefits of this project in the long-term.

The AdC will now focus on the implementation of the recommendations, and on continuing the work to consolidate a culture of competition impact assessment to other sectors of the Portuguese economy. Following these recommendations, the AdC will make specific proposals for implementation and continuity of engagement with stakeholders.

In parallel, the AdC will also develop guidelines to support the regular assessment of Portuguese policies and regulations, aiming to promote a regulatory environment of smart regulation where efficient and dynamic markets coexist with the needs of society.

I would like to express my sincere gratitude to the OECD team, AdC staff, and to all stakeholders who were involved in the project, for carrying out this comprehensive, ambitious Competition Assessment Review. This project was carried out with the financial support of the COMPETE 2020 programme, to which we express our thanks.

The collaborative AdC/OECD project was a landmark in competition impact assessment in Portugal and will surely contribute to reinforcing change in the regulatory culture in Portugal, leading to a more competitive, dynamic and innovative business environment.

Margarida Matos Rosa

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a horizontal line that tapers to the right.

President of the Board of the
Portuguese Competition Authority

Foreword

Portugal has been recovering steadily since 2014 after enduring one of the deepest recessions in the European Union. The economy is now on a positive growth path, with past structural reforms, more favourable global economic conditions, strong export performances and growing domestic demand all contributing to the upswing. After receding in the five years following the 2008 crisis, employment growth has turned positive and wage growth is picking up.

Despite this progress, Portugal's growth trajectory is projected to improve more modestly in the coming years with imbalances reappearing in the economy, particularly supply bottlenecks and tightening labour market conditions. As such, pursuing the process of structural reform is needed to strengthen the economic and social sustainability of the country. This should include reducing still-high regulatory barriers to competition and market entry across product markets and services, which will foster innovation, efficiency and productivity. Advancing in this area would ensure more firms and professionals enter the market as well as foster increased investment and ultimately job creation in the country.

In particular, a well-functioning transport sector underpins most economic activities and is fundamental for productivity growth. Portugal is no exception. The transport sector generated a GVA (gross value-added) of EUR 7.7 billion in 2015, corresponding to 4.3% of GDP. It employed almost 155 000 people, representing around 3% of the entire employed population. The sector sustains 20 000 firms, of which 99.6% are SMEs. As such, having a well-functioning and effective transport sector is crucial for the long-term sustainability of economic growth. Portugal's location on the western edge of mainland Europe and the distribution of its population in cities along the coastline present distinct challenges for transport policy. Previous transport sector reforms have yet to reach their full impact.

This is why, in 2016, the Portuguese Competition Authority asked the OECD to identify and assess the impact of regulatory barriers to competition in the land and maritime transport sectors and in self-regulated professions in Portugal. This volume of the report describes the findings of the transport sector study, focusing on rail, road, maritime transport and ports.

The OECD competition assessment project, in close collaboration with the Portuguese Competition Authority, has assessed identified 485 individual provisions in the transport sector as being harmful to the economy. To address this, the study makes 417 detailed recommendations for change, from a volume of 904 legal provisions examined. The full implementation of the recommendations set out in this report could be expected to generate a total positive impact on the Portuguese economy of around EUR 250 million per year, equivalent to 0.14% of GDP. In addition to the estimated quantifiable benefits, the cumulative and long-term impact of lifting the restrictions identified will produce long-term effects on employment, productivity and growth.

This report provides detailed policy options to mitigate or eliminate regulatory barriers, including those that restrict entry to a market, constrain firms' ability to compete (e.g. by imposing operational requirements), treat competitors differently (e.g. by favouring specific types of companies) or facilitate coordination among competitors.

I congratulate the efforts undertaken by the Portuguese Government and the work of the Portuguese Competition Authority to reinforce competition and simplify the business environment in the transport sector. These are necessary steps towards designing, developing and delivering a more competitive transport sector for the benefit of the Portuguese economy and for the Portuguese people. Count on the OECD to accompany Portugal in this endeavour.



Angel Gurría
Secretary-General, OECD

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This report is the result of the 2016-18 project on Competition Assessment of Laws and Regulations in Portugal, specifically in the transport sector.

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Abbreviations and acronyms

AdC	Portuguese Competition Authority (<i>Autoridade da Concorrência</i>)
AMT	Regulatory Authority for Mobility and Transport (<i>Autoridade da Mobilidade e dos Transportes</i>)
APNCF	Portuguese Association for Railway Standardization and Certification (<i>Associação Portuguesa para a Normalização e Certificação Ferroviária</i>)
ASAE	Authority for Food and Economic Safety (<i>Autoridade de Segurança Alimentar e Económica</i>)
CAE	Portuguese Economic Activities Classification Code
CPC	Certificate of Professional Competence (<i>Certificado de capacidade profissional</i>)
CAM	Certificate of Aptitude for drivers (CAM - <i>Certificado de aptidão para motorista</i>)
CAP	Certificate of Aptitude for taxi drivers (CAP – <i>Certificado de aptidão profissional para motoristas de taxi</i>)
CEGEA	Research Centre in Management and Applied Economics of Católica Porto Business School, Portugal
CJEU	Court of Justice of the European Union
CPLP	Community of Portuguese Language Countries
CP	Portuguese train company (<i>Comboios de Portugal, E.P.E.</i>)
CPC	Portuguese Code of Public Contracts
CQM	Qualification Card for professional drivers (CQM - <i>Carta de qualificação de motorista</i>)
DGAE	Directorate General for Economic Activities, Portugal (<i>Direção-Geral das Atividades Económicas</i>)
DGERT	Directorate General for Employment and Labour Relations, Portugal (<i>Direção-Geral do Emprego e das Relações de Trabalho</i>)
DGRM	Directorate General for Natural Resources, Safety and Maritime Services, Portugal (<i>Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos</i>)
DGTTF	Directorate General of Land and Inland Waterway Transport, Portugal (<i>Direção-Geral de Transportes Terrestres e Fluviais</i>)
DRET	Regional Directorate for Economy and Transport, Madeira (<i>Direção Regional da Economia e Transportes</i>)

DRTA	Regional Directorate for Transports, Azores (<i>Direção regional dos Transportes</i>)
ECB	European Central Bank
ECG	Electrocardiogram
ECJ	European Court of Justice
ERA	European Railway Agency (now EU Agency for Railways)
ERTMS	European Rail Traffic Management System
ESPO	European Sea Ports Organisation
ETCS	European Train Control System
FDI	Foreign direct investment
GDP	Gross domestic product
GEE	Cabinet for Strategy and Studies, Ministry of the Economy, Portugal (<i>Gabinete de Estratégia e Estudos do Ministério da Economia</i>)
GPIAAF	Cabinet for the Prevention and Investigation of Accidents in Civil Aviation and Rail, Portugal (<i>Gabinete de Prevenção e Investigação de Acidentes com Aeronaves e de Acidentes Ferroviários</i>)
GVA	Gross value added
HLC	High-level committee
HPV	Higher productivity vehicle (Australia)
ICT	Information and communication technology
ILO	International Labour Organization
IMO	International Maritime Organization
IMPIC	Institute of Public Markets, Real Estate and Construction (<i>Instituto dos Mercados Públicos, do Mobiliário e da Construção</i>)
IMT	Institute for Mobility and Transport, Portugal (<i>Instituto de Mobilidade e dos Transportes, I.P.</i>)
INE	National Statistical Institute (<i>Instituto Nacional de Estatística</i>)
IP	Portuguese infrastructure company (<i>Infraestruturas de Portugal, S.A.</i>)
IPR	Intellectual property rights
IPTM	Institute for Ports and Maritime Transport (<i>Instituto Portuário e dos Transportes Marítimos</i>)
IRN	Institute of Registration and Notary Affairs (<i>Instituto dos Registos e Notariado</i>)
IT	Information technology
ITF	International Transport Forum (OECD)
ITMMA	Institute of Transport and Maritime Management Antwerp (Netherlands)
LCV	Long combination vehicle (Canada & US)

MFP	Multifactor productivity
MoU	Memorandum of Understanding
NACE	Statistical Classification of Economic Activities in the European Union
NUTS	Nomenclature of Territorial Units for Statistics in the European Union
PEC	Pilot Exemption Certificate
PMR	Product Market Regulation
POSEI	Programme of Options Specifically Relating to Remoteness and Insularity, European Union
PSO	Public service obligation
R&D	Research and development
RJSPTP	Regime of the Public Transport Service of Passengers (<i>legal regime</i>)
RNE	National Express Network company (<i>Rede Nacional de Expressos, Lda.</i>)
RLPN	National Logistic Platforms Network (<i>Rede Nacional de Plataformas Logísticas</i>)
SPSV	Small public service vehicle
SRTOP	Regional Secretary for Transport and Public Infrastructure, Azores (<i>Secretaria Regional dos Transportes e Obras Públicas</i>)
STCW	Standards of Training, Certification and Watchkeeping for Seafarers (Convention)
TFEU	Treaty on the Functioning of the European Union
UNECE	United Nations Economic Commission for Europe

UNITS OF MEASURE

m	Metres
pkm	Passenger-kilometre
t	Tonnes
TEU	Twenty-foot equivalent units

Executive summary

In 2016, the OECD was asked by the Portuguese Competition Authority to carry out a study to assess the impact on competition from existing regulations in the land and maritime transport sectors, and in the self-regulated (liberal) professions. This volume describes the outcome of the competition assessment on the transport sector (road, railway and maritime transport and many ancillary services, such as vehicle inspection centres, as well as Portugal's ports and port services.

The project consisted of identifying and analysing all relevant regulations in the selected transport sectors, using the OECD's Competition Assessment methodology. This involved collecting and mapping all relevant legislation, followed by a close scanning of all the legal texts to identify provisions with potential restrictions using the OECD Competition Assessment Toolkit. The policy objectives for each provision then had to be determined, followed by an in-depth analysis of each regulation. This included assessing whether the restrictions were proportional to the policy objective (such as public safety, etc.). For those regulations found to be overly restrictive, the report proposes specific changes to remove or change regulations that would otherwise hamper market access and the good functioning of operations.

The strength of the Toolkit methodology is that it allows the identification of specific regulatory barriers, such as those that restrict entry to a market, constrain firms' ability to compete (e.g. by imposing operational requirements), treat competitors differently (e.g. by favouring specific types of companies) or facilitate co-ordination among competitors. Such barriers have been shown consistently to harm economic growth and productivity.

The report identifies 485 individual provisions in the transport sector as being harmful to the economy, and makes 417 detailed recommendations for change. This includes 24 provisions that were found to constitute an administrative burden to consumers and society, and 26 provisions that were found to be obsolete. Annex B of this report details all of the recommendations for the provisions identified as potentially harmful.

The in-depth analysis involved a qualitative assessment of the harm to consumers and to the economy arising from the barriers, using economic theory and empirical literature, as well as comparative studies of regulation in jurisdictions across the OECD countries.

The report also outlines the benefits which can be expected if the recommendations are implemented and, whenever possible, provides a quantitative estimate of those benefits to the Portuguese economy or to consumers. We estimate a total positive impact on the Portuguese economy of around EUR 249.28 million per year as result of the implementation of the presented recommendations. This is a rather conservative estimate and does not take into account, for instance, the positive multiplier effect across the economy as a whole arising from having cheaper, better performing or improved access to business transport services.

In addition to quantifiable benefits, the full implementation of the recommendations set out in this report is expected to deliver positive long-term effects on employment, productivity, growth and positively affect the ability of businesses to compete.

Key recommendations of the road sector

- Abolish the mandatory licensing regime for freight operators using solely motor vehicles between 2.5 tonnes and 3.5 tonnes in the domestic market.
- Abolish minimum capital requirements to start the business imposed on passenger and freight transportation operators as well as on truck rental operators.
- Abolish all access and price restrictions for the market of long-distance bus routes, locally known as "express services" and "high-quality services" and adopt formally the necessary secondary legislation.
- Abolish quotas and geographical restrictions for taxis in order to allow taxis to pick up passengers in other municipalities (and thereby charge lower fares for longer trips).
- Abolish the 500 metre geographical restriction on the location of driving schools to allow for free establishment.
- Abolish the geographical restrictions on the establishment of vehicle inspection centres (minimum requirements of distance and population; and market share criteria) and introduce a maximum price regime.

Key recommendations of the rail sector

- Fully regulate the legislation applicable to the certification of train drivers and, in the meanwhile, ensure that both pieces of legislation are in conformity with the relevant European Union (EU) legislation and with each other.
- Abolish the maximum period of validity for railway licences and establish the principles and procedures applicable to their revision every five years, in accordance with the relevant EU legislation.
- Bring into force the regulation explicitly required by provisions applicable to the railway sector. Also, publish the rules, conditions, principles and procedures which guide the intervention of the Authority for Mobility and Transport (AMT) or the Institute for Mobility and Transport (IMT) in the implementation of provisions applicable to the railway sector.

Key recommendations of the ports and maritime sector

- Broaden the private sector's access to the activities of piloting and towing, by only enabling port authorities to directly provide the service when there is no market interest by private operators.
- Redesign concessions for cargo-handling operations to promote investment and lower tariffs for port users. The length of concessions should be linked to the level of investment incurred by the concessionaire; the awarding criterion should enable contracts to be awarded to the bidder offering the lowest tariff for port users. The structure of the concession revenues should be composed of a fixed

rent for the use of the terminal, while royalties are only charged to pass through variable costs of the port authority to private operators.

- Abolish financial guarantees, minimum capital requirements, and equipment and labour standards imposed on cargo-handling operators, towing operators and shipping agents in order to promote market entry and operational efficiency.
- Open the market for the provision of port labour to temporary work agencies and eliminate the specific licensing regime of port labour companies, thereby enhancing competition in the supply of port labour to cargo-handling companies.
- Reduce the cost and administrative burden of obtaining a Pilot Exemption Certificate (PEC) and open access to the piloting profession by abolishing entry restrictions not related to safety, in order to improve the competitiveness of piloting services in ports.
- Implement an alternative model of public service obligations for cabotage in the Portuguese islands, based on general principles that promote efficiency of the public services, transparency and minimise distortions to competition.

1. Assessment and recommendations

This report identifies distortions to competition in Portuguese legislation. It proposes recommendations for the removal of regulatory barriers to competition in the transport sector (road, rail, ports and maritime). In all, 485 potential regulatory restrictions were identified and analysed, and the report makes 417 specific recommendations to remove these barriers and increase competition and market access. The resulting benefits will allow more efficient firms to enter the market or existing firms to innovate with new forms of production, lower prices and greater choice for users. They will also increase transparency and provide more effective regulation of public services markets. This report identifies the sources of those benefits and, where possible, provides quantitative estimates. If the particular quantified restrictions are lifted and the expected effects realised, the OECD calculates a positive effect for the Portuguese economy of around EUR 249 million.

Laws and regulations are key instruments in achieving public-policy objectives, such as consumer protection, public services and environmental protection. However, when they are overly restrictive or onerous, a comprehensive review can help identify problematic areas and develop alternative policies that still achieve public objectives with lesser harm to competition.

The Competition Assessment of Laws and Regulations Project has identified and evaluated market regulations of road, railway and maritime transport and many ancillary services (such as vehicle inspection centres), as well as Portugal's ports services.¹

This report identifies regulatory barriers, including those that restrict entry to a market, constrain firms' ability to compete (e.g. by imposing operational requirements), treat competitors differently (e.g. by favouring specific types of companies) or facilitate co-ordination among competitors. The methodology followed in this systematic exercise is summarised in Annex A, which also describes the stages of the project and provides full references to the OECD Competition Assessment methodology.

1.1. The benefits of competition

Consumers' ability to choose between different providers of goods or services benefits not only consumers themselves, but also the economy as a whole. When customers can choose, firms are forced to compete with each other, innovate more and be more productive (Nickell, 1996; Blundell et al., 1999; Griffith et al., 2006; Haskel et al., 2012; Aghion et al., 2004). Industries in which there is greater competition experience faster productivity growth. These conclusions have been confirmed by a wide variety of empirical studies, as summarised in OECD (2014). Other important benefits of competition include lower consumer prices, greater consumer choice, better quality of products and services, higher employment, greater investment in R&D, and faster adoption of innovation.

Competition stimulates productivity primarily because it seems to allow more efficient firms to enter and gain market share at the expense of less efficient firms. Increased productivity from competition may arise as a result of both static and dynamic gains. Static gains follow from eliminating inefficiencies as the monopolists facing competitive pressures cease to live the "comfortable life". Dynamic efficiency improvements arise, for example, because competition improves the ability of owners or the financial market to monitor managers, by enhancing opportunities for comparing performance, enhancing the incentive to innovate to gain market share or because competition leads managers to work harder to maintain profits (Nicoletti and Scarpetta, 2003).

In addition to the evidence that competition promotes growth, many studies have shown the positive effects of more flexible product market regulation, the area most closely relevant for this project.² The studies analyse the impact of regulation on productivity, employment, R&D and investment, among other variables. Differences in regulation also matter and can significantly reduce both trade and foreign direct investment (FDI) (Fournier et al., 2015; Fournier, 2015).³

There is a particularly large body of evidence on the productivity gains from more flexible product market regulation. At firm and industry level, restrictive product market regulation is associated with lower multifactor productivity (MFP) levels (e.g. Nicoletti and Scarpetta, 2003; Arnold et al., 2011).⁴ This result also holds at the aggregate level (Égert, 2016).⁵ Anticompetitive regulations have an impact on productivity that goes

beyond the sector in which they are applied and this effect is more important for the sectors closer to the productivity frontier (Bourlès et al., 2013).⁶ Specifically, a large part of the impact on productivity goes through the channel of investment in R&D.

Innovation and investment in knowledge-based capital, such as computerised information, intellectual property rights (IPRs) and economic competencies, are also negatively affected by stricter product market regulation (Andrews and Criscuolo, 2013; Andrews and Westmore, 2014). Lifting barriers also enables innovative firms to combine more efficiently the resources needed to market new ideas and products. Pro-competition reforms to product market regulation are associated with an increase in the number of patents (Westmore, 2013).

Greater flexibility can also lead to higher employment. Cahuc and Kamarz (2004) find that after deregulating the road transport sector in France, employment levels in road transport increased at a faster rate than before deregulation.⁷ In this study (Criscuolo et al. 2014) the authors find that small firms that are five years old or less on average contribute to about 42% of job creation.⁸ As noted in OECD (2015), “such a disproportionately large role by young firms in job creation suggests that reducing barriers to entrepreneurship can contribute significantly to income equality via employment effects”. The impact of lifting anticompetitive regulations on income inequality is unclear, however. On the one hand, greater flexibility leads to higher employment; on the other, deregulation is also associated with greater wage dispersion.⁹ Recent work (OECD, 2015c) investigates the relationship between competition and inequality. The authors calibrate a model to assess the redistributive effects of market power in eight countries.¹⁰ They find that market power benefits the wealthiest households and that the share of wealth of the top 10% of households deriving from market power is between 10% and 24%.

To sum up, regulations that restrict competition and hinder entry and expansion in markets may be particularly damaging for the economy because they reduce productivity growth, limit investment and innovation and harm employment creation. Removing regulatory barriers to competition was the overall aim of the project carried out by the OECD with the support of the Portuguese Competition Authority (AdC). The following chapter presents the transport context while the chapters that follow outline the main findings from the project.

1.2. Main recommendations from the Competition Assessment Project

This volume discusses the outcome of the Competition Assessment of Laws and Regulations project in the transport sector (road, rail, ports and maritime). The aim of the project is to improve market access and ease of operation in these sectors. The sectors accounted for about 4.3% of GDP and 3% of employment in Portugal in 2015. Lifting barriers to competition in these sectors could potentially have a significant economic impact on the domestic economy.

The recommendations reflect a thorough analysis of the legislation and of its impact on competition. The review identified 485 potentially harmful restrictions in the 904 legal texts selected for assessment. In total, the report makes 417 specific recommendations to mitigate harm to competition. These are listed analytically in Annex B of the report.

Table 1.1. Summary of the legal provisions analysed in the transport sector

	Horizontal	Road	Rail	Port and maritime	General transport legislation	Total
Pieces of legislation	23	356	39	319	167	904
Potential restrictions identified	3	229	100	131	22	485
Recommendations made	2	203	77	116	19	417

Source: OECD Analysis.

1.2.1. Road sector

The legislator should abolish the mandatory licensing regime for freight operators using motor vehicles between 2.5 t and 3.5 t to promote competition. The Portuguese regime is stricter than EU regulations which requires the use of an EU Community licence only above 3.5 t. Alternatively it is recommended to reassess each of the four current licensing requirements, i.e., the “good repute” criterion, financial standing, professional competence and “having an effective and stable establishment”. These criteria are highly subjective in their scope and ill-defined by the legislation. Regulations should reflect the principles of proportionality, adequacy and necessity, in light of the proposal for amendment of EU regulations on licensing for EU hauliers (2017).

Minimum capital requirements to start a business for passenger and freight transportation operators as well as on truck rental operators should be abolished. Other types of initial capital required to start a business should be listed under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code. By lifting these financial criteria, market players can better adapt and reinvest their capital, increasing their competitiveness and promoting lower prices for consumers.

Requirements for the minimum number of vehicles imposed on long-distance buses with “high-quality offer” operator as well as on car and truck rental services, imposed on operators to obtain a licence, should be abolished. Lifting these restrictions will promote a more efficient allocation of operational resources of the transport companies, contributing to a reduction in prices charged to consumers.

Access and price restrictions for the market of long-distance bus routes, locally known as “Express Services” and “High-Quality Services”, should be lifted. The necessary secondary legislation, mentioned in the Legal Regime of the Public Transport Service of Passengers, and which was due by November 2015 (but still not passed), should be adopted. This involves eliminating the rule that only existing providers of public passenger road transport or those serving one of the termination points or part of the suggested journey can obtain authorisation for these services. The imposed minimum price scheme should be abolished and prices should be liberalised for long-distance routes. Removing these restrictions will lead to more entry into the market, more routes, better and more frequent services, innovation and possibly lower prices. By early 2018, new secondary legislation had yet to be adopted. Portugal is behind with liberalising its long-distance bus routes compared to most of the rest of the European Union.

Quotas and geographical restrictions defined at municipal level for taxis operators should be lifted, in order to allow taxis to pick up passengers in other districts. These recommendations, if implemented, will contribute to an increase in the taxi cars available to customers and greater efficiency since taxis could take passengers anywhere and thereby charge lower fares for longer trips. This would lead to a reduction in waiting times for customers.

The current 500-metre geographical restriction on the location of driving schools should be lifted to allow for free establishment. The elimination of the geographical restriction will foster entry into the market of new driving schools, enhancing competition and potentially increasing consumer welfare through a decrease in prices and an increase in quality. Estimates point to a potential increase in the number of driving schools of between 6% and 37%.

The need for a licence from the Institute for Mobility and Transport (IMT) for both driving schools and professional training institutes to start operating should be removed. A licencing regime corresponds to a more complex and time-consuming administrative procedure which can deter potential players from entering the market. Other, less restrictive forms such as an administrative communication to the IMT should be considered for the opening of new driving schools and training institutes, as both seem to fall within the scope of the EU Services Directive. If implemented, this will help to foster entry into the market and lead to more competitive offers by market players. This might also contribute to a decrease in the prices charged to professional drivers and transport managers which, in turn, will contribute to a reduction in the operational costs of road transportation companies and to lower prices for consumers by a pass-through effect.

Existing restrictions on the establishment of vehicle inspection centres (minimum requirements of distance and population density; and market share criteria) should be abolished. In addition, the current regulated prices should be replaced by a maximum price regime. These measures will promote competition, allow for more entry, increase access to services for users, and allow economies of scope for owners of inspection centres. If fully implemented, the recommendations will contribute to an increase in the number of vehicle inspection centres, which implies that consumers could make a net saving in travelling costs. Additionally, by implementing a maximum price regime, it would allow the reduction of tariffs and promote competition, as in other European jurisdictions.

Current restrictions on the hire of vehicles above 6 t for own-use should be lifted. This will be in line with the Proposal for Amendment of the EU Directive on Truck Rental Services (2017). The implementation of this recommendation will foster flexibility of operations, and allow for additional savings on operational costs for firms opting for hiring instead of buying trucks, or for partial replacement of their fleet. There may be evidence that allowing for rental of trucks above 6 t lowers the average age of commercial vehicles, an aspect that can have a positive impact on the fuel efficiency and safety of vehicles.

The main recommendations for the road sector are described in Chapter 3 and listed analytically in Annex B.

1.2.2. Railway sector

The legislation applicable to the certification of train drivers should be fully regulated. In the meantime, both pieces of domestic legislation currently in force must be harmonised with the relevant EU legislation. This will eliminate legal uncertainty, and enable cost savings for individuals who want to become train drivers and for train drivers who want to improve their certification. This will help to foster more efficient railway companies.

The maximum validity period for railway licences should be abolished. Instead, licences should be reviewed for continued compliance every five years, in accordance with the relevant EU legislation. This is expected to eliminate competitive disadvantage of entities

that want to become railway companies and railway companies that want to continue to operate beyond five years. This will also decrease the administrative burden of those entities and increase regulatory certainty.

The maximum time for railway authorities to respond to requests should be revised to correspond to the time strictly necessary for them to collect and consider all relevant documentation and information. The expected benefits of such change include better-informed decisions that are promptly taken, increasing regulatory certainty and cost savings for entities that want to become railway operators and railway companies that want to continue to operate.

All legislation applicable to the railway sector that has been superseded in its substance by other legislation or that is no longer useful or has become obsolete due to technological developments should be expressly revoked. This will improve legal and regulatory certainty and lead to cost savings for entities that want to become railway companies and for existing railway companies.

The regulation explicitly required by provisions applicable to the railway sector should be brought into force. Also, the rules, conditions, principles and procedures which guide the intervention of the AMT or the IMT in the implementation of provisions applicable to the railway sector should be published. The expected benefits of this include greater predictability and transparency in the application of provisions and, as a result, increased regulatory certainty and cost savings for entities that want to become railway companies and for existing railway companies.

The main recommendations for the rail sector are described in Chapter 4 and listed analytically in Annex B.

1.2.3. Ports and maritime transport

The legislator should attribute to port authorities specific non-profit objectives, such as the optimisation of handled cargo tonnage, and create performance indicators in order to reward port authorities that reach the established objectives. The competent authorities should also review the current port tariffs regime and provide AMT with the necessary resources to fulfil its role as the sectoral regulator, in order to guarantee that port tariffs are aligned with transparency and cost-orientation principles foreseen in EU regulation 2017/352.

The competent authorities should amend the decree-laws regulating piloting, towing and cargo-handling services, so that direct provision by port authorities is only possible when there is no interest by the private sector in providing the service due to lack of economic viability. The stipulated “lack of interest of the private sector” should be re-evaluated at regular intervals to ascertain that direct provision is not unduly restricting entry. The policy maker should also consider the licensing of piloting services as an alternative regime to concession.

Port authorities should determine the duration of a concession as the minimum number of years required to recover the capital invested with reasonable profitability, based on clear, objective and transparent criteria. The contract should explicitly determine a minimum level of investment to be incurred by the operator and it should not be renewed without the opening of a new public tender.

The current concession price-bidding system should be redesigned, by defining as awarding criterion the lowest tariff for port users, instead of current designs which aim to simply maximise their revenues. Concession revenues should then be exogenously

determined based on the actual investment costs of port authorities, taking into consideration the depreciation rate of capital and market interest rates.

Port authorities are also recommended to change the structure of concession revenues, by charging only a fixed rent to private operators and eliminating any variable fees/royalties linked to the volume of cargo or passengers handled. Exceptions should only be made if the port authority incurs a variable cost related to the activities of the private operator, a case in which royalties can be used to pass through the cost from the port authority to the private operator.

The legislator should review the financial and operational requirements currently imposed on cargo handling companies, towing companies and shipping agents. This would involve eliminating requirements for financial guarantees, minimum capital, as well as equipment and labour standards that are not based on transparent and objective criteria. Instead, the establishment of minimum levels of service or the use of equipment and labour pools can be an effective alternative to ensure an efficient provision of public services.

The legislator should open the market for the provision of port labour to temporary work agencies. This can be achieved by eliminating any legal requirements for port labour companies to have the single corporate activity of providing manpower to cargo-handling operators; or by specifying in the law that the provision of port labour can be carried out by temporary work agencies, as long as they are subject to the same rules. In addition, the policy maker should consider abolishing the specific licensing regime of port labour companies, applying instead the general licensing regime of temporary work agencies.

The legislator and port authorities should reduce the cost of obtaining a Pilot Exemption Certificate (PEC), by setting issuing fees based on costs, automatically granting PEC extensions if minimum conditions are met and increasing the duration of PECs. In addition, access to the piloting profession should be opened to non-Portuguese speakers who are fluent in English and to seafarers of lower category than is currently imposed by law, as long as they have enough experience serving on board ships as seafarers.

It is recommended that the legislator identify and implement an alternative model of public service obligations for cabotage in the Portuguese islands based on general principles that promote efficiency and minimise distortions to competition. For that, the legislator should define objective and performance-based service obligations based on public needs, clearly identify the beneficiaries of the service, enable entry of new operators and favour cost-based prices. In an interim period, until the conclusion of the above mentioned technical study, or in case the current regime is still kept, the legislator should at least replace the current price regulation with a maximum price regulation.

Finally the legislator should revoke regulations that are no longer in force or are obsolete. In particular, the Douro waterway regulations should be updated, taking into account the EU regime applicable for inland waterways. The legislator should also clarify the institutional powers of the competent authorities and enhance the role of the AMT as the sectoral regulator, in order to reduce legal uncertainty and increase players' compliance with market regulations.

The main recommendations for the port and maritime sector are described in Chapter 5 and listed analytically in Annex B.

1.3. Horizontal findings

1.3.1. *Obsolete legislation*

Frequently, provisions superseded by more recent legislation have not yet been explicitly removed from the body of legislation. In its overview of Portugal, the OECD notes that “repealing old laws which are no longer necessary is not common practice” (OECD, 2015b). Among the about 417 recommendations in the transport sector, 26 were about obsolete provisions. Other obsolete provisions have been initially identified but were not included in the potentially harmful provision due to their substantive content.

Obsolete, inactive or redundant legislation can act as a regulatory barrier by creating legal uncertainty and potentially raising regulatory and compliance costs facing suppliers and market players, notably increasing legal costs.

The OECD recommends that superseded legislation be explicitly abolished. By removing obsolete legislation from the body of legislation and the online legal libraries of competent authorities, market participants and potential entrants face a more transparent, less complex and more certain business environment, ensuring that both operation and entry are facilitated. Legislation should be preferably streamlined in the context of codification of the sectoral legislation.

The provisions identified by the OECD team as obsolete are included in the recommendations listed in Annex B for each of the sectors.

1.3.2. *Regulatory quality*

The regulations reviewed in this project are often scattered across several legal texts and sometimes repeated across many different pieces of legislation. In order for businesses and consumers to have a comprehensive picture of the legislation applicable to a specific economic activity, they need to identify the relevant provisions in many separate texts and understand how these provisions interact with each other. In addition, subsequent modifications to core pieces of legislation result in further fragmentation and a lack of clear rules.

The streamlining and codification of the legislation in some areas would be especially beneficial to new entrants, who are less familiar with the legislation, and smaller competitors, for whom compliance costs are likely to be relatively more important than for larger companies.¹¹

The implementation of regulation in a transparent way is one of the key tenets of regulatory quality (see Box 1.2 below). Transparency and accountability to the public are among the requirements for the sound governance of regulators (OECD, 2014), while transparency enhances accountability and confidence in the regulator. In addition, transparency helps regulated firms understand regulators’ policies and expectations, and anticipate how these will be monitored and enforced. Transparency helps consumers, too. For instance, decisions on product recalls can affect consumers and public health, and should be published.

Since 2016, the Portuguese government has strengthened the “Simplex +” Programme, which aims, among others, to reduce administrative burdens and improve quality of regulation. This programme includes the “Revoga +”, “Unilex” and “quanto custa” (how much it costs) projects. The first one is aimed at systematic and sectoral reduction of the legislative stock, and at this date resulted in the identification of 1 589 legal provisions

that fell into disuse. In the framework of “Unilex” all new draft regulations are subject to a legislative consolidation test, and when possible new proposals for consolidation and unification of related legislation are adopted. Finally the last project (quanto custa) aims to quantify the costs to the private sector of any new regulations and measures those costs against the expected benefits. Within the framework of the latter, an *ex ante* regulatory impact assessment is made before the adoption of any new piece of legislation.

Box 1.1. What is regulatory quality?

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential but they can also be costly in both economic and social terms. In this context, “regulatory quality” is about enhancing the performance, cost effectiveness and legal quality of regulatory and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency and accountability, and be evidence-based. The concept of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient (do not impose unnecessary costs), coherent (when considered within the full regulatory regime), and simple (regulations themselves and the rules for their implementation are clear and easy to understand for users).

Building and expanding on the Recommendation of the Council on Improving the Quality of Government Regulation (OECD, 1995), it is possible to define regulatory quality by regulations that:

1. serve clearly identified policy goals, and are effective in achieving those goals;
2. are clear, simple and practical for users;
3. have a sound legal and empirical basis,
4. are consistent with other regulations and policies;
5. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account;
6. are implemented in a fair, transparent and proportionate way;
7. minimize costs and market distortions;
8. promote innovation through market incentives and goal-based approaches;
9. are compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Source: Reproduced from OECD (2015), OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264238770-en>.

1.4. Benefits of lifting barriers

The Competition Assessment Project focuses on laws and regulations relevant for the sectors under analysis. It strongly focuses on legislation and not its enforcement. This matters because changes in regulation can only have an impact if regulation is enforced. There are many reasons why regulation in practice may be less growth friendly than intended (O'Brien, 2013). Business environment is also important. Complementary to this analysis, there are measures of administrative burden and the ease of doing business which capture these broader issues, such as the OECD's Product Market Regulation index and the World Bank's Ease of Doing Business indicator.

The recommendations address specific restrictions identified in the legislation: their impact is directly linked to lifting those restrictions and the consequent positive effect on competition in the relevant sectors. It was not possible to quantify the effects of all the individual restrictions identified, either because of lack of data, or because of the nature of the regulatory change. Where possible, we have provided detailed estimates in the report. This is the case for long-distance buses, driving schools, and inspection centres in the road sector (Chapter 3), and pilotage in ports and maritime sector (Chapter 5).

For certain other recommendations, the OECD has considered whether they would be expected to have an impact on either consumer benefit, through lower prices, or on economic activity, in terms of greater efficiency and additional revenue. In the former case, the framework described in Annex A was applied; in the latter, we have made a conservative assumption on an overall improvement in the efficiency of operation.¹² More specifically, if a number of restrictions identified in the project are lifted, we estimate a conservative benefit for the Portuguese economy of around EUR 249.28 million. This amount is the total of the estimated positive effects on consumer surplus and higher turnover in the sectors analysed as a result of removing current regulatory barriers to competition.

Table 1.2. Summary of estimated impacts by sector

Sector / restriction	Benefit EUR million	Number of corresponding recommendations
Road	228.68	203
- of which gains for companies	27.26	17
Rail	12.53	77
Ports and maritime (maritime cabotage)	3.33	8
Ports and maritime (pilotage exemption certificate)	4.74	12

Source: for road sector see Table 3.A.2; for rail sector see Table 4.2; for pilotage exemption certificate see Annex 5.A. Maritime cabotage data extracted from SABI "Sistema de Análise de Balanços Ibéricos" (database).

The full implementation of the recommendations set out in this report is expected to deliver positive long-term effects on employment, productivity and growth. The cumulative and long-term impact on the Portuguese economy of lifting the restrictions identified should not be underestimated. The rationalisation of the body of legislation in these sectors, which some authorities have suggested they will undertake, will positively affect the ability of businesses to compete in the longer term, provided that the recommendations are implemented fully.

1.4.1. Output multiplier effects

According to calculations carried out by the project team, with contributions from the Católica Porto Business School (CEGEA, *Centro de Estudos de Gestão e Economia Aplicada*), we identified the multiplier effect in the case of the transport sector. The sectors correspond to the Eurostat NACE H49 and we used the input/output matrices for Portugal and for the year 2013 (the last year for which such matrices have been calculated). The multiplier effect for the Portuguese transport sector takes the value of EUR 1.018. This means that EUR 1 of additional final demand for transport services leads to an increase of EUR 1.018 in Portuguese gross value added, i.e., GDP.¹³

Notes

¹ These sectors were identified in the Agreement signed by the Portuguese Competition Authority and OECD in July 2016.

² The methodology followed in this project is consistent with the product market regulations (PMR) developed by the OECD, see OECD (2014), Box 2.1, page 67. To measure a country's regulatory stance and track reform progress over time, the OECD developed an economy-wide indicator set of PMRs in 1998 (Nicoletti et al., 1999). The indicator was updated in 2003, 2008 and 2013, and a new set of indicators will be published in 2018.

³ Fournier et al. (2015) find that national regulations, as measured by the economy-wide PMR index, have a negative impact on exports and reduce trade intensity (defined as trade divided by GDP). Differences in regulations between countries also reduce trade intensity. For example, convergence of PMR among EU Member States would increase trade intensity within the EU by more than 10%. Fournier (2015) studies the impact of heterogeneous PMR in OECD countries. He finds that lowering regulatory divergence by 20% could increase FDI by about 15% on average across OECD countries. The paper investigates specific components of the PMR index and finds that command-and-control regulations and measures protecting incumbents (antitrust exemptions, entry barriers in networks and services) are especially harmful in reducing cross-border investments.

⁴ Arnold et al. (2011) analyse firm-level data in 10 countries from 1998 to 2004 using the OECD's PMR index at industry-level, and find that more stringent PMR reduces firms' multifactor productivity (MFP).

⁵ The author investigates the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

⁶ The study of 15 countries and 20 sectors from 1985 to 2007 estimates the effect of regulation of upstream service sectors on downstream productivity growth.

⁷ Employment growth increased from its level of 1.2% per year between 1981 and 1985 to 5.2% per year between 1986 and 1990. Between 1976 and 2001, total employment in the road transport sector doubled, from 170 000 to 340 000.

⁸ The sample includes 18 countries over a ten-year period.

⁹ Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecom and transport sectors, Causa et al. (2015) find stringent PMR has a negative impact on household disposable income. This result holds both on average and across income distribution, and leads to greater inequality. The authors note that lower regulatory barriers to competition

would “tend to boost household incomes and reduce income inequality, pointing to potential policy synergies between efficiency and equity objectives”.

¹⁰ These are Australia, Canada, Germany, France, United Kingdom, Japan, Korea and the United States.

¹¹ OECD (2015b) defines administrative burdens as “the costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but not including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations”.

¹² Throughout the report, when a recommendation is expected to have a likely impact on prices or the overall market, for instance through efficiency gains, the following assumptions are used: (i) low impact – 0.5%; (ii) medium impact – 1.5%; and (iii) high impact – 2.5%. All revenue data are taken from Eurostat.

¹³ For a discussion of input/output matrix methodologies see the document (in PRT) “Sistema Integrado de Matrices Simétricas Input-Output, 2013”, www.ine.pt/ngt_server/attachfileu.jsp?look_parentBoui=294445743&att_display=n&att_download=y; For the data in the matrices themselves, calculated for the year 2013, see: www.ine.pt/ngt_server/attachfileu.jsp?look_parentBoui=293112845&att_display=n&att_download=y

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Greece (2017), <https://doi.org/10.1787/9789264088276-en>.

Romania (2016), <https://doi.org/10.1787/9789264257450-en>.

Greece (2014), <https://doi.org/10.1787/9789264206090-en>.

The OECD Competition Assessment Toolkit, www.oecd.org/daf/competition/assessment-toolkit.htm

2. Overview of the transport sector

The transport sector plays an important role in the Portuguese economy, representing 4.3% of the gross domestic product and employing around 155 000 people. Among the several modes of transportation, road transport accounts for the vast majority of the movements of passengers and freight. Maritime transport also has an important role in the movement of freight, promoting international trade and guaranteeing the connection between the mainland and the Portuguese islands. Rail transport is primarily used by passengers for national routes, as it is constrained by the small size of the railway network in the country. This section provides an economic overview of the transport sector in Portugal and identifies the main Portuguese institutions responsible for issuing national regulations, including ministries, general directorates and public institutes. It also discusses certain barriers to competition that are transversal to all modes of transportation, in particular those related to public procurement rules and fees set by administrative bodies.

The transport sector has always been and remains a crucial sector for the development of any economy. Apart from its large contribution to the gross domestic product (GDP) of OECD countries, the existence of a well-developed transportation network ultimately affects most economic activities and is fundamental to productivity growth. In fact, the growth of the GDP has been historically correlated with the gross value added (GVA) of transport, in part because the demand for transport responds to the economic environment in all other sectors (OECD/ITF, 2017).

Both the transport of freight and the transport of passengers have an important role in enhancing economic growth and promoting consumer welfare. On the one hand, the movement of freight within a country and across borders improves the integration of national and international markets, fostering competition and specialisation. On the other hand, the transport of passengers not only directly affects the quality of living of people who access other cities and countries, but also influences the mobility of labour that is so important in a context of increasing specialisation.

Portugal is a small country located on a peninsula in the far west of Occidental Europe and is separated from the American and African continents by the Atlantic Ocean. Most of the population is located along the extended coastline, an inland countryside with high hills in the north and lowland in the south, and on two sets of islands far away from the coast. The particular geography of Portugal also affects the relative importance of the several modes of transportation. As in most countries, road transport accounts for the vast majority of the movements of passengers and freight. However, in Portugal maritime transport has a particularly important role in the movement of freight, guaranteeing also the connection between the mainland and the Portuguese islands. Railway transport is mostly used by passengers for national routes, as it is constrained by the small dimension of the national railway network.

This chapter provides a short overview of the transport sector in Portugal. First, section 2.1 offers an economic overview of the evolution of the transport sector in Portugal supported by statistical data. Section 2.2 provides an overview of the institutional framework, identifying the main Portuguese institutions responsible for issuing national regulations, including ministries, general directorates and public institutes. Then, sections 2.3 and 2.3.3 discuss barriers to competition related to public procurement and administrative fees that are transversal to all modes of transportation.

2.1. Economic overview

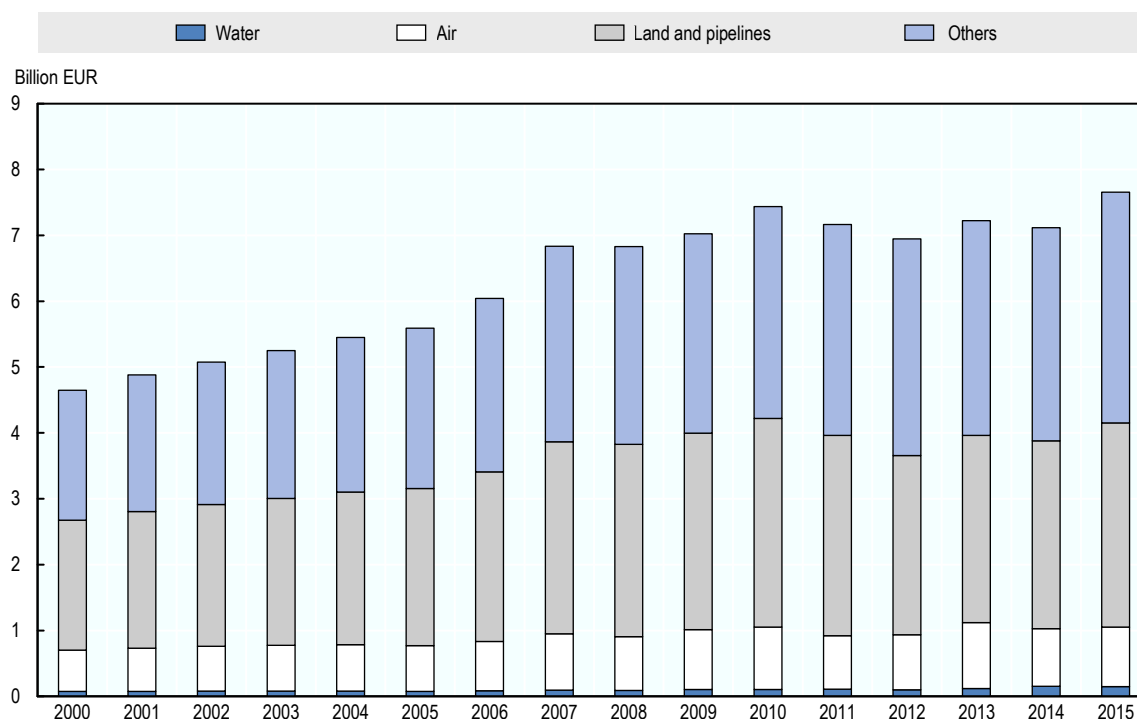
The transport sector comprises economic activities related to the movement of freight and passengers using land, water and air modes of transportation. Land transport can be further divided into road, railway and pipelines, while water transport includes maritime transport and inland waterways. The transport sector also includes warehousing, storage and other activities that support the provision of transport services.

Using 2015 data, the transport sector generated a GVA of EUR 7.7 billion for the Portuguese economy, corresponding to 4.3% of the GDP. Data gathered from INE shows that the transport sector employed almost 155 000 people, representing around 3% of the entire employed population. The sector also benefitted from the market participation of over 20 000 firms, of which 99.6% are small or medium-size companies (SMEs), most of them responsible for the provision of taxi services and freight road transport.¹

In absolute terms, the value added of transport activities in Portugal has been growing substantially over the last decades, having increased from around EUR 4.6 billion in 2000

to EUR 7.7 billion in 2015 (Figure 2.1). This corresponds to an average annual growth rate of around 3.4%, exceeding the average growth rate of the GDP of 2.3% over the same time period. The growing trend of the sector appears to have only been interrupted in the years following the international financial crises.

Figure 2.1. Gross value added of the transport sector in Portugal (current prices)



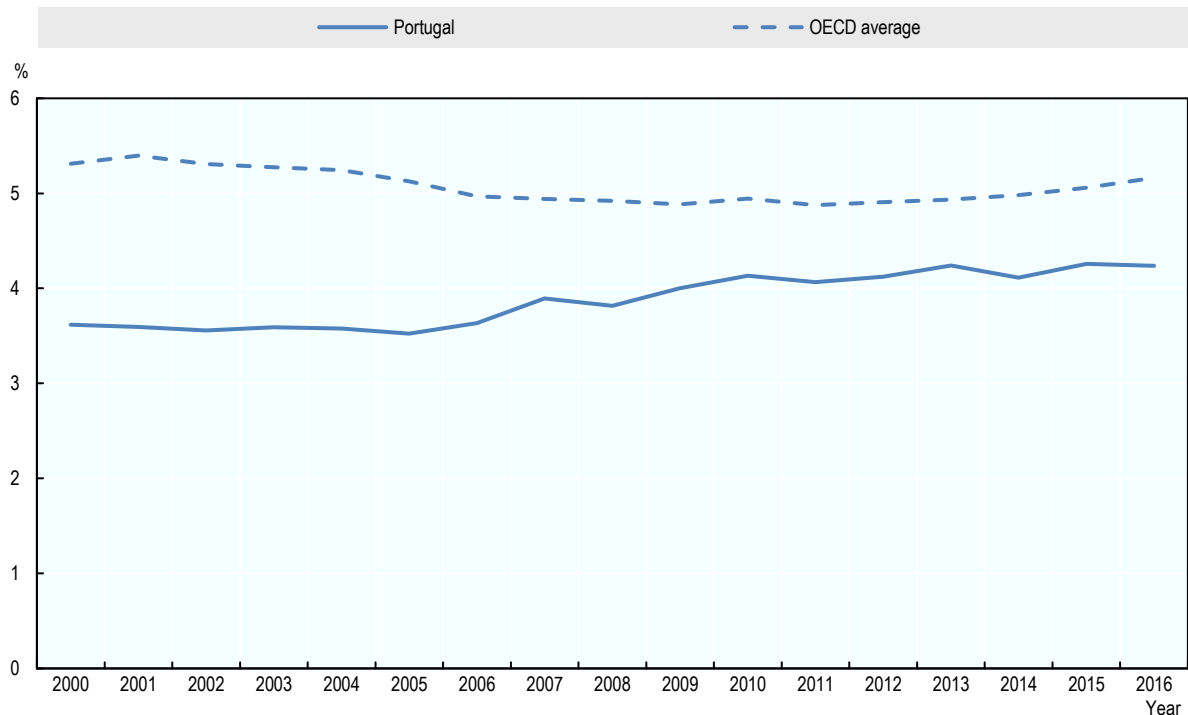
Note: “Others” includes warehousing, support activities for transportation, and postal and courier activities.

Source: OECD (2017), “Value Added and its Components by Activity, ISIC rev4”, National Accounts of OECD Countries, Vol. 2017, Issue 2: Detailed Tables, OECD Publishing, Paris, http://dx.doi.org/10.1787/na_ma_dt-v2017-2-en.

Of all modes of transportation, land transport is by far the one that generates the most value, accounting for around 40% of the sector’s value added. Air transport is responsible for a share of 12%, while transport by water only accounts for 2% of the sector’s GVA. Despite the apparently small contribution of water and air transport to the GDP, these two modes of transportation are supported by economic activities in ports and airports whose value can be substantial. In 2015, warehousing and support activities accounted for near 46% of the sector’s GVA.

The contribution of the transport sector to the Portuguese GDP is somewhat below the OECD average, as seen in Figure 2.2. Between 2000 and 2015, transport services and storage in Portugal accounted on average for less than 4% of the GDP, while the share for OECD countries exceeded 5% for the same time period. However, there is a clear growth trend of the relative dimension of the Portuguese transport sector since 2005, which has enabled the country to slowly reach the OECD average.

Figure 2.2. GVA of the transport sector as a share of the GDP



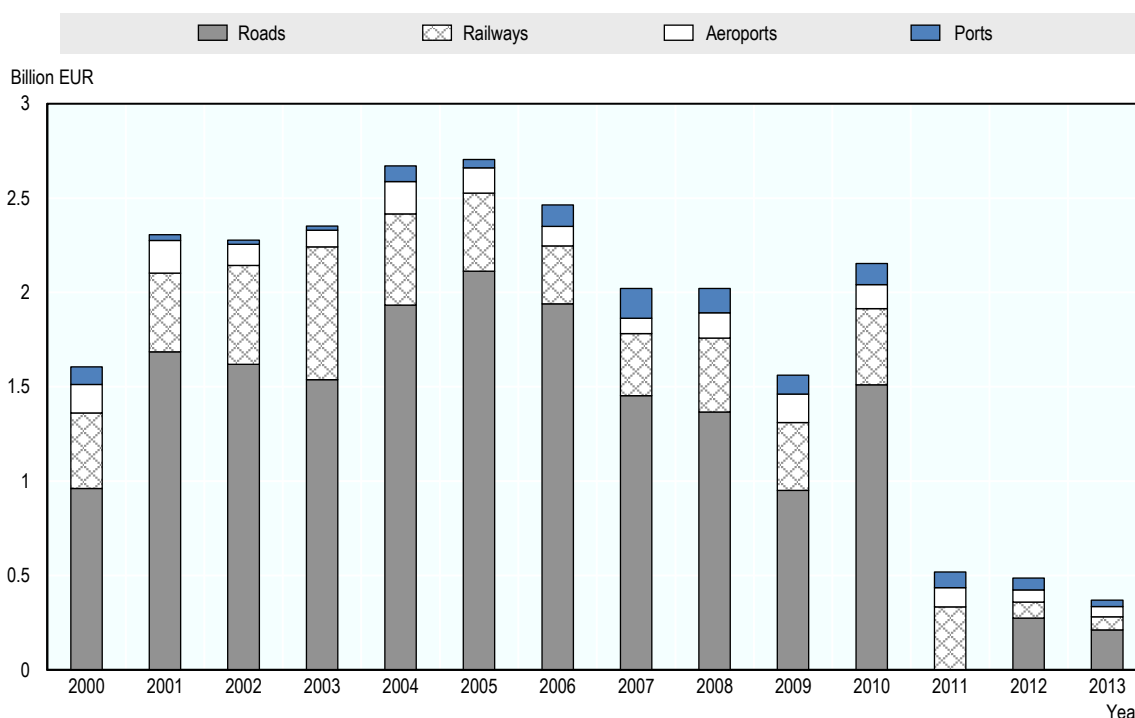
Note: The GVA of the transport sector (including warehousing and support activities) as a share of the GDP was calculated for this study using data available for OECD countries.

Source: OECD (2017), “Value Added and its Components by Activity, ISIC rev4”, National Accounts of OECD Countries, Vol. 2017, Issue 2: Detailed Tables, OECD Publishing, Paris.

http://dx.doi.org/10.1787/na_ma_dt-v2017-2-en.

The relatively recent growth of the transport sector in Portugal can be explained in great part by a major investment effort in transport infrastructure during the first decade of the new millennium (Figure 2.3). Between 2000 and 2010, Portugal invested on average over EUR 2 billion per year in infrastructure in all modes of transportation combined. Since 2011, the investment level has decreased to one quarter of that value, explaining the fact that the growth of the sector has been stabilising over the last few years.

The vast majority of the investment made between 2000 and 2010 was allocated to land transport infrastructure, particularly for the development of the national road network. Indeed, around 90% of the investment conducted during that period was assigned to inland infrastructure (roads and railways), with ports and airports benefitting from the remaining 10%. However, it was also inland infrastructure that suffered the most with the drop in investment after 2011, with ports and airports accounting since then for roughly one quarter of the total investment in transport infrastructure.

Figure 2.3. Investment in transport infrastructure in Portugal

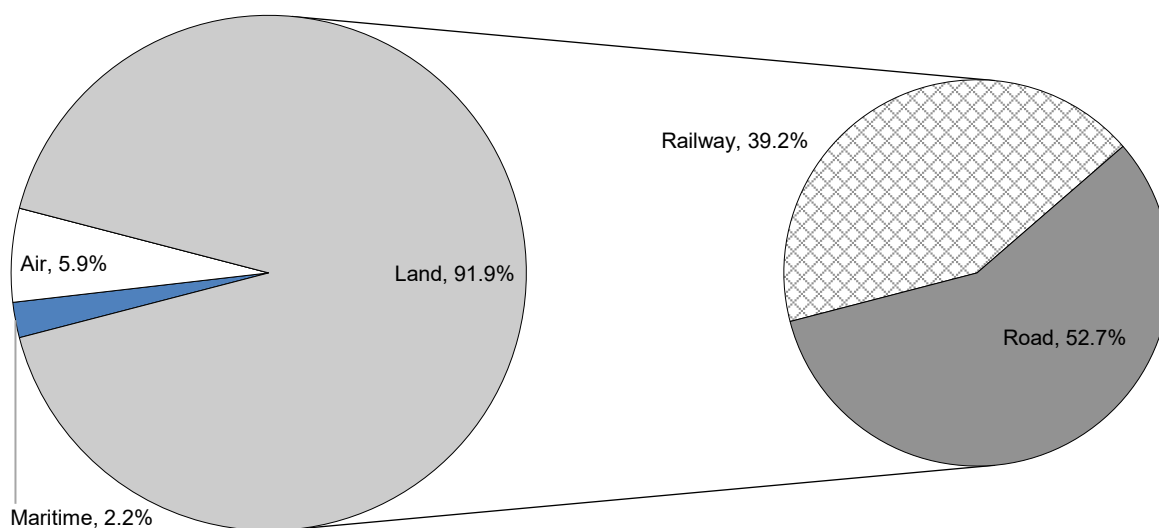
Note: No data are available for investment in road infrastructure in 2011.

Source: ITF (2018), "Transport infrastructure investment and maintenance", *ITF Transport Statistics* (database), <http://dx.doi.org/10.1787/g2g55573-en>.

Apart from the importance of infrastructure policy, the growth of different modes of transportation also depends on market demand for different kinds of transport services. On the one hand, land transport is mostly used to move passengers and freight within the country, having a limited role in international transport. On the other hand, maritime and air transport have fundamentally an international nature, though each of the two modes is mostly suited for the transport of freight and passengers, respectively.

In 2016, over 900 million passengers were served in Portugal; 92% of these were transported by land (Figure 2.4). Over half of the passengers used road transport and a substantial share of passengers opted for railways, which play a particularly important role in connecting the coast from the north to the south. Air transport has still a limited dimension in Portugal and only a very small fraction of passengers were transported by water, usually through inland waterways.

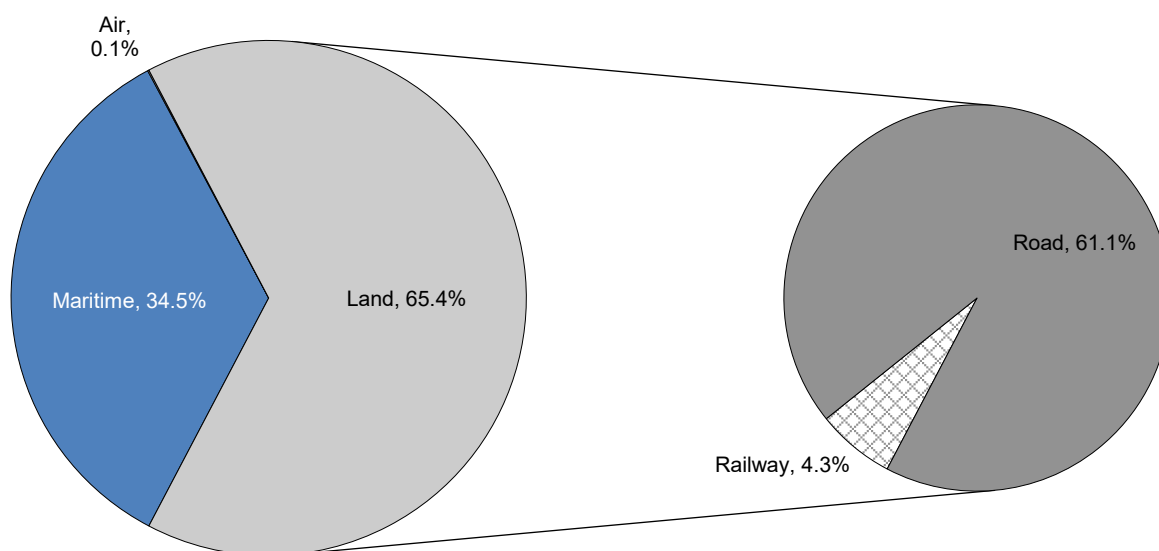
In the same year, around 250 thousand t of freight were transported in Portugal. Again, land transport is the most common mode, accounting for around two thirds of all moved cargo, almost entirely by road (Figure 2.5). However, maritime transport, which also plays an important role in freight, remains one of the cheapest modes of transportation and accounts for more than one-third of all freight transport in 2016. Rail has a small share of the freight transport and the fraction of air transport is negligible.

Figure 2.4. Distribution of passenger transport by mode in Portugal, 2016

Note: Maritime transport includes inland waterways and railway transport includes underground.

Source: INE (2017), Transport and communications statistics - 2016",

www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_publicacoes&PUBLICACOESpub_boui=277050476&PUBLICACOESmodo=2&xlang=en .

Figure 2.5. Distribution of freight transport in tonnes by mode in Portugal, 2016

Note: Railway transport includes underground.

Source: INE (2017), Transport and communications statistics - 2016",

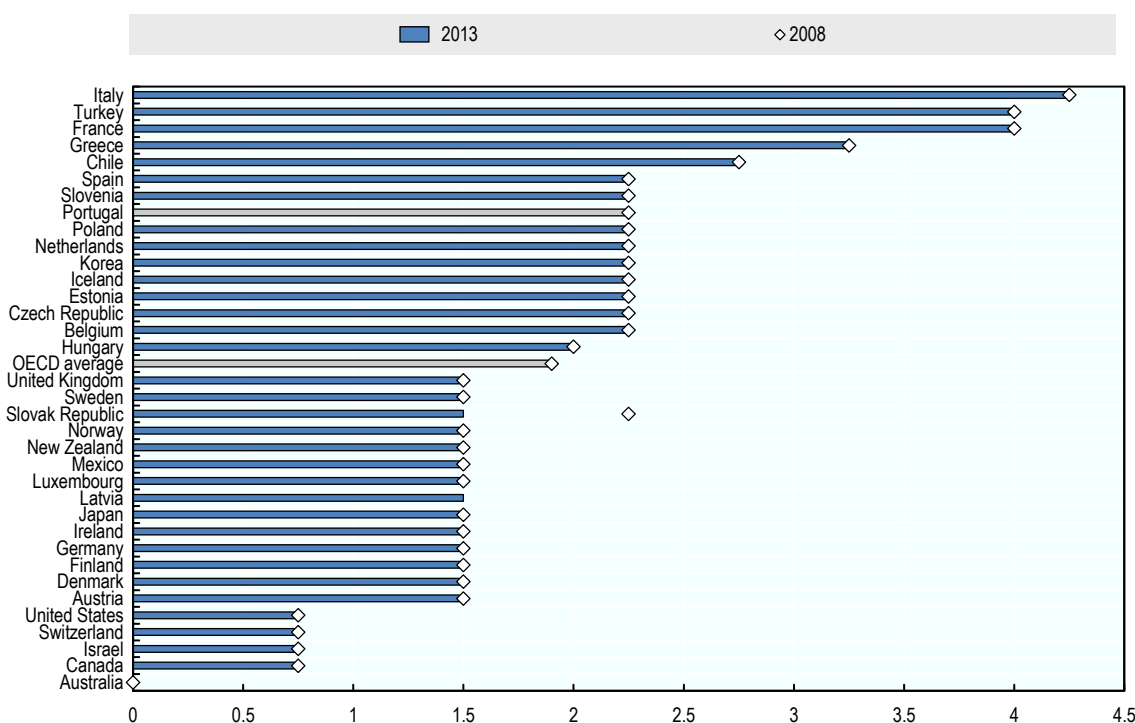
www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_publicacoes&PUBLICACOESpub_boui=277050476&PUBLICACOESmodo=2&xlang=en.

Finally, the growth and overall level of competition in the transport sector ultimately relies on the prevalent regulatory framework. According to the PMR indicator developed by the OECD, Portuguese regulations in the road, rail and airlines sectors create more obstacles to competition than the regulatory framework of most OECD countries, as shown in Figure 2.6, Figure 2.7 and Figure 2.8. Moreover, the PMR indicators in Portugal for roads and airlines have not changed between 2008 and 2013, though there was a positive evolution of the PMR of the rail sector.

Looking inside the different components of the PMR, it is possible to identify the areas where regulatory reform could be more useful. In the road sector, the high value of the PMR results from excessive barriers to entry, which could likely be reduced through pro-competitive reforms. In the rail industry, the PMR also identifies some barriers to entry, but the high level of the indicator is mostly driven by the excessive level of public ownership that may be associated with the lack of profitability of the sector. In the airline sector, no barriers to competition are captured by the PMR, whose high value is also related to the high level of public ownership.

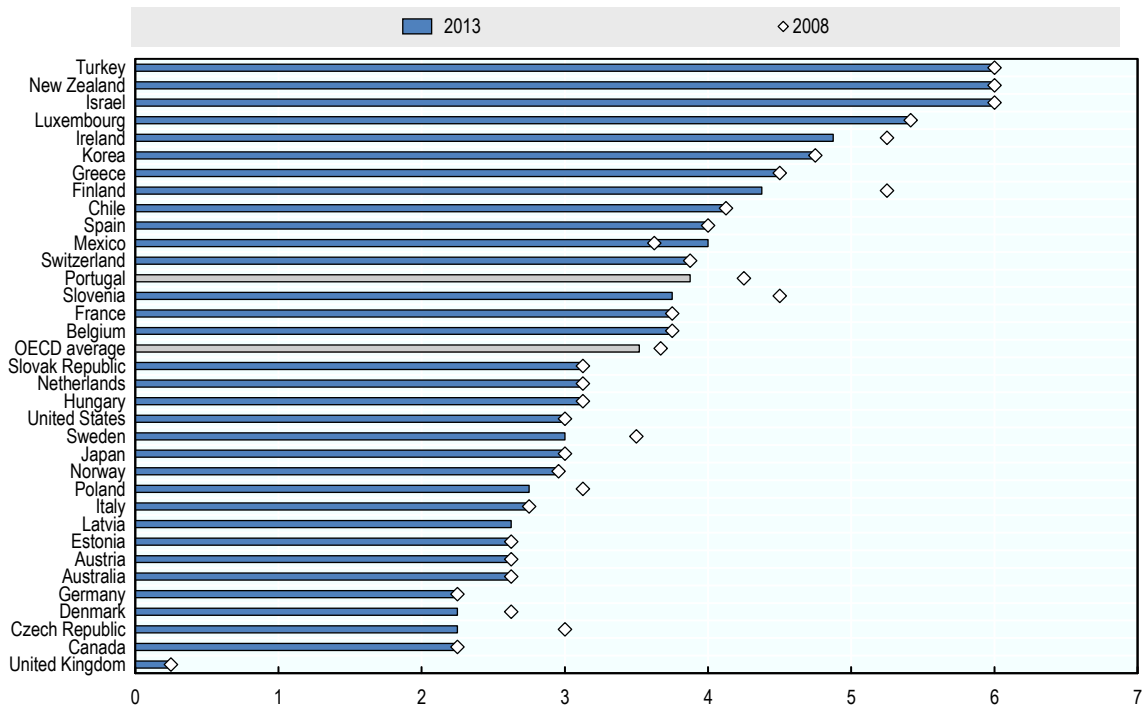
Currently the OECD does not calculate a PMR for the port and maritime sector. Nonetheless, this study identified several regulatory barriers in port regulations that may overly restrict competition, especially when compared with the standards of other OECD countries. Therefore, together with roads, ports are among the sectors that could benefit the most from a pro-competitive regulatory reform.

Figure 2.6. Product Market Regulation indicator for the road sector



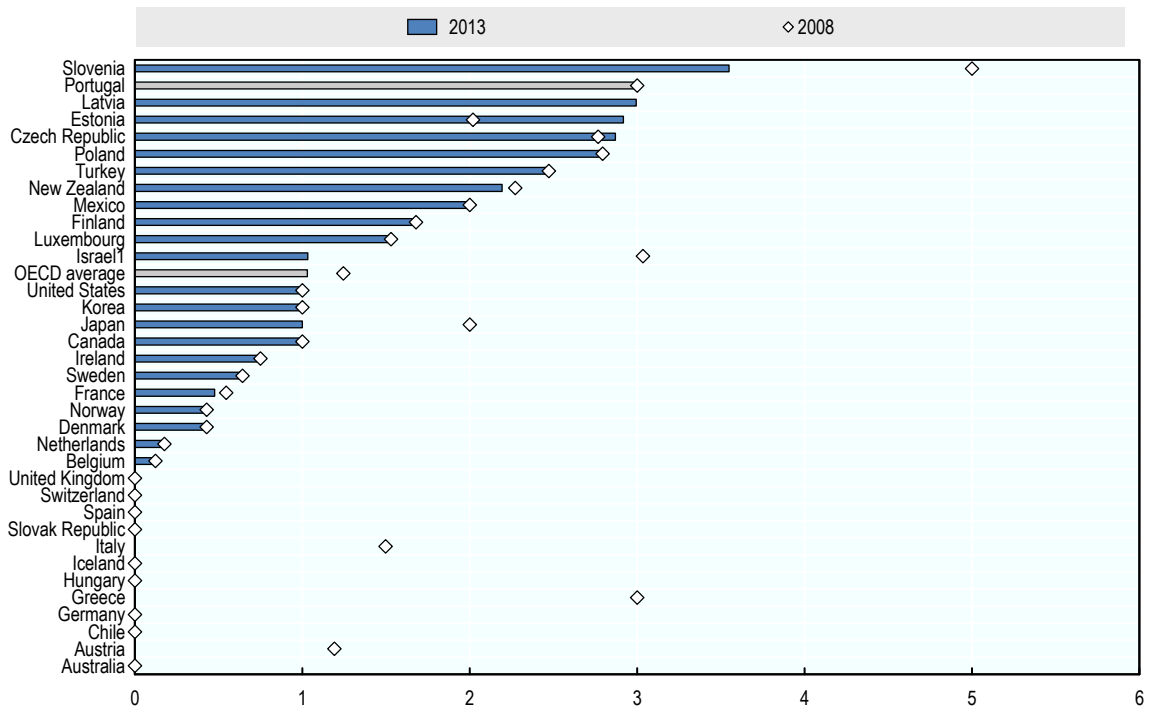
Source: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

Figure 2.7. Product Market Regulation indicator for the rail sector



Source: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

Figure 2.8. Product Market Indicator for the airlines sector



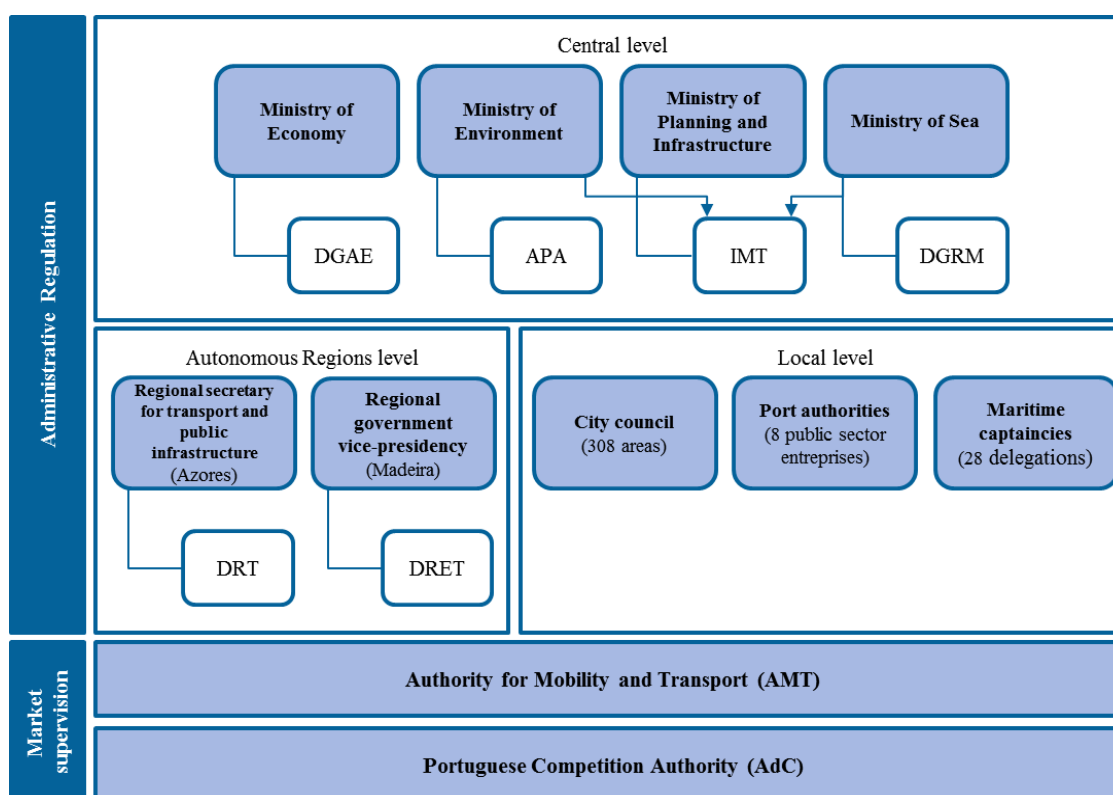
Source: OECD (2013), Product Market Regulation Database, www.oecd.org/economy/pmr.

2.2. Institutional framework

The institutions responsible for issuing or enforcing rules, instructions and guidelines in the transport sector play a significant role in the functioning of the market and can ultimately affect competition. Therefore, an overview of the institutional framework helps in setting the basis for a better understanding of the sectorial regulations discussed in the next chapters. This section focuses on the Portuguese authorities that govern the road, the railway, and the port and maritime sectors, as only Portuguese regulations governing those sectors are analysed in the scope of this study.

Portuguese authorities have a different range of geographical intervention according to their national (central), regional or local scope (see Figure 2.9). They also differ in their powers, which can generically be administrative or market regulation powers. As a result, the form and content of the regulations issued by those entities can be quite diverse, ranging from decree-laws to regional ordinances or instructions.

Figure 2.9. Portuguese authorities in the transport sector



At the central level, the ministries that regulate the transport sector² are supported by direct governmental administration bodies (general directorates) and by indirect public administration bodies (public institutes),³ having the following roles:

- The **Ministry of the Economy** promotes transport as an instrument to increase economic growth, competitiveness and innovation.⁴
 - It comprises the **General Directorate of Economic Activities (DGAE)**,⁵ which has specific powers in the regulation of taxi fares.

- The **Ministry of the Environment** is responsible for protecting the environment, reducing climate change and conserving nature through urban planning regulations, as well as policies and regulations governing the use of water and the provision of urban passenger transport.⁶
 - It oversees the **Portuguese Environment Agency (APA)**,⁷ which links Ministry of the Environment policies with other sectoral policies, in collaboration with public and private entities.
- The **Ministry of Planning and Infrastructure** formulates, conducts, implements and evaluates policies in the transport sector.
 - It oversees the **Institute for Mobility and Transport (IMT)**,⁸ which is responsible for the technical regulation, licensing, co-ordination, supervision and planning of the railway and road sectors. It is also entrusted with specific responsibilities of the Ministry of the Sea⁹ and of the Ministry of the Environment.
- The **Ministry of the Sea** has the responsibility for co-ordinating all matters related to the sea, having specific policy-making and regulatory powers concerning commercial ports and maritime transport. In co-ordination with the Minister of Planning and Infrastructure, it is the supervisory authority of port authorities.
 - It comprises the **General Directorate of Natural Resources, Safety and Maritime Services (DGRM)**, which often acts as a national maritime administration and authority in relation to other institutions or Portuguese economic agents.

In the Portuguese islands, the regional government is the executive and administrative body that regulates all modes of transport that fall within its jurisdiction. In Azores, the Regional Secretary for Transport and Public Infrastructure (SRTOP) co-ordinates areas related to transport, the road system, sustainable mobility and public infrastructure, with the support of the Regional Directorate for Transports (DRT).¹⁰ In Madeira, the Regional Directorate for Economy and Transport (DRET) executes the sectoral policies and regulates the transport and mobility sector, under the direction of the vice-presidency of the regional government.

At the local level, the following institutions have administrative powers in the transport sector:

- **Port authorities** are state-owned companies¹¹ that determine the technical conditions for private companies to operate in ports within their jurisdiction. In the exceptional case of the Port of Douro and Leixões, the port authority also regulates navigation in the Douro River waterway.
- **Maritime captaincies** act as local bodies of the Maritime Authority (that depends on the Ministry of Defence) distributed along the Portuguese sea coast. As such, they co-ordinate the activities carried out in the public and maritime domains, defining in particular vessel inspection procedures and crew control formalities.
- **City councils** establish the framework for the organisation and access to taxi licences issued at the municipal level.

The market regulation of the road, railway and the port and maritime sectors is under the responsibility of the Authority for Mobility and Transport (AMT).¹² Moreover, the

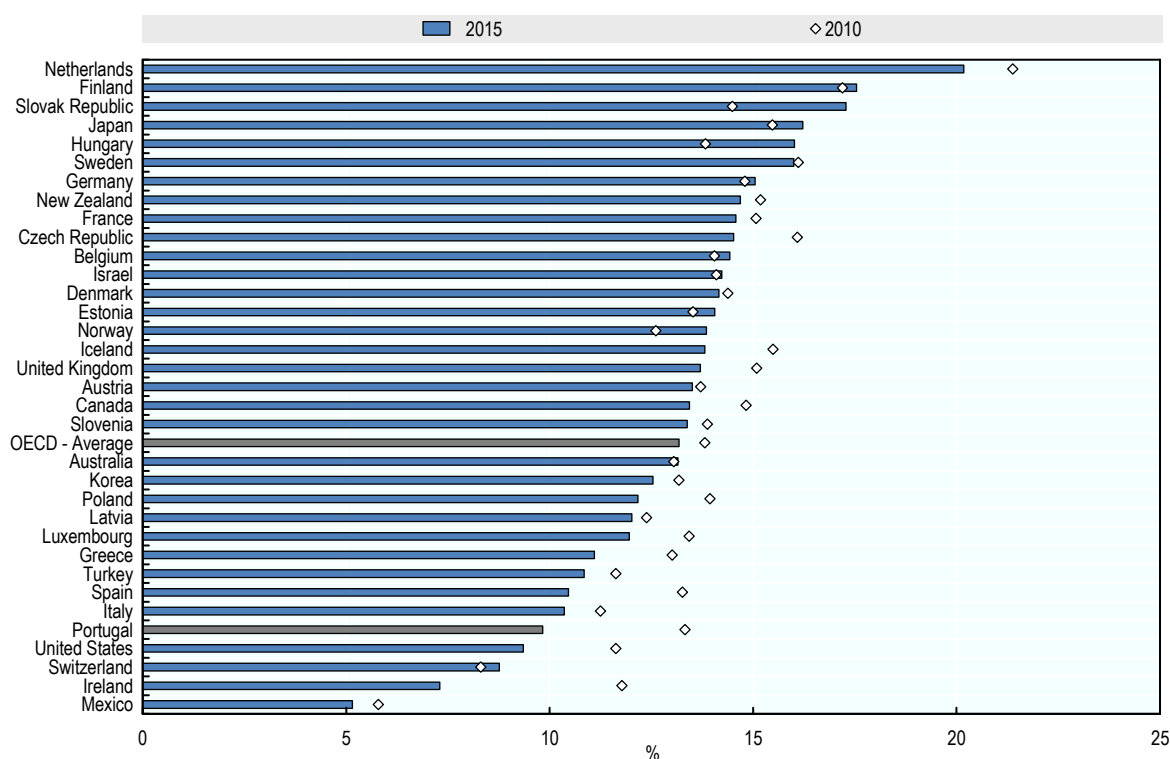
Portuguese Competition Authority (AdC) is responsible for ensuring compliance with competition rules and can also act as an advocacy organ to promote competition in the sector.

2.3. Public procurement

Public procurement is the purchase of works, goods and services by the public sector and is a key economic activity for governments. It typically accounts from 10% to 15% of the GDP in most OECD countries, including in Portugal where this share amounted to around 10% in 2015 (Figure 2.10). According to the EU Directives 2014/24/EU, public procurement comprises supply contracts, public work contracts and service contracts that can take different forms.

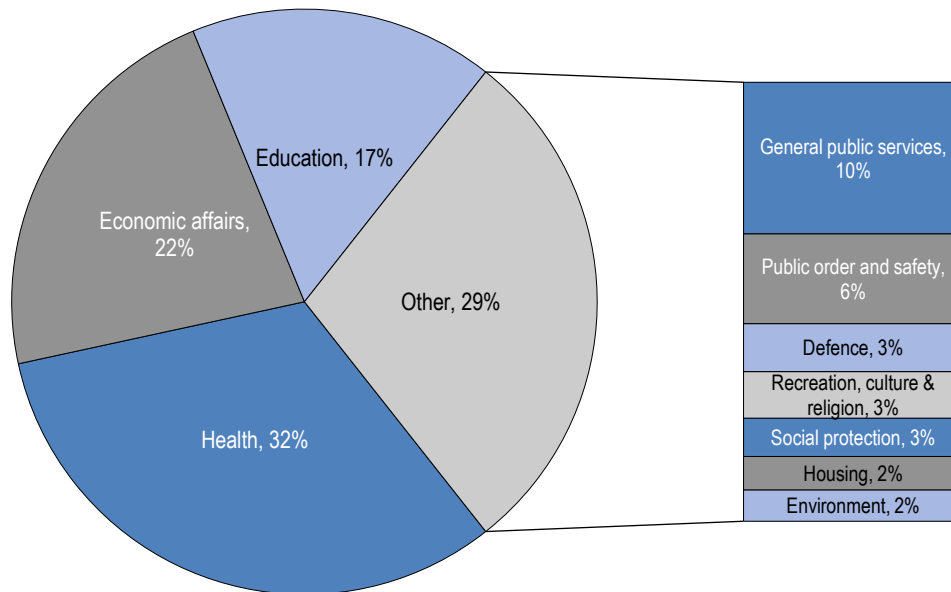
Public procurement is very relevant in the context of the transport sector, where public authorities often refer to the private sector for the construction of roads, highways, bridges, tunnels, rail tracks and other infrastructure. In Portugal, after health, the second largest share of procurement spending is allocated to economic affairs, which includes transportation among other categories (Figure 2.11). Moreover, the provision of certain transport services is often subject to concessions or public-private partnerships that are governed by similar rules to public procurement.

Figure 2.10. Public procurement as a share of GDP in OECD countries



Note: State-owned companies were excluded from the estimation of procurement spending.

Source: OECD at a Glance – 2017 edition, available at <http://stats.oecd.org/>.

Figure 2.11. Structure of public procurement by function in Portugal, 2015

Note: Procurement spending in transport is included in the category of economic affairs, which also comprises agriculture, fuel, energy, manufacturing, construction, communication, R&D and others.

Source: OECD at a Glance – 2017 edition, available at <http://stats.oecd.org/>.

The way public procurement is designed can have important implications for the integrity of the process and affects the efficient allocation of public funds. In general, public tenders should be designed to encourage the participation of competitors, minimise the risk of bid-rigging schemes, hinder corruption and prevent favouritism. However, this task can be challenging, because the large dimension of public contracts in the transport sector and the sometimes limited number of suppliers with capacity to satisfy government needs make the process especially vulnerable to collusion and corruption (OECD, 2010).

In Portugal, public procurement is regulated by the Code of Public Procurement (CPP), a consolidated set of rules that brings together all legal provisions governing procurement contracts between the public and the private sectors. Among other things, the CPP defines the elements of the contracting process, classifies different types of public contracts, sets rules for the organisation of public tenders and defines awarding criteria. The CPP also imposes principles of equality, competition, transparency, proportionality, good faith and reciprocal collaboration in the design of public procurement.

The CPP was recently subject to an extensive review to transpose the 2014 EU directives,¹³ with the purpose of making the process of public procurement in Portugal more simple, flexible and efficient.¹⁴ Some of the changes introduced to the CPP also help to make the procurement process more competitive: for instance, the new CPP abolishes a former provision that enabled contracting authorities to charge a fee in exchange for access to the specifications or terms of reference of the bid.¹⁵ Such a provision used to raise entry costs and potentially restricted the number of bidders in a procurement process.

Nonetheless, some rules of the CPP and the implementation of the law by the contracting authorities might still unnecessarily restrict the competitive process in some circumstances. This section discusses, in particular, (1) the timing for the disclosure of

bidding information and (2) the use of electronic auctions in markets that are prone to collusion. It should be noted, however, that the barriers to competition discussed here do not result from an extensive analysis of the CPP, but were identified in meetings with stakeholders when addressing issues specifically related to the transport sector.

2.3.1. Disclosure of bidding information

Description of the barrier

The organisation and awarding of public tenders is regulated by the CPP,¹⁶ which among other things sets rules for the disclosure of information related to the bidders and the content of their offers. According to the CPP, the contracting authority must share with all bidders the list of participants in the public tender on the day immediately after the deadline to submit an offer.¹⁷ In addition, there is a legal requirement for contracting authorities to provide each bidder with access to the offers submitted by all other bidders, which in some cases might potentially result in the disclosure of business-sensitive information.

The overall purpose of the legal provisions is to improve transparency in the procurement process and to protect the right to defence of any bidder that was not awarded the contract. This way, by requiring the disclosure of a list of the participants and the content of their offers, any bidder can verify whether its offer was considered by the contracting authority and, at a later stage, help in supervising whether the evaluation procedure was fair and impartial. The information released can also be used by bidders who did not win to oppose the award of the tender.

It is important to note, however, that after the release of detailed bidding information the participants might still be able to change the content of their offers under some pre-specified conditions. For instance, the CPP enables the contracting authorities to organise subsequent electronic auctions for bidders to improve their offers after the identity of the bidders is revealed. Likewise, the bids and terms of the contract can be changed in further negotiation procedures. While it might not be clear from the CPP that electronic auctions and negotiation procedures occur after bidding information is released, this fact was confirmed in meetings with relevant stakeholders.

Harm to competition

The degree of transparency of information in a public procurement procedure poses a trade-off between preventing corruption and collusion (OECD, 2010). On the one hand, a transparent process is crucial to avoid corruption, by guaranteeing that all market players have access to information about the contract opportunities, rules of the public tender and awarding procedure. On the other hand, excessive transparency and dissemination of business-sensitive information can facilitate collusion, by making the procurement procedure more predictable, and by enabling firms to align their strategies and to monitor each other's actions.

The timing for the disclosure of information in Portugal poses a particular risk of restricting competition, as contracting authorities are required to publish the list of participants and their initial offers prior to the award. This enables bidders to identify each other, to become aware of their offers and to co-ordinate bids in later stages of the process (for instance, during electronic auctions and negotiation procedures). Moreover, allowing bidders to access business-sensitive information can reduce the incentive for companies to submit competitive bids in future procurement processes.

The policy objective of promoting transparency and integrity in the procurement procedure could be achieved with a less restrictive provision, by delaying the disclosure of the bids at the moment of the awarding of the contract. In addition, it is important to guarantee that bidders' identities and all business-sensitive information (such as trade secrets) are protected and removed from the documents disclosed. Exceptions should only be made if the bidders' identities or other pieces of information are fundamental to protect the right to defence of any bidder that did not win the tender.

Recommendation

Amend the legal provision to guarantee that bids are disclosed at the moment of the awarding (after any electronic auctions and negotiation procedures have taken place). In addition, the identity of the bidders and other business-sensitive information should not be revealed at any point, except when necessary to preserve the right to defence.

2.3.2. Use of electronic auctions

Description of the barrier

Electronic auctions are a public procurement tool introduced by the 2014 EU Directives, enabling bidders to revise price downwards or to change the values of other quantitative elements initially submitted in the public tender.¹⁸ In opposition to physical auctions (for instance in art sales), electronic auctions have the advantage of reducing bidders' participation costs and decreasing their opportunities to directly communicate with each other during the bidding phase.

Electronic auctions take the form of a reverse English auction, where bidders iteratively reduce their prices until no other offers are made (see Box 2.1). Although the law does not explicitly define them as English auctions, the dynamic and iterative nature of electronic auctions is clear in the wording of both the 2014 EU Directives and the Portuguese CPC.¹⁹ During this bidding process, all bidders receive instantaneous information about their relative ranking and, sometimes, are also revealed the total number of participants and the prices submitted by other bidders.²⁰

Electronic auctions are only one amongst the several procurement instruments offered by the EU Directives and often their implementation is rather limited. Indeed, electronic auctions can only be used to bid on elements that can be easily quantified and that do not imply a subjective evaluation, since new offers are ranked through automatic evaluation methods.²¹ Still, electronic auctions appear to be common in some procurement processes in Portugal.

Harm to competition

In general, the use of electronic auctions of the "English" type in procurement processes poses a risk of fostering collusion due to two main factors (Klemperer, 2005). First, this type of auction creates a mechanism for bidders to instantaneously monitor and punish any participant that deviates from an agreed bid. Second, the dynamic nature of English auctions might facilitate signalling and co-ordination of a strategy, even when the process is done electronically.

The risk of collusion is particularly likely in public tenders that are periodically repeated or divided in slots, allowing bidders to share the gains of the cartel by rotating or diving markets. The risk of collusion is also aggravated by the fact that, in Portugal, bidders are sometimes provided with detailed bidding information²² and the identity of the

competitors is disclosed earlier in the procurement process (see Section 2.3.1). Therefore, the specific design of the English auctions in Portugal poses special concerns for competition, as it enhances the level of transparency during the bidding process.

Box 2.1. The four standard auction models

Most auctions can be organised as variants of the four main standard bidding models, whose specific rules can have different implications for competition. These are the four standard types of auctions where the auctioneer is a seller (buyer):

- **English auction:** dynamic auction where the bidders iteratively increase (decrease) the price until no other offers are made. The highest (lowest) bidder is the winner and its bid is the final price.
- **Dutch auction:** dynamic auction where the price is progressively decreased (increased) by the auctioneer until a bidder cries out and wins at that price.
- **First-price sealed-bid auction:** static auction where all participants submit a bid in a closed envelop or in an electronic platform without knowing each other's bids. The highest (lowest) bidder wins and pays (receives) its bid.
- **Second-price sealed-bid auction:** static auction similar to the previous model, but where the highest (lowest) bidder pays the second-highest bid (receives the second-lowest bid).

English auctions are often designated by ascending auctions and Dutch auctions are also called descending auctions. However, these terms can be deceptive in the context of public procurement, where the state acts as a buyer instead of a seller. In such a case, the bidding process is typically reversed and an English auction is actually descending.

A fundamental result in auction theory is the **revenue equivalence theorem**, which states that under certain assumptions (such as risk-neutral bidders and independent bids) the auction yields the same expected revenues for the auctioneer. The revenue equivalence theorem is a useful benchmark to compare different auction models when some of the assumptions do not hold. For instance, if the bids are not independent as a result of collusion, a first-price sealed-bid auction is likely to generate more revenues than an English auction.

Sources: OECD (2006), "Competition in Bidding Markets", OECD Policy Roundtables, www.oecd.org/competition/cartels/38773965.pdf; Klemperer, P. (2005), "Bidding Markets", report prepared for the UK Competition Commission, www.nuffield.ox.ac.uk/users/klemperer/BiddingMarkets.pdf.

In public tenders with a small number of participants and in tenders that are periodically repeated, the risk of collusion could be mitigated with the use of a first-price sealed-bid auction, which does not allow for signalling and eliminates opportunities to punish a deviator. A first-price sealed-bid auction is also likely to attract more participants and to promote new market entry, because the winner is not always the bidder with the highest valuation (Klemperer, 2005). This makes the outcome of the auction more uncertain and creates incentives for small entrants to participate, in an attempt to overcome potential market leaders.

Recommendation

Contracting authorities should refrain from using dynamic electronic auctions in procurement processes that are susceptible to collusion, namely whenever the number of bidders is small or when the tender is periodically repeated. In those cases, contracting authorities should use first-price sealed-bid auctions instead.

2.3.3. Administrative fees

Description of the barrier

In Portugal, the entry and operation of transport service providers is often subject to the payment of administrative fees which can often reach substantial values. These administrative fees are the value due to a public entity for the provision of a public service, for the use of property in the public domain or for the removal of a legal obstacle to the behaviour of private entities.²³ When not proportional to the costs effectively incurred by the public authorities, administrative fees can pose an excessive burden on operators and even restrict the participation of the private sector.

During the course of this study, some administrative fees were identified as posing a considerable cost on transport operators. In particular, Ordinance 1165/2010, Ordinance 342/2015 and Ordinance 210/2007 set administrative fees for providers of road, rail and maritime transport services (see Box 2.2). Nonetheless, there is no publicly available information concerning the specific criteria that were used to calculate these administrative fees.

Harm to competition

In general, the charging of administrative fees leads to an increase in the costs incurred by transport service providers, potentially leading to higher prices and reducing the competitiveness of the transport sector. When administrative fees are substantial they may actually raise entry costs and potentially prevent some agents from entering the market.

Some of the stakeholders interviewed in the context of this study mentioned that several administrative fees do not seem to be entirely proportional to the economic value of the underlying services provided. Moreover, the bureaucracy inherent in the procedures involved requires operators to spend additional resources (financial, human and material). Some stakeholders recognised that some effort has been made by the public authorities to regularly update such fees and highlighted the importance of continuing those efforts.

According to good international practice, administrative bodies and agents should act, in the exercise of their functions, within the principle of proportionality,²⁴ which also applies to the charging of administrative fees. As such, those fees should be transparent, non-discriminatory and based on the costs incurred with the provision of the underlying services. They should not be a means for the administrative bodies to collect revenues.

Recommendations

The administrative fees identified should be reviewed taking into consideration the principles of proportionality, transparency and non-discrimination. Accordingly, the fees should be based on the costs of the underlying services and the method for their calculation should be made publicly available. The fees should also be regularly reviewed according to a pre-established frequency.

The “variable” administrative fees established in Ordinance 342/2015 should be complemented by the indication of the objective criteria that will be used to determine the fee.

Benefits

The implementation of these recommendations will provide cost savings for providers of road, railway and maritime transport services, improving overall the competitiveness of the Portuguese transport sector and reducing discriminatory treatment of operators.

Box 2.2. Administrative fees in the Portuguese transport sector

In the road sector, the Institute for Mobility and Transport (IMT) charges fees for providing licences for land transport operations, as well as for various services related to the activities of driving schools, training institutes and vehicle inspection centres (see Ordinance 1165/2010). On 1 March 2013, the administrative fee charged by the IMT for the submission and assessment of an application to open a vehicle inspection centre was increased from EUR 1 000 to EUR 5 000. However, it is hard to conclude that the substantial increase of the fee in a period of less than three years can be objectively justified by an increase in the amount and type of work involved.

In the railway sector, the administrative fees charged by the IMT for the issue or renewal of licences for providing railway transport ranges from EUR 25 000 to EUR 75 000. There is no publicly available information concerning the specific criteria that were used to calculate those administrative fees. However, it seems difficult to conclude that they can be objectively justified for the following reasons:

- The administrative fees are substantially different from each other even though the cost of evaluating compliance with the licensing requirements is similar for all licences (due to the similarity of those requirements).
- The fees are much higher than the administrative fee charged by the IMT for the issue of a safety certificate (EUR 5 000), even though the technical complexity and the duration of the tasks involved with the issue or renewal of a licence for providing railway transport are lower than those involved with the issue of a safety certificate.
- The administrative fees are the same in the case of issue and renewal of licences, although the analysis that the IMT needs to carry out in order to evaluate compliance with the requirements tends to be residual after their issue, due to the previously obtained knowledge of the companies and their operational context.

In the maritime sector, the DGRM charges fees for the provision of vessels certificates, licences and declarations required to operate in the respective maritime transport sectors (see Ordinance 342/2015). Some of these administrative fees are merely described as “variable” and their specific value is calculated by the relevant administrative body on a case-by-case basis. As a result, those entities are allowed to be arbitrary in their actions and, consequently, to act differently in analogous circumstances, potentially placing some operators at a competitive disadvantage. Furthermore, the situation described also results in a reduction of the information available for companies to develop their business plans.

Additionally, some administrative fees established in Ordinance 210/2007 (such as the administrative fee charged by the maritime authority for the granting of permission for a ship to exit a port) applicable to EU vessels are lower than the ones applicable to other countries’ vessels. Consequently, operators that use ships from an EU country are placed at a competitive advantage, incurring lower costs when entering the market.

Notes

- ¹ See “Improvement in the main indicators of the non-financial enterprises - 2016”, available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaquas&DESTAQUESdest_boui=281335067&DESTAQUESmodo=2.
- ² See the Portuguese Government organic law: Decree-Law 251-A/2015.
- ³ Public institutes, which carry out activities of a technical nature, are legal persons that belong to the state (indirect) administration and act under the supervision of one or more ministerial departments, but with their own administrative and financial autonomy.
- ⁴ See Decree-Law 11/2014.
- ⁵ *Direção-Geral das Atividades Económicas*.
- ⁶ See Decree-Law 17/2014.
- ⁷ *Agência Portuguesa do Ambiente*.
- ⁸ See Decree-Law 236/2012.
- ⁹ Since the extinction of the Portuguese Institute for Maritime Transport (IPTM) in 2011.
- ¹⁰ See Regional Regulatory Decree 9/2016/A.
- ¹¹ In the Portuguese islands, port authorities are owned by the autonomous regions.
- ¹² Replaced the IMT in carrying out those tasks in 2014.
- ¹³ The new Portuguese Code of Public Procurement is implemented by Decree-Law 111-B/2017 and transposes EU Directives 2014/23/UE, 2014/24/UE, 2014/25/UE and 2014/55/UE.
- ¹⁴ See introductory statements of Decree-Law 111-B/2017.
- ¹⁵ See Art. 133(1) (abolished) of the Code of Public Procurement.
- ¹⁶ See Title II (Chapter II) of the Portuguese Code of Public Procurement.
- ¹⁷ See Art. 138(1) of the Code of Public Procurement.
- ¹⁸ See Art. 35(1) of EU Directive 2014/24/EU.
- ¹⁹ See, for instance, Art. 140(1), Art. 141(b), Art. 143(2) and Art. 145.
- ²⁰ See Art. 35(6) of EU Directive 2014/24/EU.
- ²¹ See Art. 35(2) of EU Directive 2014/24/EU.
- ²² It should be noted that EU Directive 2014/24/EU enables contracting authorities to communicate information about prices and values submitted by other bidders, but it does not require them to do so – see Art. 35(7).
- ²³ See Art. 4(2) of the General Tax Law, approved by Decree-Law 398/98 (as lastly amended by Law 98/2017).
- ²⁴ See Art. 266 (2) of the Constitution of the Portuguese Republic (CRP), approved by *Decree of 10 April 1976 (as lastly amended by Constitutional Law 1/2005)*.

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3. Road sector

This chapter focuses on the road transport sector in Portugal, the most frequently used means of transportation. The chapter proposes regulatory changes and policy reforms to foster competition. Whilst most of the legislation is convened at the EU level, there are unjustified national barriers to competition. Among these are minimum capital requirements imposed on passenger and freight operators to start a business and licensing for freight operators operating solely with light trucks. Even though secondary legislation is pending to promote liberalisation, long-distance buses are still heavily regulated in terms of entry and price restrictions, and competition amongst taxis is hampered by quantitative and fare regulations. With respect to ancillary services, geographical barriers were identified in driving schools and vehicle inspection centres, in addition to price regulation in the latter. Lifting the identified barriers would increase consumer benefits up to EUR 201.42 million a year with gains for companies from reinvesting one-off savings of up to EUR 27.26 million.

3.1. Introduction

Road transportation is crucial for the EU's economy. According to the European Commission, it carries more freight and more passengers than all other modes of transport combined,¹ contributing substantially to employment and economic growth. In an area of rapid and often disruptive innovation, where technologies such as blockchain allow for better management and distribution of capacity, promoting “sized-for-purpose transport” of people and goods, the road sector has been benefitting from such innovations, enhancing its current and anticipated importance in the transport sector and in the whole economy.²

Within the Portuguese context, road transportation is particularly relevant for a variety of reasons. First, Portugal has one of the largest road networks when divided by its total land area measured in km² in Europe.³ Second, in several cases this type of transport represents the only alternative available for people to access the countryside.⁴

While fostering competition in the road sector can be particularly challenging, as most of the regulations are framed by EU legislation, there is scope for promoting more efficient national regulation since, in several cases, the Portuguese legislator has imposed more stringent rules. Better regulation can reduce transportation costs, which represent a significant portion of the cost of the whole supply chain, enhance efficiency and boost competitive offers from market players.

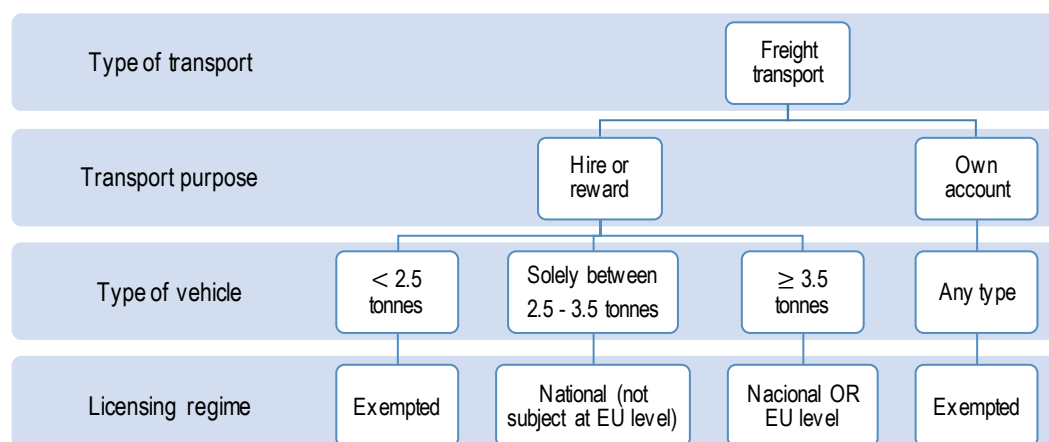
This chapter is divided into seven sections. Section 3.2 analyses several common licensing rules for transport of passengers and freight. Common topics include minimum capital requirements to start and exercise the activities, as well as restrictions on vehicles to access and exercise these activities. Sections 3.3 and 3.3.4 discuss the regulation of road passenger transport by bus and taxi. The first section includes the activity of bus transport and, specifically, access to the market for long-distance bus routes. The following section includes access and exercise of the taxi activity. Sections 3.5 and 3.6 cover ancillary services. These services do not involve the transport of goods or passengers from point A to point B, but provide important inputs for road transportation. Relevant topics include driving schools, training institutes for drivers and transport managers and vehicle inspection centres. Section 3.7 includes a regulatory barrier on customer restrictions for truck rental services and the analysis of administrative burdens and obsolete legislation.

3.1.1. Sector overview

Road transport refers to all movements of goods and passengers using a road vehicle on a given road network.

Freight transportation by road

At national level, the transport of freight by road can be pursued under two different legal regimes, either by own account or for hire and reward. Transport by own account is liberalised and not subject to licensing rules, whether concerning the vehicles used or individuals or collective persons. Transport for hire and reward is also liberalised but subject to national⁵ and European rules⁶ on access to the activity and to the market. To operate in the domestic market, national and international operators are subject to licensing rules, as well as the vehicles used, when using vehicles with a tonnage above 2.5 t.⁷ Figure 3.1 provides a schematic representation of road freight transportation.

Figure 3.1. Categories of freight transport: for hire and reward and for own account

Sources: Decree-Law 257/2007, Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009. See ANTRAM, available at www.antram.pt/attachments/upload/Guia%20Transportador/3.%20Acesso%20e%20Exerc%C3%ADcio%20da%20Atividade.pdf (accessed on 18 January 2018); and IMT, available at www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransporteMercadorias/LicenciamentoEmpresas/Paginas/LicenciamentoEmpresas.aspx (accessed on 18 January 2018).

Freight transportation by road: potential impact of technology on the current system

Within the context of a competition impact assessment of freight transportation by road, it is important to keep in mind the potential impact of technology on the current road freight transportation system. In particular, one should consider the potential impact of self-driving trucks on the current regulatory environment and how these could influence the functioning of the sector even if this type of technology is only taking its first steps with trials being carried out in some regions of the United States and the European Union (see Box 3.1.).

Road passenger transportation

National road transportation includes the total movement of passengers using road transport on a given network. Two type of vehicles can be used: (i) buses, also labelled as “heavy vehicles”, with more than nine seats, including the driver; and (ii) light passenger cars, with less than five seats, including the driver, which can be used as taxis or in car rental services.

Central bus stations also need to be considered as they are an important infrastructure and contribute to the functioning of long-distance bus operators.

Ancillary services

To fully understand the road sector it is important to cover the so-called ancillary services. They do not directly involve the transport of goods or passengers, but provide important inputs for road transportation. Relevant topics for the road transport sector include driving schools, training institutes for drivers and transport managers and vehicle inspection centres (Fig. 3.2 illustrates the structure of the road transport industry in Portugal).

Box 3.1. The potential impact of self-driving trucks

Automation represents an opportunity for the road freight sector

Driverless vehicles already operate in controlled environments like ports or mines, and trials on public roads are underway in many regions including the United States and the European Union. Within the next ten years, driverless trucks could be a regular presence on public roads. Vehicle operators and fleet managers are likely to accelerate the adoption of these vehicles due to the considerable labour cost reductions that they bring.

Other benefits of automation to society include lower emissions due to more efficient routing and greater safety by reducing the incidence of human error. At the same time, the transition to automation presents a number of political and regulatory challenges that governments will have to address.

The adoption of self-driving vehicles will introduce new policy challenges

The adoption of driverless vehicles in freight transport will have a profound impact on employment. There will be job losses among drivers while other jobs will be created, especially linked to the support and maintenance of new vehicles in operation. Potentially, some on-board tasks will also be required. The challenge for policy makers is to mitigate the negative social impact of driver job losses, whilst balancing the social status of the newly created jobs with the efficiency opportunities of the road transport industry.

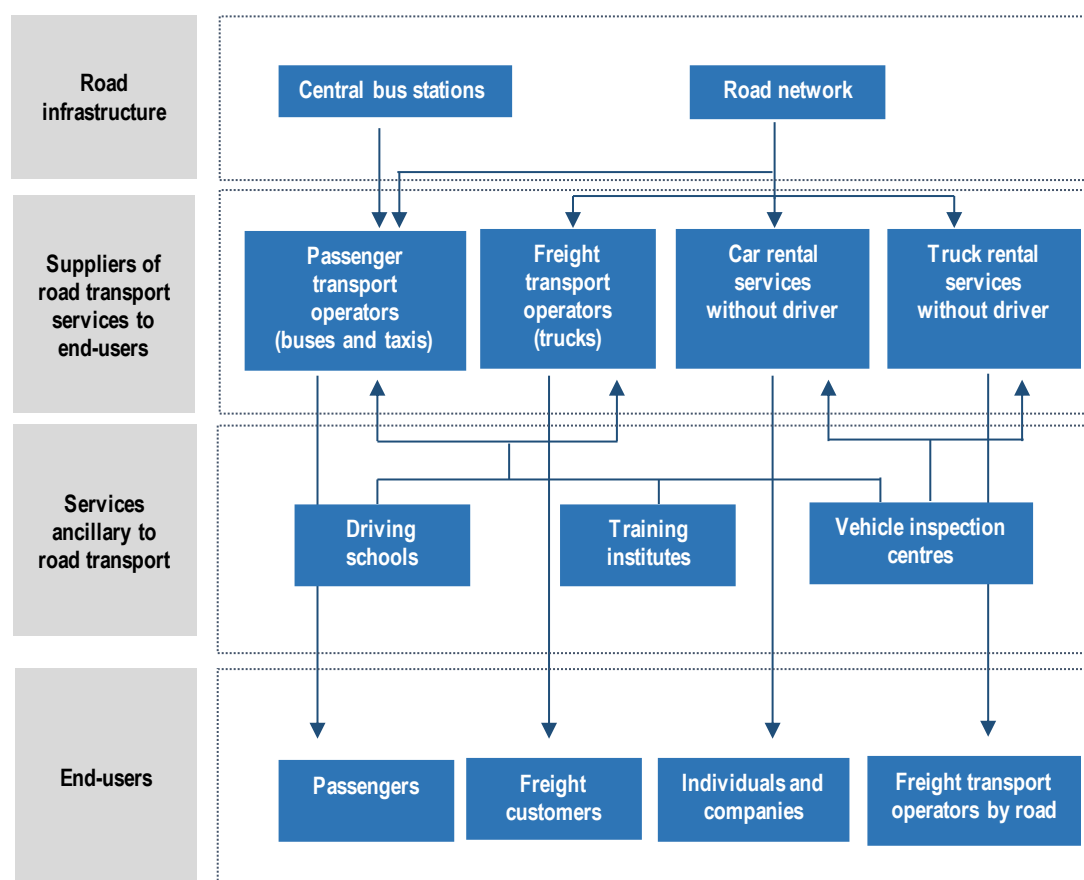
The current regulatory framework in road transport (which in the European Union includes e.g. EC Regulation No 561/2006 on working time, EC Directive 96/53/EC amended by Directive 2015/719/EC on the weights and dimensions of vehicles) have been developed and implemented for a situation in which the driver is present in the cabin of the vehicle. To reach the underlying policy goals of economic efficiency, equity and sustainability, all road transport legislation will need to be adapted to support the implementation of driverless vehicles. In order to ensure the highest safety standards during the introduction of driverless vehicles on public roads, standardisation of vehicle technical characteristics at the international level will also be required, and work is ongoing at the UNECE World Forum for Harmonization of Vehicle Regulations (WP.29).

The lack of drivers on board automated road vehicles presents an enforcement challenge too, because the current paper-based control procedures cannot be carried out in the absence of personnel on board. This calls for the development of completely new data-driven enforcement procedures, which would enable checks and inspections to be carried out without hindering the flow of goods and undermining the efficiency gains of driverless vehicles, possibly even without stopping the vehicles.

All these challenges will require new and enhanced approaches for data collection, sharing and analysis. Further co-operation will be necessary between public authorities, transport operators and vehicle manufacturers. Data-driven regulation based on live feeds and digital inspections should therefore become the norm. Greater data needs will also raise challenges with respect to issues of ownership, storage and dissemination of data.

Sources: ITF (2017b), “Managing the Transition to Driverless Road Freight Transport”, International Transport Forum Case-Specific Policy Analysis Report, OECD Publishing, Paris. DOI: available at <http://dx.doi.org/10.1787/0f240722-en>; ITF (2017a), “Data-led Governance of Road Freight Transport”, International Transport Forum Corporate Partnership Board Report, OECD Publishing, Paris. DOI: available at <http://dx.doi.org/10.1787/e0dd1973-en>.

Figure 3.2. Structure of the road transport industry in Portugal



Regulatory framework

The Portuguese road sector is mainly governed by EU legislation,⁸ which is applicable throughout the European Union, either through the implementation of regulations, the transposition of directives or the execution of decisions, as well as taking into consideration other acts. Hence, most road Portuguese legislation is harmonised accordingly.

This section lists the main pieces of EU and Portuguese legislation in the road sector for the carriage of passengers and goods, as well as for vehicle rental without a driver (i.e., car rental and truck rental), as well as for ancillary services to transport (i.e., driving schools, training institutes and vehicle inspection centres), to which we shall refer in Sections 3.2 to 3.7 of this chapter. We sometimes refer to other specific Portuguese rules as necessary for the analysis of the barriers to competition that have been identified.

Licensing rules to pursue the occupation of road transport operator

Common licensing rules to pursue the occupation of freight and passenger transport operators

Access to pursuing the occupation of road transport operator is regulated at EU level. Regulation (EC) 1071/2009 applies to all companies established in the European Union which are engaged or intend to engage in the occupation of road transport operator. It

refers to both the occupation of road haulage operator, using motor vehicles with a laden mass above 3.5 t,⁹ and the occupation of road passenger transport operator, using motor vehicles carrying more than nine persons, including the driver.¹⁰

Regulation (EC) 1071/2009 and the Treaty on the Functioning of the European Union (TFEU) allows Member States to exempt their outermost regions (as is the case of Madeira and Azores islands in Portugal) from a licensing procedure, because of the special characteristics of, and constraints in, those regions.¹¹ As a consequence, companies established in those islands and complying with the legal conditions to pursue the activity as a result of such adaptation, are nevertheless not able to obtain a Community Licence, but merely a regional licence.

In accordance with this regulation, companies should satisfy four licensing requirements: have an effective and stable establishment in an EU country, be of good repute, have appropriate financial standing and have the requisite of professional competence. This last criterion requires that every road transport company must designate a **transport manager**. National authorities have to carry out regular checks to ensure that companies continue to satisfy these four criteria.

Licensing rules for access to national and international freight transport activity and cabotage

National operators aiming to access the international market for freight transportation must additionally comply with Regulation (EC) 1072/2009 defining common rules for access to the international road haulage market and national markets other than their own (i.e., cabotage). Certain categories of companies, such as those using motor vehicles of a laden mass of less than 3.5 t, are exempt from the scope of the regulation.¹² International road transport operations have been fully liberalised within the European Union. However, national road transport within an EU country by hauliers not resident in that country (i.e., cabotage), is still subject to restrictions.

At national level, Decree-Law 257/2007 sets the legal regime for access to the activity of freight transport operator, for hire and reward, using motor vehicles of a laden mass above 2.5 t, implementing EU regulations. The requirements of financial and professional capacity for obtaining the licences are regulated by the Deliberation of IMT 1065/2012. The Azores¹³ and Madeira¹⁴ outermost regions have adapted the national regime.

Freight transport operators use trucks to operate, which can have several dimensions. Typically, they are between 2.5 t and 3.5 t, also called *light trucks*, from 3.5 t up to 40 t – the most common ones – also called *heavy goods vehicles*, and above 40 t, also called *mega-trucks*.¹⁵ The use of mega-trucks is regulated at EU level by Directive 96/53/EC.¹⁶ It harmonises the maximum weight for heavy goods vehicle combinations up to 18.75 m in length and up to 40 t in weight. The weight limit can be increased up to 44 t if carrying out intermodal transport operations.¹⁷

The Directive leaves the possibility of altering these limits to the discretion of EU Member States, but is limited to circulation within the national territory.¹⁸ This is the case for Portugal. Decree-Law 132/2017, transposing Directive 96/53/EC, authorises a length up to 25.25 meters and a maximum total weight up to 60 t.

Licensing rules for access to national and international passenger transport activity

National operators aiming to access the international market for coach and bus services must comply with Regulation (EC) 1073/2009. This regulation also lays down the provisions for companies intending to operate on national markets other than the market of their Member State of establishment (known as cabotage operations).

At national level, Decree-Law 3/2001 sets the legal regime for access to the activity of passenger transport operator by means of vehicles with more than nine seats, implementing EU regulations. The requirements of financial and professional capacity for obtaining the licences are regulated by Deliberation of IMT 1065/2012. The conditions for operators' access to the market of long-distance bus routes falls within the provisions of other legislative frameworks.

Access to long-distance bus routes above 50 km (called "Express Services") falls within the provisions of Decree-Law 326/83 and Decree-Law 339-F/84, and is regulated by Ordinance 23/91. Access to long-distance bus routes above 100 km and with a "high-quality" offer, is governed by Decree-Law 375/82 and by Decree-Law 339-E/84, and is regulated by Ordinance 22/91 and Order MES 151/85.¹⁹ The entry into force of Law 52/2015 approving the Legal Regime of the Public Transport Service of Passengers revoked the listed acts of Decree-Law 399-F/84 and Decree-Law 339-E/84, although maintained in force since 2015, pending the adoption of secondary legislation.²⁰

At national level, Decree-Law 170/71 and Decree-Law 171/72 establish the framework for the location and operation of a central bus station.²¹

Licensing rules to pursue the rental of vehicles without a driver: car rental and truck rental

All service activities benefit from the dispositions settled at EU level, framed by Directive 2006/123/EC, also called the Services Directive, establishing general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services. At national level, Decree-Law 92/2010 transposed this directive, establishing the principles and rules necessary to simplify the free access and exercise of service activities. Rules to pursue the activity of vehicles rental should also benefit from the dispositions of this directive.

Specifically, the use of vehicles hired without drivers for the carriage of goods by road (truck rental) is framed by Directive 2006/1/EC, allowing the use of vehicles hired by companies established on the territory of another Member State. Among other requirements, such vehicles must comply with the laws of the Member State of origin and be driven by the personnel of the company using them. This Directive 2006/1/EC, Art. 3 (2) allows Member States to restrict the use of hired goods vehicles with a gross vehicle weight above 6 t for own-account operations.

The national legal regime of truck rental services is established by Decree-Law 15/88. The national regime for car rental services is established by Decree-Law 181/2012.

Licensing rules to pursue mandatory periodic motor vehicles inspections

At EU level, Directive 2014/45/EU imposes minimum requirements for mandatory periodic roadworthiness tests for motor vehicles and their trailers, aiming to improve road safety in the European Union. Each EU country must have approved and compliant

testing centres. The directive applies to vehicles capable of travelling at a speed of more than 25 km/hour (e.g., passenger cars and light commercial vehicles, vehicles used as taxis, buses or minibuses, heavy goods vehicles and heavy trailers, and powerful motorcycles with an engine larger than 125 cm³). In Portugal, these road safety rules were transposed by Decree-Law 144/2017.

Rules on access to and exercise of vehicle inspection activities are not harmonised at EU level. Member States should define the conditions for the pursuit of these activities concerning the basic freedoms guaranteed by Art. 49 of the TFEU and the EC Treaty. At national level, the activity of running inspection centres is governed by Law 11/2011.

Licensing rules to pursue professional training for drivers' services: driving schools and training institutes

At EU level, two directives regulate the professional training of drivers. Directive 2003/59/EC sets common rules on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers. Directive 2006/126/EC establishes the general provisions regarding driving licences. The establishment of activities related to professional training of drivers benefits from the provisions settled by the Services Directive, transposed into national law by Decree-Law 92/2010.

At national level, Law 14/2014 regulates the access to and exercise of the activity of driving schools, as well as access to the professions of driving instructor and director of driving schools. The activity of a driving examiner is defined under Law 45/2012. Law 126/2009 sets the regime for licensing of training institutes and training courses for drivers. These are regulated by Ordinance 185/2015 and Ordinance 1200/2009.

3.1.2. Competent authorities

The main institutional stakeholders with competences and attributions for licensing, supervising and with technical regulation and regulatory powers in the road sector can be best described within three levels: ministerial, municipal and the regulators' level.

Ministerial level:

- The Ministry of Planning and Infrastructure has the mission to formulate, conduct, implement and evaluate development and cohesion policies, including regional development, as well as the definition of infrastructure policies in the areas of transport and communications, including the regulation of public procurement.²²
 - The institute for Mobility and Transport (IMT) – *Instituto da Mobilidade e dos Transportes*²³ is the indirect state administration body with jurisdiction over Portugal, responsible for technical regulation, licensing, co-ordination, supervision and planning in road transport and the respective infrastructures. It has administrative, financial and patrimonial autonomy but is subject to the superintendence and tutelage of the Ministry of Planning and Infrastructure.²⁴
- The Ministry of the Economy is the government department whose mission is the design, execution and evaluation of development policies aimed to promote economic growth, competitiveness, innovation, and the regulation of public procurement, infrastructure, transport and communications.²⁵

- The General Directorate of Economic Activities (DGAE) – *Direção-Geral das Atividades Económicas* () is a central service directly administered by the state and endowed with administrative autonomy.²⁶ The DGAE is one of the entities that, together with the IMT and stakeholders, participates in the price convention regime applicable to taxi services.
- The Ministry of the Environment is the governmental department whose mission is to formulate, conduct, execute and evaluate policies on the environment, urban planning, cities, housing, urban, suburban and road passenger transport, climate and nature conservation, from a perspective of sustainable and territorial cohesion.²⁷
- The Regional Government of the Azores is, along with the Legislative Assembly of the Azores, one of the self-governing bodies of the Autonomous Region. It is an executive body conducting the policy of the region.²⁸
 - The Secretary for Transport and Public Infrastructure of Azores – *Secretaria Regional dos Transportes e Obras Públicas, Azores* has responsibilities in the following areas: transport, road system and sustainable mobility, public infrastructure, communications and public buildings and equipment.²⁹
- The Regional Government of Madeira is, along with the Legislative Assembly of Madeira, one of the self-governing bodies of the Autonomous Region. It is an executive body conducting the policy of the region.³⁰
 - The Directorate for Economy and Transport of Madeira (DRET) – *Direção Regional da Economia e Transportes, Madeira* has the mission to ensure the execution of the policy defined by the Regional Government of Madeira for the sectors of commerce, industry, energy, quality, transportation and mobility.³¹

Municipal level:

- Municipalities are entitled to set quantitative restrictions (i.e., quotas) on the number of taxis available in each municipality.³² Taxi driver candidates should apply directly to the municipality, which then follows a set of criteria for the ordering of applications.

Regulator level:

The Authority for Mobility and Transport (AMT) – *Autoridade da Mobilidade e dos Transportes* is the independent regulator responsible for the regulation and promotion of competition in the road sector. The AMT was created in 2014³³ and partially replaced the IMT (see Box 3.2).

Box 3.2. The powers of the AMT as regulator of the road sector

The Authority for Mobility and Transport (AMT) – Autoridade da Mobilidade e dos Transportes is the independent regulator responsible for the regulation and promotion of competition in the road sector. It was created in 2014 and succeeded the Institute for Mobility and Transport (IMT) – Instituto da Mobilidade e dos Transportes – as the main regulator for mobility, land transport and road infrastructure, including the promotion and defence of competition. Before 2014, regulation and supervision of the road sector was the responsibility of the IMT. The IMT has now become the state indirect administrative body responsible for technical regulation, licensing, co-ordination, supervision and planning in land transport and its respective infrastructures.

The legislation still refers to bodies that no longer exist, such as the IMTT – Instituto da Mobilidade e dos Transportes Terrestes. However, as a general rule, for the road sector, the operators should consider the IMT as the appropriate institutional body of IMTT.

The main responsibilities of the AMT are defined in Decree-Law 78/2014, as amended by Decree-Law 18/2015, Art. 5 (2):

- a. “To identify the situations that justify the forecast or imposition of public service obligations, and the contracting of passenger roadway public transport services, within the framework of the applicable domestic and EU legislation;
- b. To participate in drawing up the general rules and principles that apply to public transport and roadway infrastructure fare policy;
- c. To monitor activities related to the mobility and transports sector, including the control of the technical inspection of vehicles and driving tests;
- d. To regulate the updating, modernisation and harmonization of the technical regulation of roadway infrastructures;
- e. To define roadway infrastructure performance levels;
- f. To supervise compliance with obligations by the regulated service operators [...];
- g. To ensure user participation in the management of roadway infrastructure quality management;
- h. To define and approve the regulations that apply to the electronic identification system of vehicles for charging tolls [...];
- i. To mediate, as the conciliation body [...] the relationship between the roadway infrastructure toll collection operators or concessionaires in Portugal and the suppliers of the European electronic toll service [...];
- j. To analyse users’ complaints and any conflicts that involve the operators [...];
- k. To exercise the functions of authority to standardise roadway infrastructures;
- l. To exercise any other functions foreseen in the legal instruments or agreements, namely in the roadway infrastructure concession and sub-concession agreements”.

Source: AMT, www.amt-autoridade.pt/amt/atribui%C3%A7%C3%B5es/setor-rodovi%C3%A1rio.

3.1.3. Methodology

The road transport categories selected for competition assessment were chosen for their central role in the competitiveness of the Portuguese economy. Included are not just transport of passengers and freight but also ancillary services and vehicle rental services.

Because of the focus on business services, areas that are exclusively dedicated to tourism such as sightseeing buses were excluded. Similarly, activities related to passengers with special needs (e.g., disabled people, school children) were also excluded. Other excluded segments were public urban bus transportation³⁴ and motorway road concessions because there is no legislative common framework except the general rules of the Code of Public Procurement (CPP).³⁵ As such, we did not analyse the specific contracts between the Portuguese state and concessionaires. Furthermore, new technology-enabled for-hire mobility services³⁶ were also excluded since, at the time of writing, the legal framework was not yet approved or published, although it was under preparation by the government. Provisions that deal mainly with road safety, labour law and tax, were also not considered due to their specific social policy objectives.

The road sector in Portugal is regulated by a complex legal and regulatory framework, composed of international law, EU law and national law. In this assessment, we only examine national legislation. Other types of law are considered only if the specific provisions they contain are enforceable through national legislation. We further include laws adopted by the two Portuguese Autonomous Regions (Azores and Madeira) regulating the road freight transport sector. We also included nine municipality taxi regulations within the area of Lisbon as a sample of the 308 municipality regulations which are broadly identical as far as taxi regulation is concerned. Taking into account their uniformity, the report discusses these regulations together.

To identify the relevant legal and regulatory provisions, a search was carried out using a selection of transport keywords across the Portuguese Official Journal. The refined search resulted in 356 pieces of legislation applicable to the road sector analysed in the scope of the project, including 229 provisions potentially harmful to competition and 203 recommendations that aim, at least, to reduce the negative impact on competition (see Table 3.1).

Table 3.1. Summary of the legislation applicable to the road sector analysed in the scope of the OECD report

	Road sector
Pieces of legislation analysed *	356
Provisions that are obsolete or no longer in force	5
Provisions where the restrictions appear to be proportional to the policy objective (no recommendation)	26
Provisions deemed harmful	191
Recommendations formulated (includes obsolete)	196
Administrative burdens	7

Note: * This number corresponds to the pieces of legislation mapped in Stage 1 of the OECD methodology.

Once the most relevant legal provisions were identified, an extensive investigation was conducted to identify the policy objective and the harm to competition associated with each of the potential barriers, as well as to produce the final recommendations. This analysis was based on OECD best practices, data from OECD countries, academic studies and information collected from meetings with main stakeholders.

Finally, with regard to driving school services, the OECD worked together with external consultants who developed a study on the geographical restriction presented in the driving school sector and some of the outputs were used to support the analysis.

3.2. Licensing of transport services for passengers and freight

Licensing regimes for transport services of passengers and freight, as well as for vehicle rental without a driver, often have multiple requirements which can carry unintentional and unnecessary barriers to competition.

This is the case for several modes of passenger transport with regard to licensing of bus and taxis operators, freight transportation concerning the licensing of hauliers and car rental and truck rental without a driver operators. These groups face barriers to competition for merely pursuing their business.

The risks of these burdens for competition lead to entry barriers, less choice and innovations, and ultimately, may lead to higher prices for consumers or end-users.

In this section we shall analyse all common barriers to competition imposed on operators of all modes of road transportation and propose recommendations to eliminate the harm to competition.

3.2.1. Specific licensing regime for light truck vehicles

Description of the barriers

Companies operating solely with *light truck* vehicles³⁷ (i.e., between 2.5 t and 3.5 t) in mainland Portugal³⁸, Azores³⁹ and Madeira⁴⁰ need to hold a licence and fulfil four licensing requirements: proof of financial capacity, demonstrated professional capacity, an effective and stable establishment within one of the EU Member States and demonstrated suitability.

Harm to competition

The imposition of a licence and the fulfilment of all four licensing requirements correspond to entry barriers and substantially raise entry costs for freight transportation companies, particularly SMEs, reducing the total number of operators in the market.

The licensing regime for freight transport operators for hire and reward is harmonised at EU level. Regulation (CE) 1071/2009 and Regulation (CE) 1072/2009 only require operators to hold a licence when using trucks above 3.5 t.⁴¹ Additionally, Regulation (CE) 1071/2009 and the TFEU allow Member States to exempt their outermost regions, such as Azores and Madeira, from a licensing procedure owing to their special characteristics and constraints.⁴²

Portuguese and international companies aiming to operate in Portugal need to fulfil a more stringent licencing regime than at EU level. The Portuguese regime prevents non-licensed international companies from exerting competitive pressure on national operators and those of the outermost regions. It also reduces international competitiveness between national and regional operators, possibly preventing them from increasing their scale of operations in international markets. Hence, these provisions have the ability to reduce efficiency of scale, and create output restrictions and upward pressure on prices.

Box 3.3. Proposal for a partial extension of Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009 to operators using solely light truck vehicles (2017)

Scope of the *ex-post* evaluation

An *ex-post* evaluation of the two EC Regulations on light trucks was carried out in 2014-2015. The reviewers concluded that the regulations were only partly effective in achieving their original objective of creating suitable competitive conditions in the market.

Shortcomings of the rules identified concern the fact that some rules are not specific on given questions or leave explicit room for unilateral measures by Member States, all of which has led to differences in practice that are negative for the operation of the single market.

The proposal for amendment includes a partial extension of regulations to operators using solely light truck vehicles (between 2.5 t and 3.5 t). It is estimated that the implementation of the proposal will trigger additional compliance costs for some businesses in some EU Member States in the order of a 4% to 10% increase in operating costs.

Regarding the need for a licence:

It is proposed to enlarge the scope of Regulation (EC) 1071/2009 to include a mandatory licensing regime for hauliers operating solely with trucks between 2.5 and 3.5 t (amending Art. 1) but proposing to exclude them from some, but not all, of the requirements of the regulation (amending Art. 7):

- i)* The requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would maintain the possibility of applying them as hitherto;
- ii)* Only the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.

Concerning the financial standing licensing requirement:

It is proposed to amend the scope of Regulation (EC) 1071/2009 to subject hauliers operating solely with trucks between 2.5 t and 3.5 t on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, they have at their disposal equity capital totalling at least **EUR 1 800** when only one vehicle is used and **EUR 900** for each additional vehicle used.

Source: “Proposal of the European Parliament and of the Council to amend Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009 with a view to adapting them to developments in the sector”, of 31 May 2017, see Report COM(2017) 281 final - 2017/0123 (COD), page 7, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:281:FIN>

The more stringent Portuguese regime has an impact on more than 800 companies and 4 200 trucks (see Table 3.2). In relative terms, this affected over 10% of the total freight companies operating in mainland Portugal and more than 5% of the total trucks in 2016.⁴³

Table 3.2. Freight operators using solely vehicles between 2.5 t and 3.5 t, Portugal, 2015

	Number of firms			Number of vehicles (between 2.5 and 3.5 t)		
	Mainland Portugal (a)	Azores (b)	Madeira (c)	Mainland Portugal (a)	Azores (b)	Madeira (c)
2015	794	10	40	4161	10*	40*

* For Azores and Madeira the number of vehicles is underestimated since it was only the first vehicle was counted per firm.

Sources:

(a) IMT – Instituto para a Mobilidade e Transportes, Portugal (Institute for mobility and transportation), available at www.imt.pt.

(b) Secretaria Regional dos Transportes e Águas Públicas, Azores (Secretary for Transport and Public Water of Azores), available at www.azores.gov.pt/Portal/pt/entidades/srtop/?lang=pt;

(c) DRET – Direção Regional da Economia e Transportes, Madeira (Directorate for Economy and Transport of Madeira), available at www.madeira.gov.pt/dret.

Additionally, EU regulations require only that EU Member States request a licence for companies operating solely with trucks below 3.5 t. Evidence shows that since the entry into force of Regulation (EC) 1071/2009, only four EU Member States impose an additional licensing regime (above 3.5) on companies competing in their respective domestic markets: Portugal, France, Italy and Latvia (see European Commission, 2017e).

The EU is proposing to amend Regulation (CE) 1071/2009 and Regulation (CE) 1072/2009, extending the mandatory licensing regime for hauliers operating solely with vehicles above 2.5 t and below 3.5 t. The text proposes to exclude hauliers from some but not all of the four licensing requirements. Requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory. Notwithstanding, Member States maintain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States, according to a proportionality criteria (see Box 3.3).

Recommendations

It is recommended to abolish the mandatory licensing regime for operators using vehicles between 2.5t and 3.5 t.

Alternatively, in light of the “Proposal for amendment of Regulation (CE) 1071/2009 and Regulations (CE) 1072/2009”, it is recommended to reassess each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and to have an effective and stable establishment, in view of reducing or adjusting the requirements, for operators using solely vehicles above 2.5 t and below 3.5 t, in light of the principles of proportionality, adequacy and necessity.

Benefits

The implementation of these alternative recommendations will allow other European operators to enter the Portuguese market, as well other national and international entrepreneurs. It will also contribute to a reduction of prices for transporting small goods.

3.2.2. Minimum capital requirements

Companies engaged in transport activities and transport services often need to fulfil capital requirements in order to be licensed and to be authorised to operate in domestic and European markets. These capital requirements are of two types. Operators can be requested to demonstrate that they have minimum capital before starting business operations. They may also be requested, during the financial year, to hold a minimum amount of capital and reserves to operate.

In this section we analyse these two types of capital requirements, common to licensing of both passenger (imposed on bus and taxi operators) and freight transport operators, as well as on truck rental without a driver service operators.

Table 3.3. Summary of the financial requirements for freight transportation licensing

		Mainland Portugal	Madeira	Azores	
Minimum capital to start the business	Between 2.5 and 3.5 t	EUR 50 000 ¹	EUR 0 ²	EUR 25 000 ¹	
	Above 3.5 t	EUR 125 000 ¹	EUR 0 ⁵	EUR 50 000 ⁶	
Capital and reserves during the financial year	Between 2.5 and 3.5 t	1 st vehicle	EUR 9 000 ⁷	EUR 5 000 ⁸	EUR 5 000 ⁹
		Any additional vehicle	EUR 1 500 ¹⁰	EUR 1 000 ¹¹	EUR 1 000 ¹²
	Above 3.5 t	1 st vehicle	No barrier	EUR 9 000 ¹³	EUR 9 000 ¹⁴
		Any additional vehicle	Between 2.5 and 3.5 t	EUR 5 000 ¹⁶	EUR 1 000 ¹⁷
		Above 3.5 t	No barrier	No barrier	No barrier

Notes:

“No barrier” means that the amount required by the Portuguese regime is in line with Regulation (CE) 1071/2009.

1. Decree-Law 257/2007, Art. 9 (2).
2. Regional Legislative Decree 10/2009/M, Art. 9 (2) (3).
3. Regional Legislative Decree 7/2010/A, Art. 8 (2), and Art. 37.
4. Decree-Law 257/2007, Art. 9 (2).
5. Regional Legislative Decree 10/2009/M, Art. 9 (2) (3).
6. Regional Legislative Decree 7/2010/A, Art. 8 (2), and Art. 37.
7. Decree-Law 257/2007, Art. 9 (3).
8. Regional Legislative Decree 10/2009/M, Art. 9 (3).
9. Regional Legislative Decree 7/2010/A, Art. 8 (4), and Art. 37.
10. Decree-Law 257/2007, Art. 9 (3).
11. Regional Legislative Decree 10/2009/M, Art. 9 (3).
12. Regional Legislative Decree 7/2010/A, Art. 8 (4), and Art. 37.
13. Decree-Law 257/2007, Art. 9 (3).
14. Regional Legislative Decree 7/2010/A, Art. 8 (3), and Art. 37.
15. Decree-Law 257/2007, Art. 9 (3).
16. Decree-Law 257/2007, Art. 9 (3).
17. Regional Legislative Decree 7/2010/A, Art. 8 (3), and Art. 37.

Sources: Decree-Law 257/2007 (mainland Portugal), Regional Legislative Decree 10/2009/M (Madeira) and Regional Legislative Decree 7/2010/A (Azores, which benefits from a transitional period until 31 December 2018).

Description of the barriers

1. There are minimum capital requirements for the following road transport operators:

- Taxis: during the exercise of the activity, and upon renewal of the licence to operate, companies need to ensure that their capital and reserves are equivalent to at least EUR 1 000 for each licensed taxi.⁴⁴

- Buses: to obtain a licence, companies need a minimum capital of EUR 100 000 to start the business.⁴⁵
- Truck rental without a driver service operators: to obtain a licence, an operator must prove they have a minimum capital of EUR 50 000 to start the business.⁴⁶
- Truck operators: to obtain a licence, operators must demonstrate their financial capacity by means of a minimum capital for starting the business and by holding capital and reserves, as summarised in Table 3.3. These values vary according to whether operators aim to operate in mainland Portugal or in Azores and Madeira islands.

Harm to competition

Financial requirements as a minimum capital to start a business or the obligation to hold minimum capital and reserves during the financial year correspond to entry barriers as they raise entry costs, which can limit the number of operators within the market. Additionally, they also constitute operational costs since they impose a minimum amount of financial resources available each year.

Box 3.4. Minimum capital requirements often fail to achieve their objectives

The early rationale for countries to adopt minimum capital requirements was to protect consumers and creditors from risky and potentially insolvent business (World Bank, 2014). By requiring investors to lock in upfront a minimum amount of capital, investors were expected to be more cautious about undertaking riskier commercial opportunities. Evidence points to a number of shortcomings of minimum capital requirements, notably to the detriment of entrepreneurial activity and companies' growth, with some notable exceptions such as for financial services (e.g. banking and insurance).

Minimum paid-in capital requirements, as often stipulated by the commercial code or company law, do not take into account firms' differences in economic activities, size or risks, thereby offering only a limited recourse to address varying probabilities of default. Creditors prefer to rely on objective assessments of companies' commercial risks based on analysis of financial statements, business plans and references, instead of legally-imposed capital requirements, as many other factors can affect a firms' possibility of facing insolvency. Moreover, such requirements are particularly inefficient if firms are allowed to withdraw deposited funds soon after incorporation (World Bank, 2014). In this situation, they act merely as barriers to entrepreneurship and may even hinder firms' financial sustainability, as the funds tied up for such purposes could be used in other critical activities for the company's sustainable growth and solvency.

Contrary to initial expectations, evidence has shown that minimum capital requirements do not help the recovery of investments as they are negatively associated with creditor recovery rates (World Bank, 2014). Credit recovery rates tend to be higher in economies without minimum capital requirements, which suggest that other alternative measures (e.g., efficient credit and collateral registries and enhanced corporate governance standards) are potentially more efficient in addressing such concerns. Moreover, minimum capital requirements have been found to be associated with higher levels of informality, and with firms operating without formal registration for a longer period. They also tend to diminish firms' growth potential (World Bank, 2014).

Sources: Box extracted from OECD Investment Policy Reviews: Lao PDR (2017), Box 3.2., p. 118, available at www.oecd.org/investment/countryreviews.htm; World Bank (2014), Why are minimum capital requirements a concern for entrepreneurs?, World Bank Doing Business 2014, Washington DC.

Moreover, according to well-established case law of the CJEU, Case *Commission v. Portugal* [2009], these provisions may also constitute a barrier to entry at the EU level since they may prevent a European operator from entering the domestic market, in case different levels of financial standing are applied across countries. These restrictions lower international competitiveness faced by national operators, which can lead to reduced efficiency and higher prices for consumers.

The *Doing Business* Project within the World Bank raises a number of issues regarding minimum capital requirements to start a business that can harm competition and consumers (see Box 3.4.). Based on several indicators, such as (i) the investor protection index,⁴⁷ (ii) the reported percentage of small and medium-size companies that report access to finance as a major constraint to their business operations, and (iii) the percentage of firms in economies who say that the informal economy severely constrains their growth, the World Bank concluded that minimum capital requirements do not protect consumers or investors, and are associated with less access to finance for SMEs and with a lower number of new formal businesses.

The reported minimum capital requirements to start a business are also neither imposed by Regulation (EC) 1071/2009⁴⁸ – regulating passenger and freight transport activities – nor by Directive 2006/1/EC – regulating truck rental services.

Box 3.5. Capital requirements: Benchmarking with EU Member States

Scope of the ex-post evaluation of the Regulations (EC) 1071/2009 and 1072/2009

Under the *EU Road Transport Package*, the *ex-post* evaluation of regulations covers the requirements to become a road transport operator, aiming to contribute to more efficient functioning of the internal road market.

The *ex-post* evaluation of regulations identified diverging practices with respect to requirements for financial standing across EU Member States, which might lead to unequal competition and unnecessary financial burden.

Non-comparability of the requirement for financial standing across EU Member States

While Regulation (EC) 1071/2009, Art. 3 (2), allows Member States to require additional licensing requirements, only a few EU Member States require an additional minimum capital of EU passenger and freight transport operators to start the business. Denmark requires EUR 20 100 and before 2014, Italy and Finland required EUR 50 000 and EUR 10 000, respectively. Currently, no value is required for both countries. Mainland Portugal demands EUR 100 000 for bus operators and EUR 125 000 for truck operators.

Regulation (EC) 1071/2009, Art. 7 (1), imposes only that all EU Member States demand a minimum mandatory financial licensing requirement, i.e., that operators have, during the financial year, a minimum capital and reserves per vehicle, of EUR 9 000 for the first vehicle and EUR 5 000 for each additional vehicle.

Sources: "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 - Final Report, MOVE/D3/2014 – 254 (2015)", pages 29, and 105-107, available at <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2015-12-ex-post-evaluation-regulations-2009r1071-and-2009r1072.pdf>.

Additionally, Regulation (EC) 1071/2009 and Regulation (CE) 1072/2009 exempt companies using solely trucks below 3.5 t from any licensing requirements.⁴⁹ Even though these regulations provide Member States with the possibility of asking for additional requirements provided they are proportionate,⁵⁰ benchmarking at the EU level demonstrates that most Member States choose not to impose them. According to the "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009" (2015, p. 29) from the European Commission, "It is relatively rare for Member States to require a higher level of capital and reserves per vehicle than the minimum levels set out in the Regulations" (see Box 3.5.).

Box 3.6. Truck rental: Benchmarking with EU Member States

Based on the scope of the ex-post evaluation of Directive 2006/1/EC on market access rules for commercial vehicles hired without drivers for the carriage of goods by road, we present its main findings:

Open market – no restrictions to access the market for truck rental: 22 EU Member States do not impose any restrictions namely those related to licensing

Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden, United Kingdom.

Restrictions to access the market for truck rental: 6 EU Member States impose market access restrictions of different categories

Denmark requires that all vehicles to be used for rental are registered as such in a national register.

Portugal, Spain, Italy and Cyprus, impose more burdensome conditions, as access to the market for hiring of all commercial vehicles is only possible for firms that meet specific licensing requirements for access to the profession of vehicle leasing companies.

These include a minimum number of vehicles (i.e. 10 in Spain and Cyprus, 12 in Portugal) and an established office. Spanish legislation allows transport companies to obtain temporary permits to hire their vehicles without the need to meet the requirement for the minimum number of rental vehicles (Art. 27, Orden de 20/07/1995).

These also include minimum capital to start the business amounting to at least EUR 50 000 (Portugal and Italy).

Portugal, Spain and Italy also impose a customer's restriction for own-account operations, as the hiring of vehicles of over 6 t of permissible laden weight is permitted only among transport operators (in Portugal this is even more restrictive as it is only permitted among freight transport operators).

Source: "Report Ex-post evaluation of Directive 2006/1/EC", of January 2016, Final report - MOVE/D3/2015-423 (pages 31, 32), available at <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf>

The interpretation of the legal provisions imposing on mainland Portugal a minimum capital for starting the business for bus and truck transport operators also implies search

and legal costs. The IMT considers⁵¹ that no other monetary value for starting a business can be requested of companies other than the minimum capital and reserves per vehicle, based on Regulation (EU) 1071/2009, Art. 7 (1). However, the Institute of Registration and Notary Affairs (IRN)⁵² considers⁵³ that the required values for minimum capital to start the business are neither void nor incompatible with the capital amounts required at EU level, based on the discretionary powers given to Member States to impose additional criteria (Regulation (EU) 1071/2009, Art. 3 (2)).

Other less restrictive alternatives could be taken into consideration. The Portuguese Companies Code and the Portuguese Commercial Registration Code allow the creation of a single shareholder limited liability company (with minimum share capital of EUR 1.00), a private limited company or partnership (with minimum share capital of EUR 1.00), a public limited company (with minimum share capital of EUR 50 000), and co-operatives (with minimum share capital of EUR 2 500) in one hour. This procedure can be done online through an electronic platform called “Create-a-firm-on-the-spot” (*empresa na hora*).⁵⁴

With regard to truck rental services operators, according to the "Ex-post evaluation of the Directive 2006/1/EC (MOVE/D3/2015-423)",⁵⁵ and as illustrated in the Box 3.6., 22 Member States do not impose any entry restrictions and only two countries (Portugal and Italy) require an initial minimum capital amount of at least EUR 50 000 to start the business.

Recommendations

The minimum capital requirements to start the business imposed on passenger and freight transportation operators and truck rental operators should be abolished. Any other amount of required initial capital to start a business should be considered under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.

The minimum capital and reserves requirements imposed on taxi operators and on freight operators should also be abolished.

Benefits

By lifting these financial criteria, market players can better adapt and reinvest their capital and increase their competitiveness, promoting lower prices for consumers.

3.2.3. Requirements of a transport manager

Access to the occupation of road transport operator is regulated at EU level. Regulation (EC) 1071/2009, Art. 4, requires that every road transport company must designate a transport manager⁵⁶ who must be a natural person, with residence in the European Union, and should have a high level of professional qualifications.⁵⁷ The transport manager is responsible for effectively and continuously managing the transport activities, namely for ensuring that the company respects the road transport legislation.⁵⁸

Description of the barriers

The national legislation imposes several requirements on the transport manager.

1. Passenger transport companies

For national passenger transport companies, the professional capacity criteria must be fulfilled by one administrator, one director or one manager who must run the company permanently and effectively.⁵⁹

2. Freight transport companies

For freight transport companies, there are three different provisions at national level, depending on where hauliers are licensed.

In mainland Portugal⁶⁰ the transport manager must be registered in the social security system as acting in the quality of the managerial board of a company, and may serve only one company, unless at least 50% of the shareholder capital of each company belongs to the same shareholder. IMT has adopted a Deliberation⁶¹ regulating this criterion, enlarging its scope and allowing hauliers to: (a) hire a transport manager with a genuine link with the company, that is, as its owner, shareholder, manager, director or employee with a labour contract; this can be a transport manager within three companies of a group structure; (b) hire an independent third party, such as a transport consultant, who may serve up to three separate transport operators as long as their combined fleet does not exceed 50 vehicles. These more flexible rules do not apply in the Azores⁶² or in Madeira.⁶³

Harm to competition

There is no official recital for the provisions. Stakeholders argue that the policy objective of these provisions is to ensure the quality of transport manager services. If a transport manager works for several separate companies at the same time, he/she may not always be available to brief drivers (e.g. on the characteristics of the goods transported, or on the route to choose to avoid delays or additional charges) or to respond to the client's demands.

While the requirement of each passenger or freight transport company to have a transport manager is in line with Regulation (EC) 1071/2009, Art. 4, the imposition limiting Portuguese transport managers to the management of one single company, as is the case for the framework of the outermost regions, or up to three companies with a maximum total fleet of 50 vehicles in mainland Portugal is more stringent.

Regulation (CE) 1071/2009, Art. 4(1)(2), clarified the role of the transport manager. This person has to demonstrate the necessary professional competence and must manage effectively and continuously the transport activities of a company. Transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. They can also be independent third parties, such as transport consultants. The transport manager may manage the transport activities of up to four different companies with a combined maximum total fleet of 50 vehicles, although Art. 4(2) allows Member States to lower these thresholds.

Ricardo (2015, p. 30) conducted an "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009", and states that the Art. 4(2) option has been exercised in France (an external manager is limited to two companies representing a total of 20 vehicles); Finland and Romania (an individual may act as transport manager for only one company with a maximum total fleet of 50 vehicles).

The OECD in a competition assessment project in Romania (2016b, pp 152-3), analysed an identical restriction and recommended changing the Romanian legislation by "inserting the provision from the EU legislation, where transport managers can cover up to four undertakings and up to 50 vehicles".

Although Regulation (CE) 1071/2009, Art. 4(2) allows Member States to determine a lower number of transport companies and/or the size of the total fleet of vehicles which

the manager may manage, imposing more stringent criteria in Portugal would be particularly harmful as Portuguese passenger and freight operators are generally SMEs, with small fleets.⁶⁴ Portuguese transport managers are prevented from expanding their business by covering more than one or three undertakings. This also raises costs for Portuguese companies, especially the SMEs, which must bear the cost of hiring their own manager.

Managing four companies with a cap of 50 vehicles would contribute to lowering the operational costs of companies, as they would not bear the cost of hiring their own transport manager.

Recommendations

We recommend amending and aligning the national provisions with the criteria established in Art. 4(2) of Regulation (EC) 1071/2009, introducing the possibility that the professional capacity could be performed by a transport manager acting as an external consultant, which could cover up to four companies and up to a fleet 50 vehicles.

Benefits

These recommendations, if implemented, will contribute to lowering the operational costs of companies, enabling them to better adapt their financial needs and increasing competitiveness.

3.2.4. Restrictions on vehicles

This section analyses restrictions to competition related to the minimum requirements for licensing of vehicles, including buses, trucks, taxi cars and light cars, essential for transport operators to start their businesses, either as passenger or freight transporters. It is also related to the supply of car and truck rental without a driver services, in order to obtain their licences or authorisations to start operating.

Description of the barriers

1. Minimum number of vehicles required to start the business:

Licensing of passenger transport operators to perform long-distance bus services, in scheduled direct routes above 100 km (locally called “High-Quality Services”),⁶⁵ require these to have at least six buses of category III⁶⁶ (i.e., heavy passenger vehicles with more than nine seats) and an employee as a crew member of the bus.⁶⁷

To offer car rental services operators must have a minimum number of seven vehicles for the rental of passenger cars and three vehicles for the rental of motorcycles, tricycles and quadbikes.⁶⁸

Licensing of truck rental services requires operators to have a minimum number of vehicles, with a Portuguese licence plate, depending on the tonnage they wish to rent. To rent trucks below 6 t, they must have 12 vehicles, or six vehicles, if aiming also to be active as car rental operators. To rent trucks above 6 t, they must have six vehicles or less, if employing a minimum tonnage of 50 t gross weight in the activity.⁶⁹

2. Lifespan of vehicles and fleets:

To obtain a licence in mainland Portugal, vehicles must be new (or up to one year old) and the sum of the company's gross vehicle weight should not exceeds 40 t (operating

with trucks above 3.5 t) or 10 t (operating solely with trucks between 2.5 t and 3.5 t).⁷⁰ The average age of the company's truck fleet must be 10 years. If a duly approved particle filter is installed, the age of the vehicle is lowered by five years.⁷¹

For car rental services, the lifespan of vehicles is five years, counted from the date of first registration, extendable up to seven years.⁷²

For truck rental services, vehicles must be registered under a Portuguese licence plate and cannot exceed five years from the date of their registry. This limit can be extended up to three years and, exceptionally, without a maximum number of years, by Order of the IMT, provided that the characteristics of the vehicle and its state of preservation warrant it.⁷³

3. Other vehicle characteristic (length and weight rules):

In general, the law imposes that trucks measuring up to 25.25 m and weighing up to 60 t ("mega-trucks") require an annual special transit authorisation from the IMT. However, the IMT exempts smaller mega-trucks with a maximum of 18.75 m from this authorisation provided it is a combination starting with a rigid truck. Hence, a tractor in the beginning of the combination of the vehicles or a semi-trailer in the middle of the combination are not permitted.⁷⁴

Moreover, only certain product-goods, belonging to specific economic sectors, can be transported through the use of a motor-towing vehicle with five or more axles, benefitting from the IMT exemption:⁷⁵

Harm to competition

1. Minimum number of vehicles to start the business:

The imposition of a minimum number of vehicles to start a business, commonly set for long-distance bus operators carrying out scheduled direct routes above 100 km (locally known as "High-Quality Services"), which must have category III buses, as well as being imposed on car and truck rental services operators, limits the ability of these operators to enter the markets and adds to their operational costs, which may lead to higher prices charged to consumers.

The initial associated investment can particularly deter SMEs or entrepreneurs from entering the market. (e.g., according to stakeholders, on average, this is almost EUR 1 million for buying 6 new buses of category III; around EUR 210 000 for buying 7 new cars for car rental; and almost EUR 1 million for buying 12 new trucks of 6 t for truck rental services).

According to stakeholders, even taking into account the policy objective of these restrictions, aiming to protect consumers by requiring that operators have a replacement vehicle, for example in case of an accident, is not being achieved since the legislation in force does not forbid operators from using or renting their entire fleet at the same time.

Regarding long-distance bus operators offering regular "High-Quality Services", the requirement to have a crew member per bus, although aiming to distinguish the high-quality service from other regular long-distance bus services, imposes an additional entry cost and might increase the price charged to consumers by a pass-through effect. According to a stakeholder, very few authorisations⁷⁶ for this type of service are in force today, possibly due to these very high initial investments and the fact that operators tend to operate within the framework of occasional tourist services.

The regime for access to truck rental activity, is harmonised at EU level, and Directive 2006/1/EC does not establish a minimum number of vehicles to operate. Hence, this may also constitute a barrier to entry at EU level, since it may prevent a European operator from entering the domestic market, in case it has a different level of minimum vehicle requirements to start the business.

Moreover, specifically the imposition of a Portuguese licence plate on all trucks for rental services also limits the ability of companies to compete, namely to face seasonable picks and to replace vehicles. Note that the European Commission (2017d) proposes to amend Directive 2006/1/EC to allow the use of a vehicle hired in another Member State, for at least four months. This will enable companies to meet temporary or seasonal demand peaks and/or to replace defective or damaged vehicles, and avoid possible distortions given the differences between them in the taxation of road vehicles.

2. Lifespan of vehicles and fleets

The imposition of specific lifespans on vehicles and on the fleet average, based only on their age, independently of mileage or of the fact that these vehicles have passed mandatory technical inspection⁷⁷ to circulate on public roads, corresponds to entry barriers and implies a high initial level of investment in new (or almost new) vehicles, which can lead to higher prices charged to consumers.

Specifically regarding freight transport operators licensed to operate in mainland Portugal, the fact that the age limit of the trucks imposes a predetermined minimum number of vehicles that must be new, until a certain tonnage is reached, represents an operational cost. This is especially true for SMEs in small markets, such as the Portuguese one, where there might insufficient demand for companies of such size, leading to less money available to face seasonable picks and/or the replacement of vehicles.

The difference between the minimum tonnage of 40 t required for vehicles above 3.5 t (on average, 12 vehicles), and the minimum tonnage of 10 t for vehicles above 2.5 t until 3.5 t (on average, four vehicles) also appears to be excessive.

Additionally, stakeholders suggested that a 10-year age limit for the trucks used could be excessive, because this period could be extended: older vehicles could be allocated to shorter routes and more recent vehicles to international ones. This would allow operators to avoid buying new vehicles as often to fulfil the fleet age limit requirement. The comments presented by stakeholders seem to be supported by the European Commission (2014), taking into consideration the age distribution of the vehicles in use in road freight transport among EU27 hauliers, stating that 16% of trucks above 3.5 t are 10 years old and older and that “vehicles that are more modern are used in international road haulage”.

The average age of leased fleet stock for truck rental in the European Union is 3.8 to 6 years.⁷⁸ In Portugal a rented truck cannot exceed five years from the date of its registry. Hence, Portugal is placed amongst those EU Member States with the lowest average lifespan for trucks but, at the same time, it is one of the most underdeveloped markets in the European Union, accounting only for 0.02% of the Portuguese GDP, half of the EU28 average.⁷⁹

Finally, it is also important to take into account the following lifespan discrepancies in the national legal and regulatory frameworks: (i) there is no age limit for buses for the transport of passengers by road; (ii) there is a 10-year average age for a truck fleet for the transport of freight by road for hire or reward;⁸⁰ (iii) for the rental of cars without a driver

the age limit is five years extendable to seven years;⁸¹ and (iv) for the rental of trucks without a driver the age limit is five years extendable up to eight years.⁸² As a result passenger transport operators face no restrictions whereas freight transportation operators and operators of rental of vehicles without a driver face disproportional restrictions.

3. Other vehicle characteristics (length and weight rules)

The limited technical combination of the vehicles appears to be excessive and may have an impact on: the difference in the cost of buying or renting a rigid tractor with a trailer versus a truck and a semi-trailer; on the fuel used; and on the versatility of possible different combinations for the operators. It may also prevent EU operators from other jurisdictions without this restriction from entering the national market. This can lead to less innovation, higher prices, and ultimately, to lower consumer welfare.

The differentiation in the transport of certain product-goods belonging to specific economic sectors may also be excessive. This can decrease incentives to compete amongst operators and limit the growth of economies of scope. For example, in the Netherlands, mega-trucks can be used in the floriculture industry whereas in Portugal it is forbidden. These differentiations may restrict competition, and may possibly lead to higher prices and harm consumers, ultimately harming economic growth and market dynamics.

At EU level, Directive 96/53/EC harmonised the maximum weight for heavy goods vehicles combinations up to 18.75 m in length and up to 40 t in weight, increased up to 44 t if carrying intermodal transport operations.⁸³ Internationally, mega-trucks measure between 26 m and 53.5 m and have a maximum weight of between 68.5 t and 125 t (see Box 3.7.).

Box 3.7. The use of mega-trucks in Europe and internationally

EU Member States: longer and heavier vehicles in use or in trials

To date, some EU Member States allow the circulation of mega-trucks (over the limits set by Directive 96/53/EC, amended by Directive (EU) 2015/719), which typically can measure up to 25.25 m in length and up to 60 t in weight, in their national roadmaps:

- In **Sweden**, their circulation is allowed since 1995.
- In **Finland**, their circulation is allowed since the 1990s.
- In **The Netherlands**, the trial period ran from 2001 to 2011. Since 2012, mega-trucks are allowed, used mainly by supermarket chains, large retailers, the floriculture industry and container transport.
- In **Denmark**, the trial periods started in 2008 and ran until January 2017.
- In **Belgium**, trial periods are running tests (December 2017).
- In **France** and the **United Kingdom**, trials have taken place but have been rejected.
- In **Spain**, their circulation is allowed since December 2015.
- In **Germany**, their circulation is allowed since January 2017.
- In **Portugal**, their circulation is allowed since October 2017.

International level: longer and heavier vehicles allowed for normal traffic

In **Australia**, these are referred to as higher productivity vehicles (HPVs) and were first introduced in 1984. They measure between 26 m and 53.5 m and have a maximum weight of between 68.5 t and 125 t.

In **Canada**, these are called long combination vehicles (LCVs). Depending on the type of LCV, gross weights between 53.5 t and 62.5 t and lengths of up to 38 m are permitted. LCVs are operated under permit in the provinces of Alberta, Saskatchewan, Manitoba and Quebec. They are generally restricted to four-lane highways.

In the **United States**, these are also called LCVs. These were first used during the late 1950s. The Intermodal Surface Transportation Efficiency Act regulated the LCV network in 1991. At that time, 21 states allowed the use of at least one form of LCV. In 2009, LCVs were allowed in certain states but not on the interstate network.

Sources: European Parliamentary Research Service, “Mega trucks: a solution or a problem?”, Briefing, 07/05/2014

([www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140804/LDM_BRI\(2014\)140804_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140804/LDM_BRI(2014)140804_REV1_EN.pdf)); European Parliamentary Research Service, “The Impact of Mega Trucks”, provisional Study, 2013, IP/B/TRAN/FWC/2010-006/Lot1/C1/SC4

(www.cepi.org/system/files/public/documents/pressreleases/competitivenessandtrade/2013/Impact%20of%20Megatrucks_Provisional.pdf); ITF (2011), "Moving Freight with Better Trucks: Improving Safety, Productivity and Sustainability". International Transport Forum, Research Report, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/9789282102961-en>; www.bbc.com/news/blogs-news-from-elsewhere-38519589; <https://ww2.frost.com/news/press-releases/mega-trucks-fleet-operational-efficiency-and-enhanced-freight-capacity-drive-global-demand/>; <https://fr.wikipedia.org/wiki/M%C3%A9ga-camion>; www.levif.be/actualite/belgique/le-mega-camion-de-60-tonnes-teste-ce-matin-a-herstal/video-rtl-764369.htm

Recommendations

1. Minimum number of vehicles to start the business:

It is recommended to abolish the minimum number of vehicles required to start a business, commonly set for long-distance bus operators performing scheduled direct routes above 100 km (locally known as “High-Quality Services”), as well as imposed on car and truck rental services operators.

For truck rental services, the use of a vehicle hired in another EU Member State, for at least four months, to enable companies to meet temporary or seasonal demand peaks and/or to replace defective or damaged vehicles (in line with "Proposal to amend Directive 2006/1/EC") should be allowed on a trial basis.

2. Lifespan of vehicles and fleets:

It is recommended to reassess the defined limits imposed on the lifespan of vehicles and fleets used in freight transportation and on car and truck rental services, based on criteria reflecting the use and depreciation of the vehicles (e.g. mileage) and taking into consideration the fact that all these vehicles need to pass mandatory technical inspections to circulate on public roads.

3. Other vehicle characteristics (length and weight rules):

The technical limitations on the possible multiple configurations of combinations of mega-trucks should be abolished, as long as the combination is technically viable and respects the

legal limits of weight and length. In particular, weighting up to 60 t and limited to, e.g., 16.5 m (tractor and semi-trailer) or 18.75 m in length (rigid truck with a trailer).

Benefits

The implementation of these recommendations concerning the vehicles will promote an efficient allocation of operational resources by the transport companies, contributing to a reduction in prices charged to consumers.

3.3. Long-distance buses

This section discusses passenger transport in heavy passenger vehicles (i.e., more than nine seats) by road for commercial purposes. The report analyses issues regarding access to the market for long-distance bus routes. Depending on the initial length of the journey, on specific conditions to access the routes, price regulation and the minimum requirements on the vehicles used, two transport services of long-distance bus services can be performed on scheduled direct routes above 50 km (locally known as "Express Services") and above 100 km (locally called as "High-Quality Services").

Central bus stations are also included since they are an important road infrastructure of general interest and contribute to the functioning of the long-distance bus operators. They serve as terminal locations or as a stopping place for non-urban road passenger transport routes for urban agglomerations. Their location and management are linked to public transport policies aiming to contribute to the order and fluidity of urban traffic.

Long-distance bus services contribute to the transport and mobility of people within interurban areas connecting citizens and businesses. In 2016, 2 653 000 passengers were transported by long-distance buses, which corresponds to 5.6% of the total passengers transported nationally by road, in Portugal.⁸⁴ In 2015 (latest available data), long-distance bus activity contributed to 0.6% of the GDP in Portugal, above the 0.2% EU28 average.⁸⁵ In the same year, the activity of management of central bus stations contributed to 0.09% of the GDP in Portugal.⁸⁶

In 2016, there were 71 bus companies licensed to operate on interurban routes in Portugal, which includes long-distance bus routes operators.⁸⁷ More than 70% of the long-distance bus services are carried out by companies working since 2005.⁸⁸ The most important of these is carried out by the *RNE - Rede Nacional de Expressos*⁸⁹ and groups other main partners. In 2015, according to the "Comprehensive Study on Passenger Transport by Coach in Europe (Steer Davies Gleave, 2016)", the Commission estimated that the RNE accounted for 70% of market share of this activity.⁹⁰

The *RNE* manages on behalf of and exclusively for the services provided by the network, a public central bus station, located in Lisbon (Sete-Rios Terminal).⁹¹ The *RNE* also uses other central bus stations as a customer, such as in Lisbon (Gare do Oriente Terminal)⁹². The Gare do Oriente Terminal is managed by a state owned entity, *G.I.L. - Gare Intermodal De Lisboa - Parque Das Nações*⁹³ and, therefore, the terminal is used by all other players needing to park their long-distance buses (either domestic or international).

As of 4 December 2011, admission to the occupation of road passenger transport operator in the European Union is governed by Regulation (EC) No 1071/2009, which covers commercial transport companies operating vehicles with seats for nine passengers, including the driver, or more. According to the regulation, operators with a European licence must fulfil four criteria to access the profession: the criterion of good repute,

financial standing, professional competence and maintaining an effective and stable establishment in a Member State.

3.3.1. Benefits of lifting barriers to competition

If the restrictions identified in this section are lifted, we make a conservative estimate of consumer benefits of between EUR 3.37 million and EUR 6.9 million per year (see Annex 3.A1) due to a decrease in prices.

3.3.2. Access to the market for long-distance bus routes

Description of the barriers

1. Long-distance buses: "Express Services"

To operate "Express Services" applicants must obtain an authorisation from the IMT. Only companies that already hold an existing concession to provide public passenger road transport, or serve at least one of the termination points of the new service and part of the journey on the same itinerary or parallel itinerary can apply. In particular, applicants must demonstrate that they can cover: i) 20 % of the length of the required course if the distance between terminals is greater than 50 km; or ii) 10% of the length of the required course in routes equal to or greater than 100 km.⁹⁴

2. Long distance buses: "high-quality services"

To provide "High-Quality Services" an authorisation from the IMT is required and only companies already operating a public passenger road transport service, or travel and tourism agencies may apply. Specifically: i) concessionaires must hold a concession on a route that touches one of the terminal points of the service requested; ii) travel and tourism agencies must have a registered office or a branch office, and must have been active for more than three years in the area where an end-point of the service requested is located; and iii) one of the terminals must be located in a city or within a specifically designated tourist area, as defined by law.⁹⁵

To operate these "High-Quality Services" operators are also conditioned to operate in 11 pre-determined road axes, defined at national level by the competent sector of the Ministry of Transport.⁹⁶ Other road axes may be authorised, following a proposal from operators, and endorsed by the IMT, and after an opinion is given by the Ministry of Tourism.⁹⁷

Harm to competition

The regulations for accessing the market and exercising the activity of long-distance bus services, by "Express Services" or "High-Quality Services" impose entry barriers which limit the number of operators in these markets.

Since only already existing operators can enter into these markets, non-concessionary companies of public passenger road transport (to provide either "Express Services" as "High-Quality Services") or tourism and travel agencies (limited to perform "high quality services"), are restricted from obtaining the required authorisations.

Additionally, long-distance bus operators are also prevented from freely deciding the itinerary of their routes: "Express Services" operators must already serve at least one of the termination points of the new service and part of the journey on the same itinerary or parallel itinerary; and "High-Quality Services" operators are limited to 11 pre-defined road-axes, mainly on highways.

Box 3.8. The Legal Regime of the Public Transport Service of Passengers – Law 52/2015

Regulation (EC) No 1370/2007 on Public Passenger Transport – in force since 2011 – established a framework at EU level for public service obligations in the field of public passenger transport.

This regulation lays down the conditions under which competent authorities, when imposing or contracting public service obligations, compensate public service operators for costs incurred and grant exclusive rights in return for the discharge of public service obligations.

Following the regulation, the Portuguese Parliament approved **Law 52/2015** containing the **Legal Regime of the Public Transport Service of Passengers**, establishing the regime applicable to the development of the public passenger transport service by road, inland waterways, rail and other guidance systems, including the public service obligations regime and their compensation.

Decentralisation of competences, from central to local power

Law 52/2015 provides a framework for the decentralization of competences, from the central power (IMT) to the local power: inter-municipal communities, municipalities and metropolitan areas (Lisbon and Oporto). These entities became competent transport authorities for the public transport service of municipal passengers. Competences delegated include, e.g., decision to exploit by own means or to allocate to public service operators; determination of public service obligations; investment levels in networks, equipment and infrastructures; determination and approval of the tariff regimes; supervision and monitoring of the operation of the public passenger transport service.

The aim is to promote greater efficiency and sustainable management of the public passenger transport service, as well as the universality of access and quality of services, economic, social and territorial cohesion, balanced development of the transport sector and intermodal articulation.

Absence of adoption of regulatory secondary legislation

Law 52/2015 expressly revoked several national legal regimes:

- Conditions for accessing the market of regular passenger long-distance bus routes over 50 km (known as "express") and over 100 km with a high-quality service (known as "high-quality"): Decree-Law 399-F/84 and Decree-Law 326/83; and Decree-Law 399-E/84 and Decree-Law 375/82.
- Structure of the tariffs regime for combined transport tickets: Decree-Law 8/93.

The revocation was to come into force, pending the adoption of new secondary legislation, due by November 2015. The requirements for obtaining a licence are not known. Without implementing regulations, national and international operators are deterred from entering the domestic market as they would have to follow the legislation still in force: applicants need to be existing operators (e.g., concessionary companies of public passenger road transport; or tourism and travel agencies) or provided they carry out pre-determined journeys (e.g. termination points of the service required; parts of the journey on the same itinerary or parallel itinerary; or pre-defined road-axes).

Sources: PT Parliament, Proposal of Law 52/2015, <http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c3246795a5868774d546f334e7a67774c336470626d6c7561574e7059585270646d467a4c31684a535339305a58683062334d76634842734d6a6734c56684a5353356b62324d3d&fich=ppl287-XII.doc&Inline=true> (accessed on 23 January 2018); IMT, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx (accessed on 23 January 2018); Costa, A. (2017), "Os Transportes de Passageiros - Rodoviário, Ferroviário e Fluvial – Volume I", Vida Económica Editorial, pp.182-3.

Even if travel and tourism agencies are also allowed to apply for a “high-quality service” authorisation, in practice there are only few a routes of “high-quality service” in operation due to this heavy requirement. According to available data from IMT, in 1995 there were 15 “high-quality routes” in operation, in contrast with only three in operation in 2005 (latest available data), two operated by tourism and travel agencies, and one by a concessionaire of public passenger road transport.⁹⁸ These cancellations translate into either the termination of the route or, in some cases, its replacement by long-distance buses provided under the category of “Express Services”.⁹⁹ Stakeholders also stated that scheduled “High-Quality Services” have been replaced by occasional long-distance buses services, mainly provided by tourism and travel agencies, which do not required the high-quality standards or the regular scheduled service, explicitly to avoid the requirements associated with the operation of “High-Quality Services”.

Reducing the supply structure leads to fewer available routes, reduced frequency of service and fewer incentives to innovate, and may therefore also lead to higher fares for consumers, which all contribute to lower welfare.

The legal frameworks stipulating the entry requirements for accessing the market of long-distance bus routes, carried out either by “Express Services” as by “High-Quality Services”, are no longer in force, as they have been revoked by Law 52/2015, which approved the Legal Regime of the Public Transport Service of Passengers (see Box 3.8.).¹⁰⁰ However, the entry into force of this revocation awaits the adoption of new secondary legislation, due 90 days after the entry into force of Law 52/2015 (i.e., November 2015).¹⁰¹ By early 2018, no new secondary legislation or regulation had yet been adopted.¹⁰²

Still, even if the aim of Law 52/2015 is to facilitate access to and to liberalise the market for long-distance bus services, the requirements for obtaining a licence are not known.¹⁰³ This means that without the necessary implementing regulations, national and international operators are deterred from entering the domestic market.¹⁰⁴

According to the report “Comprehensive Study on Passenger Transport by Coach in Europe, 2016”, from DG MOVE, European Commission,¹⁰⁵ there is an increasing tendency to promote a liberalisation of access to long-distance bus services across the EU Member States, as in the cases of Germany (since 2013 for routes above 50 km) and France (since 2015 for routes above 100 km).

In “Ex-post evaluation of Regulation 1073/2009”, the European Commission recognises the fact that access to national regular services is not harmonised at the EU level. It creates “obstacles in national markets hindering the development of inter-urban coach and bus services and a low share of sustainable passenger transport modes”.¹⁰⁶ It proposes to amend the EU regulation with a view to “introduce a common authorisation procedure at the EU level, for access to national regular services, providing Member States with the possibility to refuse such authorisation if the economic equilibrium of an existing public service contract is compromised by a proposed new service carrying passengers over distances of less than 100 km [up to 120 km] as the crow flies”.¹⁰⁷ (see Box 3.9.).

Moreover, international comparisons, based on several studies on long-distance bus services, have demonstrated that a more liberalised framework promotes price competition and product differentiation (in terms of more routes, stops and operators) contributing to an increase in the welfare of consumers (see Box 3.10.).¹⁰⁸

Box 3.9. Proposal to amend Regulation (EC) 1073/2009: Introduction of a common authorisation procedure at the EU level for access to regular national services

Outcome of the ex-post evaluation of Regulation (EC) 1073/2009

The study found that the “[O]pening of national markets will strengthen the development of the international market for regular services, quite apart from any benefits for passengers making national journeys. The main problems identified were obstacles in national markets hindering the development of inter-urban coach and bus services and a low share of sustainable passenger transport modes.”

Proposal to amend Regulation (EC) 1073/2009 is aimed to correct these shortcomings

- Proposal to amend Art. 8b(2)(3), *Authorisation procedure for national regular services*
- Proposal to amend Art. 8c(2)(d), *Decisions of authorising authorities*

Estimated benefits of the proposal if implemented over the assessment period (2015-2035)

- Administrative savings for businesses and administrations: EUR 1 560 million;
- Increase the activity of coach transport: more than 11% relative to the baseline and increase its modal share by almost one percentage point;
- Improve the connectivity of disadvantaged social groups: 62 billion passenger-km
- Creating 85 000 new jobs;
- Contribute to lower accident costs: EUR 2.8 billion;
- Positive impact on the environment: EUR 183 million net cumulative savings in CO₂ emissions costs and net cumulative savings in air pollution costs of EUR 590 million;
- Trigger a limited shift from rail to road transport and bring about a decrease in the modal share of rail of 0.4 percentage points relative to the baseline (from 8.4 % to 8 %) with a loss of revenue for rail public service contracts of 1.4 % and an increase in subsidy for coach public service contracts of less than 1 %; and that
- This would not undermine the sustainability of public service contracts serving remote urban areas.

Sources: “Ex-post evaluation of Regulation (EC) No 1073/2009”, SWD(2017) 361 final, 8.11.2017, available at www.ipex.eu/IPEXL-WEB/dossier/document.do?code=SWD&year=2017&number=361&extension=null (accessed on 16 February 2018); “Proposal for amending Regulation (EC) No 1073/2009”, COM (2017) 647 final, 2017/0288 (COD), 8.11.2017, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0647&from=EN> (accessed on 16 February 2018).

Recommendations

Fully implement the liberalised regime for access to the market of long-distance buses in scheduled direct routes above 50 km through the formal adoption of the secondary legislation as stated in Law 52/2015.¹⁰⁹ This would eliminate existing restrictions on access to the market of long-distance bus routes, for both “Express Services” and “High-Quality Services”.

The new framework should allow operators to freely decide their business strategy and identify the optimal components of their offer.

Box 3.10. Benefits from deregulation in long-distance bus regimes in Europe

Deregulation in the United Kingdom (1980)

In 1980 price and quantity regulations applied to express coach, excursion and tour operations were removed. Five years later, total trips rose by about 50%. Extensive price competition between coach operators, and between coach and rail was observed, together with higher frequencies, faster timings, and better quality. Nevertheless, National Express remained the biggest operator, with over 70% of market share. In long-distance express travel there was an average fare reduction of about 50% immediately upon deregulation.

Deregulation in Sweden (partially in 1994 and general in 1998)

While long-distance passenger transport by train is still rather heavily regulated, the express coach market has developed as a commercial alternative for long-distance travelling in a market with open entry and exit. Prices had decreased and there are no signs that quality has been compromised.

Deregulation in Norway (partially in 1998, and general in 2003)

The deregulation process has been able to provide transport services that were not provided by rail. Several *ex-post* studies have been arguing that deregulation has the potential to make the long-distance passenger transport mode more sustainable and efficient, with hardly any subsidy requirements.

Deregulation in Italy (2007)

The service regulation scenario has been gradually changing from exclusive concessions to non-exclusive authorisations. The supply of long-distance coach services in terms of frequency and geographical distribution has been increasing and gaining relevance over rail services.

Deregulation in Germany (2013)

The regime for routes above 50 km has been fully liberalised. Several post-evaluation studies showed a positive outcome in terms of prices, routes, stops and operators.

Deregulation in France (2015)

The regime for routes above 100 km has been fully liberalised. The effects have been very promising in terms of new entry, greater frequency and higher quality. Regarding fares, “bus operators used an initial aggressive pricing strategy to induce demand for new services and then increased fares once customers became accustomed with the service” (Blayac and Bougette, 2017, p. 61).

Sources: OECD – Policy roundtables (2001), “Competition Issues in Road Transport”; Blayac, T. and Bougette, P. (2017), “Should I go by bus? The liberalization of the long-distance bus industry in France”, *Transport Policy*, Vol. 56, pp. 55-62; Alexandersson, G. et al. (2010); “Impact of regulation on the performances of long-distance transport services: A comparison of the different approaches in Sweden and Norway”; *Research in Transportation Economics*, Vol. 29, pp. 212-218; Vigren, A. (2017); “Competition in Public Transport: Essays on competitive tendering and open-access competition in Sweden”, mimeo; Aarhaug, J. and Fearnley, N. (2016), “Deregulation of the Norwegian long distance express coach market”, *Transport Policy*, Vol. 46, pp. 1-6.; Beria, P., R. Grimaldi and A. Laurino (2013), “Long distance coach transport in Italy: state of the art and perspectives”, MPRA 53768; Dürr, N. S., and K. Hüschelrath (2015), “Competition in the German Interurban Bus Industry: A Snapshot Two Years After Liberalization”, *Competition and Regulation in Networking Industries*, Vol 16, Issue 3, pp. 188 - 218.

Further, abolish the requirement that only existing operators may apply. Currently, applicants have to be concessionaire companies of public passenger road transport; or tourism and travel agencies. In addition, the requirement to only serve predetermined journeys (e.g. termination points of the service required; parts of the journey on the same itinerary or parallel itinerary; or predefined road axes) should also be abolished.

Benefits

Removing these restrictions will improve the market for long-distance buses by allowing operators to freely choose their optimal journeys; thereby generating more interest in the market for potential entrants, including foreign operators.

3.3.3. Regulation of minimum prices

Description of the barriers

The regulation imposes a price scheme with minimum prices for the tickets that are sold for “Express Services” and “High-Quality Services” to be calculated in a precise manner.

For these routes, operators must set a minimum price scheme of 10% or 15% in addition to a maximum reference price value established per road-kilometre of interurban road passenger public services for routes of less than 50 km.¹¹⁰

The minimum percentage of 10% or 15% depends on the quality of the bus, i.e., whether type II¹¹¹ or type III.¹¹² The latter is mandatory only for “High-Quality Services”.¹¹³

Moreover, operators must charge a minimum corresponding to the price applicable to a 25 km journey for “Express Services” and 50 km for “High-Quality Services”.¹¹⁴

Harm to competition

Setting minimum prices limits the incentives among existing operators to compete by lowering prices, and thereby is also most likely to reduce the incentive to innovate and explore new ways of cutting costs, maintaining the same quality of service provided. It also precludes the entrance of so-called “low-cost” operators who compete on offering low-price trips to young travellers.

The provision also prevents competition based on prices between interurban and long distance buses routes. The minimum increase of 10% or 15%, depending on the type of vehicle used, is calculated on top of a maximum average price increase of the reference values for interurban routes up to 50 kms.¹¹⁵ This is a straightforward arithmetical average increase, which may lead to larger price increases for routes more often used by consumers.

Gleave (2016) analyses the effect of the liberalisation process for these markets in several European Union Member States, for instance in Germany (2013) and in France (2015). These two countries also promoted free price-setting by market players, which fostered price competition and helped spur product differentiation in the form of more choice of routes, new or more route stops and several more operators. Overall this contributed to an increase in the welfare of consumers who travel by bus or coach (see Box 3.10. above).

Recommendation

Abolish the minimum prices.

Benefits

Abolishing minimum prices would allow market players to better adjust their offer and would stimulate competition on prices. This should stimulate new entry into the market and help increase consumer welfare through lower prices and more competitive offers.

3.3.4. Concession of the central bus station infrastructure

Operators of non-urban passenger road transport routes serving urban conglomerates are obliged to terminate or stop their routes in these infrastructures.¹¹⁶ Hence, their location and management are linked to public transport policies aiming to contribute to the order and fluidity of urban traffic.

The management of a central bus station may be: i) a duty of the state, ii) a duty of a municipality, or iii) under a concession regime, conceded to private or mixed companies. The state and municipalities reserve the right for supplementary action if there is a lack of interest on the part of transporters or the lack of viability of the concession regime.¹¹⁷ In this report, we only analyse barriers to competition related to regime management of the concession.

The access to these infrastructures by long-distance operators is of a strategic importance, particularly in the case of the liberalisation expected to occur in the access to long-distance bus routes in Portugal.

Description of the barriers

1. Managing structure

The shareholders in the capital of a concessionaire of a central bus station can be actual or potential transporters, users, transporters of non-urban routes of passengers, but also, railways, inland waterways transporters and passenger transporters on urban routes.¹¹⁸

The director of a central bus station must manage the infrastructure capacity in such a way as to avoid situations of competitive advantage between non-urban routes operators when capacity is restrained (e.g., in the attribution of slots for parking in peak hours or others of less affluent traffic). However, the following conditions may be excessively restrictive:¹¹⁹

- (a) a carrier may require that such departures always take place from the same point;
- (b) where the daily number of departures of a particular carrier exceeds the average frequency in the same direction, a fixed place may be reserved for the operator;
- (c) a certain percentage of the parking places may be attributed exclusively.

To pick up or drop off passengers or baggage in a central bus station, every transporter shall send information regarding the service to be provided to the director, at least three days in advance of the commencement of the service.¹²⁰

2. Duration of the concession

The exact time period for the concession of a central bus station is not defined in the provision. Concession contract periods are considered tacitly and successively extended if one of the parties does not notify the other of termination, within a certain number of months in advance of the term or the last extension period.¹²¹

Harm to competition

1. Managing structure

As a result of vertical integration, a non-urban route passenger road transport operator acting as the concessionaire of a central bus station has incentives and the capacity to manage the infrastructure on its behalf and to the detriment of other direct and potential competitors. It might make it difficult to access the infrastructure by: preventing competitors from parking in peak hours on competing routes, or not allowing ticket offices or ticket-selling machines of competing operators inside the central bus station, forcing them to sell the tickets directly inside the buses. Steer Davies Gleave (2016, p.98) also states that vertical integration might lead to discriminatory behaviour against other operators. Depending whether space is available, this can even result in an exclusion of operators.

The concessionaire can also foreclose the market, as it can force competitors to search for other locations to park, or to pay higher fees to use the infrastructure. In several municipalities there might be only one of these infrastructures as this depends on location decisions.

It can also facilitate co-ordination among competitors through the sharing of sensitive information, in the case where more than one operator participates in the shareholder capital of the concessionaire, which may lead to a reduction in the quality of service and to higher prices for end users. Steer Davies Gleave (2016, p. 98), in an analysis of EU countries (Greece, Poland, Sweden and the United Kingdom) “did not identify any specific example of allocation of capacity by an independent or neutral regulatory body, as is often required in the allocation of airports slots and is mandated for railways by Article 7 of Directive 2012/34”.¹²²

Steer Davies Gleave (2016, p. 104) reported that the experience of deregulation in Germany in 2013 led to a rapid growth of long-distance bus services, which exposed “both a shortage of terminals and a shortage of capacity at existing terminals”.

Moreover, as indicated by a stakeholder, restrictions (a) and (b) may benefit consumers and promote efficiency since they will know that a certain bus route departs/arrives from/to the same platform, it can also treat incumbents differently and exclude new entrants, as there may be parking constraints. This is defined as “grandfathering rights to slots”. Additionally, as pointed out by Steer Davies Gleave (2016, p. 103), “the standard slot duration, or the relative charges for slots and stands, might be manipulated to enable effective discrimination between operators”. Access to these infrastructures by long-distance operators is of a strategic importance, particularly in the case of the liberalisation expected to occur in the access to long-distance bus routes in Portugal, with the adoption of the necessary secondary legislation.¹²³ Hence, there will be a need to either add or relocate capacity, but most importantly to ensure proper management of these infrastructures.

Restriction (c), also poses an issue on how to recommend a specific percentage for exclusive parking places without discriminating amongst incumbents and new entrants. There is no criterion or time-frame upon which a requirement addressed by an operator of non-urban routes to the director of a central bus station may be accepted/rejected. This creates uncertainty and costs for these transporters as they may be unsure of selling tickets for a given route on a given tour and schedule.

2. Duration of the concession

This provision constitutes an entry barrier and limits the potential number of operators in the market, which could lead to higher prices charged to users. While the duration of a concession to promote competition should not be established *a priori*, a maximum duration should be defined to avoid market foreclosure and to promote competition upon renewal of a new concession (see Box 3.11.).

Box 3.11. A brief overview of concessions

A concession's time limits result from a public policy objective to prevent excessive concession periods and maintain transparency of awarding processes. According to Recital 52 and Art. 18 of EU Directive 2014/23/UE and the general Portuguese Public Procurement Code (Art. 410 of Decree-Law n.º 111-B/2017), the duration of a concession shall be established as the minimum time period required to recover and repay the capital invested under normal conditions of return of the exploitation of the concession.

Moreover, the contracting entity should establish a specific time limit, considering the criteria mentioned above. Art. 18 (2) of EU Directive 2014/23/UE clearly states that there is a need to justify concessions with durations of over 5 years. However, Art. 410 (2) of Decree-Law n.º 111-B/2017 does not stipulate the need to justify concessions with duration over five years. Further, Art. 410 (3) states that in the absence of a contractual stipulation, the maximum duration of the concession is 30 years, including the duration of any contractual extension provided, without prejudice to a special law that establishes a different alternative term or maximum term.

Source: Own text based on Recital 52 and Art. 18 of EU Directive 2014/23/UE and the general Portuguese Public Procurement Code (Art. 410 of Decree-Law n.º 111-B/2017).

Recommendations

1. Managing structure

The vertically integrated entity to manage a central bus station should be abolished. Equally, a concessionaire company composed of actual or potential competitors managing a central bus station should be abolished.

Access to the infrastructure should be granted by the relevant authority in a transparent and non-discriminatory way. If the director of a central bus station cannot satisfy all the requests to access the infrastructure, the director should inform the competent authorities and the users that the infrastructure is congested. A capacity analysis should be carried out to identify the existing constraints and to propose measures to avoid congestion problems in the future. This report should be delivered to the competent authorities.

Allow for the tacit granting of operational licences for bus stations, following a set time to reply by the director of a central bus station to the requirement sent by operators should be stipulated. After this period, operators should consider that its authorisation has been tacitly granted and they can start operating in that infrastructure. Any refusal should be duly justified.

2. Duration of the concession

The provision to implement the principle that the duration of a concession should be limited to the time period strictly necessary to recover the investments made, together with a remuneration adequate for its level of risk should be amended. The contracting entity should establish the specific time limit, considering the need to justify concessions

with durations over 5 years and explicitly state that the concession is made through a public tender procedure (in line with Recital 52 and Art. 18 of EU Directive 2014/23/UE and Art. 410 of Decree-Law 111-B/2017).

Benefits

The implementation of these recommendations will facilitate access to central bus stations by operators in a transparent and non-discriminatory way. Particularly, taking into account the implementation of the liberalisation framework for access to long-distance bus routes,¹²⁴ access to this public infrastructure is crucial for these public transporters of passengers, which can also contribute to consumer welfare.

3.4. Taxi transport services

Taxis are light passenger cars for public transport equipped with a time and distance measuring device (taximeter) and with their own distinctive marks.¹²⁵

Taxi transport services contribute to the mobility of people within urban and suburban areas and are a crucial link between workers and firms.¹²⁶ In 2016, more than 7 million passengers¹²⁷ were transported by over 10 000 licensed taxis (an average of 1.33 taxis per 1 000 residents),¹²⁸ which corresponds to around 1.5% of the total passengers transported nationally by road.¹²⁹ In 2015 (latest available data), the average turnover per taxi company was over EUR 24 000, which is below the EU28 ratio of around EUR 75 000.¹³⁰

The main regulation on taxis is Decree-Law 251/98, which establishes the main rules for accessing both the activity and the market for taxi services. First, access to the activity of taxi transport services requires a non-transferable professional capacity certificate to manage a taxi company. Second, accessing the market requires a licence for a taxi vehicle attributed by a municipality, which can be sold.

Two provisions support this Decree-Law: (a) Decree-Law 297/92 sets the regime of fixed fares for taxi services; (b) Law 18/97 transfers the possibility of setting quantitative restrictions (i.e., quotas) to the municipalities on the number of taxis available in the respective municipality. Hence, municipalities have their own implementing regulation. As a sample, this study analysed the nine municipality regulations within the area of Lisbon. Finally, Ordinance 277-A/99 defines the characteristics that a taxi car must have.

3.4.1. Benefits of lifting barriers to competition

If the restrictions identified in this section are lifted, we make a conservative estimate of consumer benefits of between EUR 1.21 million¹³¹ to EUR 6.17 million¹³² per year. This amount is the total of the estimated positive effects on consumer surplus due to a decrease in prices.

3.4.2. Quotas and geographical restrictions

Description of the barriers

In Portugal, there is a maximum quota of licences to provide taxi transport services within a certain area. The total number of taxi licences is established either by a municipality or by small areas that constitute the municipality.¹³³ The quotas cannot be exceeded and might be revised upon prior consultation of the stakeholders.

As a result of the maximum quota system, taxi licences are attributed through a public tender. Every time there is a vacancy, a public tender for a licence is announced and candidates apply directly to the municipality, which then follows a set of criteria to rank the applications.¹³⁴ These criteria are listed in the municipality regulations and stipulate preference rights for local residents and existing operators. For instance, the analysis of the nine municipalities in the metropolitan area of Lisbon shows that the municipalities give priority to applicants according to the area they live in, previous experience in the sector and location of their headquarters.

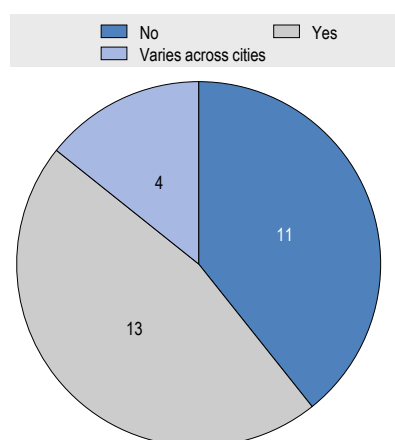
These quantitative restrictions on the number of licensed taxis operating within each municipality also impose a geographical restriction on licensed taxis. The regulations imply that a taxi licensed to operate in one municipality cannot take passengers in another municipality, even if a previous service has left the taxi empty outside its municipal borders.

Harm to competition

The licensing regime and quotas correspond to a barrier to accessing the market and limit the number of taxis available within each municipality. They also decrease competitive pressure and the normal adjustment between demand and supply. This is particularly harmful taking into account that the demand side has increased significantly in the last decade due to the increasing number of tourists (40% increase in number of overnight stays in hotels), while the number of licensed taxis operating has grown less than 1%.¹³⁵ This restriction can also reduce the overall quality of the service defined as longer waiting times, one of the factors that consumers most value, in addition to less comfort.¹³⁶

The geographical restriction leads to a higher price charged to consumers and can significantly hamper consumer welfare, competition and the efficient use of transport capacity.¹³⁷ First, a passenger who travels from one municipality to another pays a double fee to compensate for the empty return of the taxi to its own municipality, which also contributes to a less efficient use of taxi capacity.¹³⁸ Second, taxis of two neighbouring areas cannot compete directly for the same clients as they are forbidden to take passengers in another municipality, which limits their competitive pressure.

Figure 3.3. Quantitative restrictions on the taxi sector across EU28



Note: No: AT, EE, HU, IE, LV, LT, NL, PL, SK, SI and SE. Yes: BE, CV, HR, FI, FR, EL, IT, LU, MT, PT, RO and ES; Varies across cities: BG, CZ, DE and UK. Quantitative restrictions have been recently removed in Finland (see www.lvm.fi/documents/20181/937315/Factsheet+60-2017+Taxi+and+vehicle-for-hire+services+in+the+Act+on+Transport+Services.pdf/bbb5ca8a-d24d-4b41-a5be-004f4036ac2).

Source: Grimaldi, CERTeT Università Luigi Bocconi, and Wavestone (2016b), pp. 7-16.

While geographical restrictions or quotas do exist across the European Union, nonetheless, eleven EU Member States have no quantitative restrictions at all, and four have no quantitative restrictions within some regions or municipalities – see Figure 3.3.

The loss of welfare stemming from the imposition of quotas depends on the difference between the number of taxis that would be available in a market with free entry and those available under the current framework. If the number of potential taxis exceeds the actual number, the restriction is binding and, the larger the gap between these two numbers, the higher the loss of welfare. It is important to note that several municipalities have decided not to attribute the stipulated maximum number of licences (see Box 3.12).

In Ireland, which abolished quotas in 2000,¹³⁹ there was a positive impact on consumer welfare: EUR 780 million, essentially through reduced waiting times, from 11.5 minutes in 1997 to 6.2 minutes in 2008. The number of taxis also increased: in Dublin, the number of taxis rose from 2 772 in 2000 to 8 609 in 2002 (see Gorecki, 2017).¹⁴⁰ Nevertheless, in 2010 the quantitative restrictions were re-imposed except for wheelchair accessible taxis with a view to increasing the number of this type of taxi. Gorecki (2013, p. 247) argues that “these measures mean that there is a real danger that when the economy revives and demand for SPSV [Small Public Service Vehicle] services increases that there will be increased waiting times, (...) while fare discounting will end much sooner than it would otherwise”.¹⁴¹ In a more recent paper, the same author states that “the reintroduction of quantitative restrictions [is] consistent with the demands of private vested interests” Gorecki (2017, p. 231).

Besides Ireland, other international examples support the benefits to consumers from deregulation or lower taxi regulation. E.g., for the United Kingdom, the Office of Fair Trading (2003) found that local areas with no control on the number of entrants have lower waiting times and more taxis per population than entry-restricted areas.¹⁴²

Box 3.12. The case of allocation of taxi licences in the Municipality of Lisbon

The Municipality of Lisbon decided not to allocate all the licences within the allowed quota, arguing that there was an “excessive number of licensed taxis in Lisbon compared to the significantly decreasing number of residents, a decrease verified in recent years, and associated to the economic crisis, particularly since 2011” (AdC, 2016, p. 14). This limits the number of taxis available below the defined number and makes the quantitative restriction binding.

Moreover, the existence of a secondary market, where these taxi car licences are exchanged for up to EUR 150 000 in Lisbon, denotes a possible consumer welfare loss (AdC 2016, p. 14). This allows even circumvention of the ordering criteria for the attribution of licences through the public tender procedure to obtain a licence at the Municipal level which costs less than EUR 500. The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers.

In a sector study published in 2016, the Portuguese Competition Authority estimates the total amount of these annual rents of licences for Lisbon taxis at between EUR 3.5 million and EUR 5.9 million. These figures do not include the additional welfare loss associated with the small market size as a consequence of the restrictive provisions. For example, the costs associated with waiting times are also not considered, as well as the efficiencies that higher competitive pressure in the market would bring in a dynamic perspective (adapted from AdC report, p. 14-15).

Source: Portuguese Competition Authority (2016), “Report on Competition and Regulation of Public Passenger Transport Services by Car Hire”, p. 14-15, www.concorrenca.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Other/Documents/2016%20-%20Study%20on%20Public%20Passenger%20Services%20by%20Car%20Hire%20-%20Dec%202016_vf.pdf.

Recommendations

Abolish the quotas and geographical restrictions defined at municipal level.

Benefits

This will contribute to an increase in the taxi cars available and greater efficiency since taxis could take passengers anywhere. This would lead to a reduction in waiting times for customers.

3.4.3. Price convention regime

Description of the barriers

Prices charged to consumers are not unrestricted and all taxi drivers must follow a price convention regime¹⁴³ defined jointly by the Directorate-General for Economic Activities (DGAE) and the representative associations of the sector with contributions from IMT.¹⁴⁴ Passengers must pay a final fare which consists of two components: an initial fee and itinerary and duration fractions calculated according to the prices set per kilometre and waiting times.¹⁴⁵

The purpose of the price regime is mainly to protect the consumer and to promote transparency between operators and consumers, particularly when the asymmetric information between them is higher (i.e., a passenger hailing a taxi with no other option available).

Table 3.4 presents an overview of the prices charged to consumers according to the type of tariff imposed. Tariff 3 corresponds to a one-way trip to a destination outside the taxi's municipality. When compensating for the fact that the taxi is not allowed to take on passengers outside its municipality, the price per km and price per hour is twice as high as Tariff 1.

Table 3.4. 2012 Price convention regime

Schedule / No of passengers	Tariff 1				Tariff 3			
	Fixed fee (€)	Meters	Price/km (€)	Price/hour (€)	Fixed fee (€)	Meters	Price/km (€)	Price/hour (€)
Day/4 passengers	3.25	1 800	0.47	14.80	3.25	1800	0.94	14.80
Night/4 passengers	3.90	1 440	0.56	14.80	3.90	1800	1.13	14.80
Day/over 4 p.	3.25	1 800	0.61	14.80	3.25	1400	1.21	14.80
Night/over 4 p.	3.90	1 440	0.73	14.80	3.90	1400	1.45	14.80

Note: Tariff 1: urban tariff; Tariff 3: one-way trip (to a destination outside the taxi's operational area).

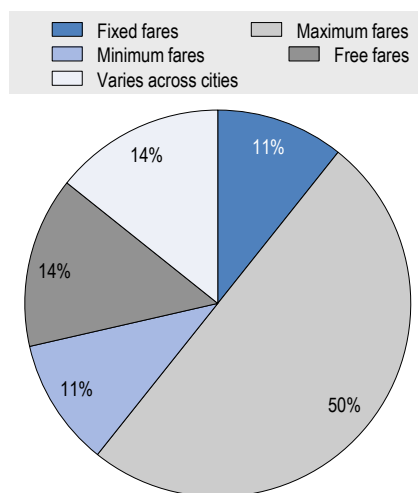
Source: 2012 Price convention regime and information provided by DGAE.

Harm to competition

The price convention regime, which is the same as a fixed-fare structure regime, limits price competition and prevents the normal response of supply to different conditions of demand, potentially leading to economic inefficiencies. It also limits ability and incentives to compete on the binomial price/quality. However, the purpose of the regulation is to allow the consumer to understand exactly how the final price will be calculated.

Within the European Union, fixed prices are the exception rather than the norm. Half of the Member States allow for maximum prices (14) and four countries have a free-price regime – see Figure 3.4.

Figure 3.4. Types of taxi fares across EU28



Note: Fixed fares: AT, CV, DE; Maximum fares: BE, HR, CZ, DK, FI, IE, IT, LV, MT, NL, PL, RO, SI, UK; Minimum fares: EL, PT, ES; Free fares: LT, LU, SK, SE; Varies across the cities: BG, EE, FR, HU. Finland removed price regulation but the Finnish Transport Safety Agency can set a price ceiling in case of unreasonably high prices (see www.lvm.fi/documents/20181/937315/Factsheet+60-2017+Taxi+and+vehicle-for-hire+services+in+the+Act+on+Transport+Services.pdf/bbb5ca8a-d24d-4b41-a5be-004f4036aeb2).

Source: Grimaldi, CERTeT Università Luigi Bocconi, and Wavestone (2016b), pp. 7-16, available at <https://ec.europa.eu/transport/sites/transport/files/2016-09-26-pax-transport-taxi-hirecar-w-driver-ridesharing-country-reports.pdf>.

Recommendations

The current fixed price regulation should be replaced with maximum prices for pre-booked services (online, by phone, by mobile application, etc.), with a view to possible liberalisation in the medium/long term. This recommendation should be implemented after the recommendation on quotas and geographical restrictions.

Regarding hailing or taking a taxi at a taxi rank, the taxi driver should be allowed to offer clients discounts on the metred fare.

Benefits

The implementation of this recommendation is likely to contribute to a reduction in prices and an increase in efficiency. More flexible fare regulation, for instance allowing taxi drivers to give discounts on the metred fare, as well as providing some leeway in setting the price for a pre-booked ride (within a maximum fare regime) (e.g., by phone booking; internet booking, mobile app, etc.) could possibly stimulate competition. It could be introduced as a pilot scheme in one or two municipalities. This would allow consumers to check and bargain for prices from different providers and possibly negotiate prices beforehand, without the typical pressure to pick up a taxi at a taxi rank or by hailing.

Box 3.13. Shared mobility: Opportunities and challenges

Shared mobility has been on the rise in cities across the world

Shared transport services, including car sharing and ride sharing, was initially developed as informal and ad-hoc sharing (e.g. household car sharing, car-pooling among co-workers). Recently, new models of commercial car sharing have emerged, allowing travellers to subscribe to shared fleets whose vehicles they reserve, access and use only when they need them. Pricing for these services is typically calculated on a per-hour or per-kilometre basis. In parallel, internet access and dedicated app-based services have facilitated the growth of ride-sharing services. These can take the form of taxi-like services or peer-to-peer real-time ride sharing, such as Uber, Lyft and BlaBlaCar. Pioneering companies in this market have generated billions of dollars in market capitalisation and have become globally recognised brands. Consumers have increasingly adopted shared mobility solutions and ride sharing represents up to 4% of passenger kilometres globally.

The transition to shared mobility has significantly positive impacts

Evidence of the impacts of shared mobility is only available with respect to short-term effects. Studies have detected a reduction in car ownership in large cities with high levels of shared mobility services, as well as a rise in car occupancy and a decrease in the total number of vehicle-kilometres travelled. In addition, the International Transport Forum (ITF) at the OECD has developed a simulation platform to explore different configurations of shared transport solutions for cities. Analysis carried out for Lisbon, Auckland and Helsinki identifies the potential for a stepwise increase in shared mobility solutions that replaces individual car trips to significantly reduce congestion, CO₂ emissions and access to jobs and services.

Challenges are nonetheless present in the areas of regulation and competition

Shared mobility services are placed somewhere between traditional car rental services, taxis and on-demand public transport depending on their characteristics. With the rise of ubiquitous services, numerous challenges for regulators have emerged around the question of whether services such as Uber should be bound by licensing conditions and regulatory requirements akin to other transport services. Following a landmark ruling by the European Court of Justice in 2017, Uber should be classified as a transport service and regulated like other taxi operators based on national rules in each EU Member State. Further challenges extend to the sphere of competition policy and relate to questions of dominance and anticompetitive behaviour.

As shared mobility options expand, policy makers will also face challenges and opportunities in the design of public transport systems at the metropolitan level. Most studies to date suggest that ride-sharing solutions are complementary to mass transit options such as metro lines and their benefits are maximised when they act as feeder services or last-mile solutions for rail and bus passengers going from a station to their final destination.

In light of these privately-led initiatives, the challenges are twofold. First, it is likely that competition agencies will be required to establish whether an increasing number of co-operation agreements between potential competitors are pro- or anticompetitive, including across markets whose products are being brought together by digitalisation. Second, regulatory bodies will need to address the changing nature of public transport concessions.

Sources: ITF (2017c), “Transition to Shared Mobility”, International Transport Forum Corporate Partnership Board Report, OECD Publishing, Paris. DOI <http://dx.doi.org/10.1787/b1d47e43-en>; ITF (2016a), “Shared Mobility: Innovation for Liveable Cities”, International Transport Forum Policy Papers, No. 21, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/5jlwvz8bd4mx-en>; OECD (2016a), “Competition and Innovation in Land Transport”, Working Party No. 2 on Competition and Regulation, Background Note by the DAF/COMP Secretariat; ITF (2015), “Urban Mobility System Upgrade: How shared self-driving cars could change city traffic”. International Transport Forum Policy Papers, No. 6, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/5jlwvzdk29g5-en>; Transport & Environment Briefing (June 2017), “Does sharing cars really reduce car use?”

3.4.4. Type of vehicles authorised

Description of the barriers

Significant restrictions were found on the type of vehicles authorised to be used as a taxi car. Taxi cars must be non-convertible, light passenger cars and must have at least four doors, two of which must be on the right side.¹⁴⁶ In addition, taxi cars should be painted beige-ivory or sea-green and black in order to be easily distinguishable for clients.¹⁴⁷

Harm to competition

The imposition of four doors corresponds to an entry barrier and excludes passenger cars with two seats, passenger cars with three doors and motorcycles. As an example, French legislation already allows motorcycles to perform taxi services.¹⁴⁸ These types of vehicles could be an additional mechanism to better match supply and demand.

The imposition of colours for the taxi car corresponds to an additional cost for taxi car owners as they need to paint them accordingly and limits their ability to differentiate the look of their taxis. However, given that all taxi cars, independently of their colour, must already display on the roof of the car a light identifying the car as a taxi, consumers should always be able to identify a taxi car.

Both restrictions are particularly relevant as they limit the appearance of new ways of transportation aimed at reducing costs and increasing efficiency. As an example, since taxi owners are limited to a specific type of car and a set of colours, they cannot use private cars as a taxi. This could eventually prevent the adoption and implementation of new ways of shared mobility. While new technology-enabled for-hire mobility services (such as UBER and CABIFY) are not discussed here because of the lack of a relevant legal framework, we nonetheless take into account the current opportunities and challenges that shared mobility brings today and in the near future (see Box 3.13.).

Recommendations

The possibility of including other types of vehicles as taxis, including vehicles with three doors or motorcycles, as well as the abolition of the imposition of the set of colours demanded for the taxi car should be assessed.

Benefits

These recommendations would allow the entry of different types of vehicles into the market and thereby foster increased competition in taxi services. This will enhance efficiency and reduce waiting times for consumers.

3.5. Driving schools and training institutes

Driving schools are services within the road transportation sector as they provide teaching and training of driving skills for future and professional drivers to manoeuvre and safely drive passenger and freight vehicles. Training institutes are services that provide specialised professional training to transport managers and professional drivers of passenger and freight vehicles. While driving schools provide driving licences, training institutes certify the professional aptitude to drive or to manage a transport operator.

Between 2015 and 2016 there were 357 354 enrolled students distributed amongst 1 156 driving schools in mainland Portugal.¹⁴⁹ Additionally, in 2015, the top five

companies within the driving school and training institute sectors represented almost EUR 6 million and over EUR 31 million, respectively.¹⁵⁰ In total, both sectors employed almost 15 000 workers and represented around 0.05% of the Portuguese GDP.¹⁵¹

Two directives regulate these activities: a) Directive 2006/126/EC which establishes the general provisions regarding driving licences; and b) Directive 2003/59/EC which sets the initial qualifications and periodic training of drivers of certain road vehicles for the carriage of goods or passengers. Both benefit from Directive 2006/123/EC which establishes the general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services (Services Directive), transposed into national law by Decree-Law 92/2010.

At national level, Law 14/2014 regulates the access to and exercise of the activity of driving schools, as well as access to the professions of driving instructor and director of driving schools. The activity of a driving examiner is defined under Law 45/2012. Finally, Law 126/2009 sets the regime for licensing of training institutes and training courses for drivers. They are supported, respectively, by Ordinance 185/2015 and Ordinance 1200/2009 which impose a set of licensing requirements, such as opening hours and facility rules. In particular, the former also sets a distance requirement for driving schools.

3.5.1. Benefits of lifting barriers to competition

If the restrictions identified in this section are lifted, we make a conservative estimate of consumer benefits of between EUR 0.4 million and EUR 3.7 million per year (see Annex 3.A2). This amount is the total of the estimated positive effects on consumer surplus due to a decrease in prices. For operators, we estimate a positive benefit up to EUR 1.62 million¹⁵² per year. This amount is the estimated positive effect of reinvesting the capital released from current regulatory obligations in government treasury bonds.

3.5.2. Licensing regime

Description of the barriers

Both driving schools¹⁵³ and training institutes¹⁵⁴ need to have a licence from IMT fulfilling several requirements which unnecessarily restrict competition.¹⁵⁵

For driving schools, a minimum radius of 500 metres distance between driving schools is further imposed.¹⁵⁶

A financial capacity criterion is imposed on training institutes, either as a share capital, a statutory capital or the constitution of a reserve fund of EUR 50 000 or EUR 25 000, depending on whether it is a commercial company or a single shareholder limited liability company.¹⁵⁷

Finally, both driving schools and training institutes need to fulfil several facility rules. As an example, for driving schools, regulation imposes that a classroom needs to have a minimum of 30m² and cannot exceed 20 students;¹⁵⁸ for training institutes, the training room needs to have a minimum of 25m²¹⁵⁹ and cannot exceed 25 students.¹⁶⁰

Harm to competition

These licensing requirements correspond to entry barriers and limit the number of suppliers available in the market. This reduces competitive pressure and possibly leads to higher prices and lower consumer welfare.

1. The need for a licence to open new driving schools and training institutes

A licencing regime corresponds to a more complex and time-consuming administrative procedure which can deter potential players from entering the market. Other alternative less restrictive forms such as a mere administrative communication to the IMT should be considered for the opening of new driving schools and training institutes, as both seem to fall within the scope of the Service Directive (see European Commission, 2008, p.11) which expressly dictates that driving school services, vehicle rental services and similar should benefit from more flexible access to the market.¹⁶¹

The streamlining of procedures should be accompanied by the necessary strengthening of means and modes of supervision. The simplification introduced thus has, on the one hand, the accountability of economic agents and, on the other, the strengthening of supervision.¹⁶² Indeed, the car rental regime in Portugal already benefits from the transposition of the Services Directive in Portugal as only a simple communication to the IMT is required to access the market.¹⁶³

2. Geographical restriction to open new driving schools

The 500-metre restriction is particularly harmful since it is not possible to have schools near each other competing for custom, thus limiting the incentives to compete. This can lead to higher prices or services of a lesser quality, as well as fewer competitors (see Box 3.14.).

Additionally, following the interpretation given on the Handbook on Implementation of the Services Directive (2008), p. 33,¹⁶⁴ this type of territorial restriction “limit[s] the overall number of service providers, thus hindering new operators from entering the market, and seriously restrict or even impede the freedom of establishment. (...) Member States should keep in mind that they [these territorial restrictions] can often be abolished.”

3. Minimum capital to start the business imposed on training institutes

The minimum capital required for training institutes to start their business can also be particularly harmful to SMEs and may also constitute a barrier to entry at EU level since it may prevent a European operator from entering the domestic market, in case it has a different level of financial standing to start a business.¹⁶⁵ Additionally, the demanded values are higher than those stated in the Portuguese Companies Code and the Portuguese Commercial Registration Code, which unnecessarily increases the entry costs. For example, only EUR 1.00 is required as minimum share capital to open a single shareholder limited liability company. This procedure can be carried out on line through an electronic platform called “Create-a-firm-on-the-spot”.¹⁶⁶ Additionally, in comparison with other regimes, as with the licensing regime for driving schools, there is no financial requirement for accessing the activity.¹⁶⁷

4. Minimum requirements on facility rules

The restrictions imposed on facilities increase operational costs, particularly for SMEs. The limitation on the number of students per classroom implies that if, for example, a school exceeds the maximum number of students by one, it would need two classrooms.

Box 3.14. An entry econometric model on driving schools in Portugal

An empirical entry model was conducted by independent economic consultants to study this geographical restriction. After mapping all the driving schools and their respective location in Portugal, two approaches were followed to test whether the 500-metre restriction is binding (i.e., if it is preventing the opening of new driving schools). The first one consists of a “municipality approach”, where it was assumed that the location of a new driving school would be within the limits of a municipality, taking into account the need to obtain a licence to operate from the correspondent municipality and to demonstrate that the driving school fulfils the 500-metre distance requirement. The second one consists of a “distance approach”, where the location of a new driving school was based on distances between schools (less than 1 km, since 48% of driving schools are located within 500 m and 1000 m of one another) – e.g. see the map below. This shows the difference between the municipality approach (in which case all driving schools in Porto are considered to be in the same geographic area) and the distance approach, where geographic areas are defined on the basis of the distance to the nearest school.

Driving schools in Porto: municipality vs. distance



In the end, 308 and 754 geographical areas were identified under the first and second approach, respectively. As a rule, we assume that the constraint is binding if an additional driving school reduces the population per school to a level below the national mean (or median) for the municipality approach, or if an additional driving school reduces the population per school to a level below the mean in markets with N_{i+1} schools.

We found out that the constraint was binding for the municipality approach in 55 (out of 264) municipalities and 76 (out of 264) municipalities, depending on whether we consider the mean or median value; and 146 and 231 (out of 737) municipalities for the distance approach.

Finally, we also find evidence that the geographical restriction constraint is active and is indeed preventing otherwise profitable entry from occurring. Our estimates point to a potential increase in the number of driving schools between 6% (municipality approach) and 37% (distance approach).

Note: Any reference to “geographical area” included in this report does not reflect the same definition for purposes of competition law.

Source: Data from IMT, and calculations performed by independent economic consultants from CEGEA (2017).

Recommendations

The need for a Portuguese licence as well as the corresponding licensing requirements (geographical restriction, financial capacity and facility requirements) should be abolished.

Benefits

The elimination of the licence will contribute to fostering entry into the market and to more competitive offers by market players. It would also create savings of around EUR 350 per each administrative fee that each operator needs to pay the IMT for the licensing procedures.¹⁶⁸ This will also contribute to a decrease in prices charged to professional drivers and transport managers which, in turn, will contribute to a reduction in the operational costs of road transportation companies and to lower prices for consumers by a pass-through effect.

The elimination of the geographical restriction will foster entry into the market of new driving schools, enhancing competition and potentially increasing consumer welfare through a decrease in prices and an increase in quality. Estimates point to a potential increase in the number of driving schools of between 6% and 37%.

The elimination of the financial criterion for training institutes would allow market players to reinvest their capital and increase their competitiveness, promoting lower prices for trainees.

The lifting of the facility requirements would allow market players to better adapt their commercial strategy, which might contribute to lowering prices for students.

3.5.3. Advertising restrictions on driving schools*Description of the barriers*

Driving school cars can only publicly display specific information related to the identification of the driving school, such as their name and telephone number.¹⁶⁹

Harm to competition

The advertising limitation is a barrier to the exercise of the activity since it does not allow advertisements promoting third parties and other unrelated services to be displayed on the driving school car, which can be considered as a way to increase revenue and decrease operational costs. Note that a driving school car is already identified by a sign on the roof of the car with the letter “L”. In comparison, it is possible to have publicity promoting third parties on a taxi vehicle.¹⁷⁰

Additionally, it also limits competition amongst driving schools as it is forbidden to advertise prices or discounts to attract more students.

Recommendation

The display of publicity on the driving school car should be permitted.

Benefits

This might be considered a way to increase revenues and decrease operational costs.

3.5.4. Access to the professions of driving instructor, driving examiner and driving school director

A driving instructor is a person responsible for teaching a student how to drive. Once the student completes the theoretical and practical lessons, a driving examiner will check, by means of a practical exam, whether the student is ready to become a driver. While

students can choose their instructor in their driving school, on the day of the exam a student is randomly matched to a driving examiner. The work of a driving examiner is periodically checked by an examiner-supervisor and a driving school is managed by a driving school director.

Description of the barriers

To become a driving instructor in category B an individual needs to have a minimum of two years of private experience after acquiring a full driving licence, which in turn requires three years of driving experience.¹⁷¹ Additionally, the individual needs to hold a certificate of pedagogical aptitude and attend a training course of 280 hours to teach students how to drive.¹⁷² This training course includes a 25-hour course on pedagogical skills. To become a driving instructor in the remaining categories (A, C, and D), an individual needs one year of professional experience as a category B driving instructor and must have had the driving licence category they aim to teach for at least two years.

Access to the profession of a driving school director depends on prior experience as a driving instructor (five years) as well as on the attendance of an additional training course.¹⁷³

To become a driving examiner one needs to attend an initial training course with a minimum duration of 290 hours. An examiner-supervisor must have 10 years of activity as an accredited driving examiner.¹⁷⁴

Finally, there is also a conflict-of-interest issue between all these professions, as a person cannot manage a driving school or be a driving instructor if their spouse (or common law spouse), or any children or parents are also driving examiners or work at a driving testing centre in the same district.¹⁷⁵

Harm to competition

The requirements to become a driving instructor, driving examiner, or driving school director correspond to entry barriers which can limit the number of professionals available. The corresponding requirements might also increase the operational costs of driving schools. This can be reflected in the prices charged to consumers.

1. Driving instructors

The two years of driving experience on top of the initial three years required to obtain a full driving licence can discourage younger drivers from enrolling in this profession. Compared with other countries, such as the United Kingdom,¹⁷⁶ where the experience demanded is lower, the full licence (category B) is acquired after three weeks¹⁷⁷ of passing the driving exam and prior experience is limited to three years on a full licence.¹⁷⁸ Furthermore, to teach category C and D, prior experience is limited to three years on a full licence, with no need to take a training course but rather to pass an exam.

Moreover, the possible repetition of subjects between the 25 hours of pedagogical skills included in the training course and the certificate of pedagogical aptitude can delay the entrance of new driving instructors. Compared with other countries, such as the United Kingdom,¹⁷⁹ to show that a candidate has pedagogical skills, it must be tested by an examiner, who will assess these skills by playing the role of two different pupils. Additionally, the 280-hour length of the training course might be disproportional taking into account international examples. Comparing with other countries, such as the United

Kingdom,¹⁸⁰ the certificate and the training course are not required. Instead, candidates must pass practical and written online tests.

2. Driving school director

The requirement to have held the valid professional title of driving instructor for at least five years seems unnecessary since it is designed specifically for a driver instructor and not a managerial function such as a director of a driving school. Additionally, according to stakeholders, the proposed training course to be a director is very similar to the one to become a driving instructor. This also constitutes an unnecessary entry barrier which can increase the operational costs of driving schools.

3. Driving examiner

Mandatory attendance at the initial training course to become a driving examiner is in line with Directive 2006/126/EC but it is more stringent since it does not impose a specific duration.¹⁸¹ According to stakeholders, the number of hours required does not seem proportional to attaining the policy objective. These restrictions contribute to longer waiting times for applicants to pass the driving exam to become a driver since there is a shortage of driving examiners.¹⁸²

The provision of 10 years' experience as an accredited driving examiner to become an examiner-supervisor imposes a minimum requirement as a proxy for quality standards, therefore limiting access to the profession.

4. Conflict-of-interest issue

Finally, the conflict-of-interest issue imposes a geographical limitation on driving examiners regarding their relatives. Taking into account that mainland Portugal has 18 districts, excluding driving examiners from one district restricts considerably the number of examiners available. Even if there is a possible conflict of interest, there are other less restrictive alternatives that ensure that the candidate for a driver's licence is not examined by a relative of his driving instructor, regardless of the location of the driving school.

Recommendations

The additional two years of private driving experience required after obtaining a full licence to become a driving instructor of category B should be abolished. Additionally, the duplication of pedagogical attestation, eliminating either the 25 hours of pedagogical skills included in the training course or the need to hold a certificate of pedagogical aptitude should be abolished. Consider also reducing the minimum 280 hours of initial training.

The requirement of prior experience as a driving instructor to become a driving school director, as well as the corresponding training course, should also be abolished, and the compulsory 290 hours of initial training to become a driving examiner should be reduced.

Amend the rules to allow for alternative routes to access the profession of driving examiner-supervisors, to enable professionals without 10 years of experience, but with a relevant professional background to qualify. This will allow well-qualified professionals who have the knowledge and experience, but do not meet the requirement of years of experience will not be excluded. The IMT could be the body granting the exception.

Finally, regarding the conflict-of-interest issue, the wording stating that candidates cannot be examined by a relative of their driving school owner or driving instructor, regardless

of the location of the driving school premises should be amended. The possible conflict of interest can be solved by imposing a restriction on the random matching process, run a few minutes before the examination.

Benefits

By lifting these barriers to entry, more applicants can be expected to become driving instructors and driving school directors, which, in turn, might reduce the operational costs of driving schools and, therefore, lead to lower prices charged to consumers.

The elimination of these barriers will foster entry into the activities of a driving examiner or an examiner-supervisor and will contribute to the reducing of waiting times experienced by applicants for the driving exam to become a driver. This may also contribute to a decrease in prices charged to consumers.

Finally, the resolution of the conflict-of-interest issue will make room for more competitive offers by market players and contribute to lowering operational costs and prices for consumers by a pass-through effect.

3.5.5. Opening on Sundays and public holidays

Description of the barriers

Driving schools¹⁸³ and training institutes¹⁸⁴ cannot operate on Sundays or on public holidays.

Harm to competition

The limitations to operating on public holidays and Sundays correspond to entry barriers and can limit the matching process between demand and supply. On the one hand, these restrictions impinge on students' and trainees' choice regarding when to receive training. On the other hand, operating on Sundays and public holidays would give businesses an extra differentiation tool, which would allow them to respond better to the preferences of trainees and students.

Additionally, a substantial part of services (restaurants, shopping malls, etc.) can operate on public holidays and Sundays in Portugal, and public institutions monitor these activities, accordingly (e.g., the ASAE - *Autoridade Administrativa Nacional Especializada no Âmbito da Segurança Alimentar e da Fiscalização Económica*¹⁸⁵ - carries out its duties on these days). Moreover, international comparison states that Sunday clauses are to be fully liberalised (OECD, 2013, pp. 82-86).

Recommendation

Abolish the limitations imposed on operations on public holidays and Sundays.

Benefits

It is expected that the deregulation of Sundays and public holidays will lead to a better match between supply and demand, enhancing competition and providing more competitive offers by market players.

3.6. Vehicle inspection centres

Periodic roadworthiness testing of motorised vehicles is part of a political strategy aimed at making road transport safer. The European Union has set a goal of reaching zero road fatalities by 2050 (European Commission, 2008). In Portugal this testing of roadworthiness falls under the competence of the IMT which entrusts these inspections to private bodies. The decision as to whether or not to certify the roadworthiness of a vehicle is taken by the private vehicle inspection body without intervention by the public administrative authority.¹⁸⁶

The first stage of this activity is the technical inspection, that is, verifying whether the vehicles inspected comply with the technical standards applicable, and drawing up of a report of the inspection recording the details of the tests carried out and the results obtained. The second stage includes certification of roadworthiness based on the inspection, by affixing a badge to the vehicle or, conversely, the refusal of such certification.

In 2015, the activity of vehicle inspection represented 0.12% of the GDP in Portugal, which is below the average value for the EU28 of 0.22%.¹⁸⁷ To better understand the business structure of this activity in Portugal, we have gathered data that shows that the top five companies in 2015 in the vehicle inspection sector accounted for almost 30% of the total turnover generated in the entire segment.¹⁸⁸ According to publicly available data, the largest operator by number of inspection centres is the group Controlauto.¹⁸⁹

In November 2017, there were 171 inspection centres in mainland Portugal.¹⁹⁰ In the Azores there are three inspection centres (one on Terceira Island and two on São Miguel Island) and one mobile service to serve the remaining seven islands.¹⁹¹ Madeira has two inspection centres (one in Funchal and another in Porto Santo) and also one additional mobile service.¹⁹² Out of the 308 Portuguese municipalities, almost half do not have a vehicle inspection centre.¹⁹³

The Portuguese legislative framework for periodic roadworthiness testing is governed by EU legislation for the technical rules, including safety checks and emission checks. As illustrated in Box 3.15., Directive 2014/45/EU¹⁹⁴ harmonises these rules, in particular, by determining the categories of vehicles to be tested, the frequency of those tests and the items which must be tested. In Portugal, the directive, which is part of a set of three directives composing *The Roadworthiness Package*, 2014, was transposed by Decree-Law 144/2017.¹⁹⁵

Rules on access to and exercise of vehicle inspection activities are not harmonised at European level. Hence, Member States may define the conditions for the pursuit of activities in this sector, having to respect the basic freedoms guaranteed by Art. 49 of the TFEU¹⁹⁶ and the EC Treaty.¹⁹⁷

In Portugal, the activity of running inspection centres is governed by Law 11/2011. However, in July 2010, another regime was enforced by Decree-Law 48/2010, which established a paradigm of full liberalisation, with free access and exercise of the activity and a maximum tariff system. Based on numbers calculated by the Portuguese government, the official recital states that this legislative act aimed to: render the services closer to the citizens, for the benefit of consumers, estimating an entry impact of around a 50% increase, and net savings in travelling costs; promoting competition allowing for maximum prices; and complying with the principles of free competition and freedom of

establishment, accomplishing the terms of the CJEU judgement in Case C-438/08, *Commission v. Portugal*, [2009], imposed on Portugal.

The IMT, had since 2008 undertaken technical studies supporting the government, leading to the adoption of the contested Decree-Law 48/2010. However, some political parties have raised concerns, and proposed to the Portuguese Parliament to revoke the decree-law, succeeding to revoke it by Resolution of the Portuguese Parliament 83/2010, re-enacting Decree-Law 550/99, ultimately revoked by Law 11/2011.¹⁹⁸

3.6.1. Benefits of lifting barriers to competition

If the restrictions identified in this section are lifted, we make a conservative estimate of consumer benefits of between EUR 7.3 million and EUR 16.7 million per year (see Annex 3 A.3). This amount is the total of the estimated positive effects on consumer surplus due to a decrease in prices.

Box 3.15. Periodic roadworthiness tests for motor vehicles: Directive 2014/45/EU

Background

EU rules on vehicle checks derive from Art. 91 of the TFEU which puts obliges the legislators to lay down measures to improve road safety. These rules, adopted under the subsidiary regime, set minimum standards for vehicle checks and have only been marginally updated since.

Three directives constitute the *Roadworthiness Package*: Directive 2014/45/EU on periodic roadworthiness tests; Directive 2014/47/EU on technical roadside inspections for commercial vehicles; and Directive 2014/46/EU on vehicle registration documents (amending Directive 1999/37/EC). These directives entered into force on 20 May 2014 and Member States needed to (i) put in place national legislation to comply with them by 20 May 2017; and (ii) apply the main provisions from 20 May 2018 at the latest (with some provisions being implemented by 2023).

This report focuses only on the periodic checks (as barriers to competition were found in the Portuguese legislation). Directive 2014/45/EU ensures that all vehicles and trailers are inspected on a regular basis according to minimum standards of safety and environmental purposes, contributing to a EU level playing field and a more competitive environment for road transport.

Key elements of Directive 2014/45/EU

- Also introduce compulsory EU testing for scooters and motorbikes (already compulsory for passenger cars, buses and coaches and heavy goods vehicles and their trailers);
- Increase the frequency of the periodic roadworthiness tests for vehicles carrying passengers
- Improve the quality of vehicle tests by setting common minimum standards for:
 - the test equipment determining the quality of the roadworthiness tests
 - the knowledge and skills of the inspectors as well as for a training system including initial and periodic training and the areas this training will cover; and
 - assessing detected deficiencies according to common rules related to their risk (minor, major and dangerous deficiencies) and their consequences for vehicle safety;
- Member States are required to set up a quality assurance system that covers the processes of authorisation, supervision and withdrawal, suspension or cancellation of the authorisation to perform roadworthiness tests;
- Introduce the obligation to register mileage readings which will provide official evidence to detect kilometre fraud and enable further cross-border use of this information once the interconnection of national registers is in place.

Scope of Directive 2014/45/EU

Vehicle categories	Date and frequency of roadworthiness tests
M1 - Passenger motor vehicles up to nine seats	Four years after the date of first registration and thereafter every two years
M2 and M3 - Passenger motor vehicles with more than nine seats	One year after the date of first registration and thereafter annually
N1 - Freight motor vehicles not exceeding 3 500 kg	Four years after the date of first registration and thereafter every two years
N2 and N3 - Freight motor vehicles exceeding 3 500 kg	One year after the date of first registration and thereafter annually
O3 and O4 - Trailers and semi-trailers exceeding 3 500 kg	One year after the date of first registration and thereafter annually
L3e, L4e, L5e and L7e over 125cc – Two- or three- wheeled vehicles (applicable from 1 January 2022)	Member States to determine frequency
M1 - Registered as taxis or ambulances	One year after the date of first registration and thereafter annually (1-1-1)
T5 - Wheeled tractors exceeding 40 km/h	Four years after the date of first registration and thereafter every two years

Sources: https://ec.europa.eu/transport/road_safety/topics/vehicles/inspection_en; http://europa.eu/rapid/press-release_IP-12-780_en.htm?locale=en; http://europa.eu/rapid/press-release_MEMO-12-555_en.htm?locale=en; www.fta.co.uk/export/sites/fta/galleries/downloads/transport_manager_2014_pack/eu_roadworthiness_pack_age_0614.pdf

3.6.2. Geographical restrictions and price regulation

In Portugal, the activity of running inspection centres is governed by Law 11/2011, which imposes distance, population and market shares restrictions on the opening of such centres, and regulates the prices. Two ordinances regulate this main rule of law. One ordinance regulates the fixed price to be charged for inspection and re-inspection.¹⁹⁹ The IMT updates the prices for these services annually,²⁰⁰ a percentage of which is due as a financial contribution to the IMT by the vehicle inspection centres, calculated over the amount of each fixed-price tariff charged to consumers.²⁰¹ The second ordinance regulates the technical requirements to be met by the inspection centres.²⁰²

Description of the barriers

The authorisation to open a new vehicle inspection centre in a given municipality is a function of distance (from 1.5 km to 10 km), population requirements (from 27 500 registered voters to more than 300 000 registered voters; if there are less than 27 500 registered voters, it may also be authorised, provided that there is no inspection centre in the municipality and in the neighbouring municipalities) and market share limitations (limited to 30% of the same region (NUTS II - Nomenclature of Territorial Units for Statistics)).²⁰³

Prices charged to consumers for the services rendered are regulated, at governmental level, with a fixed-price structure, based on the type of inspection and the category of the vehicle, and are updated annually in accordance with the inflation rate.²⁰⁴

Harm to competition

1. Geographical restrictions (minimum requirements of distance and population and market share criteria)

The distance and population restrictions constitute a binding barrier to entry which limit the number of operators within a given geographical area. This means that operators within a given area are protected from any competitive pressures and consequently have few incentives to change their business model to attract more customers, be it to lower prices, improve the level of service or innovate the services on offer. This is further compounded by price regulation and the fact that current vehicle inspection centres are not allowed to offer repair services.

Under the current regulation, the entry of a new operator into the market would depend on population growth to allow for more inspection centres within an area. However, Portugal has a very low population growth.²⁰⁵ However, even if the population grows, competition pressure would not increase due to the regulatory barriers that make the supply fixed for a given level of demand.

Because of the restrictions (minimum requirements of distance and population; and market share criteria), almost half of Portuguese municipalities in mainland Portugal do not have a vehicle inspection centre at all. In November 2017, there were 171 inspection centres in mainland Portugal²⁰⁶ located in 278 municipalities, the majority of which were located in the Lisbon and Porto metropolitan areas and other littoral areas.

All the technical requirements related to safety of the inspections and road safety goals are already harmonised at EU level, by Directive 2014/45/EU (see Box 3.15. above). In Portugal, this directive was transposed by Decree-Law 144/2017, guaranteeing that all vehicle inspections comply with the technical standards settled at EU level. In addition, two institutional bodies, AMT (see Box 3.2) and IMT, have attributions and competences within the vehicle inspection centre activities, guaranteeing proper regulation, supervision and monitoring of the market players, and enforceability of the existing law mechanisms to guarantee that inspection centres comply with safety rules.

This is a sector that has not been subject to full harmonization at European level, and EU Member States remain competent to define the conditions for the access and exercise of the activities in that sector, in respect of the basic freedoms guaranteed by the TFEU, specifically under Art. 49 TFEU.²⁰⁷

The fact that Portugal requires an authorisation imposing compliance with minimum requirements of distance and population, and market share criteria, to carry out this activity seems to be against the spirit of the TFEU, as confirmed by previous case-law of the Court of Justice (CJEU).

As the CJEU made clear in the cases *Yellow Cab*²⁰⁸ and *Grupo Itevelesa*,²⁰⁹ national legislation requiring that an authorisation be obtained to operate a service constitutes, in principle, a restriction of the freedom of establishment within the meaning of Art. 49 TFEU, in that it seeks to restrict the number of service providers, notwithstanding the alleged absence of discrimination on grounds of the nationality of the persons concerned.

National provisions with licensing schemes for access to the market and the activity aiming to achieve objectives other than those of public interest such as road or passenger safety and protection of consumers, for example ensuring the profitability of a competing service as a reason of a purely economic nature,²¹⁰ cannot constitute an overriding reason for justifying a restriction of a fundamental freedom.

Moreover, according to the CJEU’s jurisprudence on interpretation of Art. 49 TFEU, national measures should not be “liable to hinder or render less attractive the exercise by EU nationals of the freedom of establishment, independently of these kind of provisions to apply indiscriminately to nationals and to nationals of other EU Member States”, as stated in the cases *Grupo Itelevesa, cit.* and *Soa Nazionale Costruttori*.²¹¹

Box 3.16. Restrictions on competition for entry into the vehicle inspection centres activity

Portugal

The opening of a new vehicle inspection centre in a municipality is a function of distance (from 1.5 km to 10 km), population requirements (from less than 27 500 to more than 300 000 registered voters) and market share limitations [up to 30% in the same region (NUTS II)]. An administrative management contract is set for a 10-year period, subject to renewal and unlimited in time.

United Kingdom

To set up an MOT station, which can also be a local car repair garage, any individual can apply for an authorisation, unlimited in time, with an “approval in principal”, without *a priori* geographical, population or market shares requirements.

France

To set up a “*Contrôleur agréé par l’État*”, an authorisation is needed, as follows:

- If organised in a network franchise structure, the authorisation is granted for 10 years, renewable, and the operator needs to be present in 90 *départements* (parishes/municipalities) for inspection of light vehicles, or in 20 *départements* for heavy vehicles.
- If not organised in a network franchise structure, independent operators need only to ask for an authorisation, unlimited in time, subject to inspection every two years to ensure the fulfilment of requirement conditions for access to the market.

Spain

There are four regimes at national level to manage a vehicle inspection centre:

- Managed directly by the Autonomous Communities (“CC.AA”) (Public service)
- Managed directly by the Autonomous Communities with other companies with private and public capital (private-public partnerships)
- Managed by private entities through concession
- Managed by private entities through authorisation. At least in two Autonomous Communities, access to the activity is liberalised: Madrid and Canarias.

Sources: IMT website (www.imt-ip.pt/sites/IMTT/Portugues/Veiculos/CentrosdeInspecao/Paginas/Paginaparialistagemdesubmenu.aspx) (accessed on 11 October 2017); UK Government, Driver and Vehicle Standards Agency (DVSA) website (www.gov.uk/government/organisations/driver-and-vehicle-standards-agency) (accessed on 11 October 2017); Report from the Spanish Competition Authority, CNMC, IPN/CNMC/18/16 (www.cnmc.es/sites/default/files/1503105_0.pdf); and *Real Decreto* 2042/1994; *Real Decreto* 224/2008; and *Draft Real Decree* (accessed on 11 October 2017); Ministry of Transports / “Préfet du département” website (accessed on 11 October 2017); and the “Code de la Route”, Art. L.311-1, Art. L.323-1, Art. R. 323-1 to Art. R. 323-26) and Decree June, 18, 1991.

Furthermore, the prohibition on holding a market share above 30% in the market has already been considered by CJEU case law. In Case *Grupo Itelevesa* (concerning a threshold of 50% market share), the CJEU stated that it “does not immediately appear to contribute to consumer protection or to ensure road safety”.²¹² We also consider that the proxy of 30% market share to prevent an operator from achieving “market power” or “a dominant position” does not seem to be necessary in view of the fact that Portugal’s Competition Law already foresees intervention by the PCA for merger control or if a dominant market position is abused by the incumbent.²¹³

Benchmarking with other EU Member States, as illustrated in Box 3.16, shows that the policy objectives of guaranteeing road safety and quality of the technical inspections may also be achieved by other less restrictive means. In the United Kingdom, to set up an “MOT station”, an undertaking need only ask for an authorisation, unlimited in time, with an “approval in principle”, without any prior geographical, population or market share requirement conditions.²¹⁴ In France, independent operators must only ask for an authorisation, unlimited in time, auditable every two years to ensure the fulfilment of the requirement conditions.²¹⁵ And, in Spain, although there are four regimes at national level to manage a vehicle inspection centre, at least in two autonomous communities (Madrid and Canarias) access to the activity is liberalised.²¹⁶

The deregulatory experiment of Portugal, through the adoption of Decree-Law 48/2010, which established a paradigm of full liberalisation with free access to and exercise of the activity and a maximum tariffs system, was not implemented beyond July 2010.

For Spain, Trillas, F. et. al. (2011, p. 52) found "differences in technical efficiency between existing vehicles inspection units, implying that liberalisation or incentive regulation might improve productivity efficiency in our sample's units". Additionally, "in high density territories, a great number of smaller stations may still operate at an efficient scale. (...) There is scope for improving technical efficiency (which can be achieved both by liberalisation and by incentive regulation) and scale efficiency (which can be achieved by liberalisation)".

The Portuguese ratio between the number of vehicle inspection centres and the population, is below that of France and the United Kingdom (see Table 3.5). This might be explained by the fact that the United Kingdom has no restrictions on access to the market; and, for France, the requirements for access to the market are less restrictive when compared with those in Portugal. For Spain, since the legal regime for access to the market allows for several modalities, the aggregate data are not conclusive.

2. Price regulation

Setting fixed prices for the services of vehicle inspection centres prevents suppliers from competing on prices. It also reduces the intensity and dimension of rivalry, preventing operators from developing new techniques to be more efficient and to offer lower prices. Since the technical requirements are already harmonised at EU level by Directive 2014/45/EU, transposed by Decree-Law 144/2017, safety and quality standards for the services of inspections and re-inspections rendered should remain the same. In addition, as referred to above, the two institutional bodies, AMT (see Box 3.2.) and IMT, guarantee proper price regulation, supervision and monitoring of the market players.

Benchmarking with other EU Member States, as illustrated in Table 3.6, demonstrates that there are other alternative measures which are less restrictive than a regime based on fixed prices, which could promote competition and still achieve the policy objectives pursued. For instance, in the United Kingdom, there is a system of maximum fees.²¹⁷ In France, fees are freely set.²¹⁸ In Spain, the three types of regimes coexist, that is, fixed

fees, maximum fees and liberalised fees. As an overview of the Spanish case, we have chosen randomly three autonomous communities (out of the seventeen), as illustrative examples (CNMC, 2016).

Table 3.5. Comparison on the number of vehicle inspection centres or MOT test centres: Benchmarking with selected EU Member States

	Portugal (1)	Spain (2)	France (3)	United Kingdom (4)
Number of vehicle inspection centres /MOT test centres	178	456	6 274	22 888
Population	10 309 573	46 468 102	65 018 096	65 648 100
Number of centres/100 000 persons	1.73	0.98	9.65	34.86
Territorial area (km ²)	92 225 km ²	505 990 km ²	551 695 km ²	242 495 km ²

Sources and notes:

- Portugal:** Number of vehicle inspection centres: IMT website (www.imt-ip.pt/sites/IMTT/Portugues/Veiculos/Inspecao/AprovacaoCITVs/Paginas/CITV.aspx) (accessed on 24 January 2018), Azores website www.azores.gov.pt/Portal/pt/entidades/srtpo-drt-sctt/textoTabela/Tarifas+a+praticar+Centros++Inspecao%3%A7%3%A3o+Ve%3%ADculos.htm (accessed on 24 January 2018) and Madeira information (www.madeira.gov.pt/dret/Estrutura/DRET/A-Dire%3%A7%3%A3o). Population: www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008273&contexto=bd&selTab=tab2. Territorial Area: [www.dgterritorio.pt/static/repository/2016-08/2016-08-16153058_b511271f-54fe-4d21-9657-24580e9b7023\\$6E9B5286-6507-4D17-8690-8A11FFE1FF35\\$2BAF27CC-022C-4B76-9A49-1D6E2CEC07CC\\$\\$file\\$\\$pt\\$\\$1.pdf](http://www.dgterritorio.pt/static/repository/2016-08/2016-08-16153058_b511271f-54fe-4d21-9657-24580e9b7023$6E9B5286-6507-4D17-8690-8A11FFE1FF35$2BAF27CC-022C-4B76-9A49-1D6E2CEC07CC$$file$$pt$$1.pdf)
- Spain** Number of vehicle inspection centres: www.dgt.es/Galerias/seguridad-vial/centros-colaboradores/Listado-de-Centros-de-Inspeccion-Tecnica-de-Vehiculos.pdf (accessed on 24 January 2018). Population: www.ine.es/prensa/np1010.pdf. Territorial Area: www.ine.es/prodyser/pubweb/anuario08/anu08_01entor.pdf
- France:** Number of vehicle inspection centres (European France): www.cteasy.com/fr/guide/controle-technique-reglementation/; www.utac-otc.com/ (accessed on 24 January 2018). Population (European France): www.insee.fr/fr/statistiques/1892088?sommaire=1912926. Territorial Area (European France): <https://unstats.un.org/unsd/demographic/products/dyb/dyb2012/Table03.pdf>
- United Kingdom:** Number of MOT test centres: www.gov.uk/government/publications/active-mot-test-stations (accessed on 24 January 2018). Population: www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates. Territorial Area: <https://unstats.un.org/unsd/demographic/products/dyb/dyb2012/Table03.pdf>

Table 3.6. Price regime for inspections carried out at vehicle inspection centres or MOT test centres: Benchmarking with EU Member States, Jan/2018 (USD PPP) (8)

	Portugal (1)	United Kingdom (2)	France (3)		Spain (4)					
	Fixed fees	Maximum fees	Free fees National average		Aragón (5) Fixed fees		Rioja (6) Maximum fees		Madrid (7) Free fees National average	
			Gasoline	Diesel	Gasoline	Diesel	Gasoline	Diesel	Gasoline	Diesel
Personal cars ("Motor light vehicles")	43.16	78.13	50.83 – 77.80	50.83 – 88.17	45.34	55.87	38.82	50.45	44.81 – 48.55	64.75 – 68.49
Motor heavy vehicles (buses and trucks)	64.59	177.35	81.95	259.34		78.11		78.30		92.87
Two or three wheeled vehicles	21.74	42.24	51.87	72.62		22.62		22.79		43.00
Trailers and semi-trailers	43.16	Varies*	Not eligible for inspection			54.24		56.30		69.74

1. **Portugal** - Deliberation 4-A/2018 establishes fixed prices (for 2018). Prices do not include VAT (23% rate).

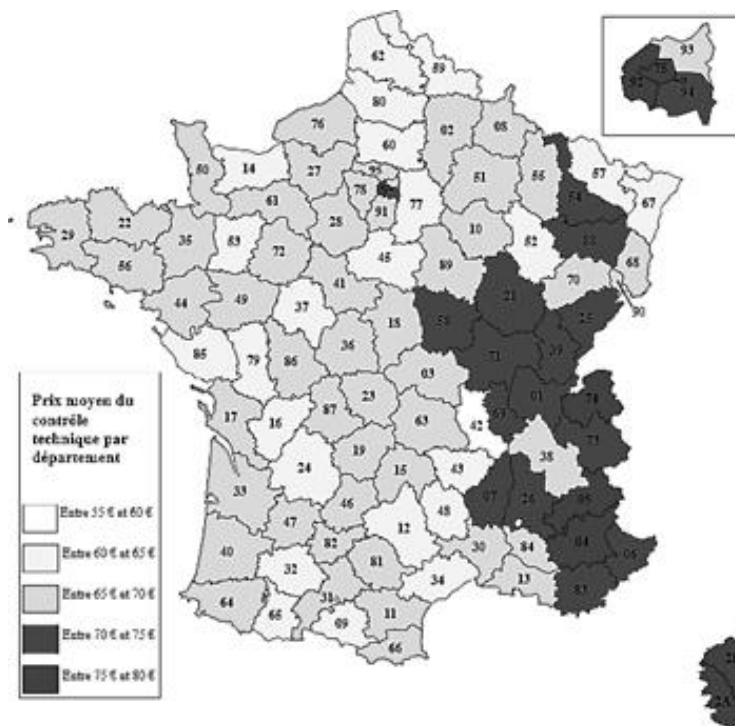
- 2. United Kingdom** – Driver and Vehicle Standards Agency (DVSA) website (www.gov.uk/government/uploads/system/uploads/attachment_data/file/487115/mot-test-fees-and-appeals-poster.pdf); Fees (constant since 2010), rules and regulations for the U.K. (https://en.wikipedia.org/wiki/MOT_test). *Prices on trailers depend on the number of the vehicle axles and whether pre-scheduled (www.gov.uk/government/publications/heavy-goods-vehicle-fees/heavy-goods-vehicle-hgv-and-trailer-test-fees). Consumers do not pay VAT (www.gov.uk/getting-an-mot/mot-test-fees) (all websites accessed on 24 January 2018).
- 3. France** - Ministry of Transports/*Préfet du département* website and the *Code de la Route* (Art. L.311-1, Art. L.323-1, Art. R. 323-1 to Art. R. 323-26) and Decree June, 18, 1991 (www.cteasy.com/fr/guide/controle-technique-prix-moins-cher) (accessed on 24 January 2018). Trailers are not eligible for technical inspection of vehicles (www.cteasy.com/fr/guide/controle-technique-type-vehicule-concerne). Promotional offers are allowed between -30% and -50% (www.cteasy.com/fr/guide/controle-technique-prix-moins-cher/). Website for prices (<https://controle-technique.ooreka.fr/comprendre/prix-du-controle-technique>) (All websites accessed on 24.01.2018). While prices include VAT (19.6% rate), they were excluded for comparison reasons.
- 4. Spain** - Spanish Competition Authority Report (CNMC), IPN/CNMC/18/16, *Real Decreto* 2042/1994, *Real Decreto* 224/2008 and *Draft Real Decreto* (www.cnmc.es/sites/default/files/1503105_0.pdf). Website for prices (<https://itvcitaprevia.es/precios-itv/>) (accessed on 24 January 2018). While prices include VAT (21% rate) and other taxes (EUR 4 for a traffic tax charged at each autonomous communities), they were excluded from for comparison reasons (first, the EUR 4 was taken; second, the VAT).
- 5. Aragón** – Order EIE/2165/2017, from the Aragón Government, establishes fixed prices (for 2018) for inspection and reinspection of the automobile vehicles at inspection centres (www.boa.aragon.es/cgi-bin/EBOA/BRSCGI?CMD=VEROBJ&MLKOB=996726221616). Website for prices (<https://itvcitaprevia.es/precios-itv/aragon/tarifas-2018/>) (accessed on 24 January 2018).
- 6. Rioja** – Order n°9/2014, from the Rioja’s Government Ministry of Industry, Innovation and Employment, which approves the maximum fees for the inspection and re-inspection of the automobile inspection centres (www.iberley.es/legislacion/orden-n-9-2014-5-diciembre-consejeria-industria-innovacion-empleo-aprueban-tarifas-maximas-aplicables-ano-2015-prestacion-servicios-inspeccion-tecnica-vehiculos-17217781). Website for prices (<https://itvcitaprevia.es/precios-itv/la-rioja/tarifas-2018/>) (accessed on 24 January 2018).
- 7. Madrid** – Deliberation 8/2011 regulates the inspection and re-inspection of the automobile inspection centres (www.madrid.org/wleg_pub/secure/normativas/contenidoNormativa.jsp?opcion=VerHtml&nmnorma=7074&cdestado=P#no-back-button). Website for prices (<https://itvcitaprevia.es/precios-itv/madrid/tarifas-2017/>) (accessed on 24 January 2018).
- 8. USS Purchasing power parities (PPP), 2016, OECD:** information gathered from <https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm> (accessed on 13 February 2018). As definition, PPPs are the rates of currency conversion that equalise the purchasing power of different currencies by eliminating the differences in price levels between countries. This indicator is measured in terms of national currency per US dollar.

As shown in Table 3.6 above, Portuguese prices are comparatively lower for all the countries considered except in one particular situation (Spain, Community of Rioja, personal cars, gasoline). However, to analyse these price differences other factors should be taken into account.

First, for some type of inspections the reported price corresponds to a maximum price, which implies that inspection centres can charge lower prices to end consumers (see, e.g., United Kingdom and Spain, Community of Rioja). Maximum price systems aim typically to protect consumers from higher prices and, at the same time, to promote some price competition.

Second, for the United Kingdom, since consumers can obtain more than one service at the same place (e.g., inspection of the car and the corresponding repair), consumers might be willing to pay a higher price to save time and not go to another place, which is a quality aspect. Additionally, multi-product MOT stations might end up charging lower prices for each individual service.

Finally, in France and in the Community of Madrid, where the prices for mandatory vehicle inspections are freely set by the operators, prices vary for the same type of vehicle inspection, indicating active competition on prices. Available information allows us to illustrate this pattern for France. Average prices for consumers vary significantly, even within a small geographical area, as in the example given, regarding the Île-de-France, Paris (see Figure 3.5).

Figure 3.5. Average price for light motor vehicle inspection by *département* in France

Note: Study carried out with prices for 2016.

Source: www.cteasy.com/fr/guide/controle-technique-prix-moins-cher/ (accessed on 24 January 2018)

Recommendations

The geographical restrictions (minimum requirements of distance and population; and market share criteria) should be abolished and a liberalised regime should be introduced, provided that all applicants for establishing a vehicle inspection centre fulfil all technical requirements stated in EU Directive 2014/45/EU.

The fixed regulated price regime should be abolished and a maximum price system should be introduced to allow for discounts and other commercial acts.

Benefits

By abolishing geographical restrictions, an increase in the number of vehicle inspection centres is expected, which implies that consumers could make a net saving in travelling costs.

Abolishing fixed prices and implementing a maximum price regime would reduce tariffs and promote competition.

3.6.3. Restrictions on repair activities

Description of the barriers

The Portuguese regulation expressly forbids the carrying out of manufacture, repair, rental, import or commercialisation of vehicles, their components and accessories, as well

as the display of advertising related to these activities on the premises of vehicle inspection centres.²¹⁹

Harm to competition

This particular restriction on repair activities constitutes a barrier both for the ability and the incentive to compete. It limits the social object of the activities that can be pursued within the premises of a vehicle inspection centre. Hence, it constrains the actions and commercial activities of an agent in the market, as well as the services provided to consumers. It also limits the ability of the owner of the inspection centre to create economies of scope through the addition of activities.

This prohibition aims to protect the consumer in a situation of asymmetric information by preventing perverse incentives by the vehicle inspector to impose a (unnecessary) number of repairs in order to obtain a pass. However, as mentioned above, this is an activity where all the technical requirements related to safety are harmonised and standardised at EU level (see Box 3.15.). At national level, Directive 2014/45/EU was transposed by Decree-Law 144/2017, guaranteeing that all vehicle inspections comply with the technical standards set at EU level. In addition, the two institutional bodies, the AMT (see Box 3.2) and IMT ensure that proper regulation, supervision and monitoring of the market players is carried out, and enforce the existing law mechanisms to guarantee that inspection centres comply with safety rules.

Moreover, Recitals 15 and 34 of Directive 2014/45/EU allow for private bodies to “perform vehicle repairs” and to carry out roadworthiness testing.

Moreover, the current regulation does not limit the location of garages and inspection centres. As such, it is absolutely possible to have a garage in the immediate proximity of the premises of an inspection centre, both controlled by the same owner(s).²²⁰ In a vertical integration structure, more diversity of services could be offered to consumers, allowing for economies of scope and the possibility for operators to reduce costs, to be more efficient and to reduce prices without jeopardising road and consumer safety.

Also, according to well-established case law of the CJEU on the interpretation of Art. 49 TFEU, as in Case *Commission v. Portugal*²²¹ and Case *Grupo Itelevsa*,²²² provisions that limit the social object of firms even if applied indiscriminately to Portuguese nationals and to nationals of other EU Member States, may fall within the scope of the provisions relating to the fundamental freedoms established by the TFEU to the extent to which they apply to situations connected with trade between the Member States.²²³

Finally, benchmarking with other EU Member States, as illustrated in Box 3.17, shows that the policy objectives of guaranteeing road safety and the quality of technical inspections may also be achieved by other less restrictive measures, as well as respecting the principle of EU law of the freedom of establishment.

Recommendations

The obligation to separate these two activities, such as those on repair and vehicle inspection should be abolished. A fully liberalised system should be implemented, provided that all applicants fulfil all technical requirements stated in EU Directive 2014/45/EU.

Box 3.17. Restriction of repair activities: Benchmarking with EU Member States**Portugal**

It is prohibited to carry out activities related to the repair of vehicles in vehicle inspection centres.

United Kingdom

A repair centre can request to operate also as an MOT garage.

France

As a general rule, it is forbidden; exceptionally, operators may conduct repair activities in order to guarantee geographical coverage for all consumers.

Spain

Shareholder participation of firms is allowed in inspection centres and in repair shops. However, repairs may not be performed on the premises of inspection centres. The Spanish Competition Authority (CNMC) has found the national provision to be restrictive and unjustified.

Netherlands

Authorised garages can also work as vehicle inspection centres.

Sources: IMT website (www.imt-ip.pt/sites/IMTT/Portugues/Veiculos/CentrosdeInspecao/Paginas/Paginaparialistagemdesubmenu.aspx) (accessed on 11 October 2017); UK Government, Driver and Vehicle Standards Agency (DVSA) website (www.gov.uk/government/publications/mot-modernisation-it-specification) and announced services (www.fleetstationmot.co.uk/) (accessed on 11 October 2017); Ministry of Transport/Préfet du département website (accessed on 11 October 2017); and the Code de la Route, Art. R. 323-11); Report from the Spanish Competition Authority, CNMC, IPN/CNMC/18/16 (www.cnmc.es/sites/default/files/1503105_0.pdf); and Real Decreto 2042/1994; Real Decreto 224/2008; and Draft Real Decree (accessed on 11 October 2017).; Institute for Road Safety Research (www.swov.nl/en/publication/periodic-vehicle-inspection-cars-mot) (accessed on 11 October 2017).

Benefits

This would allow economies of scope, allowing for more competitive pressure amongst market players and provide garage owners with the ability to offer a broader range of services.

3.7. Other issues**3.7.1. Consumer restriction for hiring trucks above 6 t for own-account operations**

The national legal regime on the use of vehicles hired without drivers for the carriage of goods by road is established by the Decree-Law 15/88.

At EU level, this activity is regulated by Directive 2006/1/EC. This directive provides a minimum level of market opening for the use of hired goods vehicles in the single market

as it allows the use of vehicles hired by companies established on the territory of another Member State. This could be a motor vehicle, a trailer, a semi-trailer, or a combination of vehicles intended exclusively for the carriage of goods. It sets a general framework where hired commercial vehicles are treated on the same basis as owned commercial vehicles, what is “recognised as playing a positive role in the organisation and efficiency of transport operations”.²²⁴

At the same time, Directive 2006/1/EC, Art. 3 (2) allows Member States to restrict the use of hired goods vehicles with a gross vehicle weight above 6 t for own-account operations.

Description of the barrier

Consumers not licensed as public road freight transportation companies cannot use hired vehicles above 6 t for their own-account operations,²²⁵ whereas vehicles below 6 t can be hired for own-account operations.

Harm to competition

This provision has a dual effect on two markets: on the one hand, the restriction is an entry barrier which reduces the dimension of the market for truck renters (particularly given the small dimension of the Portuguese market), preventing them from achieving an efficient scale. This can result in higher costs which will be passed through to freight transportation companies and the final consumer. On the other hand, the provision increases operational costs for non-served companies who are forced to purchase (instead of hiring) vehicles above 6 t for their own transportation purposes.

Benchmarking with other EU Member States confirms that very few Member States impose this restriction preventing consumers from using hired vehicles above 6 t for own-account operations. According to the “Report Ex-post evaluation of Directive 2006/1/EC”, only three EU Member States have restrictions on hiring vehicles over 6 t for own-account operations: Portugal, Spain and Italy. Another EU Member State restricts the hiring of vehicles for own-account operations from leasing companies (only not allowed for over 3.5 t: Greece.²²⁶

Consequently, for the majority of the EU Member States, the rental of trucks above 6 t for own-account operations is possible for consumers who are either private individuals with a driver’s licence (category C), or firms.

The restrictions still in place under Directive 2006/1/EC, Art. 3 (2), also appear to be linked to the following factors:

- with “underdeveloped hired vehicles markets with lower level of use of hired vehicles, thus depriving operators of some of the benefits identified earlier [in terms flexibility of operations and on the operational costs of, where savings are possible for firms opting for hiring instead of buying trucks, partially replacement their fleet]”;
- with “a higher average age of commercial vehicles, an aspect that can have a negative impact on the fuel efficiency and safety of vehicles”;
- with “negative impact on [the] productivity [of operators]”, namely in terms of “annual transport costs savings”²²⁷.

The “Report Ex-post evaluation of Directive 2006/1/EC” also states that, regarding transport cost savings, a benefit with a range from 1% to 10% was estimated, depending on the type of operation, the size of the firm and the type of vehicle hired. Moreover, other non-quantified benefits include the “lower risks from outsourcing of fleet management, the greater flexibility provided to operators, the potential to better manage and improve cash flows and the improved safety and environmental performance of new vehicles.”²²⁸

Box 3.18. Truck rental: Proposal to amend Directive 2006/1/EC, Art. 3(2)

Directive 2006/1/EC, Art. 3(2), allows Member States to restrict the use of hired goods vehicles with a gross vehicle weight above 6 t for own-account operations.

Proposal to remove the possibility to restrict the use of hired vehicles for own-account operations:

“Overall, the proposal ensures equal access for transport operators across the EU to the market for hired vehicles. It also ensures a uniform regulatory framework across the EU and enables transport operators to perform their transport activities in the most efficient way possible. As hired vehicles are usually newer, safer and less polluting, the proposal reduces the negative externalities of road transport.”

Impact assessment quantification:

“By further liberalising the use of hired goods vehicles, this directive is expected to boost the market for hired vehicles and lead to **lower costs and more flexibility and profitability for operators**”;

“Operating costs of EU hauliers could be reduced by a total of EUR 158 million in 2030. An operator switching from owned vehicles to hired vehicles should see his **operating costs go down by around 2%**. In addition, the vehicle rental/leasing sector stands to gain some EUR 81 million, bringing the total annual economic benefit to around EUR 240 million in 2030. In addition, it would lead to almost 5 000 additional jobs, 2 900 in the vehicle rental/leasing sector and 1 700 in the road haulage business.”

Sources: “Proposal of the European Parliament and of the Council to amend Directive 2006/1/EC on the use of vehicles hired without drivers for the carriage of goods by road”, of 31 May 2017, see Report COM(2017) 282 final - 2017/0113 (COD), available at www.ipex.eu/IPEXL-WEB/dossier/document/COM20170282.do Report Ex-post evaluation of Directive 2006/1/EC”, of January 2016, Final report - MOVE/D3/2015-423, page 9, available at <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf>

In May 2017, a “Proposal to amend Directive 2006/1/EC” was adopted.²²⁹ It proposed to remove the existing option for Member States to restrict the use of hired vehicles for vehicles over 6 t used for own-account operations under Art. 3(2). As illustrated in Box 3.18., the market opening for the use of hired goods vehicles for own-account operations would remove existing restrictions, which in turn, are expected to reduce costs by the operators.

Recommendations

The current customer’s restriction preventing consumers from using hired vehicles above 6 t for own-account operations (in line with the “Ex-post evaluation of the Directive

2006/1/EC" and "Proposal for amendment of Art. 3 (2) of Directive 2006/1/EC") should be abolished.

Benefits

The implementation of this recommendation will foster flexibility of operations, and allow for additional savings on operational costs for firms opting to hire instead of buying trucks, or partially replace their fleet.

There may be evidence that allowing for rental of trucks above 6 t lowers the average age of commercial vehicles, an aspect that can have a positive impact on the fuel efficiency and safety of vehicles.

3.7.2. Administrative burdens

Restrictions were identified that were not barriers to competition as such, but represented administrative burdens for users. They increase costs to operators with possibly no discriminatory effect on competition in the market, such as time spent, possible delays and missed opportunities to maximise efficiency. As such, it might reduce the interest of entrant operators and hinder the efficiency and competitiveness of the market.

Four categories of administrative burdens

1. Self-employed drivers are exempt from tachographs.²³⁰ However, they should keep records for five years for inspection purposes. This subject matter is regulated by Directive 2002/15/EU,²³¹ which establishes only two years as a minimum requirement. Additionally, no governmental guidance as to the method used to register the data required was adopted.²³² Moreover, there are exemptions to the use of tachographs within a 50-km radius, which have been updated under Regulation (EU) 561/2006/EU,²³³ to 100 km. The national legislation has not been updated accordingly.²³⁴ The request for tachograph cards must be made to the IMT, requiring that applicants present themselves in person, confirm the data, collect their signature and photograph and to provide payment of an administrative fee.²³⁵
2. Professional drivers are obliged to have, on paper, the "Certificate of Professional Competence for drivers" ("CAM") only to obtain the Driver Qualification Card ("CQM"). The CQM and the driving licence are the only two documents required either for access to the profession or for road inspections by the competent authorities.²³⁶ Therefore, the physical issuance of the CAM represents an administrative burden and a cost for companies.²³⁷ The CQM itself may dispense with the display of the driving licence since the relevant information is already stated in the CQM.²³⁸
3. Training institutes for development of professional capacity of freight operators shall be kept for a period of at least five years, recording the training activities carried out as well as the individual processes of the trainees.²³⁹ Most probably, the IMT also keep these records.
4. Minimum requirements are imposed on truck rental operators regarding formalities related to rental contracts which (a) must be numbered, produced in writing, kept in triplicate and the original must be archived for a minimum period of two years after its expiry; and (b) recorded in an annual register. The IMT can request, for inspection purposes, copies of contracts signed at least two years ago.²⁴⁰

Recommendations

1. Concerning tachographs, we recommend to (i) change to the minimum requirement in keeping records from five to two years, in line with Directive 2002/15/EU, Art. 2(1) and Art. 9 (b) and (ii) regulate the Decree-Law, adopting the necessary secondary legislation regarding the method of registering the data required. We also recommend that the scope of the exemptions, amending Ordinance 222/2008, Art. 2 (c)(d), excluding the need for tachographs for distances up to 100 km, in line with Regulation (EU) 561/2006/EU, Art. 3 (aa) be updated. Consider also using the existing online Official Citizen's portal (<https://bde.portaldocidadao.pt>) to make requests for first issue, renewal, substitution or exchange of tachograph cards.
2. Concerning professional drivers' activity, we recommend abolishing the need to issue the CAM physically, to obtain the CQM, or, alternatively, abolishing the associated fee, in line with Directive 2003/59/EC, Art. 10(1). We also recommend studying the possibility of inserting the information of the driving licence into the CQM, in line with the "Proposal to amend Art. 10(1) of Directive 2003/59/CE, Annex II", COM (2017) 47 final.²⁴¹
3. Concerning training institutes, the need to record the training activities carried out, as well as the individual processes of the trainees for a period of five years should be abolished.
4. On the truck rental activity, the requirement to put the contract in writing and the need to physically keep a two-year record of all the information should be abolished.

Benefits

These recommendations, if implemented, would bring savings for businesses and economic agents in the road sector. They would eliminate unnecessary paperwork and other efforts of administrative entities while supporting the policy objectives of the regulations.

Improving the regulatory environment is a precondition for Portugal to successfully stimulate economic activity, create jobs and raise productivity.

3.7.3. Obsolete legislation

Some of the legal provisions that regulate road transport have been superseded by more recent legislation but have not been explicitly removed from the body of legislation. Another type of obsolete legislation is restrictions with uncertain status but still remaining as part of the Portuguese body of law. These situations can lead to legal uncertainty and unintentional discriminatory behaviour on the part of competent authorities, that may apply them or not, according to their legal understanding.

On the first type of obsolete legislation we identified (i) the rules regarding professional capacity for taxi drivers demanding five years of experience²⁴² and (ii) rules regarding the subject matter of the exams to obtain the Certificate of Professional Capacity (CPC) for transport managers, for hire and reward or transport of freight by road.²⁴³

Among other types of obsolete legislation we identified as such the rules imposing quotas on licensing of trucks and prices for rental services in truck rental activity.²⁴⁴

Recommendations

All such obsolete provisions should be abolished.

Competent entities should confirm if provisions with uncertain status are still in force or obsolete. If obsolete, then they should be abolished.

Benefits

Such “cleaning up” of the Portuguese body of law removes potential sources of legal uncertainty, improves the operational environment and contributes to creating a level playing field for companies in the sector.

Notes

¹ https://ec.europa.eu/transport/modes/road/road-initiatives_en

² <https://www.itf-oecd.org/blockchain-and-beyond>

³ <https://www.pordata.pt/Europa/Extens%C3%A3o+das+auto+estradas-3068>

⁴ https://www.fct.pt/esp_inteligente/docs/Mobilidade_ENEI_Evora.pdf

⁵ Decree-Law 257/2007 establishes the regime for access to the activity of road freight transport, for hire or reward, nationally or internationally, by means of vehicles weighing more than 2.5 t.

⁶ Regulation (EC) 1071/2009 establishes common rules concerning the conditions to be complied with to pursue the occupation of road transport operator. Also, Regulation (EC) 1072/2009 sets common rules for access to the international road haulage market.

⁷ The national regime sets the cumulative conditions under which the transport of freight is considered as transportation for hire and reward [see Decree-Law 257/2007, Art. 2(b)(n)(o), Art. 3, and Art. 14] or as transport by own account [see Decree-Law 257/2007, Art. (2)(c)(m)].

⁸ https://europa.eu/european-union/eu-law/legal-acts_en

⁹ Regulation (EC) 1071/2009, Art. 1(4)(a); and Art. 2(1).

¹⁰ Regulation (EC) 1071/2009, Art. 2(2).

¹¹ Regulation (EC) 1071/2009, Recital 5; and TFEU, Art. 349.

¹² Regulation (EC) 1072/2009, Art. 1(5)(c).

¹³ Regional Legislative Decree 7/2010/A establishes the Azores region for access to the activity of road freight transport, for hire or reward, by means of vehicles weighing more than 2.5 t.

¹⁴ Regional Legislative Decree 10/2009/M establishes the Madeira region for the access to the activity of road freight transport, for hire or reward, by means of vehicles weighing more than 2.5 tonnes.

¹⁵ The European Modular System redefines six main single parts that can be combined with each other to form and create a mega-truck., www.modularsystem.eu/ (accessed on 12 January 2018).

¹⁶ Directive 96/53/EC laying down the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic.

¹⁷ Directive 96/53/EC, Art. 2 and Annex I, point 2.2.2. (c) (d).

- ¹⁸ Directive 96/53/EC, Art. 4 (3) (4) (5). In 2014, the attempt to further liberalise cross-border operations with vehicles heavier, longer or higher than the limits of Directive 96/53/EC was rejected (see www.eprs.ep.parl.union.eu; [www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140804/LDM_BRI\(2014\)140804_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140804/LDM_BRI(2014)140804_REV1_EN.pdf)). In 2015, the adoption of Directive (EU) 2015/719, amending Directive 96/53/EC, represents the compromise achieved.
- ¹⁹ Order MES 151/85, amended by Order MOPTC 35 – XII/92, available at www.imt-ip.pt/sites/IMTT/Portugues/Legislacao/Nacional/TransporteRodoviario/TranspPassageirosVe%C3%ADculosPesados/Paginas/TransportePassageirosVeiculosPesados.aspx (accessed on 13 February 2018).
- ²⁰ DGTTTF (2005), “Caracterização dos Serviços Expresso e de Alta Qualidade”.
- ²¹ Ordinance 410/72 regulates the provisions concerning the construction and operation of a central bus station.
- ²² <https://www.portugal.gov.pt/pt/gc21/area-de-governo/planeamento-e-infraestruturas/acerca>
- ²³ Decree-Law 236/2012 sets the attributions and competences of IMT.
- ²⁴ www.imt-ip.pt/sites/IMTT/Portugues/IMTT/Paginas/OIMT.aspx
- ²⁵ Decree-Law 11/2014 sets the attributions and competences of the Ministry of the Economy.
- ²⁶ Regulatory Decree 5/2015 sets the attributions and competences of DGAE.
- ²⁷ Decree-Law 17/2014 sets the attributions and competences of the Ministry of the Environment.
- ²⁸ <https://www.portaldocidadao.pt/web/governo-regional-dos-acoeres/governo-regional-dos-acoeres>
- ²⁹ www.azores.gov.pt/Portal/pt/entidades/srtop/?lang=pt
- ³⁰ <https://www.madeira.gov.pt/>
- ³¹ <https://www.madeira.gov.pt/dret/Estrutura/DRET/A-Dire%C3%A7%C3%A3o>
- ³² Law 18/97.
- ³³ Decree-Law 78/2014.
- ³⁴ The agreement between the OECD and the AdC excludes from the study the analysis of public urban (bus) transport.
- ³⁵ Decree-Law 18/2008.
- ³⁶ E.g., transportation services provided by electronic platforms (e.g. Uber and Cabify).
- ³⁷ European Parliamentary Research Service (2014), “Mega-trucks: a solution or a problem?”.
- ³⁸ Decree-Law 257/2007, Art. 3 (1).
- ³⁹ Legislative Decree 7/2010/A, Art. 3 (1), and Art. 37.
- ⁴⁰ Regional Legislative Decree 10/2009/M, Art. 4 (1).
- ⁴¹ Regulation (CE) 1071/2009, Art. 1 (4) (a); and Regulation (CE) 1072/2009, Art. 1 (5) (c).
- ⁴² Regulation (CE) 1071/2009, Recital 5; and Art. 349 TFEU.
- ⁴³ www.imt-ip.pt/sites/IMTT/Portugues/Observatorio/Estatisticas/Mercadorias/Documents/2017/EMPRESAS_VEICULOS_MERCADORIAS-Dez16.pdf (accessed on 25 January 2018).
- ⁴⁴ Ordinance 334/2000, Art. 6 (2).
- ⁴⁵ Decree-Law 3/2001, Art. 8 (2).

- ⁴⁶ Decree-Law 15/88, Art. 2 (1) (d).
- ⁴⁷ It measures the legally required minority shareholder protections provided by law.
- ⁴⁸ Regulation (CE) 1071/2009, Art. 7 (1).
- ⁴⁹ Regulation (CE) 1071/2009, Art. 1 (4) (a); and Regulation (CE) 1072/2009, Art. 1 (5) (c).
- ⁵⁰ Regulation (CE) 1071/2009, Art. 3 (2).
- ⁵¹ See Deliberation 1065/2012 of IMT, paragraph 7, *cit. supra*.
- ⁵² The Institute of Registration and Notary Affairs (IRN) has the mission of executing and following the policies related to registration services, namely to ensure the regulation, control and supervision of notarial activity.
- ⁵³ IRN (2012), Legal Opinion, *in Case* “Proc. Co. 10/2012 SJC-CT”.
- ⁵⁴ www.empresanahora.mj.pt/ENH/sections/PT_inicio.html
- ⁵⁵ <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf>
- ⁵⁶ Regulation (EC) 1071/2009, Recital 8.
- ⁵⁷ Regulation (EC) 1071/2009, Recital 11.
- ⁵⁸ Regulation (EC) 1071/2009 considers it appropriate that Member States may authorise examination and training centres according to criteria to be defined by them.
- ⁵⁹ Decree-Law 3/2001, Art. 6 (2).
- ⁶⁰ Decree-Law 257/2007, Art. 6 (1) (2) (3).
- ⁶¹ Deliberation 1065/2012 of IMT, paragraphs 4 and 6.
- ⁶² Azores benefits from a transitional period until 31 December 2018. See Regional Legislative Decree 7/2010/A, Art. 4 (1); Art. 6 (1) (2) (3), and Art. 37.
- ⁶³ Regional Legislative Decree 10/2009/M, Art. 5(1); and Art. 7 (1) (2) (3).
- ⁶⁴ On average, under the CAE 49.410 (see Annex A), 99.7% of the companies in Portugal are SMEs and employ 7 employees (data from GEE, 2015). Furthermore, on average, non-financial companies employed 7 employees (data from INE, 2015), available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaquas&DESTAQUESdest_boui=281335067&DESTAQUESmodo=2
- ⁶⁵ Decree-Law 375/82, Decree-Law 339-E/84, Ordinance 22/91 and Order MES 151/85.
- ⁶⁶ Ordinance 22/91, Art. 1 (b) defines category III as vehicles with standards regarding comfort, such as a toilet, air conditioning, individual reclining seats spaced apart from each other by at least 74 cm. For EU level rules, see Directive 2001/85/EC.
- ⁶⁷ Ordinance 22/91, Art. 1 (b) (e) and Art. 9 (d).
- ⁶⁸ Decree-Law 181/2012, Art. 4(2) (a) (b).
- ⁶⁹ Decree-Law 15/88, Art. 3 (1) (2) (3); Art. 5 (3); Art. 12 (1) (c).
- ⁷⁰ Decree-Law 257/2007, Art. 14 (2).
- ⁷¹ Decree-Law 257/2007, Art. 14 (3) (5).
- ⁷² Decree-Law 181/2012, Art. 6(1) (c) (2). The lifespan for vehicles with special characteristics is awaiting secondary legislation to be adopted, to be defined in a Deliberation from IMT.

- ⁷³ Decree-Law 15/88, Art. 14 (1) (2) (3).
- ⁷⁴ Decree-Law 132/2017, Art.11 (3) (4); Art. 13 (1) (2) (4); Art. 14 (5).
- ⁷⁵ Decree-Law 132/2017, Art.11 (3) (4); Art. 13 (1) (2) (4); Art. 14 (5).
- ⁷⁶ High-quality bus routes were created in 1982. In 1995, there were 15 routes. At the end of 2005, there were only three routes in operation. According to stakeholders, currently this number has been further reduced. These cancellations translate into either the termination of a career or, in some cases, its replacement by regular “express” routes or by occasional bus services. See DGTTF (2005), “Caracterização dos Serviços Expresso e de Alta Qualidade”, p. 3.
- ⁷⁷ Decree-Law 144/2017, which transposes Directive 2014/45/EU.
- ⁷⁸ <https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf> (p. 47).
- ⁷⁹ <http://ec.europa.eu/eurostat/web/structural-business-statistics/data/database>, NACE code N77.12.
- ⁸⁰ Decree-Law 257/2007, Art. 14(3).
- ⁸¹ Decree-Law 181/2012, Art. 6(1) (c).
- ⁸² Decree-Law 15/88, Art. 14 (1)(2) (3).
- ⁸³ Directive 96/53/EC, Art. 2 and Annex I, point 2.2.2.(c) (d).
- ⁸⁴ INE (2017), “Estatísticas dos Transportes e Comunicações, 2016”, Quadro III.40.
- ⁸⁵ EUROSTAT, Structural Business Statistics, 2015, available at <http://ec.europa.eu/eurostat/web/structural-business-statistics/data/database> (accessed on 13 February 2018). See Annex A.
- ⁸⁶ EUROSTAT, Annual detailed enterprise statistics, 2015 (site). INE, 2015. See Annex A.
- ⁸⁷ www.imt-ip.pt/sites/IMTT/Portugues/Observatorio/Estatisticas/Passageiros/Documents/2017/EMPRESAS_VEICULOS_IDADE_TIPO_dez16.pdf (accessed on 25 January 2018).
- ⁸⁸ DGTTF (2005), “Caracterização dos Serviços Expresso e de Alta Qualidade”.
- ⁸⁹ See RNE website, available at <https://www.rede-expressos.pt> (accessed on 13 February 2018).
- ⁹⁰ See Steer Davies Gleave (2016), p. 319, B. 286.
- ⁹¹ <https://www.rede-expressos.pt/#flexible> (accessed on 13 February 2018).
- ⁹² <https://www.rede-expressos.pt/#flexible> (accessed on 13 February 2018).
- ⁹³ See GIL website, available at www.infraestruturasdeportugal.pt/sobre-nos/grupo/gil (accessed on 13 February 2018). GIL is owned 100% by a public entity, *Infraestruturas de Portugal, S.A.*
- ⁹⁴ Decree-Law 326/83, Art. 3(1) (2); Decree-Law 399-F/84, Art. 1(1) (2) and Art. 7; and Ordinance 23/91, Art. 1(1) (b) and Art. 9 (1).
- ⁹⁵ Decree-Law 375/82, Art. 2; and Decree-Law 399-E/84, Art. 1(1).
- ⁹⁶ Order MES 151/85, amended by Order MOPTC 35 - XII/92, www.imt-ip.pt/sites/IMTT/Portugues/Legislacao/Nacional/TransporteRodoviario/TranspPassageirosVe%C3%A9culosPesados/Paginas/TransportePassageirosVeiculosPesados.aspx (accessed on 13 February 2018).
- ⁹⁷ Order MES 151/85, Art. 1 and Art. 2.
- ⁹⁸ See DGTTF (2015), “Caracterização dos Serviços Expressos e de Alta Qualidade”.

- ⁹⁹ See DGTTT (2015), “Caracterização dos Serviços Expressos e de Alta Qualidade”.
- ¹⁰⁰ Law 52/2015, Art. 6(1), Art. 15 and Art. 16 (b) (c), and Annex, Art. 33(1), which approved the Legal Regime of the Public Transport Service of Passengers, revoked Decree-Law 399-F/84 and Decree-Law 399-E/84, pending the adoption of secondary legislation.
- ¹⁰¹ Law 52/2015, Art. 6(1), Art. 15 and Art. 16(b) (c).
- ¹⁰² IMT, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx (accessed on 23 January 2018).
- ¹⁰³ Law 52/2015 uses two different terminologies, either referring to the need for an "authorisation" (see Annex, Art. 16 (1) (c) of Law 52/2015) or the need for a "communication" (see Annex, Art. 33 (1) of Law 52/2015) to the competent authority.
- ¹⁰⁴ Law 52/2015, Art. 6(1), Art. 15 and Art. 16(b) (c).
- ¹⁰⁵ See Steer Davies Gleave (2016).
- ¹⁰⁶ See European Commission (2017b).
- ¹⁰⁷ See European Commission (2017a).
- ¹⁰⁸ See Steer Davies Gleave (2016) and Dürr, N. S. and K. Hüschelrath (2015).
- ¹⁰⁹ Law 52/2015, Art. 6(1), Art. 15 and Art. 16(b) (c).
- ¹¹⁰ Ordinance 23/91, Art. 7(1)-(3); and Ordinance 22/91, Art. 8. See also, Order 15417-A/2016 and Normative Order 14-A/2016, established a 1.5% "maximum average increase limit" over the last revision of the price values (2013), to be in force on 1 January 2017.
- ¹¹¹ Ordinance 23/91, Art. 8, a vehicle type II has some standards regarding comfort, such as heating, forced ventilation, individual reclining seats spaced apart from each other by at least 68 cm.
- ¹¹² Ordinance 22/91, Art. 1(b), a vehicle type III has some standards regarding comfort, as bathroom, air conditioning, individual reclining seat benches, spaced apart from each other at least 74 cm.
- ¹¹³ Ordinance 22/91, Art. 1(b).
- ¹¹⁴ Ordinance 23/91, Art. 7(1)-(3); and Ordinance 22/91, Art. 8.
- ¹¹⁵ Order 15417-A/2016 and Normative Order 14-A/2016, established a 1.5% "maximum average increase limit" over the last revision of the price values (2013), to be in force on 1 January 2017.
- ¹¹⁶ Only exceptionally may be exempted, by the competent minister or by the IMT, from this obligation on some routes, see Decree-Law 170/71, Art. 1(1) (3).
- ¹¹⁷ Decree-Law 170/71, Art. 11(1) (2).
- ¹¹⁸ Decree-Law 171/72, Art. 12(1) (2) and Decree-Law 170/71, Art. 5(1).
- ¹¹⁹ Ordinance 410/72, Art. 5(1) (3); Art. 12(1); and Art. 16(2) (from Annex C).
- ¹²⁰ Ordinance 410/72, Art. 3 (Annex C).
- ¹²¹ Ordinance 410/72, Art. 6 (from annex A) and Art. 2 (from Annex B).
- ¹²² Directive 2012/34/EU was transposed in Portugal by Decree-Law 217/2015.
- ¹²³ See Law 52/2015.

- ¹²⁴ Law 52/2015 and Subsection 3.3 of this chapter.
- ¹²⁵ Decree-Law 251/98, Art. 2(a).
- ¹²⁶ ITF (2016b), “Regulation of For-Hire Passenger Transport – Portugal in International Comparison”.
- ¹²⁷ INE (2017), “Estatísticas dos Transportes e Comunicações, 2016”.
- ¹²⁸ AMT (2016). A significant proportion of these taxis were licensed in the districts of Lisbon and Porto, accounting for 25.4% and 5.1% of the total number of licensed taxis, respectively.
- ¹²⁹ INE (2017), “Estatísticas dos Transportes e Comunicações, 2016”.
- ¹³⁰ EUROSTAT, Annual detailed enterprise statistics, for 2014. Note also that the top five taxi companies had a turnover of more than EURO 4 million (see SABI database. Information from 31 January 2016, accessed on 12 2018)
- ¹³¹ See Annex A.2. This number is based on the annual turnover for the CAE Code H49.32 (Transport of passengers by taxi) and considers an elasticity of demand of 2 and a reduction in price of 0.5%.
- ¹³² See Annex A.2. This number is based on the annual turnover for the CAE Code H49.32 (Transport of passengers by taxi) and considers an elasticity of demand of 2 and a reduction in price of 2.5%.
- ¹³³ A taxi operator must: a) hold a licence ("alvará"), issued by the IMT, non-transferable and issued for a period not exceeding five years, renewable by proving that the requirements for access to the activity are maintained; and also b) hold a licence for a taxi vehicle, attributed by a given municipality, in respect of a quantitative quota contingent, which is transferable between companies duly authorised with a licence, needing only to communicate it to the city council of the municipality whose quota the licence belongs to. See Law 18/97, Art. 2(1) (a); and Decree-Law 251/98, Art. 3(3) and Art. 12(4).
- ¹³⁴ E.g., “Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003), Art. 19 (1) (a) (c) (d).
- ¹³⁵ See AMT (2016).
- ¹³⁶ See Gorecki, P. (2017).
- ¹³⁷ Portuguese Competition Authority (2016).
- ¹³⁸ 2012 Price Convention Regime (see Tariffs 3 and 5).
- ¹³⁹ According to the “Study on passenger transport by taxi, hire car with driver and ridesharing in the EU”, cit. supra, there is no quantitative restrictions, but a moratorium applies since 2010, available at <https://ec.europa.eu/transport/sites/transport/files/2016-09-26-pax-transport-taxi-hirecar-w-driver-ridesharing-country-reports.pdf>
- ¹⁴⁰ See Gorecki, P., 2017, “Competition and vested interests in taxis in Ireland: a tale of two statutory instruments”, *Transportation Research Part A*, Vol. 101, pp. 228-237.
- ¹⁴¹ See Gorecki, P., 2013, “The Small Public Service Vehicle Market in Ireland: Regulation and the Recession”, *The Economic and Social Review*, Vol. 44, No. 2, pp. 247-272.
- ¹⁴² OFT (2003), "The Regulation of Taxi Services and PHVs in the UK".
- ¹⁴³ Decree-Law 251/98, Art. 20.
- ¹⁴⁴ Decree-Law 297/92, Art. 1 and Art. 2(1).

- ¹⁴⁵ AdC (2016), “Report on Competition and Regulation of Public Passenger Transport Services by Car Hire”, p. 17.
- ¹⁴⁶ Ordinance 277-A/99, Art. 1(1.1).
- ¹⁴⁷ Ordinance 277-A/99, Art. 1(1.5).
- ¹⁴⁸ <https://www.service-public.fr/professionnels-entreprises/vosdroits/F32753>
- ¹⁴⁹ Data received from IMT in July 2017.
- ¹⁵⁰ Data based on the information received by GEE and the respective CAE codes. Note that the CAE code P85591 includes activity of training institutes and other non-related activities. Hence, the turnover presented might be overestimated.
- ¹⁵¹ Data collected from INE (accessed on 25 January 2018).
- ¹⁵² See Annex A.2. This number is based on the reinvestment of the capital available once the restrictions are lifted and considers a rate of return based on “All euro area central government bonds (10 years, spot rate, ECB = 1.16)” available at the European Central Bank (ECB), Euro area yield curves, available at https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_area_yield_curves/html/index.en.html (accessed on 18 January 2018).
- ¹⁵³ Law 14/2014, Art. 14(1).
- ¹⁵⁴ Decree-Law 126/2009, Art. 13(1).
- ¹⁵⁵ Specifically on training institutes, the licence is issued for a period of five years, renewable upon the fulfilling of the licence requirements (see Decree-Law 126/2009, Art. 13[1]). For driving schools, licensing requirements are of permanent verification, and the entities holding the licence must prove when requested to do so by IMT (see Law 14/2014, Art. 19 [1]).
- ¹⁵⁶ Ordinance 185/2015, Art. 19(2) (c).
- ¹⁵⁷ Decree-Law 126/2009, Art. 16 (2).
- ¹⁵⁸ Ordinance 185/2015. Annex VI(1) (3).
- ¹⁵⁹ Ordinance 1200/2009, Art. 6 (2).
- ¹⁶⁰ Deliberation 3256/2009, Title III (3).
- ¹⁶¹ The Services Directive, Art. 2(2) (d), excludes from its application only transport services falling within Title V of the EC Treaty, Art. 2(2) (d). See European Commission (2008).
- ¹⁶² Decree-Law 92/2010, official recitals and Art. 5, Art. 6 and Art. 23.
- ¹⁶³ Decree-Law 181/2012, Art. 3(1).
- ¹⁶⁴ <https://publications.europa.eu/en/publication-detail/-/publication/a4987fe6-d74b-4f4f-8539-b80297d29715>
- ¹⁶⁵ Judgments of the ECJ in Cases C-438/08, *Commission v. Portugal* [2009], paragraphs 18, 28, 29, 53; C-171/02, *Commission v Portugal* [2004] ECR I 5645, paragraphs 53 and 54.
- ¹⁶⁶ www.empresanahora.mj.pt/ENH/sections/PT_inicio.html
- ¹⁶⁷ Law 14/2014, cit. supra.
- ¹⁶⁸ Ordinance 1165/2010, Annex, Section X, A1.
- ¹⁶⁹ Ordinance 185/2015, Art. 25(7).
- ¹⁷⁰ Ordinance 277-A/99, Art. 3(2).

- ¹⁷¹ The first three years correspond to a trial period to obtain a full driver's licence (Road Code, Arts. 122, 129, 144) and the next two years to specifically acquire private driving experience.
- ¹⁷² Law 14/2014, Art. 37 and Art. 42(1).
- ¹⁷³ Law 14/2014, Art. 53(1) and Art. 54(1).
- ¹⁷⁴ Law 45/2012, Art. 10(1) and Art. 24(2).
- ¹⁷⁵ Law 45/2012, Art. 5(2); and Law 14/2014, Art. 16(2).
- ¹⁷⁶ <https://www.gov.uk/become-a-driving-instructor>; <https://www.gov.uk/become-an-lgv-driving-instructor>; <https://www.gov.uk/supervise-small-lorry-and-minibus-learner-drivers>; <https://www.gov.uk/adi-part-3-test>; <https://www.gov.uk/adi-part-1-test>; <https://www.gov.uk/adi-part-2-test>.
- ¹⁷⁷ <https://www.gov.uk/become-a-driving-instructor>
- ¹⁷⁸ To teach category C and D prior experience is limited to three years on a full licence, with no need to take a training course but rather to pass the exams.
- ¹⁷⁹ <https://www.gov.uk/become-a-driving-instructor>; <https://www.gov.uk/become-an-lgv-driving-instructor>; <https://www.gov.uk/supervise-small-lorry-and-minibus-learner-drivers>; <https://www.gov.uk/adi-part-3-test>; <https://www.gov.uk/adi-part-1-test>; <https://www.gov.uk/adi-part-2-test>
- ¹⁸⁰ <https://www.gov.uk/become-a-driving-instructor>; <https://www.gov.uk/become-an-lgv-driving-instructor>; <https://www.gov.uk/supervise-small-lorry-and-minibus-learner-drivers>; <https://www.gov.uk/adi-part-3-test>; <https://www.gov.uk/adi-part-1-test>; <https://www.gov.uk/adi-part-2-test>
- ¹⁸¹ Directive 2006/126/EC, Art. Annex IV (2.1.) (c) and (3.1.).
- ¹⁸² www.sabado.pt/portugal/detalhe/falta-de-examinadores-atrasa-exames-de-conducao.
- ¹⁸³ Ordinance 185/2015, Art. 21.
- ¹⁸⁴ Deliberation 3257/2009, Title V.
- ¹⁸⁵ ASAE, available at www.asae.gov.pt/
- ¹⁸⁶ Judgement of the CJEU in Case C-438/08, *Commission v. Portugal*, [2009] paragraph 37.
- ¹⁸⁷ EUROSTAT, Annual detailed enterprise statistics (NACE Code M71.20), 2014.
- ¹⁸⁸ GEE - Office for Strategy and Studies of the Ministry of Economy, Portugal. The information available is based on the specific CAE Code (equivalent to the NACE Code M71.20 on “Technical testing and analysis”). Since it is not possible to desegregate it, we provide an economic overview of “technical testing and analysis” as a proxy for the the activity of technical inspection centres.
- ¹⁸⁹ See public versions of the AdC decisions in merger cases Ccent. 25/2005, *Controlauto/Iteuve*, [2005]; Ccent. 30/2011, *Fundo Explorer III/Inspecentro*, [2011]; Ccent. 45/2012, *Auto-Sueco/Grupo Master Test*, [2012]; and Ccent. 19/2017, *Dekra/Master Test*, [2017], all available at www.concorrenca.pt/. See also Infoempresas.pt, available at www.infoempresas.com.pt/M7120_ATIVIDADES-ENSAIOS-ANALISES-TECNICAS.html (accessed on 22 January 2018)
- ¹⁹⁰ www.imt-ip.pt/sites/IMTT/Portugues/Veiculos/Inspecao/AprovacaoCITVs/Paginas/CITV.aspx (accessed on 24 January 2018).
- ¹⁹¹ www.azores.gov.pt/Portal/pt/entidades/srtop-drt-sctt/textoTabela/Tarifas+a+praticar+Centros++Inspec%C3%A7%C3%A3o+Ve%C3%ADculos.ht

[m](#) (accessed on 24 January 2018). The remaining seven islands of Azores are: Santa Maria, Graciosa, Flores, Corvo, São Jorge, Pico and Faial.

¹⁹² According to information supplied by the Directorate of Economy and Transports of the Madeira Regional Government (DRET - Direção Regional da Economia e Transportes), on 31 January 2018 (see <https://www.madeira.gov.pt/dret/Estrutura/DRET/A-Dire%C3%A7%C3%A3o>).

¹⁹³ In 2010, 161 out of the 308 Portuguese municipalities had a vehicle inspection centre (evidence taken from the official recital of Decree-Law 48/2010 of 11 May).

¹⁹⁴ Directive 2014/45/EU, *cit. supra*.

¹⁹⁵ Decree-Law 144/2017 of 29 November.

¹⁹⁶ Art. 49 TFEU (ex-Art. 43 TEC).

¹⁹⁷ Judgement of the CJEU in Case C-438/08, *Commission v. Portugal*, [2009], paragraph 26.

¹⁹⁸ Portuguese Parliament, “Apreciação Parlamentar nº 41/XI”, pp. 1-2), <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalleDiplomaAprovado.aspx?BID=16552>; <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalleIniciativa.aspx?BID=35384>

¹⁹⁹ Ordinance 378-A/2013 of 31 December, establishes the fixed tariffs for inspection and re-inspection services carried out by the vehicle inspection centres, for the year 2014 and the following ones, as provided for in Law 11/2011, Art. 21.

²⁰⁰ Deliberation 95/2017 of 4 January updates the fixed tariffs for inspection and re-inspection services, for the year 2017, as provided for in Law 11/2011, Art. 21.

²⁰¹ Deliberation 1450/2013 of 19 June establishes the procedure and amount of a financial contribution due by the vehicle inspection centres to the IMT, calculated over the amount of each fixed tariff charged to consumers, as provided for in Law 11/2011, Art. 9.

²⁰² Ordinance 221/2012 of 20 July (modified by the Declaration of Rectification 49/2012 and by the Ordinance 378-E/2013 of 31 December), establishes the technical requirements to be met by the vehicle inspection centres, regulating Law 11/2011.

²⁰³ Law 11/2011, Art. 2(a) (b) (c) (d); and Art. 5.

²⁰⁴ Law 11/2011, Art. 21 (1); Ordinance 378-A/2013, Art. 2 and Annex; and Deliberation 95/2017.

²⁰⁵ The Statistics Office of Portugal (INE) forecasts that Portugal will possibly “keep its population around 10 million residents for the next 50 years”. See INE - Statistics Office of Portugal, “Projections of the Resident Population in Portugal, 2008-2060”, available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=65573359&DESTAQUESmodo=2&xlang=en

²⁰⁶ www.imt-ip.pt/sites/IMTT/Portugues/Veiculos/Inspecao/AprovacaoCITVs/Paginas/CITV.aspx (accessed on 24 January 2018).

²⁰⁷ Judgement of the CJEU in Case C-438/08, *Commission v. Portugal*, [2009], *cit.*, paragraph 26.

²⁰⁸ Judgement of the CJEU in Case C-338/09, *Yellow Cab Verkehrsbetriebs v. Landeshauptmann von Wien*, [2010], paragraphs 33, 45-46, 51.

²⁰⁹ Judgement of the CJEU in Case C-168/14, *Grupo Itevelesa SL and o. v. OCA and Cataluña, Spain*, [2015], paragraphs 53; 78-82.

²¹⁰ Judgement of the CJEU in Case C-338/09, *Yellow Cab Verkehrsbetriebs v. Landeshauptmann von Wien*, [2010], paragraphs 33, 45-46, 51.

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- ²¹² Judgement of the CJEU in Case C-168/14, *Grupo Itevelesa*, [2015], *cit.*, paragraphs 79-80.
- ²¹³ Art. 101 and Art. 102 TFEU; Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings; Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Art. 81 and Art. 82 of the Treaty; and Law 19/2012 of 8 May, approving the Portuguese Competition Act.
- ²¹⁴ Driver and Vehicle Standards Agency (DVSA), available at <https://www.gov.uk/government/organisations/driver-and-vehicle-standards-agency>
- ²¹⁵ Ministry of Transport/“Préfet du département” website; and the “Code de la Route”, Art. L.311-1, Art. L.323-1, Art. R. 323-1 to Art. R. 323-26) and Decree of 18 June 1991.
- ²¹⁶ “Report from the Spanish Competition Authority of the Spanish legislation, CNMC, IPN/CNMC/18/16”, available at https://www.cnmc.es/sites/default/files/1503105_0.pdf
- ²¹⁷ Driver and Vehicle Standards Agency (DVSA), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487115/mot-test-fees-and-appeals-poster.pdf
- ²¹⁸ See Ministry of Transport/“Préfet du département” website; and the “Code de la Route” – Art. L.311-1, Art. L.323-1, Art. R. 323-1 to Art. R. 323-26) and Decree of 18 June 1991.
- ²¹⁹ Law 11/2011, Art. 13(3); and Ordinance 221/2012, Art. 8.
- ²²⁰ The national regime has no incompatibility rules with other activities concerning partners, managers and administrators of firms that perform vehicle inspections. Following the judgement of the CJEU, in 2009, in Case *Commission v. Portugal*, the Decree-Law 550/99 was amended. Minority or cross shareholdings among garage and inspection centres is not forbidden.
- ²²¹ Judgement of the CJEU in Case C-438/08, *Commission v. Portugal*, [2009], *cit.*, paragraphs 19, 43, 45.
- ²²² Judgement of the CJEU in Case C-168/14, *Grupo Itevelesa*, [2015] *cit.*, paragraph 16.
- ²²³ Judgement of the CJEU in Case C-438/08, *Commission v. Portugal*, [2009], *cit.*, paragraph 19.
- ²²⁴ Ricardo (2016), “Ex-post evaluation of Directive 2006/1/EC– Final report”, p. 7.
- ²²⁵ Decree-Law 15/88, Art. 4; and Directive 2006/1/EC, Art. 3(2).
- ²²⁶ Ricardo (2016), “Ex-post evaluation of Directive 2006/1/EC– Final report”, pp. 7, 32.
- ²²⁷ Ricardo (2016), “Ex-post evaluation of Directive 2006/1/EC– Final report”, pp. 7, 8.
- ²²⁸ Ricardo (2016), “Ex-post evaluation of Directive 2006/1/EC– Final report”, pp. 7, 8.
- ²²⁹ European Commission (2017d).
- ²³⁰ A tachograph is a device intended for installation in road vehicles to display, record, print, store and automatically or semi-automatically output details of the movement, including the speed of such vehicles, and details of certain periods of activity of the drivers. A tachograph provides information to the road traffic inspection authority regarding the transport operators’ compliance with the regulations, mainly observance of working hours and possible overwork in the road transport industry.
- ²³¹ Directive 2002/15/EC, Art. 2(1) and Art. 9(b).

²³² Decree-Law 117/2012 of 5 June, Art. 7 (1). This legislative act regulates the organization of working time of self-employed drivers in road transport activities, transposing Directive 2002/15/E.

²³³ Regulation (EC) 561/2006, *cit. supra.*, Art. 3 (aa).

²³⁴ Ordinance 222/2008 of 5 March, Art. 2(c)(d). This legislative act lays down which transports are exempted from the provisions on driving and rest times and the obligation to use a tachograph.

²³⁵ Order 13 449/2006 of 27 June, paragraphs 2, 3, 4.1., implements the issuing of new tachograph cards for a digital tachograph and defines the maximum intervals between discharge of data recorded by the tachograph.

²³⁶ Decree-Law 126/2009, Art. 5(5).

²³⁷ Ordinance 1165/2010, Annex, Section I (passengers) and Section III (freight), B., *cit. supra* (EUR 30 per each professional driver).

²³⁸ Directive 2003/59/CE, Annex II, and Recital 15; and Art. 10(1). The European Commission (2017f) proposes to amend Art. 10(1) "to ensure that all holders of a [CAM] are issued either with mutually recognised code 95 on their driving licence, or with a mutually recognised driver qualification card [CQM]".

²³⁹ Ordinance 1017/2009, Art. 8(e) and Title IV of Deliberation IMT 3257/2009.

²⁴⁰ Decree-Law 15/88. Art. 18(1) and Art. 23(1) (2).

²⁴¹ See European Commission (2017f)

²⁴² Ordinance 334/2000, Art. 2.

²⁴³ Ordinance 1099/99, all Articles.

²⁴⁴ Decree-Law 15/88, Art. 5(2), Art. 16(1)(2), and Art. 22.

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Annex 3.A. Benefits of lifting barriers

The recommendations in this report address specific regulatory restrictions identified by the project team. The impact of the recommendations is directly linked to removing those restrictions and the consequent positive effect on competition in the relevant segment areas of the road sector. It was not possible to quantify the effects of all the individual restrictions identified, either because of a lack of data, or because of the nature of the regulatory change. Where possible, we have provided detailed estimates in the report.

Summary of data for the road sector-segments analysed in this Report by CAE Code

After matching each road sector-segment, within the competition assessment exercise for the road sector with a CAE code,¹ these account for **2.6 % of the GDP** in Portugal in 2015.² In 2015, these activities generated over EUR 8 billion and employed almost 110 000 workers, distributed among 25 558 companies (see Table 3.A.1).³ In relative terms, these activities account for 2.6% of total companies, 3.1% of total employment, and 2.4% of total industry turnover in Portugal.⁴

Annex Table 3.A.1. Summary data for the road sector for Portugal, 2015

Road sector	GVA (% of GDP)	Turnover EUR MILLION	No. of companies	No. of employees
Services ancillary to transport				
Driving schools(CAE P85.530; P85.320)*	0.02	104.7	1 170	4 884
Training institutes (CAE P85.591) *	0.03	213.3	4 052	9 318
Inspection Centres (CAE M71.20) *	0.12	311.8	824	4 681
Transport of passengers by road				
Long distance buses (CAE H49.391) *	0.59	585.1	668	10 439
Central bus stations (CAE H52.213) *	0.09	357.9	624	3 999
Transport by taxi (CAE H49.32) *	0.10	240.6	9 932	10 464
Car rental services without a driver (CAE N77.11)*	0.42	1 046.8	515	3 708
Transport of freight by road				
Truck transportation (CAE H49.41) *	1.24	5 154.1	7 725	61 546
Truck rental services without a driver (CAE N77.12) *	0.03	50.8	48	123
TOTAL	2.64	8 065.1	25 558	109 162

Source: EUROSTAT, Structural Business Statistics, available at <http://ec.europa.eu/eurostat/web/structural-business-statistics/data/database>, and INE - National Statistics Institute, Portugal, accessed on 15 January 2017.

Summary of the estimated benefits based on full implementation of the recommendations for the road sector

For certain recommendations, the project team analysed whether recommendations would be expected to have an impact on either consumer benefit, through lower prices, or on economic activity, in terms of additional savings for operators. In the latter, we have made a conservative assumption on an overall use of the capital available by lifting barriers related to financial requirements such as minimum capital requirements to start the business and minimum capital and reserves during the financial year (see Annex 3.A.2).

If the restrictions identified in the road sector are lifted, we make a conservative estimate of consumer benefits of between **EUR 46.50 million**⁵ and **EUR 201.42 million**⁶ per year (see Table 3.8). This amount is the total of the estimated positive effects on consumer surplus due to a decrease in prices. We also estimate a positive benefit for operators of up to **EUR 27.26 million**⁷ per year (see Table 3.8). This amount is the estimated positive effect of reinvesting the capital released from current regulatory obligations, either in fixed-term deposits or in government treasury bonds.

The full implementation of the recommendations set out in this report is expected to deliver positive long-term effects on the Portuguese economy, on employment, productivity and growth, beyond the conservative estimates listed here. The cumulative and long-term impact of lifting regulatory restrictions on market entry and competition such as those identified in this report will positively affect the ability of businesses to compete in the longer term, provided that the recommendations are fully implemented.

Annex Table 3.A.2. Synthesis of positive effects quantified by item

Road sector	Consumer welfare			Gains for companies	
	Turnover (2015) EUR MILLION ^(a)	Benefit EUR MILLION (annual) ^(b)			Benefit EUR MILLION (investment of one-off savings) ^(c)
		Low range Price change = 0.5%	High range Price change = 2.5%	Other price changes*	
Services ancillary to transport					
Driving schools					
- CAE P85.530	84.9	0.43	2.18	0.4-3.7	-
- CAE P85.320 ⁽¹⁾	4.95	0.02	0.13		-
Training institutes (CAE P85.591)	213.3	1.07	5.47	-	-
- Minimum capital requirements ⁽²⁾	[101.3]	-	-	-	1.62
Inspection centres (CAE M71.20)	311.8	1.57	7.99	7.3-16.7	-
Transport of passengers					
Long distance buses (CAE H49.391)	585.1	2.94	14.99	3.7-6.9	-
- Minimum capital requirements ⁽²⁾	[668]	-	-	-	10.69
Central bus stations (CAE H52.213) ⁽¹⁾	89.5	0.45	2.29	-	-
Transport of passengers by taxi (CAE H49.32) ^(c)	240.6	1.21	6.17	-	-
- Capital and reserves ⁽³⁾	[13.8]	-	-	-	0.22
Car rental services (CAE N77.11)	1 046.8	5.26	26.82	-	-
Transport of freight by road					
Trucks transportation (CAE H49.41)	5 154.1	25.90	132.07	-	-
- Minimum capital requirements (> 3.5 t) ⁽²⁾	[866.8]	-	-	-	13.87

- Minimum capital requirements (2.5–3.5 t) ^{(d) (2)}	[39.95]	-	-	-	0.64
- Capital and reserves (2.5 – 3.5 t) ^{(d) (3)}	[11.26]	-	-	-	0.18
Truck rental services (CAE N77.12)	50.8	0.26	1.30	-	-
- Minimum capital requirements ⁽²⁾	[2.40]	-	2.18	-	0.04
TOTAL	7 781.85	39.11	199.41	11.4 – 27.3	27.26

Notes:

(1) Since CAE code includes other non-related activities (see Annex A), it is assumed that only ¼ of the turnover would correspond to the activity in question to avoid over-calculation of the expected benefits for consumers and companies.

(2) Calculations based on a) the minimum capital requirements to register firms and obtain the licence to access the activity; and b) the number of companies gathered at INE. Under the truck transportation activity, values are calculated for mainland Portugal and Azores (which benefits from a transitional period until 31.12.2018); as in Madeira there is no minimum capital requirement.

(3) Calculations based on a) the capital and reserves required; and b) the number of vehicles gathered at AMT (for taxis) and INE and GEE (for trucks). For trucks, values are calculated for mainland Portugal, Azores (benefitting from a transitional period until 31.12.2018) and Madeira operators. For Azores and Madeira the number of vehicles is underestimated as it only one per firm.

Sources:

(a) National Statistics Institute, Portugal (INE), available at www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2 (accessed on 18 January 2018)

(b) See Annex A.2. Price elasticity of demand is 2.

(c) The spot rate corresponds to all euro area central government bonds – see European Central Bank (ECB), Euro area yield curves, available at www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_area_yield_curves/html/index.en.html (accessed on 18 January 2018).

(c) AMT, Taxis in Portugal 2006-2016, “Observatório dos mercados da mobilidade, preços e estratégias empresariais”, available at <http://taxis.amt-autoridade.pt/#/> (accessed on 15 December 2017).

(d) IMT and GEE (Office for Strategy and Studies of the Ministry of Economy, Portugal).

* See Annex 3.A1, Annex 3.A2 and Annex 3.A3.

Notes

¹ For definition, see Annex A.

² Eurostat glossary, available at [http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Gross_domestic_product_\(GDP\)](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Gross_domestic_product_(GDP)).

³ OECD glossary, available at <https://stats.oecd.org/glossary/detail.asp?ID=2780>; Eurostat glossary, available at <http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Enterprise>.

⁴ All data were gathered from INE, www.ine.pt (accessed on 24 January 2018).

⁵ This value combines the sum of the minimum range from column “Other price changes” with the values from column “Price change = 0.5%”.

⁶ This value combines the sum of the maximum range from column “Other price changes” with the values from column “Price change = 2.5%”.

⁷ See column “Benefit EUR MILLION (investment of one-off savings)”.

Annex 3.B. Price effect from deregulation and additional providers on long-distance bus routes

The legal framework in Portugal includes requirements authorising operators to offer long-distance bus transportation. These are deemed to be overly restrictive. In particular, only existing providers of public passenger road transport or those serving one of the termination points or part of the suggested journey can obtain authorisation for Express Services. Similarly, in the case of High-Quality Services, only existing providers or travel and tourism agencies that fulfil certain criteria can be authorised. Moreover an authorisation is needed for the routes used.

These requirements favour existing operators and pose significant barriers to new entry into the relevant markets. In addition, they pose restrictions on the way bus operators conduct their business (by limiting the itineraries they can use). The OECD recommends that those restrictions be lifted. It is also recommended that price regulation, in the form of minimum ticket fares, be abolished so that prices are set freely.

The expected impact of removing those barriers found in the legislation is an increase in the number of bus operators.¹ This concerns both new routes (coupled with deregulation in route design), which can be seen as market expansion and existing routes, where competition will intensify.² The analysis below is mostly concerned with the latter effect. It is noted that potential positive effects from increased competition on existing lines range from lower fares (including following the entry of low-cost operators³ and the abolition of minimum price regulation), increased frequency of service, better quality of service (for example, on-board ancillary services) and innovation (for example, ticket price structures).

The price effect from entry, or threat of entry, arises as a result of three different mechanisms that can be at play: (a) the willingness of new entrants to set lower fares in an attempt to gain share from the incumbent(s); (b) incumbent operators lowering their prices in response to entry; or (c) incumbents lowering their prices to discourage and pre-empt entry. There is a potential for a second-order effect on the cost of other modes of transport (for example, rail) in the context of intermodal competition. This latter effect is not considered further.

In order to estimate the potential impact of lifting the regulations relating to express and High-Quality Services on the average fare for such journeys, the finding of studies on the effect of deregulation in (interurban) passenger transportation by bus in other countries are used.

The average price differential in Germany among routes with one, two or three operators is 9% or 5% if the price per km or price per minute is considered respectively. Dürr and Hüschelrath (2015) also report that prices decrease by about 5.6% for every additional provider on a particular route in Germany. In the case of the United Kingdom, the medium-term (equilibrium) change in return fares is estimated to have been 9% (17% if cross-country minor routes are excluded), whereas in the case of single fares, which relate to a price promotion focused on London trunk routes, the fares crept up again after the initial reduction.⁴

Annex Table 3.B.1. Price effect from deregulation and additional providers on interurban bus routes: Germany

	Fare/km (EUR)		Fare/min (EUR)	
One operator	0.059		0.064	
Two operators	0.055	-7%	0.063	-2%
Three operators	0.049	-11%	0.058	-8%
Average		-9%		-5%

Source: Dürr, and Hüsichelrath, 2015.

Annex Table 3.B.2. Price effect from deregulation and additional providers on interurban bus routes: United Kingdom

Routes	Single fares				Return fares			
	Short-term effect		Medium-term effect		Short-term effect		Medium-term effect	
Normalised price (base)	100		100		100		100	
Cross-country minor route	100	0%	138	38%	100	0%	114	14%
Cross-country trunk route	68	-32%	102	2%	70	-30%	85	-15%
London minor route	50	-50%	101	1%	55	-45%	82	-18%
London trunk route	45	-55%	96	-4%	50	-50%	82	-18%
Average		-34%		9%		-31%		-9%

Note: National express fares. The short-term effect is measured in October 1980, whereas the medium-term effect is measured in October 1985. Fare index extracted from figures.

Source: Robbins and White, 1986.

Based on the converging estimates arising from the above, two scenarios regarding the (medium-term) change in average fares are used to estimate the benefit to passengers: 5% and 9%. Moreover, a demand elasticity of -2 is assumed, reflecting the fact that, while passengers are interested in specific point-to-point travel, there typically exist alternative modes of transport which express and high-quality bus service users can switch to/from – such as a private car, rail, other bus services, air travel, or combinations of those modes.

The revenue of interurban bus services is EUR 585.1 million;⁵ however this includes services other than express and high-quality ones. To estimate the revenues of this segment (express and High-Quality Services), we start from the turnover of the main Express Service bus operator in Portugal, *Rede Nacional de Expressos* (“RNE”). RNE’s 2016 revenue was EUR 49.2 million,⁶ and its services are estimated to account for approximately 70% of the market for express bus services.⁷ Consequently, the revenue of the sector is estimated to be EUR 70.3 million.⁸

The change in consumer surplus is represented by:

$$Benefit = \left(\rho + \frac{1}{2} |\varepsilon| \rho^2 \right) * R$$

where ρ takes the percentage price change values set out above (5% or 9%); $|\varepsilon|$ is the elasticity of 2, and the sector revenue (R) has been estimated to be EUR 70.3 million. This yields consumer benefits of EUR 3.7 million or EUR 6.9 million per annum for assumed average fare changes of 5% or 9% respectively.

Notes

¹ Dürr and Hüschelrath (2015) find that, following deregulation of the interurban bus industry in Germany, the number of licensed bus operators increased by 84% in the first six months and 350% after 2 years.

² Dürr and Hüschelrath (2015) note that “[c]omparing a week in August 2013 with the same week in August 2014 [post deregulation] reveals that the number of lines increased from 113 to 244 (an increase of about 116 percent) while the number of journeys jumped from 2,360 to 7,088 (an increase of about 300 percent)”

³ More generally, the impact on prices will not only depend on the number of entrants but also on their identity and business model.

⁴ This highlights the fact that there may be a number of routes for which the fares will increase after deregulation. This is also shown in the case of France, the interurban bus industry of which was deregulated in 2015 – for example, see Blayac and Bougette (2017).

⁵ National Statistics Institute, Portugal (INE), available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2 (accessed on 18 January 2018)

⁶ Barraqueiro SGPS, S.A, Relatório & Contas 2016, p. 121, available at www.barraqueiro.com/downloads/rc2016.pdf (accessed on 6 March 2018)

⁷ Steer Davies Gleave (2016), p.319.

⁸ This corresponds to 12% of the revenue for all interurban bus services.

References

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Annex 3.C. Entry into local markets and price effect for driving schools

The OECD review of the regulations governing the licensing of new driving schools has led to the identification of certain geographic restrictions and facility requirements that constitute barriers to entry in the relevant market for these services. The OECD recommends that the provisions imposing a minimum distance radius between driving schools and rules stipulating the facilities required (such as minimum classroom area or maximum number of students) be abolished.

Direct impact on supply

Several studies document the impact of lifting geographic restrictions (such as minimum distance between stores) on entry. A prominent example is the relaxation of the requirement that no new pharmacy open within a certain distance from an existing one. For example, using an empirical entry model, Schaumans and Verboven (2008) find that entry restrictions in Belgium had the effect of directly reducing the number of pharmacies by more than 50%. Similarly, a post-assessment study of the retail pharmacies market for the Office of Fair Trading (OFT) (DotEcon, 2010) found an increase of 8.8% in the number of pharmacies in England when the relevant provisions were amended.

A study conducted for the OECD and the Portuguese Competition Authority (CEGEA, 2017) uses an empirical entry model to estimate the impact of the geographical restriction on the number of driving schools in Portugal. It concludes that the restriction is binding in a number of areas and lifting it would lead to entry of 6%, 10%, 19% or 37% – depending on the methodology adopted.

Entry and price effects

As outlined elsewhere in this report, entry of new players can put downward pressure on prices in two ways. New schools will likely offer their services at a lower price point (or offer better services at the same price point) to capture business from existing ones. The latter may in turn lower their rates either as a competitive response or to deter entry where such a threat exists.

In the case of driving schools, entry is unlikely to have a discernible effect on the size of the market, which is relatively constant, consisting of candidate drivers – the cost of attending a driving schools is unlikely to be sufficiently strong a factor to counter the long-term benefits of being able to drive a car. Consequently, given that entry will occur when the restriction was previously binding, it is expected to intensify competition in a market the size of which remains unchanged, thus leading to a decrease in prices.

Expected price change

In order to estimate the effect of (local) entry on average rates charged by driving schools, we rely on past studies on the effect of entry into retail and professional markets where participation was restricted.

The DotEcon (2010) study for the OFT found price effects (on certain categories of products) after the opening up of the retail pharmacy markets. Whilst the effect could only be attributed to the entry of supermarkets, the prices of which were 10% to 30% lower than that of pharmacies, the finding underlines the conclusion that low-cost entrants can have an impact on average prices and consumer welfare.

Bresnahan and Reiss (1991) conduct an empirical analysis of five retail and professional industries and conclude that “*in markets with five or fewer incumbents, almost all variation in competitive conduct occurs with the entry of the second or third firm*”, or in other words that “*post-entry competition increases at a rate that decreases with the number of incumbents*”. Similarly, using a cross-section dataset of local service sectors in Belgium, Schaumans and Verboven (2015) conclude that a second entrant reduces mark-ups by at least 30%, whereas subsequent entry has smaller or insignificant effects.

Annex Table 3.C.1. Entry into local markets and average price effect for driving schools in Portugal

Methodology A (based on municipalities)

Number of driving schools	Price effect	Binding criterion 1			Binding criterion 2		
		No. of areas where restriction is binding	Ratio to total number of areas	Weighted price effect	No. of areas where restriction is binding	Ratio to total number of areas	Weighted price effect
1	30%	4	2%	0.5%	7	3%	0.8%
2	15%	1	0%	0.1%	6	2%	0.3%
3	0%	3	1%	0.0%	4	2%	0.0%
4 or more	0%	47	18%	0.0%	59	22%	0.0%
Total		264		0.5%	264		1.1%

Methodology B (based on distance)

Number of driving schools	Price effect	Binding criterion 1			Binding criterion 2		
		No. of areas where restriction is binding	Ratio to total number of areas	Weighted price effect	No. of areas where restriction is binding	Ratio to total number of areas	Weighted price effect
1	30%	89	12%	3.6%	157	21%	6.4%
2	15%	33	4%	0.7%	39	5%	0.8%
3	0%	12	2%	0.0%	23	3%	0.0%
4 or more	0%	12	2%	0.0%	12	2%	0.0%
Total		737		4.3%	737		7.2%

Note: Additional price effects may result in cases where the number of driving schools in an area of only one increase to three. This second-order effect is not taken into account in the table.

Source: CEGEA (2017), “The Economic Impact of Deregulation: Transport and Liberal Profession Sectors in Portugal”, Report prepared for the Portuguese Competition Authority and the OECD.

In order to estimate the potential price effect of (local) entry in the case of driving schools in Portugal, we use these findings and the geographic distribution of 1 116 driving schools. Based on CEGEA (2017), each matrix in Annex Table 3.C.1 shows the number of areas for which the geographic restriction on entry is found to be binding – using alternative definitions of what constitutes a relevant area and criteria on determining whether the restriction is binding.¹

It is further assumed that entry in areas where only one driving school exists will lead to a 30% decrease in prices; additional entry in areas consisting of two schools will lead to a decrease of half of that, i.e. 15%; whereas further increases in the number of competitors have no impact on prices. This permits us to calculate the average percentage price change, across the whole of Portugal, as a result of entry: it ranges from 0.5% to 7.2%.

Impact on consumer welfare

The consumer benefit is calculated on the basis of the above assumptions on price effects, and using the following equation:

$$Benefit = \left(\rho + \frac{1}{2} |\varepsilon| \rho^2 \right) * R$$

where ρ is the percentage change in pilotage fees as a result of opening up the market to entry. The demand is assumed to be inelastic, so that $\varepsilon = 0$.² Finally, the total turnover (R) for driving schools was EUR 85 million in 2015.³ Assuming that this remains constant, the annual benefit to consumers from following the OECD recommendations and the ensuing entry is estimated to be EUR 0.4 million (for a price change of 0.5%), EUR 0.9 million (price change of 1.1%), EUR 3.7 million (for a price change of 4.3%), EUR 6.1 million (for a price change of 7.2%) – depending on the percentage price changes assumed.

Notes

¹ See Box 3.14. outlining the results of the study.

² The results are not very sensitive to this assumption. For example, assuming an elasticity of -2 would result in substantially the same estimated benefits to consumers.

³ National Statistics Institute, Portugal (INE), available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2 (accessed on 18 January 2018). Not in References.

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Schaumans, C. & Verboven, F. (2015), "Entry and Competition in Differentiated Products Markets", *Review of Economics and Statistics*, 97 (1), pp. 195-209.

Annex 3.D. Price effect from abolishing fixed fees and free entry for vehicle inspection centres

The OECD recommendations for vehicle inspection centres concern two restrictive regulations. In particular, the opening of a vehicle inspection centre is regulated: new centres cannot be established within a certain distance from existing ones; there are limitations to the total number of centres within certain areas, depending on population density; and there is an upper limit on market share such centres can command by geographic areas. Moreover a fixed fee for vehicle inspections is prescribed for each vehicle type. The recommendation is that the geographical restrictions be lifted and price regulation abolished (or substituted by maximum fees).

The combined effect of abolishing fixed fees for inspections and allowing free entry (or threat of entry) in areas where this is currently limited is that there is the potential for lowering the inspection fee for consumers. Additional benefits may come in the form of reduced travel costs and times for users, easier access and convenience, increased choice, and improvement in the quality of service (including reduced waiting times). Given that such benefits are hard to quantify, the last part of the discussion here focuses mainly on benefits arising from a drop in prices (or increase in discounts and offers).

The likely effect of prices charged for inspections after abolishing the fixed fees and allowing free entry is anchored to comparisons with other countries. More specifically, the range of fees levied for inspections in the United Kingdom and France are used. The following exercise is undertaken in the absence of more detailed information on the fee structure, the number of vehicles inspected in each centre (or region) and the relationship between (local) concentration and fees.

First, the range of fees for inspection of private vehicles¹ is recorded. In the case of France, this is found to be between EUR 49 and EUR 75;² whereas in the case of the United Kingdom various price points exist: GBP 25, GBP 35 and GBP 29.99 charged by certain national chains of garages;³ and GBP 40 to GBP 54.85 (the latter being the maximum fee allowed) charged by independent garages and repair centres, car manufacturer authorised dealers and council-run depots.⁴

Second, in order to compute the average price change that can potentially arise from moving to freely-set prices, a (conservative) distribution of (step) prices is assumed as shown in Annex 3.D.1.

The table should be read as follows. A weight of 1% is assigned to the lowest price in the range (EUR 50 in France, GBP 25 in the United Kingdom); 2% to the second lowest price (EUR 55 in France, GBP 30 in the UK – using an increment of EUR 5 or GBP 5) etc. The residual to 100% is assigned to the maximum price in each range, i.e. 85% to EUR 75 in France and 79% to EUR 55 in the United Kingdom. These weights are used to calculate a (hypothetical) weighted average price – given that information on the number of inspection centres at each price point is not available. This in turn gives the ratio of the effective weighted average price to the maximum in each country (97.7% in France and

94.9% in the United Kingdom), or equivalently the average price discount to the maximum (2.3% in France and 5.1% in the United Kingdom).

Annex Table 3.D.1. Fees for private car inspection, France and United Kingdom

Weight	Price	
	France (EUR)	UK (GBP)
1%	50	25
2%	55	30
3%	60	35
4%	65	40
5%	70	45
6%		50
79%		55
85%	75	
Weighted average price	73.3	52.2
Ratio to maximum price	98%	95%

This average discount to the maximum price can be used to approximate the potential downward adjustment in inspection fees following the abolition of set restrictions and the lifting of entry restrictions in Portugal. Using the implied price change of 2.3% and 5.1% and the sector turnover of EUR 312 million,⁵ the benefit to consumers can be estimated using the methodology presented elsewhere in this report. The change in consumer surplus is given by:

$$Benefit = \left(\rho + \frac{1}{2} |\varepsilon| \rho^2 \right) * R$$

where ρ is the percentage change in inspection fees and R is the sector revenues.

While the market demand elasticity is likely to be very low (it is unlikely that the cost of the inspection will result in consumers not undertaking the inspection and therefore not using their cars), the residual demand elasticity will be higher – given the option to undertake the inspection at a different centre. Assuming an elasticity of -2 yields benefits of between EUR 7.3 million and EUR 16.7 million.⁶

Notes

1. Private vehicles are used as a proxy for all vehicles: more information is readily available on prices and offers for inspections of vehicles; and comparisons across countries are easier given that the categorisation of other vehicle types differs among countries. Note that this exercise is intended to uncover an average *percentage change* so that the *level* of fees is not of relevance. Another simplification is abstracting from the cost of repeat/follow-on inspections and associated repairs, which may be relevant in the consumer's assessment of the total cost likely to arise from undertaking the inspection in each centre.

2. <https://www.cteasy.com/fr/guide/controle-technique-prix-moins-cher> (accessed 1 March 2018).

3. <https://www.kwik-fit.com/offers>, <https://www.national.co.uk/mot>, <https://www.halfordsautocentres.com/advice/mot-advice/how-much-does-an-mot-cost>, <https://www.atseuomaster.co.uk/consumer/mot/mot-testing> (all accessed 1 March 2018).

4. <https://bookmygarage.com/mot> (accessed 1 March 2018).

5. National Statistics Institute, Portugal (INE), available at https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0008484&contexto=bd&selTab=tab2 (CAE M71.20, accessed on 18 January 2018).

6. For completeness, assuming an elasticity of 0 instead, results in estimated benefits of between EUR 7.2 million and EUR 15.9 million.

4. Railway sector

In 2015, the Portuguese railway sector had a gross value added (GVA) representing 0.1% of the Portuguese GDP and employed 3 642 persons. The majority of legislation applicable to that sector is largely harmonised with EU legislation. Nevertheless, several barriers to competition were identified, including a lack of regulation concerning the certification of train drivers and a lack of conformity of the respective legislation with EU legislation and each other, a lack of conformity in the validity of railway licences with EU legislation, a lack or inadequacy of maximum times for entities to decide or act, a lack of formal repeal of superseded, not useful or obsolete legislation, and a lack of implementing regulation and guidelines concerning the intervention of the AMT and the IMT. These barriers prevent cost savings and increase legal and regulatory uncertainty for potential and existing railway companies and raise their administrative burden, while allowing some of them to be placed at a competitive disadvantage.

4.1. Introduction

Over the last decades, in Portugal, as in the majority of the European Union (EU), the weight of the railway sector in the transport sector has been decreasing. This is the result of the development of road transport infrastructure and services and of leaner production models and greater flexibility in the work life of the individual.

However, the significant positive impact of the railway sector on economic and social cohesion, as well as on factors such as congestion, oil dependency and greenhouse gas emissions, makes the revitalisation of that mode of transportation a crucial element of EU and national transport strategies.

In fact, the European Commission (EC) has been promoting transferral in the transport activity from road to railways and shipping, having set, as a (two-stage) specific goal that 30% of freight carried over 300 kms by road be shifted to other modes of transport such as railway or waterborne transport by 2030 and that more than 50% of the same transport be shifted in the same manner by 2050 (EC, 2011).

The pursuit of the revitalisation of railway transport requires consideration that the railway sector, as most network industries,¹ is characterised by the high fixed and sunk costs of the construction, management and operation of its infrastructure and the economies of scale inherent in those activities, which make the infrastructure in question non-duplicable. This is adequate to consider the railway infrastructure as a natural monopoly, which should be subject to regulation, contrary to most railway transport services, which should be subject to competition.

In this context, it is up to regulatory authorities to ensure the development of competition in the provision of services and non-discriminatory access to the infrastructure while providing for the existence of the right incentives for investments in the network to be made, ensuring the satisfaction of public service needs and safeguarding consumers' rights.

This has been gradually and successfully accomplished both at the level of the European Union and, nationally, at the Portuguese level for over two decades, through the adoption and continuous improvement of a legal framework aimed, consistently, at: (i) fostering competitiveness; (ii) promoting market opening to national and cross-border competition; (iii) enhancing the interoperability and safety of the network; and (iv) developing a well-integrated system.

In Portugal, the three main measures adopted were the following:

- structural separation of the railway infrastructure and railway transport services, corresponding to the separation between the provision of railway infrastructure management services and the provision of railway transport services;
- the opening to competition of the markets for the provision of railway freight transport services and for the provision of international railway passenger transport services; and
- the establishment of the *Autoridade da Mobilidade e dos Transportes* (AMT), the Portuguese single and independent railway regulator.

The majority of Portuguese legislation applicable to the railway sector falls within the scope of the national transposition of EU legislation and is largely harmonised with it.

The present report is organised in the following way: (i) Section 4.2 describes the Portuguese railway sector and the main pieces of EU and Portuguese legislation that are applicable; (ii) Sections 4.3 to 4.7 detail the analysis of the main barriers to competition in the Portuguese railway sector identified within the scope of the project and the respective recommendations formulated; and (iii) Annex B presents a list of all the provisions applicable to the Portuguese railway sector which are considered to be potentially harmful to competition and the recommendations formulated within their scope.

4.2. Sector overview

The railway sector is a relevant contributor to the Portuguese economy. In 2015, the sector had a GVA of EUR 88.2 million,^{2,3} representing 0.1% of the Portuguese GDP,⁴ and employed 3 642 persons.⁵ Its total impact on the Portuguese economy is expected to increase once the entire supply chain for railway services⁶ is taken into account.

The indirect impact of the railway sector on the economy is based on the links between the railway industry and the sectors that constitute its supply chain. Such an effect represents the economic impact of the railway activities on the companies that supply the railway sector, but do not provide railway services. In September 2015,⁷ the following indirect impacts of the Portuguese railway sector were estimated on the overall economy (Steer Davies Gleave, 2015):

- every EUR 1.00 of outputs produced by the Portuguese railway sector was estimated to generate EUR 0.85 of outputs in the remaining Portuguese economic sectors, without considering imports and exports;
- every EUR 1.00 of outputs produced by the Portuguese railway sector was estimated to generate EUR 1.23 of outputs in the remaining sectors of the Portuguese economy and in the remaining world economies;
- every job created in the Portuguese railway sector was estimated to generate 0.75 jobs in the remaining Portuguese economic sectors, without considering imports and exports; and
- every job created in the Portuguese railway sector was estimated to generate 1.15 jobs in the remaining sectors of the Portuguese economy and in the remaining world economies.

The present chapter describes the Portuguese railway sector. Section 4.2.1 discusses the sector and its players. Section 4.2.2 describes the main (EU and Portuguese) legal framework applicable to the sector. Section 4.2.3 identifies the specific methodology used to analyse the sector, including matters excluded from it.

4.2.1. The sector and its players

Definitions

The railway transport sector refers to all the movements of goods or passengers using a railway vehicle on a specific railway network. It is typically divided into the transport of freight and the transport passengers.

The statistics distinguish between: (i) the revenue earned through transportation services, which refer to the carriage conveyed for an outside party against payment; and (ii) the in-

house transportation services, which refer to the transport carried out by a railway enterprise to meet its internal requirements, regardless of whether or not such transport generates revenue.

The railway freight transport sector refers to all transportation of freight, cargo or goods by railways, not including parcels or baggage transport services which are associated with the railway transport of passengers.

The railway passengers transport sector refers to all transportation of persons who make a journey by railway, with the exception of members of the train crew and persons making a journey solely by railway-operated ferry or bus services.

Regulators

The regulators in the Portuguese railway sector are the following:

- the Ministry of Planning and Infrastructure, which has the mission to develop, conduct, implement and assess transport-related development and cohesion policies and to develop infrastructure policies within the transport sector;
- the Instituto da Mobilidade e dos Transportes (IMT), the Portuguese body entrusted with aspects of railway safety,⁸ as more thoroughly described in Section 4.2.2, which acts under the oversight and jurisdiction of the Ministry of Planning and Infrastructure;
- the AMT, the Portuguese regulatory body for the railway sector, as more thoroughly described in Section 4.2.2; and
- the Gabinete de Prevenção e Investigação de Acidentes com Aeronaves e de Acidentes Ferroviários (GPIAAF), the Portuguese accident and incident investigating body for the railway sector, more thoroughly described in Section 4.2.2.

Economic agents

Since 1 June 2015, the Portuguese railway network is managed by Infraestruturas de Portugal, S.A. (IP), which is state-owned and acts under the jurisdiction of the Ministry of Planning and Infrastructure and the Ministry of Finance.

The object and main activity of IP is the design, construction project, construction, funding, maintenance, operation, revitalisation, extending and modernisation of the Portuguese railway network⁹ and of the Portuguese road network.¹⁰

To pursue of such object, on 11 March 2016, the state and IP concluded a contract within the scope of the Portuguese railway network establishing the obligations of the state concerning funding of infrastructure management and the obligations of IP to achieve certain performance targets in regard to users of the infrastructure¹¹ for a period of five years.

Funding of the Portuguese railway network comes from three sources: (i) charges for its use levied on railway companies; (ii) surplus resulting from complementary activities related to its operation; and (iii) compensatory payments granted to cover costs incurred while fulfilling public service obligations not covered by the other sources of revenue.

In early 2018, the Portuguese railway network was used by the following six railway companies:

- CP – Comboios de Portugal, E.P.E. (CP), which is state-owned and provides passenger services;
- Comsa Rail Transport, S.A. – Branch in Portugal, which provides passenger services and, as a secondary activity, freight services;
- Fertagus – Travessia do Tejo, Transportes, S.A. (Fertagus), which provides passenger services;
- Mediterranean Shipping Company Rail (Portugal) – Operadores Ferroviários, S.A., which provides freight services;
- MEDWAY – Operador Ferroviário e Logístico de Mercadorias, S.A., which provides freight services; and
- Takargo – Transporte de Mercadorias, S.A., which provides freight services.

Besides access to the railway infrastructure, two main elements are necessary for railway companies to operate: (i) the use of interoperability constituents and subsystems; and (ii) the use of train drivers.

As far as interoperability constituents and subsystems are concerned, since 4 August 2008, Associação Portuguesa para a Normalização e Certificação Ferroviária (APNCF) has been the only Portuguese body responsible for establishing the "EC" declaration of conformity or suitability for use of interoperability constituents and the procedure for establishing the "EC" declaration of verification subsystems.¹²

As concerns train drivers, in 2018 there were two entities recognised by the IMT to perform the training requires for driving licences: (i) Fernave – Formação Técnica, Psicologia Aplicada e Consultoria em Transportes e Portos, S.A.; and (ii) Logistel, S.A..

4.2.2. Regulatory framework

The Portuguese railway sector is mainly governed by EU legislation. That integration has been increasing with the growing adoption of EU regulations that are binding and directly applicable throughout the EU. Consequently, the majority of the Portuguese legislation applicable to the railway sector is largely harmonised with the respective EU framework legislation and complies with it.

In the present section, the main pieces of relevant EU legislation are briefly described and an overview of the current Portuguese situation as far as sectoral legislation is concerned is provided.

Directive 91/440/EEC

In the beginning of the 1990s, the EU (European Economic Community at the time) initiated a programme to prepare the European railways for the European Single Market. In order to do so, the regulatory framework needed to allow for the opening of the markets to competition, for more efficiency and, ultimately, for improvement of the competitiveness of European railways.

To achieve those objectives, Directive 91/440/EEC¹³ introduced, in particular: (i) the management independence of railway companies from the state; (ii) the separation between the provision of railway infrastructure management services and the provision of railway transport services; (iii) the improvement of the financial structure of publicly owned or controlled railway companies; and (iv) the granting of access rights for railway

infrastructure to international groups of railway companies and to railway companies that provide international transport of goods.

Since then, these principles have been progressively implemented. Specifically, since 26 February 2001, the EC has adopted four packages of legislative measures. Those measures were aimed at better fostering competitiveness and market opening to competition in the European railway sector. Additionally, that regulatory framework intended to enhance the interoperability and safety of national railway networks and to encourage the development of well-integrated national railway systems, leading to European railways, through certification and harmonization of technical specifications and safety standards.

First Railway Package

The First Railway Package¹⁴ exclusively intended to make the existing railway sector legislation more effective. In order to do so, the regulatory framework established a general framework for the development of European railways and gave railway companies non-discriminatory access to the trans-European railway network, through the opening of the market for the provision of international railway freight transport services to competition.

Moreover, the First Railway Package: (i) clarified the relationships between the railway infrastructure manager, the state, and railway companies; (ii) laid down the requirements for the granting of licences for railway freight transport on European railway networks; and (iii) set out the principles and procedures for the allocation of railway infrastructure capacity and for defining and levying charges for the use of the same infrastructure.

Second Railway Package

The Second Railway Package¹⁵ was aimed at accelerating the construction of an integrated European railway area. To achieve that objective, the regulatory framework opened the markets for the provision of railway freight transport services to competition and guaranteed a high level of railway safety, by setting out a European common approach to railway safety and the laying down of the requirements for interoperability of European high-speed and conventional railway systems.

Furthermore, the Second Railway Package also established the European Railway Agency (ERA), for the gradual alignment of technical regulations and the establishment of common safety objectives applicable to the European railway networks, and determined the creation of national safety authorities and national accident and incident investigating bodies for the railway sector.

Since 1 June 2014, the Portuguese safety authority has been the IMT. The IMT is specifically entrusted with the following tasks regarding railway safety: (i) issuing, renewing, amending and revoking safety authorisations and safety certificates; (ii) developing, monitoring and enforcing the safety regulatory framework, including the system of national safety rules; (iii) authorising the placing in service of the structural subsystems constituting the trans-European high-speed and conventional railway systems and permanently verifying their compliance with the relevant essential requirements; (iv) verifying the compliance of the interoperability constituents with the applicable essential requirements; and (v) authorising the placing in service of certain rolling stock.

Additionally, since 29 June 2017 the Portuguese accident and incident investigating body for the railway sector has been GPIAAF. Its particular mission is to investigate railway

accidents and incidents with a view to preventing them in the future. It determines causes, writes and releases the correspondent technical reports and, if appropriate, formulates recommendations to prevent recurrence of such accidents and incidents.

Third Railway Package

The Third Railway Package¹⁶ was aimed at completing the EU regulatory framework applicable to the railway sector. In order to do so, it opened the market for international railway passenger transport to competition, allowing railway companies to pick up and set down passengers along international railway routes, and ensured basic rights for railway passengers, guaranteeing them minimum quality standards.

The Third Railway Package also established EU-harmonised conditions for delivering train driving licences, through the setting out of the requirements and procedures for the certification of train drivers and the introduction of a European train driving licence.

Recast of the First Railway Package

The need to simplify, consolidate and, in some cases, clarify the rules contained in the First Railway Package, as well as the need to tackle several problematic issues concerning the railway transport market, motivated the adoption of the Recast of the First Railway Package.¹⁷ The Recast merged the (three) directives included in the First Railway Package and, as such, regulates the matters addressed in them.

To achieve those objectives, the Recast improved the framework for investment in the railway sector and ensured fairer access to railway infrastructure and to railway related services. It also strengthened the power of national railway regulators, determining the creation of single and independent national regulatory bodies for the railway sector (in particular, in terms of financial, human and material resources).

In Portugal, that regulatory body, the AMT, was established on 14 May 2014.¹⁸ Its mission is to regulate and monitor the road, railway and inland waterways transport sectors (including their respective infrastructures), as well as the economic activity of the commercial ports and maritime transport sectors. In order to pursue this mission, the AMT has administrative, financial and managerial autonomy and has its own assets.

Fourth Railway Package

The Fourth Railway Package, which included the “Technical pillar of the Fourth Railway Package”¹⁹ the “Market pillar of the Fourth Railway Package”,²⁰ was aimed at enhancing the performance of the European railway sector and, consequently, its competitiveness when compared with other modes of transport while enabling public savings. In order to do so, it fostered the diversity, quality and efficiency of European railway services, by eliminating administrative, technical, institutional and legal obstacles to their development.

Specifically, the technical pillar of the Fourth Railway Package established the EU Agency for Railways, an entity that replaces and succeeds the ERA, and entrusted it with the tasks of issuing, renewing, amending and revoking single safety certificates valid throughout the European Union and authorising the placing in service of rolling stock and types of rolling stock throughout the European Union. Moreover, the regulatory framework optimised, simplified and reduced the use of national technical and safety rules applicable to the railway sector and ensured that the European Rail Traffic Management System (ERTMS) equipment is interoperable.

The market pillar of the Fourth Railway Package determined the opening to competition of the market of national railway passenger transport services²¹ and prevented discrimination between railway companies in their access to railway infrastructure, through independence (in terms of financial, human and material resources) in the governance of that infrastructure. Also, it established a general principle of mandatory competitive tendering procedures for awarding public service contracts for national railway passenger transport²² and set out the principles and procedures applicable in any exceptional (remaining) cases.

Current situation in Portugal

Several pieces of Portuguese legislation have been brought into force to comply with the EU legislation that governs the railway sector²³ and, as such, the rules, conditions, principles and procedures established by it were, in general, adopted in Portugal. The only exception to that situation refers to the Fourth Railway Package.

By early 2018, Portugal had not yet brought into force the legislation required to comply with the Fourth Railway Package, which must be transposed into Portuguese legislation, its technical pillar by 16 June 2019, although that period may be extended until 16 June 2020 in duly justified cases, and, its market pillar, by 25 December 2018.

4.2.3. Methodology

The majority of Portuguese legislation applicable to the railway sector falls within the scope of the national transposition of EU legislation and is largely harmonised with it.

Additionally, the following matters concerning the railway sector and, consequently, any applicable legislation were not analysed within the scope of the “OECD Competition Assessment Review: Portugal”:²⁴

- the provision of urban and suburban railway passenger transport services, given that those services are able to compete with urban and suburban road and light railway passenger transport services, which are explicitly not included in the Project, and the analysis within the scope of the Project of only one of the competing transport modes could create undesirable effects in competition;
- the authorising and operation of notified bodies, given that the railway companies can use the services provided by any European notified body and, therefore, are not significantly influenced by the level of competition and efficiency of the Portuguese market for notified bodies;²⁵
- the rules, conditions, principles and procedures applicable to the congested railway infrastructure, given that, according to the IMT and the stakeholders, a section of that infrastructure has never been and is not expected to be declared to be congested (at least not in the near future);
- the principles and procedures applicable to the definition and levying of charges for the use of the railway infrastructure, given that their proper analysis would require the acquisition of very specific technical knowledge that was not compatible with the time constraints faced by the Project; and
- the rules, conditions, principles and procedures applicable to railway level crossings, given that their proper analysis would require the acquisition of very specific technical knowledge that was not compatible with the time constraints faced by the Project.

Therefore, the number of provisions considered to have the potential to unnecessarily restrain competition in the sector is limited.

The Project analysed 39 Portuguese laws and regulations²⁶ applicable to the railway sector. Among these, the Project identified 100 provisions as potentially harmful to competition and 77 recommendations were made (see Table 4.1).

Provided these recommendations are fully implemented, in order to improve the operational environment of the railway sector, the Project estimated a likely minimum positive annual impact on consumer surplus,²⁷ through lower prices, of around EUR 2.46 million (see Table 4.2).

Table 4.1. Summary of legislation analysed by the Project as applicable to the railway sector

	Railway sector
Pieces of legislation analysed	39
Provisions identified as potentially harmful to competition	100
Recommendations formulated	77

Table 4.2. Summary of the estimated impact of implementation of recommendations for the railway sector formulated in the scope of the Project on consumer surplus

	Operating revenues in 2016	Annual impact on consumer surplus ¹		
		Low ²	Medium ³	High ⁴
Railway freight sector	EUR 206.38 million (m)	EUR 1.04 m	EUR 2.08 m	EUR 3.14 m
Railway passengers sector	EUR 282.49 m	EUR 1.42 m	EUR 2.85 m	EUR 4.30 m
Railway sector	EUR 488.87 m	EUR 2.46 m	EUR 4.94 m	EUR 7.44 m

1. Calculated based on the methodology outlined in Annex A and, specifically, in Box A.2;

2. Assuming a likely impact on prices equal to -0.5% and an elasticity of demand equal to 2.00;

3. Assuming a likely impact on prices equal to -1.0% and an elasticity of demand equal to 2.00;

4. Assuming a likely impact on prices equal to -1.5% and an elasticity of demand equal to 2.00.

Sources: SABI (2017) (accessed on 20 December 2017).

4.3. Certification of train drivers

4.3.1. Description of the relevant provisions

Law 16/2011²⁸ establishes the regime for the certification of train drivers operating locomotives and trains on the Portuguese railway system, transposing Directive 2007/59/EC. However, according to the IMT, by early 2018, the legislation needed to fully regulate Law 16/2011 had not yet been brought into force. The regime effectively applied is IMT's Provisional Regulation concerning the certification of train drivers and agents that monitor trains,²⁹ in force since at least November 2011.³⁰ Both Law 16/2011 and the Provisional Regulation deal with the same matters concerning the certification of train drivers.

In addition to this situation, several provisions included in Law 16/2011 and in the Provisional Regulation conflict with the provisions included in Directive 2007/59/EC and, also, with each other. One example is Art. 7 (a) of the Provisional Regulation, according to which applicants for train driving licences must always be at least 20 years of age. This clearly conflicts with Art. 6 (2) of Law 16/2011 and Art. 10 (second sentence) of Directive 2007/59/EC, which allow individuals between the ages of 18

and 20 to obtain a train driving licence for use exclusively within Portugal. This conflict prevents individuals between the ages of 18 and 20 from becoming train drivers in Portugal and, consequently, reduces the supply of train drivers available to railway companies.

Additionally, various matters of critical importance, such as the minimum medical and training requirements necessary for driving trains, are not fully regulated by the Provisional Regulation and, on the contrary, are thoroughly addressed by Law 16/2011 and/or Directive 2007/59/EC. In fact, the Provisional Regulation only determines general options in the scope of those matters, while Law 16/2011 and/or Directive 2007/59/EC also specify the exact conditions that should be fulfilled so that general options can be adequately implemented.

One example is the minimum set of criteria that should be covered by the medical examinations necessary for obtaining train driving licences. The Provisional Regulation merely determines that those examinations should take into account the individual's sensory functions of vision (including colour perception) and hearing.³¹ In contrast, Law 16/2011 and Directive 2007/59/EC establish very specific requirements concerning the sensory functions in question and, in particular, values that should be taken as guidelines when analysing each one of those functions.³²

4.3.2. Harm to competition

The current situation in Portugal concerning the regulation applicable in the scope of the certification of train drivers leaves the choice of the legislation to be applied in a specific situation (Law 16/2011 or the Provisional Regulation) to the discretion of the IMT. Consequently, the IMT may discriminate in its application of the rules in question. This increases legal uncertainty faced by individuals who want to become train drivers and by train drivers who want to improve their certification and, therefore, by railway companies that hire or wish to hire them and may place some of those individuals and, by extension, some railway companies at a competitive disadvantage.

Moreover, the situation leads to an avoidable increase in costs incurred by railway companies, making it significantly more difficult for them to employ train drivers and to adjust the train drivers' certification to their needs. This is driven by the following factors:

- a reduction in the number of individuals who can drive trains available to businesses, in particular by preventing individuals with certain characteristics from becoming train drivers;
- a reduction in the number of individuals who can drive specific types of trains or who can drive trains on specific railway routes available to businesses, in particular by requiring businesses to wait longer for decisions concerning the certification of train drivers, given that the legislation does not set a maximum period of time for the IMT to decide;
- a reduction in the number of individuals who can drive trains used in the provision of international railway transport services, by preventing holders of train driving licences issued in Portugal that do not fulfil the respective minimum requirements in Directive 2007/59/EC³³ (although complying with the Portuguese legal framework applicable to the certification of train drivers) from practising the profession in a country other than Portugal;³⁴ and

- an increase in the human and financial resources necessary for certifying train drivers, in particular by frequently extending the bureaucracy inherent in that certification.

Railway companies will be even more constrained by the situation in cases in which they are faced with an increased demand for train drivers or for additional certification of train drivers.

Finally, several provisions within Law 16/2011, such as provisions concerning the minimum age necessary for holding a train driving licence, do not need implementing regulation, but merely enforcement. Hence, there seems to be no objective justification for the lack of application of those provisions or for the use of the Provisional Regulation.

4.3.3. Recommendations

As soon as possible, the legislation needed to fully regulate Law 16/2011 should be brought into force, in order to apply Law 16/2011, instead of the Provisional Regulation.

In the meanwhile, both those pieces of legislation should be amended in such a way as to conform with Directive 2007/59/EC and with each other.

4.3.4. Benefits of implementation of the recommendations

The implementation of the recommendations will create legal certainty and cost savings for individuals who want to become train drivers and for train drivers who want to improve their certification and, therefore, for railway companies.

4.4. Licensing of railway transport service providers

4.4.1. Description of the relevant provision

Licences for providing railway transport services³⁵ shall be (initially) valid for a period of time that may not exceed five years, and that period is renewable.³⁶

The provision analysed defines the maximum period of validity for railway licences and determines the need for these licences to be renewed. However, this is contrary to Directive 2012/34/EU,³⁷ which foresees that those licences should rather be valid for as long as their respective holders fulfil the requirements necessary for providing the services in question and be subject to a regular review.

Moreover, the provision does not determine the criteria, such as non-discrimination and uniform treatment of entities, which the IMT needs to fulfil when defining the exact period of time for a railway licence to be valid.

The provision also does not define the period of time for the renewal of those licences and does not determine the principles or procedures applicable. The regular review of the licences foreseen in Directive 2012/34/EU should be carried out at least every five years.³⁸

4.4.2. Harm to competition

The provision appears to achieve its policy objective of ensuring regular analysis of the fulfilment of the requirements underlying railway licences in a more harmful way than other provisions included in the Portuguese legal framework applicable to the licensing of railway companies which share that objective.³⁹

In fact, the fulfilment of those requirements should be permanently verified.⁴⁰ For this reason, the licences in question can be suspended or revoked as soon as they no longer comply with all the requirements underlying them.⁴¹

Also, the number of railway companies operating in Portugal has been (and is expected to continue to be) very limited. Therefore, it is more likely that the IMT will quickly know about any substantial changes in the circumstances of the licences.

Additionally, the provision potentially entails the lapse of those companies' licences, in particular by requiring businesses to wait longer for decisions concerning the renewal of their licences, given that the legislation does not set a maximum period of time for the IMT to decide.

The provision may also place some railway companies at a competitive disadvantage. In fact, the provision allows the IMT to grant railway licences which are analogous to each other, as far as their scope is concerned, but that are valid for different periods of time (after their respective issue or renewal), and, consequently, gives leave to the IMT to apply dissimilar conditions to equivalent situations.

As a result, the provision increases the administrative burden of railway companies, creates regulatory uncertainty for them and leads to an unsubstantiated and, consequently, avoidable increase in the costs incurred by them.

The additional costs incurred by railway companies due to the provision are strongly influenced by the fees charged by the IMT for the issue and for the renewal of each of the six types of licences existing in Portugal.⁴² These fees vary between EUR 25 000 (in the case of a licence for providing regional passenger transport) and EUR 75 000 (in the case of a licence for providing international passenger transport) and are the same for the renewal and for the issue of the licences.^{43,44}

Nevertheless, a railway enterprise which holds a licence for providing a specific passenger transport may provide any passenger transport services and, in the same manner, a railway enterprise which holds a licence for providing a specific freight transport may provide any freight transport services.⁴⁵

Finally, it is worth mentioning that the validity of the railway licences issued in the majority of European countries is unlimited and that those licences are subject to review every three to five years (EC, 2006).

4.4.3. Recommendations

The maximum period of time of validity for railway licences should be abolished.

Instead, those licences should be valid for as long as their respective holders fulfil the requirements necessary for providing the services in question, in accordance with Directive 2012/34/EU. They should be reviewed every five years.

Alternatively (as a second-best option), the period of time of validity for railway licences should be changed from a period of time that may not exceed five years to (exactly) five years. Also, those licences should be renewed consecutively for periods of time equal to the period of time during which they were (initially) valid.

Furthermore, the principles and procedures applicable to the revision or renewal of railway licences should be determined. Also: (i) those licences should be valid throughout their revision or renewal process; and (ii) the consequence of non-compliance with the

principles and procedures by railway companies should be the (certain) revocation of those licences.

4.4.4. Benefits of implementation of the recommendations

The implementation of the recommendations will partially eliminate the administrative burden of entities that want to become railway companies and railway companies that want to continue to operate beyond five years. It will also create regulatory certainty and provide cost savings for those entities, while preventing some of them from being placed at a competitive disadvantage.

4.5. Administrative procedures

4.5.1. Description of the relevant provisions

Several provisions included in the legislation applicable to the railway sector concern various administrative procedures, applicable, in particular, to: (i) implementation of safety management systems; (ii) issue, amendment and renewal of safety authorisations; (iii) access to and use of the railway infrastructure; (iv) issue, amendment and renewal of safety certificates; and (v) certification of train drivers. However, the majority of these procedures do not set a deadline for certain phases or, where they do, set a deadline for only part of the phase in question.⁴⁶

Specifically, several of the procedures analysed leave it to the discretion of the relevant entity, such as the IMT, the AMT or the railway infrastructure manager, to decide its response time. Sometimes, this is because the provisions leave it to the entity in question to decide the length of time during which it collects information.

Additionally, several of the deadlines defined in the procedures do not seem to be fully justified by the amount and the type of work involved.

4.5.2. Harm to competition

The provisions create regulatory uncertainty for railway companies and may lead to an avoidable increase in costs incurred by those companies, given that the additional waiting time for decisions may involve having to interrupt their activities. In fact, these provisions make it significantly more difficult for the railway companies to decide and, in particular, to develop their respective business plans, which requires accurate and timely information about the operational context.

The IMT stated that the deadlines for phases of administrative procedures foreseen in the Code of Administrative Procedure⁴⁷ are applicable to cases in which the procedures being analysed do not set a deadline for certain phases or set a deadline for only part of the phase in question.

However, the stakeholders drew attention to the fact that, in the majority of those cases, the period of time between the receipt of a request and the adoption of a decision or action has been longer than what seems necessary for the amount and type of work involved. For that reason, the Code of Administrative Procedure does not appear to prevent delaying decisions or actions. Consequently, it seems not to prevent railway companies from being unduly hindered when entering the market or operating in it.

Such might arise from the fact that the Code of Administrative Procedure has to be sufficiently broad to be suitable for the diversity of the administrative procedures covered

by it.⁴⁸ Therefore, the Code of Administrative Procedure does not take into consideration the specificities underlying each of those administrative procedures, which may justify the adoption of rules, conditions, principles and procedures tailored specifically for it.

This seems to be the case for the procedures under analysis and a clear deadline for a phase to be completed is of the utmost importance.

The deadline for replying to a request should be set so as to take into consideration the needs of both the relevant entity and the railway enterprise responsible for the underlying request. In fact, that deadline should correspond to the period of time strictly necessary for the entity which is responsible for the phase in question to collect all relevant documentation or information and, based on those elements, to reflect on its decision or action.

4.5.3. Recommendations

A maximum response time should always be set in such a way so as to correspond to the period of time strictly necessary for the entity required to decide or act to collect all relevant documentation or information and to reflect on its decision or action.

Furthermore, if necessary, existing deadlines should be modified to comply with the same principles.

4.5.4. Benefits of implementation of the recommendations

The implementation of the recommendations will allow the entities in charge of phases of administrative procedures to make decisions that are prompt, duly weighed and based on all relevant information. This will create regulatory certainty and cost savings for entities that want to become railway companies and railway companies that want to continue to operate.

4.6. Obsolete legislation

4.6.1. Description of the relevant provisions

Several pieces of legislation applicable to the railway sector analysed in the scope of the Project were superseded in their substance by more recent legislation, have lost their usefulness (as they were supposed to be in force only for a certain period of time or to be applicable only to certain cases) or became obsolete (as a result of technological developments).

Amongst those pieces of legislation are:

- Decree-Law 146/2004,⁴⁹ which extends a transitional period applicable to certain provisions included in Decree-Law 270/2003 that expired, ultimately, on 15 June 2007, with the entry into force of Decree-Law 231/2007;
- Decree-Law 177/2007,⁵⁰ which exclusively amends one piece of legislation that was expressly repealed by Decree-Law 27/2011;
- Decree-Law 178/2007,⁵¹ which exclusively amends one piece of legislation that was expressly repealed by Decree-Law 27/2011;
- Decree-Law 191/2008,⁵² which exclusively amends two pieces of legislation that were expressly repealed by Decree-Law 27/2011;

- Decree-Law 20/2010,⁵³ which regulates subjects that, since 08 October 2015, have been regulated by Decree-Law 217/2015;
- Regulation 18/2000,⁵⁴ which regulates subjects that, since 23 February 2011, have been regulated by Decree-Law 27/2011;
- Regulation 473/2010,⁵⁵ which regulates subjects that, since 08 October 2015, have been regulated by Decree-Law 217/2015; and
- Regulation 630/2011,⁵⁶ which regulates subjects that, since 08 October 2015, have been regulated by Decree-Law 217/2015.

In addition, according to the IMT and the stakeholders, the majority of the provisions⁵⁷ included in Decree-Law 39780 ceased to be applicable with the liberalisation of the transport of goods⁵⁸ or with the entry into force of the Legal Regime of the State Owned Enterprises,⁵⁹ of the Code of Public Contracts,⁶⁰ of the relevant concession contracts or of the Framework Law of Land Transport System.⁶¹ Therefore, Decree-Law 39780 (in particular, the provisions included in it which were not expressly repealed by other pieces of legislation) was analysed within the scope of the Project, in the search for provisions which are potentially harmful to competition.

The majority of the provisions included in Decree-Law 39780 regarded as being potentially harmful to competition for some reason were considered to be obsolete. In particular, those provisions represent 18.2% of the provisions applicable to the railway sector analysed in the scope of the Project which are potentially harmful to competition and in which the restriction does not appear to be proportional to the policy objective.

4.6.2. Harm to competition

The lack of formal repeal of obsolete provisions makes it significantly more difficult for entities that want to become railway companies and for railway companies to have accurate and timely information concerning the relevant operational context. This creates legal and regulatory uncertainty for those entities and leads to an unsubstantiated and, consequently, avoidable increase in the costs they incurred. In fact, such a situation results in:

- an increase in the human and financial resources necessary for businesses to begin or continue to operate, given that they have to search for the regulation that is being effectively implemented;
- a reduction in the necessary and adequate information available to businesses to decide and, in particular, to develop their respective business plans and, consequently, an increase in the likelihood that businesses erroneously consider that they do not comply with all the applicable regulations; and
- an increase in the likelihood that businesses are required to fulfil requisites which have ceased to be applicable.

4.6.3. Recommendation

The legislation and the provisions included in legislation which have been superseded in their substance by more recent legislation, have lost their usefulness or have become obsolete as a result of technological developments should be expressly revoked.

4.6.4. Benefits of implementation of the recommendation

The implementation of the recommendation will create legal and regulatory certainty and lead to cost savings for entities that want to become railway companies and for existing railway companies, as it will substantially reduce their search costs.

4.7. Regulations and guidelines still to be implemented

4.7.1. Description of the relevant provisions

Several provisions included in the legislation applicable to the railway sector analysed in the scope of the Project explicitly require the approval of new implementing regulations concerning, in particular: (i) the establishment of a framework for the allocation of railway infrastructure capacity and for the definition and levying of charges for the use of the same infrastructure; (ii) the adoption of rules for submitting applications and for organising examinations in the certification of train drivers; (iii) the setting out of various procedures; and (iv) the laying down of requirements for carrying out certain economic analyses. However, by early 2018, many of those regulations had not yet been adopted.

Amongst those provisions are:

- Art. 24 (1) of Law 16/2011, which requires the IMT to approve regulations indispensable for the organisation of examinations concerning professional knowledge necessary for obtaining train driving licences;
- Art. 25 (2) of Law 16/2011, which requires the Portuguese Government to establish the procedures applicable for recognising the training courses necessary for obtaining train driving licences;
- Art. 26 (2) of Law 16/2011, which requires the Portuguese Government to establish the procedures for the recognition of entities to carry out the medical examinations or psychological evaluations necessary for obtaining train driving licences;
- Art. 29 of Law 16/2011, which requires the IMT to define the rules for submitting applications through which entities request to the IMT their recognition for performing the examinations concerning professional knowledge necessary for obtaining train driving licences;
- Art. 20 (2) of Decree-Law 27/2011, which requires the IMT to clarify whether additional authorisations for placing in service of vehicles conform with the relevant technical specifications for interoperability (TSIs) and of vehicles not conforming with the applicable TSIs are needed;
- Art. 4 (2) of Decree-Law 217/2015, which requires the AMT to lay down the framework and, if necessary, specific rules for the allocation of railway infrastructure capacity and for the definition and levying of charges for the use of the same infrastructure; and
- Art. 11 (2) of Decree-Law 217/2015, which requires the AMT to define the criteria for analysing the risks to the economic equilibrium of a public service contract resulting from the picking up and setting down of passengers at any station by railway companies providing international railway passenger transport.

Additionally, the implementation of many of the provisions analysed requires the intervention of the AMT or the IMT concerning specific matters, in particular by: (i) making decisions; (ii) defining administrative procedures or requirements; (iii) taking the necessary and appropriate measures to accomplish certain objectives; and (iv) carrying out studies. Such intervention is guided by rules, conditions, principles and procedures that those entities determine taking into consideration the specific matters in question. Nevertheless, by early 2018, those elements had not yet been published, specifically in the form of guidelines.

Amongst those provisions are:

- Art. 66-S (4) of Decree-Law 270/2003, which foresees that the IMT may, in three specific cases, fulfil its obligations of identification and certification of the entity responsible for the maintenance of freight wagons through the adoption of alternative measures to the respective measures adopted at the European level;
- Art. 18 (4) of Decree-Law 27/2011, which foresees that the IMT shall, in specific cases, determine the extent to which the relevant TSIs are applicable to projects relating to the renewal or upgrading of subsystems concerning structural areas;
- Art. 18 (6) (b) of Decree-Law 27/2011, which foresees that the IMT shall, in specific cases, determine the technical characteristics applicable in place of the relevant TSIs in the scope of projects relating to the renewal or upgrading of subsystems concerning structural areas;
- Art. 20 (6) of Decree-Law 27/2011, which foresees that the IMT may grant authorisations for placing in service of groups of identical vehicles of a type of project;
- Art. 7 (3) of Decree-Law 217/2015, which foresees that the AMT may demand railway companies to contribute to the development of the railway infrastructure, in particular through investment in, maintenance of and funding of that infrastructure;
- Art. 8 (5) of Decree-Law 217/2015, which foresees that the AMT may, in specific cases, require the railway infrastructure manager to balance its accounts without receiving public funding;
- Art. 20 (4) of Decree-Law 217/2015, which foresees that the IMT may require applicants for railway licences to hand in an audit report and adequate documents drawn up by banks, public savings banks, accountants or auditors;
- Art. 24 (3) of Decree-Law 217/2015, which foresees that the IMT may, in specific cases, issue temporary railway licences, which shall be valid for a period of time that does not exceed six months;
- Art. 24 (4) of Decree-Law 217/2015, which foresees that the IMT may, in specific cases, revoke railway licences;
- Art. 24 (5) of Decree-Law 217/2015, which foresees that the IMT may, in specific cases, suspend railway licences;
- Art. 24 (6) of Decree-Law 217/2015, which foresees that the IMT shall determine the requirements underlying the end of the suspension of a railway licence; and

- Art. 31 (8) of Decree-Law 217/2015, which foresees that the AMT shall lay down the rules for the allocation of potential revenues of the railway infrastructure manager generated by the levying of charges for the costs of the environmental effects of the operation of the railways.

Even in 2012, the IMT's activity plan mentioned the following needs concerning the certification of train drivers (IMTT, 2012), which, by early 2018, had not yet been fully met: (i) adopt the regulations required by Law 16/2011; (ii) establish the procedures for examinations concerning the professional knowledge necessary for obtaining train driving licences; (iii) publish a manual of procedures concerning the entities recognised to perform the training necessary for obtaining train driving licences; (iv) develop a computerised system to keep an updated register of the train driving licences issued; (v) implement the examinations concerning the professional knowledge necessary for obtaining train driving licences; and (vi) enhance the licensing and certification portal by enabling its use in the scope of the certification of train drivers.

4.7.2. Harm to competition

The lack of implementing regulations or guidelines for the conduct and decision-making processes of the AMT and the IMT allows them to be more arbitrary in their actions. This makes it more difficult for potential and existing railway companies to obtain accurate and timely information concerning the relevant operational context. It also creates regulatory uncertainty for those entities and may lead to an avoidable increase in the costs they incur. In fact, such a situation:

- allows the AMT and the IMT to act differently in analogous circumstances, allowing the AMT and the IMT to apply dissimilar conditions to equivalent situations, potentially placing some railway companies at a competitive disadvantage;
- results in a reduction in the necessary and adequate information available to businesses to decide and, in particular, to develop their business plans.

4.7.3. Recommendations

The regulation whose approval is explicitly required by several provisions should be brought into force.

Also, the rules, conditions, principles and procedures which guide the intervention of the AMT or the IMT in the implementation of several provisions should be published.

4.7.4. Benefits of implementation of the recommendations

The implementation of the recommendations will increase predictability and transparency in the application of provisions. As a result, it will create regulatory certainty and provide cost savings for those entities that want to become railway companies and for existing railway companies.

Notes

¹ Industries which provide services through a network infrastructure.

² *Source:* INE (2017b), “valor acrescentado bruto (€) das empresas por actividade económica (subclasse - CAE Rev. 3) e escalão de pessoal ao serviço”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0006612&contexto=bd&selTab=tab2 (accessed on 26 October 2017).

³ The present chapter does not cover the public administration, defence and social security sectors, given that they do not relate directly to the transport sector in terms of activities carried out, although they have an impact on that sector.

Therefore, all the references to employment included in the present report should be understood as being references to employment without taking into account individuals employed in the public administration, defence or social security sectors.

⁴ *Sources:* (i) INE (2017b), “valor acrescentado bruto (€) das empresas por actividade económica (subclasse - CAE Rev. 3) e escalão de pessoal ao serviço”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0006612&contexto=bd&selTab=tab2 (accessed on 26 October 2017); (ii) OECD (2017b), “value added and its components by activity, ISIC rev4”, http://stats.oecd.org/Index.aspx?DataSetCode=SNA_TABLE6A (accessed on 28 November 2016); and (iii) OECD (2017a), “GDP”, http://stats.oecd.org/Index.aspx?DataSetCode=SNA_TABLE1 (accessed on 12 December 2017).

⁵ *Sources:* (i) Eurostat (2017), “annual detailed enterprise statistics for services (NACE Rev. 2 H-N and S95)”, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=sbs_na_1a_se_r2 (accessed on 29 November 2016); and (ii) INE (2017a), “pessoal ao serviço (nº) das empresas por actividade económica (subclasse - CAE Rev. 3) e escalão de pessoal ao serviço”, https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0006593&contexto=bd&selTab=tab2 (accessed on 17 December 2017).

⁶ Which includes a wide variety of services, such as train manufacturing services and catering services.

⁷ The most recent information known.

⁸ Henceforth called “Safety authority”.

⁹ Including the command and control of railway traffic.

¹⁰ In accordance with Art. 2 (1) of the statutes of IP, approved by Decree-Law 91/2015.

¹¹ Those targets cover a wide variety of variables, in particular train speed, reliability of the tracks, satisfaction of users, network capacity, asset management, volume of activity, safety levels and environmental protection.

¹² Henceforth called “Notified body”.

¹³ Repealed by Directive 2012/34/EU.

¹⁴ Includes Directive 2001/12/EC, Directive 2001/13/EC and Directive 2001/14/EC, all repealed by Directive 2012/34/EU.

¹⁵ Includes Directive 2004/49/EC (repealed by Directive 2016/798/EU with effect from 16 June 2020), Directive 2004/50/EC, Directive 2004/51/EC (repealed by Directive 2012/34/EU) and Regulation (EC) 881/2004 (repealed by Regulation (EU) 2016/796).

Directive 2004/49/EC was amended, in particular, by Directive 2008/57/EC (repealed by Directive 2016/797/EU and Directive 2016/798/EU with effect from 16 June 2020), Directive 2008/110/EC (repealed by Directive 2016/798/EU with effect from 16 June 2020), Directive 2009/149/EC (repealed by Directive 2016/798/EU with effect from 16 June 2020) and Directive 2014/88/EU (repealed by Directive 2016/798/EU with effect from 16 June 2020).

Directive 2008/57/EC was amended, in particular, by Directive 2009/131/EC (repealed by Directive 2016/797/EU with effect from 16 June 2020), Directive 2011/18/EU (repealed by Directive 2016/797/EU with effect from 16 June 2020), Directive 2013/9/EU and Directive 2014/38/EU.

¹⁶ Includes Directive 2007/58/EC, Directive 2007/59/EC, Regulation (EC) 1370/2007, Regulation (EC) 1371/2007 and Regulation (EC) 1372/2007.

Directive 2007/59/EC was amended, in particular, by Directive 2014/82/EU and Directive 2016/882/EU.

¹⁷ Consists of Directive 2012/34/EU.

¹⁸ The AMT started to carry out its tasks on 12 September 2014.

¹⁹ Consists of Directive 2016/797/EU, Directive 2016/798/EU and Regulation (EU) 2016/796.

²⁰ Consists of Directive 2016/2370/EU, Regulation (EU) 2016/2337 and Regulation (EU) 2016/2338.

²¹ As of 14 December 2020.

²² As of 25 December 2023.

²³ The main pieces of Portuguese legislation brought into force to comply with Directive 91/440/EEC were Decree-Law 252/95 (repealed by Decree-Law 60/2000, repealed, in turn, by Decree-Law 270/2003), Decree-Law 104/97 (its provision relevant within the scope of Directive 91/440/EEC was repealed by Decree-Law 270/2003) and Decree-Law 59/2012. The main pieces of Portuguese legislation brought into force to comply with the First Railway Package were: (i) in the case of Directive 2001/12/EC, Decree-Law 270/2003; (ii) in the case of Directive 2001/13/EC, Decree-Law 270/2003; and (iii) in the case of Directive 2001/14/EC, Decree-Law 270/2003 and Regulation 473/2010. The main pieces of Portuguese legislation brought into force to comply with the Second Railway Package were: (i) in the case of Directive 2004/49/EC, Decree-Law 231/2007, Decree-Law 395/2007 (repealed by Decree-Law 70/2012), Decree-Law 394/2007, Decree-Law 70/2012 (repealed by Decree-Law 36/2017), Decree-Law 151/2014, Regulation 442/2010 and Regulation 443/2010; (ii) in the case of Directive 2004/50/EC, Decree-Law 177/2007 (repealed, tacitly, by Decree-Law 27/2011, given that it exclusively amends Decree-Law 75/2003 and Decree-Law 75/2003 was repealed, explicitly, by Decree-Law 27/2011) and Decree-Law 178/2007 (repealed, tacitly, by Decree-Law 27/2011, given that it exclusively amends Decree-Law 93/2000 and Decree-Law 93/2000 was repealed, explicitly, by Decree-Law 27/2011); and (iii) in the case of Directive 2004/51/EC, Decree-Law 231/2007. Furthermore, the main implementing pieces of Portuguese legislation were: (i) in the case of Directive 2008/57/EC, Decree-Law 27/2011, Decree-Law 41/2014 and Decree-Law 179/2014; (ii) in the case of Directive 2008/110/EC, Decree-Law 27/2011; (iii) in the case of Directive 2009/149/EC, Decree-Law 62/2010; and (iv) in the case of Directive 2014/88/EU, Decree-Law 214-D/2015. Also, the main implementing pieces of Portuguese legislation were: (i) in the case of Directive 2009/131/EC, Decree-Law 27/2011; (ii) in the case of Directive 2011/18/EU, Decree-Law 182/2012; (iii) in the case of Directive 2013/9/EU, Decree-Law 41/2014; and (iv) in the case of Directive 2014/38/EU, Decree-Law 179/2014.

The main pieces of Portuguese legislation brought into force to comply with the Third Railway Package were: (i) in the case of Directive 2007/58/EC, Decree-Law 20/2010; and (ii) in the case of Directive 2007/59/EC, Law 16/2011. Additionally, the main implementing pieces of Portuguese legislation were: (i) in the case of Directive 2014/82/EU, Decree-Law 138/2015; and (ii) in the case of Directive 2016/882/EU, Decree-Law 24/2017.

The main piece of Portuguese legislation brought into force to comply with the Recast was Decree-Law 217/2015.

²⁴ Henceforth called “Project”.

²⁵ According to the IMT and the stakeholders, the characteristics of the Portuguese market in which notified bodies operate (in particular, the low level of the respective demand) do not and will not allow for the existence of more than one Portuguese notified body. In fact, APNCF has been the only Portuguese notified body since 04 August 2008, when it was created.

²⁶ Henceforth called “Pieces of Portuguese legislation”.

²⁷ The difference between the amount that consumers are willing and able to pay for railway transport services and the amount that consumers actually pay for those services.

²⁸ Its last modification was made by Decree-Law 138/2015.

²⁹ Henceforth called “Provisional Regulation”.

³⁰ The earliest mention of the application of the Provisional Regulation that it was possible to identify.

³¹ In accordance with Art. 9 (2) (second sentence) of the Provisional Regulation.

³² In accordance with: (i) in the case of the individuals’ sensory functions of vision, Art. A (4) (2) of Annex II of Law 16/2011 and Art. 1 (2) of Directive 2007/59/EC; and (ii) in the case of the individual’s sensory functions of hearing, Art. A (4) (3) of Annex II of Law 16/2011 and Art. 1 (3) of Directive 2007/59/EC.

³³ Regarding age, knowledge and competences developed or acquired and medical condition.

³⁴ At the EU level, no mutual recognition rights have been conferred relating to entitlements for driving trains obtained without the fulfilment of the respective minimum requirements foreseen in Directive 2007/59/EC.

³⁵ Henceforth called “Railway licences”.

³⁶ In accordance with Art. 23 (3) of Decree-Law 217/2015, which establishes rules, conditions, principles and procedures applicable in the scope of the provision of railway infrastructure management services and of the provision of railway transport services.

³⁷ Specifically, in Art. 23 (2) (first sentence) and in Art. 23 (2) (second sentence), respectively, of Directive 2012/34/EU.

³⁸ In accordance with Art. 23 (2) (third sentence) of Directive 2012/34/EU.

³⁹ Specifically, Art. 24 (1) of Decree-Law 217/2015.

⁴⁰ In accordance with Art. 24 (1) of Decree-Law 217/2015.

⁴¹ An action which is explicitly foreseen in Art. 24 (1) (second paragraph) of Directive 2012/34/EU.

⁴² In accordance with Art. 17 (5) of Decree-Law 217/2015.

⁴³ In accordance with Art. 1 to Art. 4 and Art. 6 to Art. 7 of chapter XVII of Annex 1 of Ordinance 1165/2010, which defines the fees applicable to the provision of services by the IMT.

⁴⁴ The potential of the administrative fees charged by the IMT for the issue or renewal of railway licences to unnecessarily restrain competition in the sector is analysed in Section 2.3.3 and, specifically, in Box 2.1.

⁴⁵ In accordance with Art. 17 (6) of Decree-Law 217/2015.

⁴⁶ Such as the maximum period of time for the IMT to decide or act from the date of receipt of all relevant documentation or information (and not from the date of receipt of the request in question).

⁴⁷ Approved by Decree-Law 4/2015 and which establishes rules, conditions, principles and procedures applicable in the scope of the conduct of entities adopted in the exercise of public powers or regulated by administrative law.

⁴⁸ The Code of Administrative Procedure is applicable, as a general rule, to any entity's behaviour engaged in the exercise of public powers or regulated by administrative law.

⁴⁹ Which extends the transitional regime applicable to the rules concerning the calculation of the tariffs due for use of the railway infrastructure foreseen in Decree-Law 270/2003.

⁵⁰ Which amends Decree-Law 75/2003.

⁵¹ Which amends Decree-Law 93/2000.

⁵² Which amends Decree-Law 75/2003 and Decree-Law 93/2000, transposing Directive 2007/32/EC into national law.

⁵³ Which liberalises the provision of international railway passenger transport services to competition in the railway infrastructure and establishes the rules applicable in the scope of access to the provision of those services, transposing Directive 2007/58/EC into national law.

⁵⁴ Which establishes the requirements for granting individual authorisations for the placing in service of rolling stock.

⁵⁵ Which establishes a regime aimed at improving the performance of the railway network, regulating Art. 60 of Decree-Law 270/2003.

⁵⁶ Which establishes methodologies and rules applicable in the scope of the tariffs due for the provision of essential, additional or ancillary railway services, in accordance with Decree-Law 270/2003.

⁵⁷ Specifically, all the provisions with the exception of Art. 53 to Art. 63.

⁵⁸ Established in Decree-Law 270/2003.

⁵⁹ Established in Decree-Law 133/2013.

⁶⁰ Approved by Decree-Law 18/2008.

⁶¹ Law 10/90.

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5. Port and maritime sector

This chapter analyses the port and maritime transport sector in Portugal, proposing regulatory reforms and policy changes to enhance competition and competitiveness in the sector. While main Portuguese ports follow a landlord port management model, which is the predominant model in most OECD countries, national regulations often translate into burdensome concessions, licensing or authorisation regimes that pose unnecessary barriers to entry. There is often room to implement alternative regulations that can be less restrictive to the participation of the private sector in domains such as cargo handling, piloting, towing, port labour companies and shipping agents. With respect to maritime activities outside ports, although most of the legislation is international, there are some unjustified national barriers to competition, for instance, in the public services regime for cabotage in the Portuguese islands. The sector also suffers from administrative burdens and legal uncertainty resulting from obsolete legislation and an unclear legal institutional framework.

5.1. Introduction

Maritime transport plays a fundamental role in the movement of goods around the world, ultimately promoting international trade and economic growth. In an era of digitalisation where consumers increasingly buy products online from global markets and companies interact with suppliers overseas, the maritime and port sector is growing in volume and in value, enhancing its already important historical dimension. In fact, transportation by sea still remains one of the cheapest modes of shipping goods across borders, continuously opening new markets to competition and increasing pressure on businesses to innovate and perform more efficiently.

There is considerable variety with regards to competition in port activities worldwide. In some regions there is fierce competition between ports and inside ports. In other locations enhancing competition can be a daunting task, especially where ports are local natural monopolies with limited space and subject to heavy national regulations. The state of port competition also needs to be assessed in a context where ports face global shipping alliances with strong bargaining power.¹ Certain shipping sectors, such as container shipping, have recently become much more concentrated, following a wave of mergers and acquisitions.²

The sea has no physical barriers to the entry of international players and is mostly governed by international law. However there might be various other barriers to market entry or anti-competitive behaviour. National regulations may restrict competition in national or local maritime routes for protectionism and public service reasons. Shipping companies traditionally have been organised in international conferences that were able to collectively set prices. This practice has been prohibited in some regions of the world (e.g. in the European Union) and is gradually disappearing.

The relevance of the port and maritime sector is particularly important in the context of the Portuguese economy. Together with the islands, Portugal has one of the largest exclusive economic zone of the European Union,³ and in the world. The country is also strategically positioned in the middle of essential routes that connect the continents of America and Europe, as well as Africa and northern Europe. The successful development of the port and maritime sector in Portugal depends on the existence of a national regulatory framework that enhances competition and promotes an efficient allocation of resources.

This chapter provides a competition assessment of port and maritime activities in Portugal. The remaining part of this section presents an overview of the structure of the sector, its main regulatory framework and the methodology used for competition assessment. Then, Sections 5.2 to 5.7 discuss relevant regulatory barriers, providing for each an analysis of competition harm and policy recommendations for each one. Section 5.2 addresses the regulatory barriers related to the port management model in Portugal. Section 5.3 discusses the design of port concessions, with a special focus on cargo handling; Section 5.4 analyses licensing regimes for several port activities; Section 5.5 scrutinises the regulation of port labour companies; Section 5.6 examines competition barriers related to piloting in ports; and lastly Section 5.7 addresses national activities of maritime transport.

5.1.1. Sector overview

Maritime transport consists in the movement of goods and people by sea. It can be international, where freight and passengers are transported between ports of different

countries; and national or coastal, where it takes place between ports of the same country. In turn, national maritime transport can be split into local maritime transport, if it is confined to a restricted geographical area (usually within the jurisdiction of a single port); and maritime cabotage, if the national maritime transport is not limited to a local area.

The provision of maritime transport services fundamentally depends on the existence of ports, which are delimited areas on the coast that interconnect maritime routes and serve as a link to several other modes of transportation. Most ports have an extensive network of infrastructure that typically includes quays,⁴ roads, rail tracks, areas for storage and stacking, repair facilities, as well as fences or walls to securely enclose the port (OECD, 2011). In addition, ports include superstructures constructed above the main infrastructure, which comprise terminal buildings, warehouses and cargo handling equipment, such as lifting cranes and pumps, among others.

In Portugal, ports are managed by **port authorities**, the institutions in charge of coordinating port activities, investing in infrastructures and operating some or all of the port services. They are also responsible for several safety services and navigation aids, including navigation lights, radar and radio, as well as traffic systems. Port authorities can be designated by port institutions and port administrations, and they must be distinguished from the concept of a national port authority, which is sometimes used to refer to the institution responsible for sectorial regulation.

Despite the prominent role of port authorities in management and investment in infrastructure, port services can be provided not only directly by the port authority, but also by **private operators** through regimes of concession or licensing. The most common port services include:

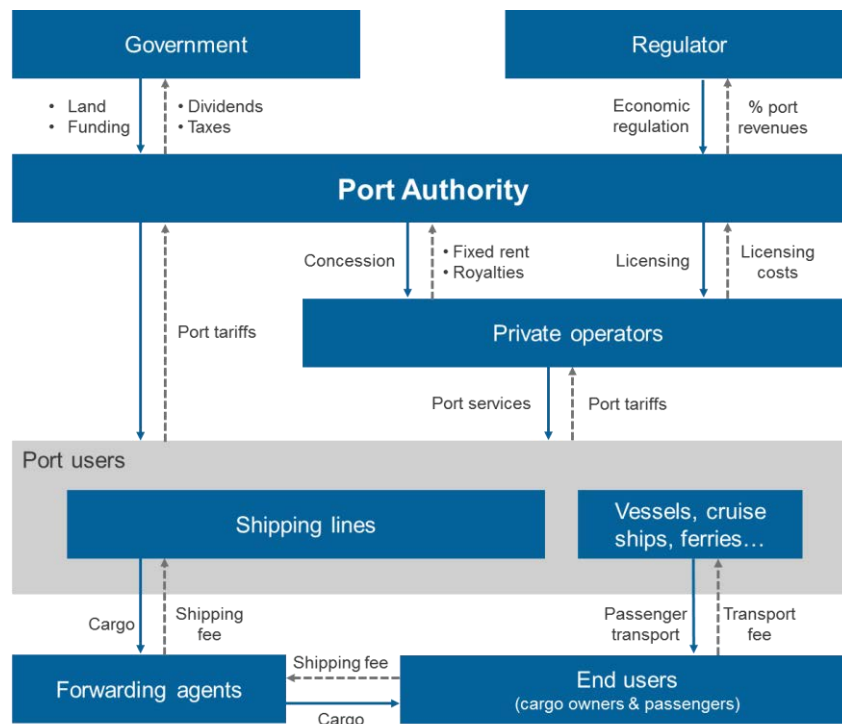
- **cargo-handling**, which involves both cargo loading operations commonly known as stevedoring and marshalling services such as storage, assembly and sorting of cargo
- **towage**, the service of moving vessels in the port area using tugboats
- **piloting**, a specialised service provided by pilots with local knowledge, who assist ship commanders navigating and manoeuvring the vessels inside the port area
- **ancillary services**, that is, a wide range of services such as the provision of water and electricity, bunkering (supply of fuel), waste reception and security, among others.

The agents that directly benefit from port services are the **port users**, who comprise a variety of national and international maritime transport operators. The transportation of cargo is mainly conducted by shipping lines and other carriers, while passenger transport services are carried out by local vessels, cruise ships and ferries. Shipping lines or cargo owners are represented in ports by shipping agents, who take care of procedures related to the movement of ships and their cargo.

Finally, the ultimate beneficiaries of maritime transport services are the cargo owners and the passengers. There are usually intermediaries between cargo-owners and shipping lines known as forwarding agents, who are responsible for contracting and paying for the maritime transport services, as well as for transporting the cargo between the port and the final destination.

The structure of the port and maritime sector is shown in Figure 5.1.

Figure 5.1. Value chain of the port and maritime sector



Note: Dark arrows indicate flows of goods and services, while dashed arrows refer to flows of money.

5.1.2. Regulatory framework

The maritime and port sector is regulated by legal provisions of an international, European and national nature, which are developed and implemented by a wide variety of institutions with distinct roles. This section provides a description of the role of the main competent institutions, followed by a brief overview of the regulatory framework in the particular case of the Portugal.

Relevant institutions

The following international organisations set rules and standards applicable to the port and maritime transport:

- **International Maritime Organization (IMO)**: a specialised UN agency responsible for the safety of shipping and prevention of marine pollution. The most relevant IMO conventions currently in force include:
 - Convention for the Safety of Life at Sea (SOLAS)
 - Convention for the Prevention of Pollution from Ships (MARPOL)
 - Convention for Training, Certification and Watchkeeping (STCW), which establishes international standards for seafarers.
- **International Labour Organization (ILO)**, an organism that sets international labour standards promoting decent work. It includes at least 36 maritime conventions applicable to seafarers and several instruments on safety and health in ports.

- **World Trade Organization (WTO)**, which deals with the global rules of trade between nations. Its main function is to ensure that trade between nations is as smooth, predictable and free as possible.
- **World Customs Organization (WCO)**, an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of customs administrations.

Box 5.1. Regulation (EU) 2017/352 of the European Parliament and the Council of Ministers

Regulation (EU) 2017/352 establishes a framework for the provision of several port services and defines common rules for the financial transparency of ports.

The purpose of this regulation is to level the playing field in the sector, to protect private operators against uncertainty and to create an economic environment that is prone to public and private investment. With such objectives in mind, the regulation determines the conditions under which port services can be provided by private operators, specifying the type of minimum requirements that can be imposed for safety or environmental purposes, the circumstances under which the number of operators can be restricted and the procedures to select the operators in such cases.

The regulation also imposes some obligations, requiring all private operators to provide adequate training to their employees.

In order to promote financial transparency, it introduces common rules to enhance the transparency of public funding and of tariffs charged for port services and for the use of infrastructure, while making sure that all port users are consulted in the process. Finally, it introduces a new mechanism in each Member State to handle complaints and disputes between stakeholders.

This regulation will enter into force in March 2019. As such, the Portuguese legislator should consider this regime when revising the regulation of the port sector.

Source: https://ec.europa.eu/transport/modes/maritime/ports/ports_en (accessed 18 December 2017).

The work of these international organisations is supported by the European Union, which promotes a network of bilateral maritime transport agreements with key commercial partners. The European Commission also issues several policies and specific instruments on this domain, including the following EU directives, regulations and communications:

- Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States.
- Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations.
- Directive 2009/16/EC on port state control.
- Regulation (EC) No 725/2004 on enhancing ship and port facility security.
- EU Directive 2000/59/EC which imposes an obligation on port authorities to provide waste reception services.

- Regulation (EU) 2017/352 establishing a framework for the provision of port services and common rules on the financial transparency of ports (See Box 5.1).

In Portugal, several institutions are responsible for issuing and implementing the legislation regulating the port and maritime sector, some of which is based on the EU instruments and international agreements:

- **Directorate General of Natural Resources, Safety and Maritime Services (DGRM):** central administration body of the government that, under the overall authority of the Ministry of the Sea, is responsible for the regulation and control of maritime transport.
- **Institute for Mobility and Transport (IMT):** state institute currently overseen by the Ministry of Planning and Infrastructure, which has responsibilities entrusted by the Ministry of the Sea in the area of commercial ports and maritime transport services.
- **Authority for Mobility and Transport (AMT):** independent regulator of the transport sector (see Box 5.2).

Box 5.2. Legal powers of the Authority for Mobility and Transport (AMT)

The AMT (Authority for Mobility and Transport) is the independent regulator responsible for the regulation and promotion of competition in the transport sector, including the port and maritime transport.

The AMT was created in 2014 to partially replace the IMT (Institute for Mobility and Transport), a state agency specialised in transportation that used to be the sectoral regulator between 2011 and 2014. Before 2011, the regulation and supervision of the port and maritime sector were under the responsibility of the IPTM (Institute for Ports and Maritime Transport). Today, the IPTM no longer exists, but the IMT has kept certain roles, such as the licensing of port labour companies and authorisation of cabotage operators.

The evolution of the role of these different institutions in the last 15 years and a succession of laws without legal consolidation have been the object of debate and have resulted in legal uncertainty for market players. In several cases the legislation still refers to bodies that no longer exist (IPTM) or to organisms that have changed their fundamental role (IMT). In other cases, the legislation seems to give the same powers to several entities (IMT and AMT).

This legal uncertainty represents additional costs for private operators, who have mentioned the difficulty in identifying the administrative institution responsible in certain cases. The lack of clarity in the law may also justify the absence of action or effective control by the competent institutions. Despite this, it should be noted that the AMT is, in fact, the regulator of the port and maritime sector, whose main responsibilities are defined in Decree-Law 78/2014.

Source: Decree-Law 78/2014 as last amended by Decree-Law 18/2015.

Portuguese legal framework

The role of national and international institutions in the regulation of the port and maritime sector in Portugal varies substantially across different economic activities. In particular, maritime transport services and port activities are subject to different rules, despite the fact that the two activities are deeply interconnected. The main reason for this

is that maritime transport takes place mostly in international waters where there are no physical barriers to entry of international players, while port services are provided in a restricted space within the Portuguese jurisdiction.

Accordingly, maritime transport services in Portugal are mostly governed by rules imposed by international organisations, particularly the IMO. The European Commission also issues several instruments, including EU directives, to deal with specific matters of maritime transport, such as maritime cabotage, passenger rights and navigation in inland waterways. Since international and European rules have to be implemented by national authorities, most Portuguese maritime rules often consist in administrative procedures that regulate the interaction of operators with the several maritime authorities and other national administrations.

A very specific feature of the national legal framework is that the Portuguese Constitution protects the nature of port land and waters as a public domain good, in order to guarantee that the population is not deprived of access to the sea. This implies that ports are the property of the state and cannot be transferred to the private sector. While the law foresees that the management of a port could still be attributed to the private sector through a concession,⁵ historically port management has always been attributed to port authorities under the direct control of the state (see Box 5.3).

Box 5.3. Port authorities in Portugal

Portuguese port authorities are public limited companies that have the state as the sole shareholder. Their nature as state-owned companies was introduced in 1998 to improve the performance of ports, by enabling a more autonomous and efficient management.

Portuguese law attributes to each port authority a specific legal statute and a range of powers, which normally include the legal capacity to (1) expropriate and occupy land; (2) award concessions for the use of public assets and the exploration of port activities; (3) license port services; (4) set port tariffs; and (5) protect the port's facilities and staff. Each port authority is also responsible for maritime safety in the area under its jurisdiction.

Port authorities have the power to pass regulations determining the technical conditions for private companies to operate inside the port. This includes the creation of rules for the movement of ships, the use of port services such as pilotage, towing and mooring, as well as the reception, storage and delivery of goods, among others. Port authorities also define inspection procedures, documentation formalities, fines and other regulatory aspects that are necessary for the proper functioning of the port. All port regulations are subject to law and can be disputed by any interested parties in administrative courts.

The board of directors of port authorities is appointed by ministerial decision. While in the past each Portuguese port used to have a distinct board, in 2016 the government introduced the possibility for a common president and board of directors to lead multiple port authorities. The purpose of this reform was to enable efficiencies through joint management, to promote the development of a strategic plan common to all ports and, more generally, to facilitate shared services between ports. The role of the board is regulated by laws governing the corporate public sector, including the Statute of the Public Manager.

In some cases, the Portuguese state has considerable discretion on the transposition of the international rules, particularly when the regulation is related to the state's primary

obligations. For instance, Portugal has specific rules for the registration of vessels and ship crew requirements, which aim at protecting citizens' rights, such as national security and territorial continuity. Likewise, there are some national regulations on the island cabotage regime, in order to guarantee public services obligations.

Unlike maritime transport services, port activities in Portugal are essentially regulated by legislation developed by national institutional bodies, although a few national dispositions may still result from the transposition of EU directives or other international law.

Most provisions applicable to ports are adopted by the Portuguese Government and developed by the DGRM, which corresponds to the national port authority. In addition, each Portuguese port has specific regulations issued by the respective port authorities, some of which are subject to approval by the AMT. In the autonomous regions, some matters fall within the legal statute of the regional government.

5.1.3. Methodology

This competition assessment of the port and maritime sector focuses mainly on maritime transport services and commercial ports that have significant implications for the competitiveness of the Portuguese economy. Hence, excluded from the analysis are maritime activities of a touristic nature, such as waterways excursions, cruises and sightseeing boats, as well as ports that are exclusively dedicated to recreational and tourist activities, such as marinas.

The study focuses only on national legislation, excluding from the analysis all legal provisions that result directly from international agreements⁶ or EU regulations, since their content does not exclusively depend on the national legislator. Also excluded from the analysis is national legislation that is fully harmonised with EU law, such as the rules related to vessel safety,⁷ vessels certification,⁸ naval equipment,⁹ safety of high speed ferries,¹⁰ safety and prevention of pollution,¹¹ vessels inspection¹² and civil liability of transporters in case of accident.¹³

In addition, the provisions that deal mainly with port safety, labour law (for instance the port labour contract regime), and tax and social security were not considered in this study due to their specific social policy objectives. Likewise, the regime for registry of ships operating under the Portuguese flag is excluded, as it relates to fiscal and social security obligations. Finally, the maritime transport regulated by public service contracts is not included in the analysis, as any changes in those contracts depend on agreement between the parties involved.

The legal provisions subject to competition assessment include port specific regulations from all major ports in Portugal. When those specific regulations are similar across most ports, as is the case of towing services, the report discusses all provisions together. In cases where ports issue different regulations, a sample of regulations is selected to cover a diversity of subjects.

In order to identify the most relevant legal provisions for maritime transport services and main commercial ports, a broad search was carried out using a selection of keywords across the Portuguese Official Journal. The refined search resulted in a database of 319 pieces of legislation, among which 131 legal provisions were identified as potentially harmful to the competitive process, after the elimination of provisions that were not relevant for the analysis. This resulted in 116 recommendations that aim, at least, to reduce the negative impact on competition (see Table 5.1).

Table 5.1. Summary of legislation analysed in the scope of the “OECD Competition Assessment Review: Portugal”

	Port and maritime sector
Pieces of legislation analysed	319
Potential restrictions identified	131
Recommendations formulated	116

Note: In some cases recommendations may be formulated for provisions that do not clearly harm competition, but which still pose some administrative burden or regulatory uncertainty.

Once the most relevant legal provisions were selected, an in-depth analysis was conducted in order to identify the policy objective and the harm to competition associated with each of the potential barriers, as well as to produce the final recommendations. This analysis is based on international good practices, data from OECD countries, academic studies and information collected from meetings with the main stakeholders in the sector.

Given the complexity and importance of the barriers identified in the provision of piloting services, the OECD worked together with external consultants, who developed an original study on pilot fees that attempts to evaluate the impact of piloting regulations. Some of the outputs of the study are used to support the analysis.

The next sections discuss in detail the most relevant barriers to competition identified in the port and maritime transport sector in Portugal.

5.2. The port management model in Portugal

The participation of the private sector and the degree of competition in the provision of port services depends mainly on the choice of the port management model. Although port management varies substantially across jurisdictions, there are essentially four models that attribute different roles to the public and private sectors (see Table 5.2):

1. The **public service port** is fully owned and managed by the state, often through a state-owned port authority, which carries out the roles of investing and providing all the port services.
2. The **tool port** combines the participation of the public and private sectors. The (state-owned) port authority manages the port and makes all investments, providing private operators the tools to operate main port activities, such as cargo-handling.
3. The **landlord port** is another hybrid model, where the port authority is in charge of managing and investing in the main infrastructure, while private operators invest in superstructure (such as equipment and terminal buildings) and operate main port activities.
4. The **fully privatised port**¹⁴ is fully managed and operated by a private entity, which either owns the port land or has the exclusive rights of exploration attributed through a concession.

Table 5.2. Main differences between the basic port management models

	Ownership of infrastructure	Ownership of superstructure	Cargo-handling operations	Other operations
Public service port	Public	Public	Public	Public
Tool port	Public	Public	Private	Public or private
Landlord port	Public	Private	Private	Public or private
Fully privatised Port	Private	Private	Private	private

Source: Adapted from World Bank (2007).

Currently, the landlord port is the predominant model in OECD countries, particularly for large and medium size ports, while models with stronger participation by the public sector are more commonly observed in developing economies (World Bank, 2007). Some of the strengths of the landlord port model include the possibility of introducing competition in the provision of port services and to foster private investment in the port superstructure.

In Portugal, the management model in force corresponds to the landlord port, as it results from Decree-Law 298/93 that establishes the regime for port operations. Despite that, the same Decree-Law also enables the tool port to function as a transitory regime, since this used to be the prevalent model observed in Portugal prior to the 1990s.

Although the policy option of adopting the landlord port model aligns Portugal with the best practices of OECD countries, this model can be differently implemented in each jurisdiction. For instance, as shown in Table 5.2, some port operations may be provided either by the public sector or by the private sector, and under different regimes.

This section examines some of the Portuguese regulations and policy options that might restrict competition more than necessary to adequately implement the landlord port model in Portugal. In what follows, the section discusses (1) the role of the private sector in the provision of different port services; (2) the choice of the best regime to privatise port operations; (3) and the principles behind the calculation of port tariffs and discounts.

5.2.1. Role of the private sector in the provision of port services

Description of the barrier

The Portuguese legislation foresees that port services can be provided either directly by the port authority, which is a state owned enterprise, or by private operators. The conditions and frequency with which direct provision is observed in Portuguese ports crucially depend on the type of service provided.

For **cargo-handling operations**, the general rule is that provision should be carried out by private operators, as is expected in a landlord port model. However, Art. 3(4) of Decree-Law 298/93 creates two exceptions where port authorities may directly provide cargo-handling services: (1) in case of under provision by the private sector; and (2) in order to guarantee “free competition”, case in which the Directorate General for Competition and Prices (superseded in 2003 by the Portuguese Competition Authority)¹⁵ must give its opinion.

For other port services, direct provision by the port authority is always possible. For instance, Art. 4(2) of Decree-Law 75/2001 enables the port authority to directly provide **towing services**, while Art. 2(1) of Decree-Law 48/2002 enables the direct provision of

piloting services. Likewise, there are also many **ancillary port services** that the port authority may carry out directly without the participation of the private sector.

In practice, port authorities have made different policy choices regarding the regime for the provision of port services. Table 5.3 summarises the frequency with which each of the regime is observed in Portugal.

Table 5.3. Predominant regimes for the provision of port services in Portugal

	Direct provision by the port authority	Provision by private operators	
		Concession	Licensing
Cargo handling	-	7	2
Towing	1	2	6
Piloting	9	-	-
Ancillary services	Most cases	Few cases	Few cases

Note: The table includes information about the 7 major ports in Portugal (Viana do Castelo, Leixões, Aveiro, Figueira da Foz, Lisbon, Setubal, Sines) and aggregates all ports in the two regions of the islands (Azores and Madeira). Licensing of cargo-handling is predominant in Port of Aveiro and Figueira da Foz. Towing is directly provided by the authority of Port of Leixões and through a concession both in Port of Sines and Port of Aveiro.

Harm to competition

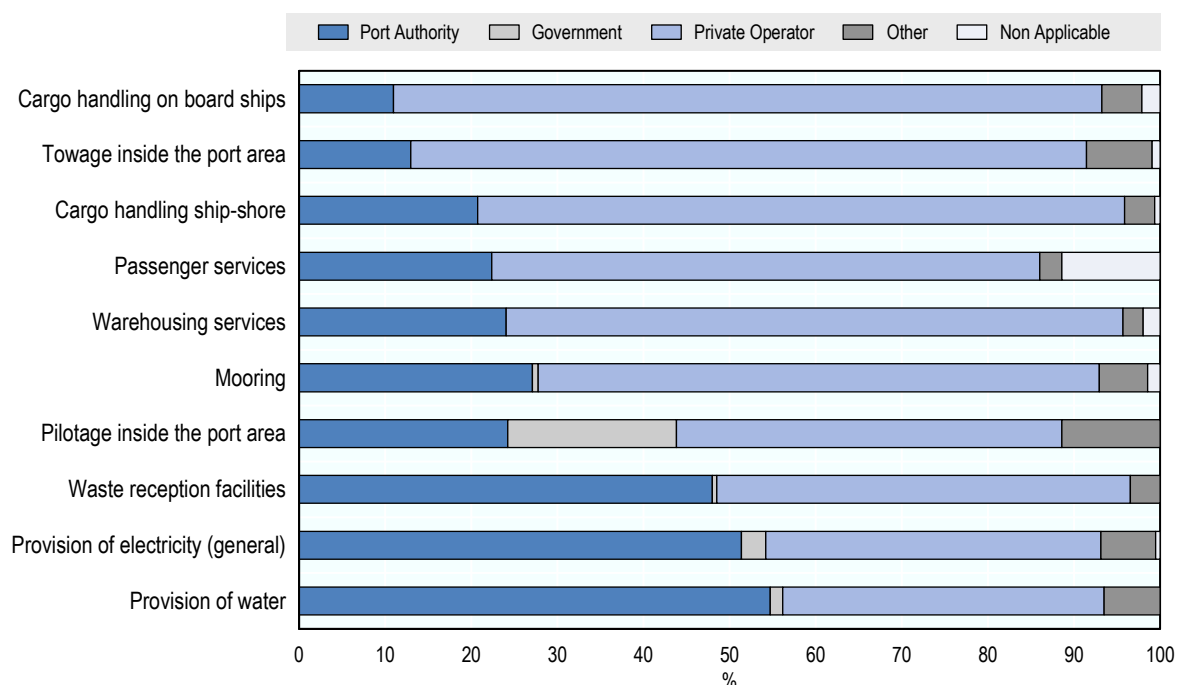
The direct provision of port services exclusively by port authorities ultimately prevents the entry of any potential competitors, even when private initiative would be available. In other words, some port services are actually provided under the regime of a (local) public monopoly that does not face competitive pressure and which cannot be contested by the private sector.

Public monopolies are typically associated with all forms of harm to competition. In the absence of a profit-driven management model and without a competitive process that selects the most efficient players through market entry and exit, public monopolies are likely to result in cost inefficiency (allocative and technical) and lack of innovation.

There is also a risk that the provision of port services through a monopoly may result in high prices due to the extraction of monopoly rents. However, it is not clear whether the introduction of competition in the provision of port services would suffice to prevent high prices, since port authorities have other alternative means to exert market power, for instance by increasing port use tariffs or by charging higher concession/licensing fees to the private operators.

Still, when everything is considered, the direct provision of port services by port authorities is likely to harm final consumers, by increasing port tariffs and reducing the volume, quality and variety of port services.

Experience in other European ports suggests that there is broad scope to increase the participation of private operators in the port sector. Indeed, Figure 5.2 shows that the provision by private operators is the norm for most port services and is also viable for many ancillary services.

Figure 5.2. Regimes for the provision of port services in Europe

Note: Sample of 116 ports from 26 European countries.

Source: Data collected from European Sea Ports Organisation (2011).

Recommendation

Amend the decree-laws regulating cargo-handling,¹⁶ towing and piloting services, so that direct provision by port authorities is only possible whenever there is no manifest interest by the private sector in providing the service due to lack of economic viability. The lack of interest of the private sector should be re-evaluated on a regular basis, in order to make sure that direct provision is not unduly restricting entry.

The policy maker should also consider establishing direct provision as an exceptional regime for other ancillary services, in order to promote the participation of the private sector.

If carefully designed, making piloting services contestable will have the effect of securing lower fees for users of pilotage services, with an estimated annual benefit to freight handlers from a price drop estimated between EUR 3.6 million and EUR 9 million (see Annex 5.A. on Quantification of the impact on pilotage fees and distribution of PECs), potentially also increasing the attractiveness of the port to cargo-shipping companies. It also has the potential to improve the quality of the service offered, especially waiting times.

5.2.2. Concession versus licensing of private operators

Description of the barrier

In order to enable the participation of the private sector in the provision of port services, port authorities usually have two framework regimes available: (1) **licensing** of the

service to multiple operators or (2) **concession** of the exclusive rights of operation to a single operator.

The choice between licensing and concession depends on the policy objective of the policy maker and has a fundamental implication on the type of competition observed. On the one hand, a licensing regime enables multiple operators to **compete in the market**, while at the same time serving as an instrument to guarantee that the competitors have minimum quality standards. On the other hand, the awarding of a concession through a competitive bidding process can be used to introduce **competition into the market** and to provide greater incentives for investment and innovation. Concessions are particularly useful in instances where competition in the market may not be viable.

While in most circumstances the regulatory framework allows the port authority to identify and choose with discretion the most appropriated regime, in other instances port authorities are legally bound to one of the two options. This is the case of piloting services, for which Decree-Law 48/2002 foresees that the private sector can only participate through a concession regime (as an alternative to direct provision by the port authority).

A similar restriction is observed in cargo-handling services, for which Decree-Law 298/93 determines that cargo-handling operations can only be licensed if: (1) there is the risk that the tender for a concession would be deserted; or (2) a resolution of the Council of Ministers declares the existence of a “national strategic interest”.¹⁷ In addition, a provisional provision included in this piece of legislation enables ports to temporarily license cargo-handling operations until port authorities are able to organise their first concession awarding process.¹⁸ There are two ports currently licensing cargo-handling operations based on this transitory provision: Port of Aveiro and Port of Figueira da Foz.

Harm to competition

By restricting the private exploitation of certain port services to a concession regime, the current regulatory framework prevents port authorities from implementing a licensing scheme in cases where multiple operators could co-exist in the same port. This can have the effect of preventing competition in the market, resulting in harm for port users and the final consumers.

The risk of inhibiting competition in the market seems to be particularly relevant in the context of **piloting services**, where there is no clear reason for not using a licensing regime. In fact, piloting services do not necessarily require large investments in equipment or occupy a significant part of the port area, suggesting that it would be possible to have more than one operator in the market.

With respect to **cargo-handling services**, the choice of the concession regime as a general rule seems to be motivated by the substantial fixed costs of cargo-handling equipment and terminal buildings. This way, concessions create incentives for operators to invest in their own superstructure, enabling full implementation of the landlord port model (as compared to the tool port model where the licensing of cargo-handling operations is more common).

Nevertheless, the transitory legal dispositions created by Decree-Law 298/1993 have enabled two port authorities in Portugal to license cargo-handling operations for more than 20 years, while all the other port authorities are legally required to maintain concession regimes. Since the two operating regimes involve different costs and obligations, this may have the effect of preventing competition between ports.

Recommendation

Enable the licensing of piloting services as an alternative to a concession regime, through an amendment of Art. 2(1) of Decree-Law 48/2002.

In the case of cargo-handling services, the legal framework should create a level playing field that allows all ports to compete under the same rules. For that, the policy maker has the two following options:

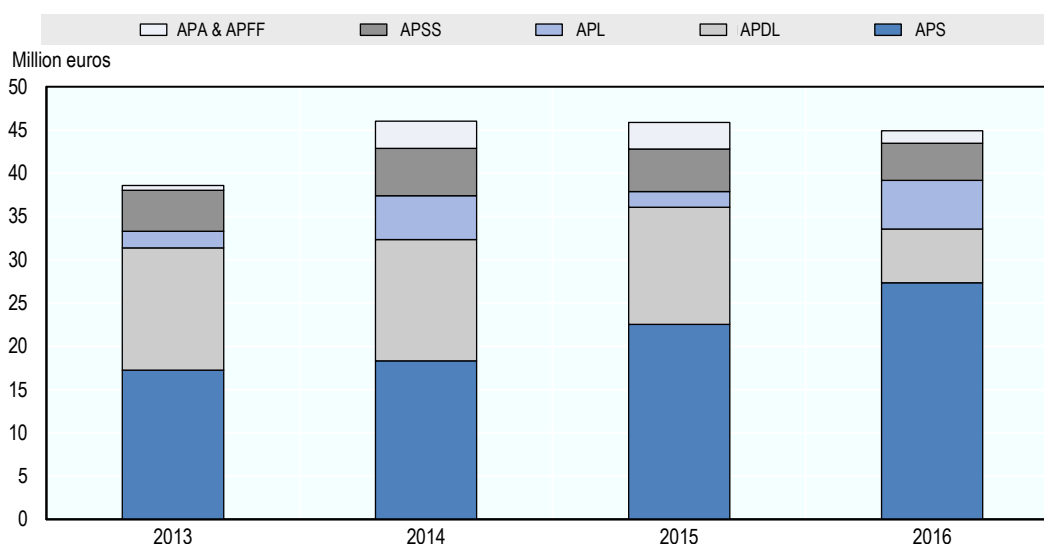
- to amend Decree-Law 298/93, enabling all port authorities to decide between a concession or a licensing regime of cargo-handling operations, based on common objective criteria set by law;
- to abolish any exceptions in the law enabling the licensing of cargo-handling operations, giving port authorities a reasonable deadline to organise the concession.

5.2.3. Policy on tariffs and discounts

Description of the barrier

In Portugal, port tariffs are subject to multiple forms of price control, depending on the regime under which the port service is provided. In the case of port services provided directly by port authorities, tariffs are regulated by Decree-Law 273/2000, which establishes tariff-setting formulas, exemptions and discounts.¹⁹ Then, each port authority publishes annually its own tariffs within the rules of Decree-Law 273/2000. In the case of services provided by private operators, tariffs are determined in the respective concession and licensing contracts, which are not only regulated by Decree-Law 273/2000, but also by other specific legislation that will be subject of analysis in Sections 5.3 and 5.4.

Figure 5.3. Consolidated profits before taxes of Portuguese port authorities



Note: The legend refers to the Administrations of Port of Aveiro (APA), Port of Figueira da Foz (APFF), Port of Sesimbra and Setúbal (APSS), Port of Lisbon (APL), Port of Douro, Leixões and Viana do Castelo (APDL) and Port of Sines and Algarve (APS). Some administrations are responsible for the governance of more than one port, but consolidated profits can typically be attributed to the main port under their control. The profit of APS in 2016 is an estimated value.

Source: Data extracted from the annual income statements of the port authorities.

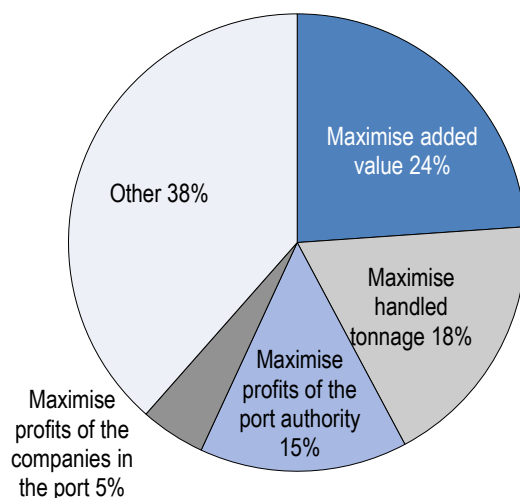
Apart from the existing legal provisions, the overall level of port tariffs ultimately depends on whether port authorities have profit-oriented objectives that create an incentive to raise prices. In Portugal, while some ports set tariffs that are just high enough to break even, other ports have systematically generated millions of euros in gross profits, most of which are distributed to the state in the form of corporate taxes and dividends. Figure 5.3 shows the evolution of the consolidated profits before taxes declared by Portuguese port authorities between 2013 and 2016, which at the aggregate level have reached nearly EUR 45 million.

Harm to competition

The criteria established in Decree-Law 273/2000 do not appear to be based on transparent, cost-oriented and non-discriminatory principles, and thus can have the effect of distorting competition. For instance, Decree-Law 273/2000 imposes several loyalty discounts that may raise switching costs and restrict competition between ports. Some provisions also impose mathematical formulas that enforce price discrimination between different types of vessels. While price discrimination can be pro-competitive, each port authority has more information than the legislator to implement a price discrimination scheme based on the cost that each type of vessel poses on the port.

Furthermore, the policy option of some port authorities to charge tariffs above the average costs has the effect of restricting total output and reducing the competitiveness of the Portuguese economy. Although it is well understood that high port tariffs enable the accumulation of profits, the latter distributed to the state in the form of corporate taxes and dividends, the state could consider alternative mechanisms to collect revenues that do not decrease the competitiveness of Portugal in a strategically relevant sector. Indeed, most port authorities in Europe have economic objectives that differ from simple profit maximisation, aiming instead at maximising added value or handled tonnage of cargo (see Figure 5.4).²⁰

Figure 5.4. Most common objectives of port authorities in Europe



Note: Sample of 116 port authorities from 26 European countries. The category “other” refers to port authorities that have either a combination of different objectives or a qualitative objective that is not economic in nature.

Source: Data available in European Sea Ports Organisation (2011), “The ESPO Fact-Finding Report”, prepared by Patrick Verhoeven, www.espo.be/media/espopublications/espofactfindingreport2010.pdf.

Recommendation

In order to increase the competitiveness of the Portuguese port sector, the following recommendations should be cumulatively implemented:

- Formally attribute to port authorities specific non-profit objectives, such as the maximisation of handled tonnage, and to create performance indicators in order to reward port authorities that reach the established objectives.
- Abolish Decree-Law 273/2000, or at least to eliminate all provisions with fee-setting criteria, discounts and exemptions that do not have a clear public goal.
- Provide AMT with the necessary resources to fulfil its role as the sectorial regulator, guaranteeing thus that port tariffs are aligned with transparency and cost-orientation principles foreseen in EU Regulation 2017/352.

5.3. Design of port concessions

Concession contracts play a crucial role in the economic development of ports. They have a major impact on the conditions under which private operators participate in the port sector. The design of concessions is particularly relevant for the provision of cargo-handling operations, where concessions are more common because of the magnitude of investment needed. However, the analysis in this section also applies to the concession of other port services, such as towing,²¹ water supply or mooring.

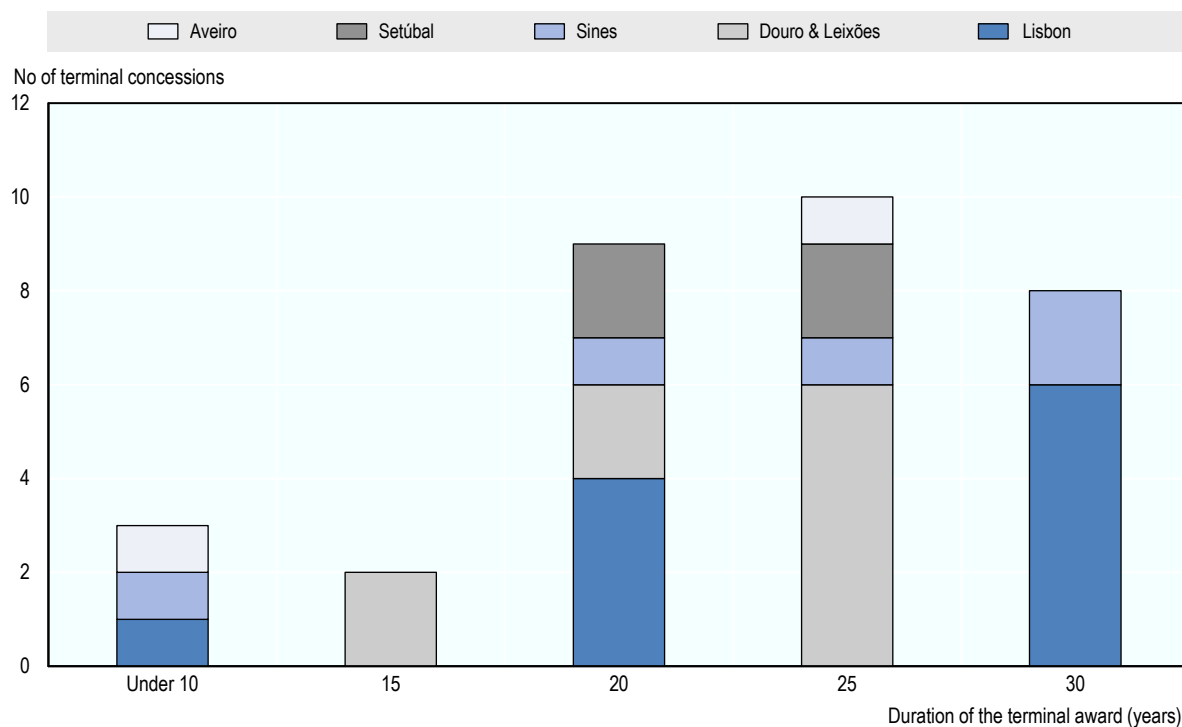
When a concession contract is well designed, port services may be provided under competitive conditions that are reflected in low prices, continuous innovation and high levels of investment. On the other hand, a poorly designed concession can have the effect of granting a monopoly to a cost-inefficient operator that may charge high tariffs for a long time period, without any possibility for the market to be contested.

While in Portugal concessions are regulated by the Code of Public Procurement (CPC) and by some specific legislation, in general port authorities have considerable discretionary power when designing concession contracts. For that reason, this section discusses not only a few provisions and port regulations that affect concessions, but also some policy choices that can have the effect of restricting competition. In particular, three important dimensions of concessions are addressed: (1) the duration of the contract, (2) the awarding criteria and (3) the structure of concession fees.

5.3.1. Duration of concession contracts*Description of the barrier*

In Portugal, the length of concession contracts is discretionarily set by port authorities, subject to certain maximum ceilings imposed by law. In particular, sectoral regulations determine that concessions for towing services cannot exceed 10 years²² and concession of cargo-handling services cannot exceed 30 years.²³ Within these boundaries, the duration of terminal awards may vary substantially across ports and inside the same port, as shown in Figure 5.5. There are also other laws setting rules for the duration of port concessions not related to public services transport, such as the port concessions awarded under the water management law regime – see Box 5.4.

Figure 5.5. Duration of the terminal award of 32 terminal concessions in Portuguese ports

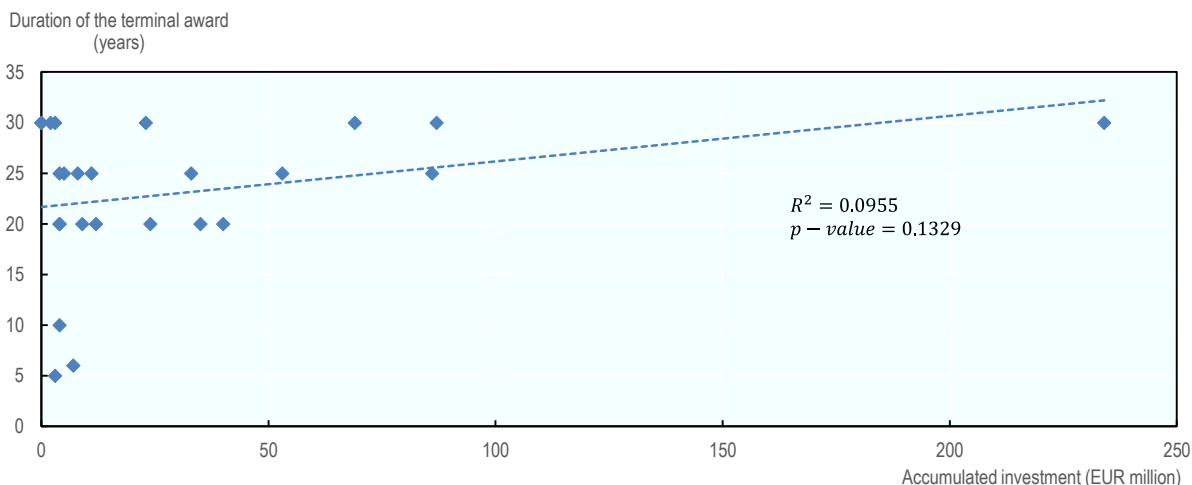


Source: Data collected from UTAP (2017), Boletim Trimestral Concessões, 2o Trimestre 2017.

In addition, the CPC offers port authorities some guidance, by determining that concessions should be awarded for the minimum time period required to repay the capital invested under normal market conditions.²⁴ This principle is aligned with EU directives²⁵ and implies that the length of each concession should be closely related to the investment level incurred by the private operator. However, there seems to be a limited extent to which this EU principle has been observed in Portugal.

Empirical evidence suggests that, despite the maximum ceilings foreseen in port regulations, some concessions in Portugal have been awarded for a time period above the level that would be strictly necessary to recover the capital invested. Indeed, data available for 25 Portuguese terminal concessions reveals a weak correlation between the duration of the terminal award and the volume of accumulated investment by the private operator, as seen in Figure 5.6.²⁶ It is particularly striking from the data that some of the longest concessions in Portugal are associated with the lowest investment levels observed in the sample. This is the case of two terminals in the Port of Lisbon awarded in the 1990s for a period of 30 years, for which no investment has been observed so far.

Finally, some terminal concessions have been renewed at the end of the contract for an extended period of time, without the opening of a new competitive awarding procedure. In some cases the extension was granted to concessions that had already been awarded for 30 years, implying that the total length of the concession ended up exceeding the maximum ceiling originally foreseen in the Portuguese regulation.

Figure 5.6. Role of private investment in the duration of terminal awards in Portugal

Source: Data for 25 terminal concessions in Portugal collected from UTAP (2017), Boletim Trimestral Concessões, 2o Trimestre 2017.

Harm to competition

In Portugal, the prevalence of some concessions with long durations may substantially harm the competitive process, by reducing the frequency with which private operators compete for the market. The risk of harm is higher when the awarding process is not designed to promote competition, a case in which a long concession could result in a single operator providing port services at high prices for an extensive time period. However, even if the awarding process is carefully designed, a long concession may still prevent new operators from innovating and contesting incumbents with more competitive offers.

Some of the long concessions awarded so far have also failed to achieve the policy goal of promoting private investment, possible due to the fact that no investment conditions were included in the contract. In fact, while the duration of a concession should be linked to the amount of investment that is required from the private operator, some Portuguese terminals were awarded for the maximum legal duration to operators who have not engaged in any investment at all. This situation is further aggravated by the fact that some contracts were extended through direct negotiation, which increases the length of the concessions without necessarily providing an extra incentive to invest.²⁷

Despite the fact that some port concessions in Portugal appear to be excessively long, the ceilings imposed by Portuguese regulations also pose their own risks. Maximum ceilings may reduce the ability of port authorities to attract private initiative in projects involving high levels of investment, particularly given that concessions with longer durations are commonly awarded in other countries. This conclusion is supported by the International Transport Forum (ITF/OECD), according to which port concessions of container terminals have an average duration of 32.5 years.²⁸ Moreover, data collected by Notteboom (2008) reveals that around 90% of the biggest terminal projects in Europe (over 100 hectares) are awarded for a period of 30 to 65 years.

Recommendation

The three following recommendations should be cumulatively implemented:

- Port authorities should, under the supervision of the AMT, determine the duration of the concession as the minimum number of years required to repay the capital invested.²⁹ Whenever possible, the contract should explicitly determine a minimum level of investment to be incurred by the operator.
- National law should be amended so that concessions cannot be renewed without the opening of a new public tender.
- Policymakers should establish clear, objective and transparent criteria to determine the length of any concession, based on the level of investment required, prior to any consideration to revise current ceilings in concession contract lengths.

Box 5.4. Port concessions awarded under the water management law regime

Law 58/2005 on the sustainable management of water regulates water resources, setting the institutional framework and legal basis for the several regimes applicable – concession, licensing, authorisation or communication. In this context, it provides port authorities with the power to award water use titles (e.g. concession) to private operators in the areas falling under their jurisdiction. Since 2005, port authorities have awarded several port concessions for the use of water resources to industrial companies.

This legislation has a different regime from the port regulation on access and exercise of public service operations (Decree-Law 298/93). In both regimes the duration of the concession must be determined as the minimum period necessary to recover the investment made. However, while the concessions awarded for public service cargo-handling operations have a 30-year limit (Art. 29), those awarded under law 58/2015 to other private operators can have an overall duration of 75 years (Art. 68, item 6).

The 75-year period was considered necessary by the Portuguese authorities to cover the wide range of concessions that may fall within the water law regime, such as concessions for the establishment of hydroelectric power plants. However, such generic provision can also be used to award other concessions, for instance for the installation of an industrial infrastructure in a specific port area. In those cases, the companies established in ports are allowed to load and unload cargo exclusively related to their industrial operations (Art. 2 and Art. 5 of Decree-Law 298/93).

In its opinion no. 6/2016, the AMT stated that the coexistence of two legal regimes for port concessions “creates undoubtedly distortions to competition, since the technical requirements and the maximum duration established for those cases are substantially different”. The underlying question that remains to be answered is whether providers of the public service of cargo-handling and firms that do cargo-handling operations for their own purposes compete in the same market and should, therefore, be subject to similar rules.

5.3.2. Awarding criteria

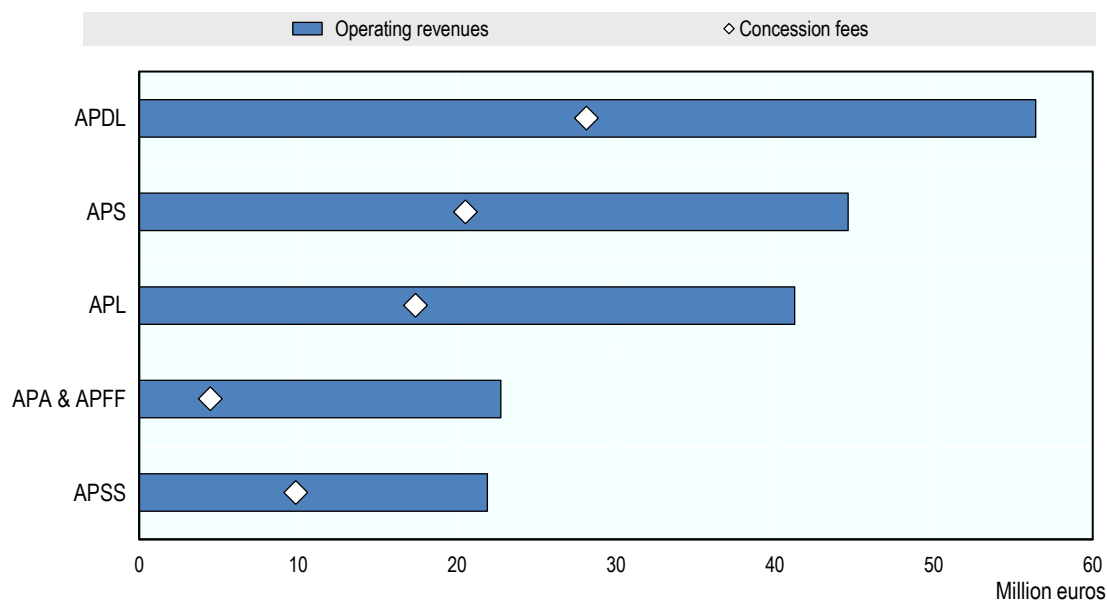
Description of the barrier

The criteria used by port authorities for the awarding of concessions are not governed by specific port regulations, but they must still comply with the general rules of public procurement. Accordingly, a contract should be awarded to the bidder submitting the economically most advantageous offer, which may consist either of the best price or the best price-quality ratio.³⁰ In certain cases, offers can also be evaluated based only on quality factors.

Although the general law enables a broad range of different criteria, there are essentially two main possible models for the awarding of port concessions, upon which many variations of awarding criteria are based. First, a concession can be awarded to the bidder who is willing to pay the highest price to the port authority for the use of land, whether that price is a fixed rent or a stream of royalties. Second, a concession can be awarded to the bidder who is willing to charge the lowest price to port users, while any rents paid are exogenously determined before the tender procedure.

In Portugal, port concessions are in general awarded according to the first model, that is, candidates compete on the rent annually paid to port authorities and the contract is awarded to the highest bidder. At the same time, port authorities often fix the maximum port tariff that operators can charge to the port user, in order to prevent excessively high tariffs. This awarding system has the effect of maximising the revenues that port authorities can extract from private operators, for a given maximum tariff defined.

Figure 5.7. Weight of concession fees in total operating revenues of Portuguese port authorities, 2016



Note: The label of the vertical axis refers to the Administrations of Port of Aveiro (APA), Port of Figueira da Foz (APFF), Port of Sesimbra and Setúbal (APSS), Port of Lisbon (APL), Port of Douro, Leixões and Viana do Castelo (APDL) and Port of Sines and Algarve (APS).

Source: Data extracted from the annual income statements of the Port Authorities.

Under the current system, concession revenues for all Portuguese ports have reached over EUR 80 million in 2016, most of which come from the concession of cargo-handling operations. In relative terms, concession revenues represent around half of the operating revenues for most port authorities, as shown in Figure 5.7. The only exception is the Administration of Port of Aveiro, which has opted to license the cargo-handling operations of one of the two main terminals, thus receiving relatively less revenue from concessions.

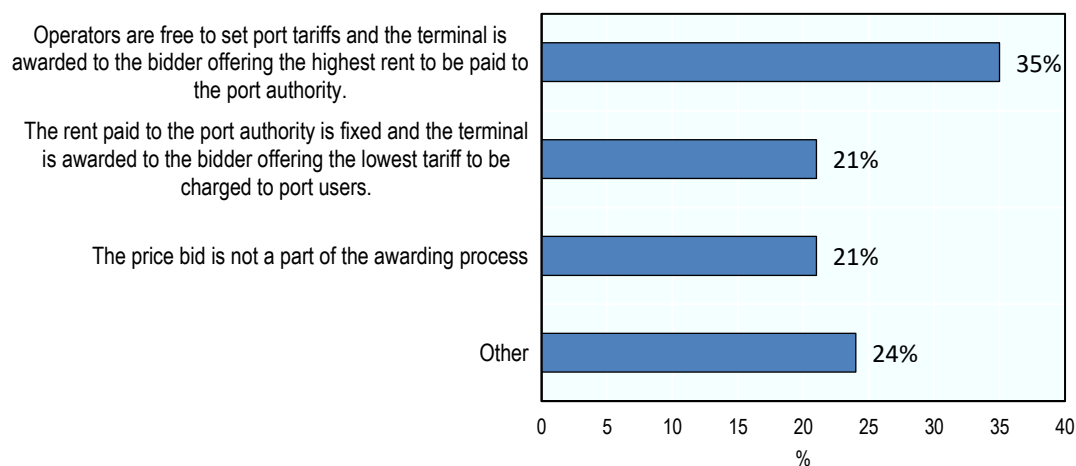
Harm to competition

The current awarding system has the effect of reducing the degree of price competition, by not including the tariff paid by port users as a relevant element of the competitive bidding process. This implies that competitive pressure on operators to decrease tariffs can only be exerted by other terminal operators or even by other ports. However, for the particular case of cargo-handling operations, most port terminals in Portugal are specialised in different types of cargo, implying that the level of intra and inter-port competition is limited.

While port authorities often fix the maximum tariff that concessionaires can charge to port users, this mechanism might not be enough to guarantee competitive tariffs. Indeed, port authorities have weak incentives to enforce low port tariffs, as that would limit the revenues that port authorities would be able to extract from the concessionaires. Therefore, the current awarding system appears to be unable to prevent high port tariffs, ultimately restricting the volume of port services in Portugal.

Despite the risk of competition harm, the price bidding system currently implemented by Portuguese port authorities is very similar to the dominant model observed in European landlord ports – Figure 5.8. Still, there is a reasonable share of European ports awarding terminals to the operator offering the lowest port tariff to port users, which could lead to better outcomes for consumers. There is, likewise, a considerable share of alternative awarding systems that are variations of the two basic models, some of which might also be less restrictive to competition.

Figure 5.8. Price bidding system used to award port terminals in Europe



Note: Sample of 43 terminal projects in European landlord ports.

Source: Data available in Notteboom, T. (2008), “The Awarding of Seaport Terminals in Europe”, Results from the ITMMA Survey Commissioned by the European Sea Ports Organisation (ESPO).

Recommendation

Port authorities are recommended to modify the current price bidding system, by defining as an awarding criterion the lowest tariff for port users. Concession revenues should then be exogenously determined based on the actual investment costs of port authorities, taking into consideration the depreciation rate of capital and market interest rates.

Due to the opposition of interests between port users, who benefit from low port tariffs, and port authorities, who might target higher revenues, the sectoral regulator should monitor the implementation of this recommendation.

5.3.3. Structure of concession revenues

Description of the barrier

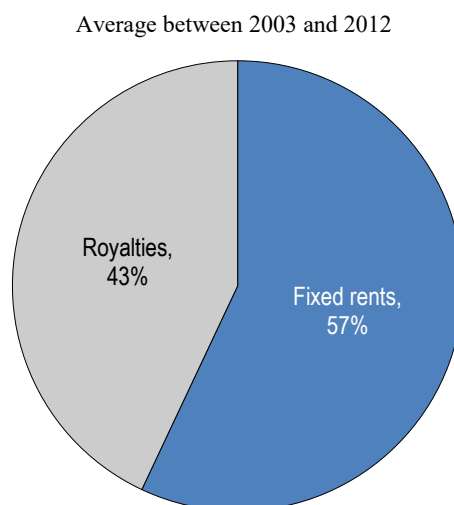
Concessions impose several contractual obligations on private operators, including the payment of fees that serve as revenues for port authorities to recover investment and management costs. While the previous section raised some concerns about the overall dimension of concession revenues, this section discusses how a given amount of revenues, whether high or low, can be collected using alternative payment structures, with implications for competition.

In general, the concession revenues collected by port authorities can include one or a combination of the two following components: a fixed rent for the use of space in the public domain, which is often calculated in terms of the area occupied; and a variable fee or royalty depending on the volume of services provided by the private operator. The weight given to each of these components determines the structure of concession revenues and has a direct impact on the economic incentives for the provision of port services.

On the one hand, fixed rents pose a fixed cost on private operators, affecting their profitability and potentially their decision to enter the market, but having no impact on prices or any other operational decisions. On the other hand, royalties increase the marginal costs of operators and, accordingly, do not only affect profitability, but also influence prices and production levels. Therefore, port authorities can choose to charge fixed rents without distorting the economic decisions of operators, as long as rents are not so high that they would prevent market entry.

Still, charging some royalties can be economically efficient if the port authority incurs variable costs that are not internalised by the private operator. In such case, royalties would allow the variable cost to be passed through to the private operator, providing him with the incentives to set optimal prices taking into account the total variable costs incurred along the port value chain.

In Portugal, port authorities have made the policy choice of charging both a fixed and a variable component to private operators. Figure 5.9 shows that, for the time period between 2003 and 2012, royalties represented on average 43% of the total concession revenues of Portuguese port authorities, with fixed rents representing the remaining share. The same data source reveals that this pricing structure has been stable during the whole time period and there is no evidence suggesting that the weights of fixed rents and royalties have significantly changed since then.

Figure 5.9. Structure of concession revenues in Portuguese ports

Source: Amado da Silva et al (2013).

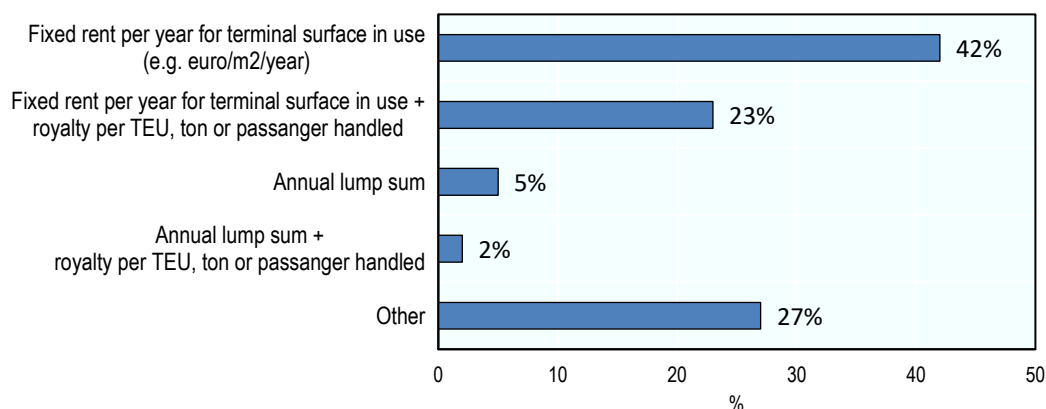
Harm to competition

The current structure of concession revenues in Portugal has the risk of harming the competitive process, since the volume of royalties typically charged to operators largely exceeds the variable costs incurred by port authorities. Indeed, while the investment in infrastructure involves substantial fixed costs, the marginal cost for the port authority of an additional cargo handled or extra unit of service should be close to zero. Even if port authorities have some variable costs that are not internalised by private operators, these are unlikely to represent half of the total concession revenues.

Therefore, the excessive level of royalties charged by Portuguese ports has the effect of artificially increasing the marginal cost of private operators, discouraging them from selling units of service that would otherwise be profitable for the port as a whole, and thus leading to economic inefficiency. These royalties are also likely to be passed through to port users and final consumers in the form of higher prices.

It can also be argued that the current structure of concession revenues has the effect of shifting some operational risk from private operators to port authorities,³¹ since the former pay more (less) royalties in periods of better (worse) performance. The current distribution of risk might decrease incentives for operators to create and meet demand, thus reducing the volume and quality of port services.

The experience from other European ports appears to support a pricing structure based mostly on a fixed component. Indeed, according to data for 43 terminal projects in Europe, nearly half of the port authorities opted to charge either a fixed rent per terminal surface or an annual lump sum. In comparison, only one quarter of the ports in the sample charge royalties in addition to the fixed component.

Figure 5.10. Structure of concession fees paid by terminal operators in Europe

Note: Sample of 43 terminal projects in European landlord ports.

Source: Data available in Notteboom, T. (2008), “The Awarding of Seaport Terminals in Europe”, Results from the ITMMA Survey Commissioned by ESPO.

Recommendation

Port authorities are recommended to change the structure of concession revenues, by eliminating the variable component and charging only a fixed rent to private operators. Exceptions should only be made if the port authority incurs a variable cost related to the activities of the private operator, case in which royalties can be used to pass through the cost from the port authority to the private operator.

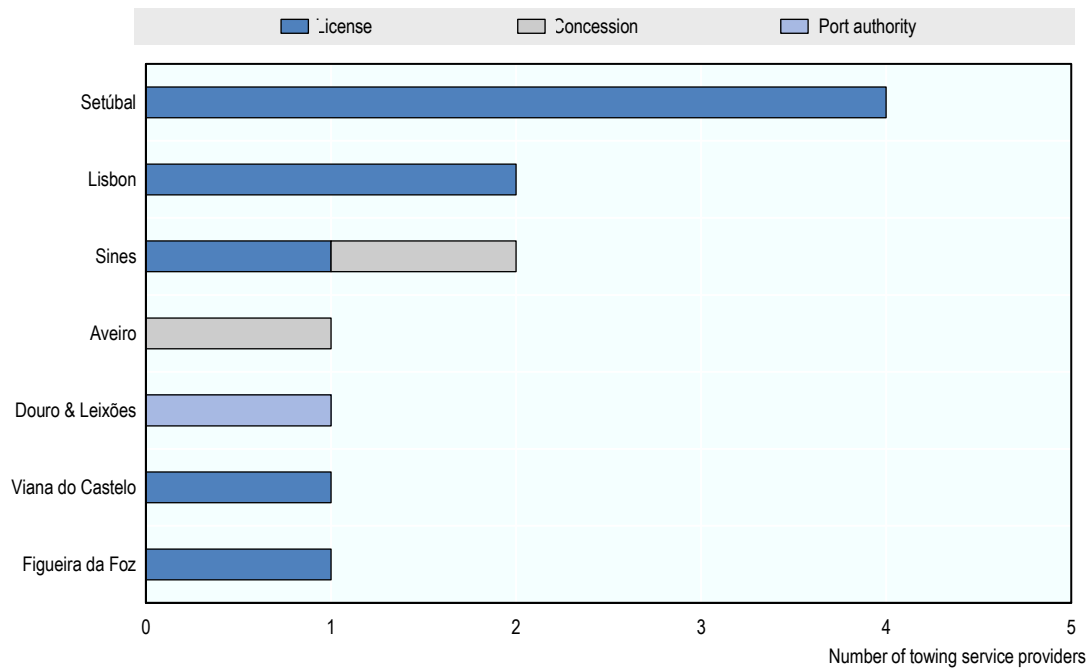
Due to the implications of the structure of concession revenues for economic efficiency, the implementation of this recommendation should be supervised by the sectoral regulator.

5.4. Licensing requirements for port activities

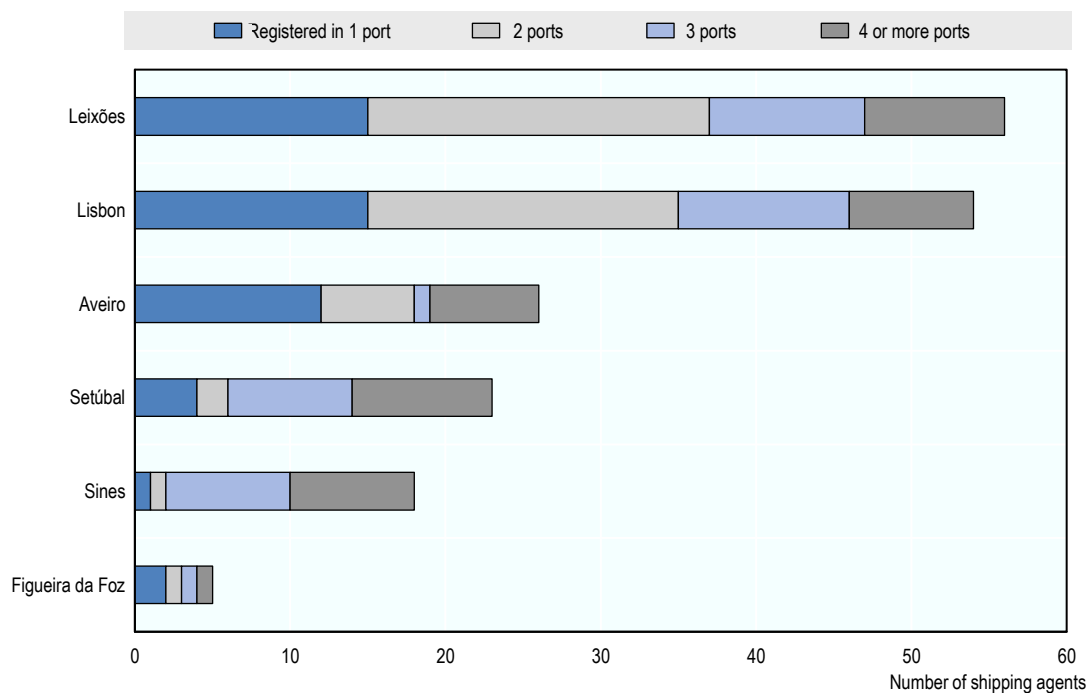
The economic activities developed in ports are limited by the available space and can pose several concerns for public safety and the environment. Hence market entry is usually subject to registration procedures and licensing requirements that guarantee minimum quality standards. However, some provisions may be disproportional for the policy objective or even have the effect of protecting incumbents from new entrants. Port authorities can also impose additional requirements to those already foreseen in the general law, which may further limit private operators’ entry into the local market.

There is a risk that excessive licensing requirements can overly restrict competition in the provision of cargo-handling, towing and shipping agent services, which are regulated by general provisions and port specific regulations.³² These restrictions could partially explain the very small number of towing operators in most Portuguese ports, as shown in Figure 5.11. They could also justify the limited number of shipping agents in some ports and the fact that several shipping agents choose to exclusively operate in a single port, preferring not to incur the cost of registration in other ports (see Figure 5.12).

This section focuses on licensing requirements that might be particularly harmful to competition. Firstly it addresses regulations that pose financial burdens on operators and then it discusses requirements for achieving minimum levels of owned equipment or staff.

Figure 5.11. Number of towing service providers in Portuguese ports, 2017

Source: Data collected from tariff regulations of port authorities.

Figure 5.12. Number of registered shipping agents in Portuguese ports, 2017

Source: Data collected from the websites of port authorities.

5.4.1. Financial requirements

Description of the barrier

Financial obligations are amongst the most common licensing requirements to operate in a port. These can include the payment of financial guarantees, the subscription of insurance policies and the investment of a minimum share capital. The type and value of the financial obligations may vary across different activities and even across ports.³³

For **cargo-handling** operations, licensed operators are subject to the following financial requirements:

- Payment of an annual financial guarantee to the port authority, amounting to 20% of the share capital in the first year and, after that, one-twelfth of the total port fees paid in the previous calendar year.³⁴
- Subscription of an insurance policy covering a minimum capital of EUR 100 000.³⁵
- Investment of a minimum share capital, whose value ranges across ports from EUR 175 000 to EUR 1 000 000.³⁶

With respect to the latter requirement, if a cargo-handling operator provides services in more than one port, the minimum share capital required to obtain a licence corresponds to the sum of the capital requirements for each of the ports, up to a maximum ceiling of EUR 2 500 000. In other words, once this ceiling is reached, the operator does not have an obligation of invest further in order to operate in other ports.

For **towing operations**, licensed operators must fulfil the following requirements:

- Payment of an annual financial guarantee to the port authority amounting to one-twelfth of the estimated annual turnover for the first year and, after that, one-twelfth of the actual turnover observed in the previous year.³⁷
- Subscription of an insurance policy covering a minimum capital of EUR 500 000 for the risk of theft, fire, lightning, explosion and civil liability. This requirement is only imposed by some port authorities.³⁸

Finally, **shipping agents** are subject to the following requirements:

- Payment of a financial guarantee³⁹ to the port authority, in order to cover professional civil liability. The value of the guarantee is usually fixed and may vary across ports.
- Subscription of an insurance policy, which is only required by some port authorities.

Harm to competition

The existence of onerous financial requirements as a condition to access the port market substantially increases entry costs, restricting the number of private operators supplying cargo-handling and towing services. Moreover, the simultaneous imposition of financial guarantees, a minimum share capital and insurance requirements on the same operator is likely to be particularly restrictive to competition due to the cumulative effect of all the barriers, which may prevent operators with less financial capacity from entering and competing in the market.

In addition, some of the financial requirements can have the effect of discriminating between different operators. In the particular case of cargo handling, the requirement for a company to have a minimum social capital poses an investment cost that is not proportional to the dimension of the operator, preventing small companies from providing cargo-handling services.⁴⁰ Likewise, the financial guarantee imposed on shipping agents is a fixed amount that is not proportional to the size of the operator, reducing the incentive of small agents to enter.⁴¹ These provisions may thus lead to market concentration and prevent small operators from contesting the market with more innovative services and lower prices.

Finally, it should be evaluated whether the financial requirements are adequate to attain the policy goal. For instance, financial guarantees may not be the most effective means to ensure that a company is able to cover its liabilities, as they actually force operators to put aside capital and decrease their financial capacity.⁴² This is particularly noticeable in the case of shipping agents, for which financial guarantees can be legally used to cover civil liability, replacing the traditional role of insurance companies. Instead, the same objective could be achieved with a more effective measure, such as a compulsory insurance policy, which is already required by some port authorities.

Recommendations

The legislator should review the financial requirements currently imposed on private operators, abolishing any redundant requirements that are not the most effective way to attain the policy objective or which may have the effect of discriminating among operators. For that, the following recommendations could be cumulatively implemented:

- Abolish existing requirements for financial guarantees and minimum share capital, replacing them when necessary with a compulsory insurance policy.
- Determine the minimum capital covered by the compulsory insurance policy according to objective criteria based on the operational risks and dimension of the operator, in order to prevent market distortions.

5.4.2. Equipment and labour requirements

Description of the barrier

Another common regulatory restriction for the provision of port services in Portugal is the imposition of minimum levels of equipment or manpower on private operators. In general, the objective of such a requirement is to guarantee that operators have the necessary resources to provide services that are of public interest.

In the case of cargo-handling operations, national legislation requires operators to employ an exclusive group of workers and to own the equipment, machinery and vehicles required to carry out the operations.⁴³ According to the competent ministry, the requirements of the licensing regime were initially designed to foster the consolidation and strengthening of the national operators, in the context of the transition from the port-tool model to the landlord port model in the early 1990s.

With respect to towing operations, several port authorities have adopted port-specific regulations requiring towing operators to have the “adequate material means” to provide towing services. While the port regulations do not define “adequate material means”, in practice port authorities request towing operators to have a minimum number of tugboats, which are their most significant financial investment.⁴⁴ The main objective of this request

is to guarantee that a licensed towing operator has the necessary equipment to provide services to all port users, including particularly large vessels that rarely enter the port.

Finally, port-specific regulations also require shipping agents to have permanent staff with appropriate qualifications⁴⁵ and the necessary material means to operate, including office and information technology (IT) equipment.⁴⁶ In addition, some of the port regulations go beyond imposing minimum equipment and also restrict the geographical area where the shipping agent must be based. For instance, to operate in Port of Sines, the shipping agent's premises must be located either in the municipality of Sines or less than 25 km away from Port of Sines.⁴⁷

Harm to competition

Legal requirements imposing a minimum investment in capital may substantially increase fixed costs, restricting the number of operators that can co-exist in the same port. Therefore, the provisions may have the effect of restricting competition in the market, reducing the incentives of operators to innovate and to set lower prices for port users.

The imposition of minimum levels of equipment and manpower also limits the ability of the operators to organise themselves and to allocate their resources more efficiently. For instance, the obligation of cargo-handling operators to own their equipment and to hire permanent workers excludes other contractual forms, such as leasing or renting, or to rely only on temporary work for operational purposes. Likewise, it might be more efficient for shipping agents to hire temporary staff. With respect to towing, there is a risk of overinvestment, for instance when every towing operator is forced to individually own the minimum number of tugboats that is necessary to drag the largest vessels entering the port.

The legal requirements identified may also be ineffective to attain the policy goal, since in general they are unclear and not-well specified in the legislation and port regulations.⁴⁸ An alternative less restrictive option would be to establish minimum levels of public service or to enable the use of pools of equipment and labour.

Finally, special attention should be given to the requirements for shipping agents to have premises in pre-designated areas, which constitute an additional barrier to enter the local market. This does not only have the effect of restricting competition, but may also hinder economies of scale for shipping agents that operate in several ports, by eventually forcing them to have offices located in every market where they operate.

Recommendations

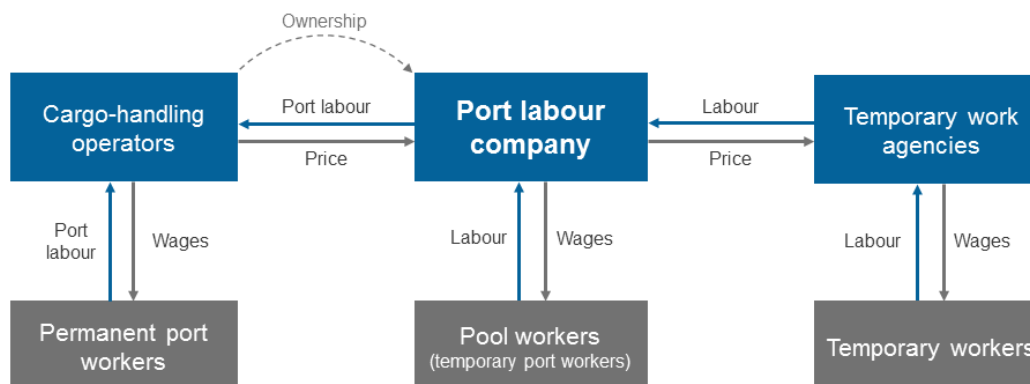
The legislator and port authorities are recommended to abolish all equipment and labour standards that are not based on transparent and objective criteria. Instead, the establishment of minimum levels of service or the use of equipment/labour pools can be an effective alternative to ensure public services.

5.5. Port labour companies

In Portugal, port labour companies are businesses specialised in providing temporary port labour⁴⁹ that have the exclusive right of providing it to cargo-handling operators. For that, port labour companies employ a pool of workers that can be used by different operators in order to meet their short-term labour shortages. If the pool workers are not enough to

satisfy the demand for temporary work, port labour companies may hire workers from temporary work agencies, as portrayed in Figure 5.13.

Figure 5.13. The flow of port labour for cargo-handling operations



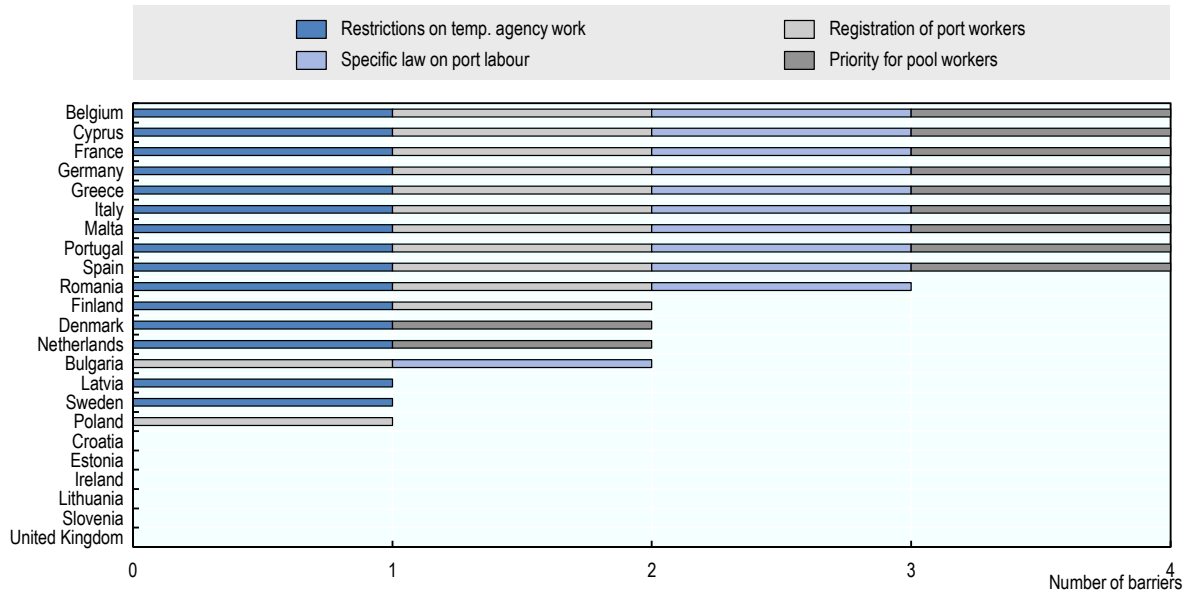
In addition to the manpower provided by port labour companies, cargo-handling operators employ their own permanent labour force. In contrast to pool workers, permanent port workers are staff of cargo-handling operators and benefit from full-time jobs, usually having better working conditions and long-term contracts.

The vast majority of labour used by cargo-handling operators corresponds to temporary work, due to the fact that the volume of cargo handled in a port is typically subject to high fluctuations over time. Indeed, cargo-handling companies can face time periods with little or no business, alternated with periods when most cargo handling takes place and substantial manpower is needed. These dynamics require most operators to have a flexible labour force that can be easily adjustable to periods of high and low demand, as it would be prohibitively expensive to permanently employ the manpower required to satisfy punctual occasions of high demand.

However, the provision of temporary workers by port labour companies is often subject to regulatory barriers that may excessively restrict competition. Historically, many of these regulations were introduced to safeguard the interests of dockers, who used to be subject to poor working conditions characterised by low wages and benefits, high uncertainty of employment and safety hazards. Figure 5.14 displays the prevalence of the following four typical regulations across EU countries:

1. **Restrictions on temporary agency work:** legal provisions preventing cargo-handling companies from employing temporary workers from agencies that do not have the legal status of a port labour company.
2. **Registration of port workers:** registration system that gives exclusive rights to registered port workers. The total number of registrations is usually limited.
3. **Specific law on temporary port labour:** laws on temporary port labour that typically provide more protection to workers than the general temporary labour law.
4. **Priority rights for pool workers:** clauses that provide pool workers with priority rights for job vacancies.

Figure 5.14. Number of restrictions in the provision of temporary port labour in the EU, 2015



Note: Since 2013, registration of port workers is no longer required in Portugal.

Source: Data collected from Hooydonk (2014).

In 2013 Portugal was one of the countries in the EU with more regulatory restrictions and thus with the highest risk of distorting the market for temporary port labour. Since then, the registration system of port workers has been abolished, but many other barriers still persist. As a result, nowadays temporary port labour is provided in major ports by a reduced number of port labour companies, which are exclusively owned by either one or a few cargo-handling operators.

The following section will address in detail some of these regulatory barriers and discuss alternatives that might be less restrictive to competition.

5.5.1. Exclusivity rights in the provision of port labour

Description of the barrier

According to the legal regime of port labour⁵⁰ and other Portuguese regulations,⁵¹ the supply of labour for cargo-handling operations can only be performed by port labour companies that are (1) licensed by the IMT⁵² and (2) created exclusively for that effect. This implies that port labour companies have the exclusive right of hiring port labour (dockers) to work under the direct supervision of a third party, the cargo-handling operators. In addition, it also means that port labour companies cannot provide any other services potentially related to their main business, including professional training, human resource management and recruitment orientation.

The exclusivity right of port labour companies has the main effect of preventing general temporary work agencies from directly providing labour to cargo-handling operators, even if the former comply with specific port labour laws. Indeed, if temporary work agencies wish to pursue such an activity, they have to create a whole new legal identity whose single corporate objective is the provision of port labour. Alternatively, temporary

labour agencies can provide temporary workers to port labour companies, who would act then as intermediaries and make those workers available for cargo-handling operators.

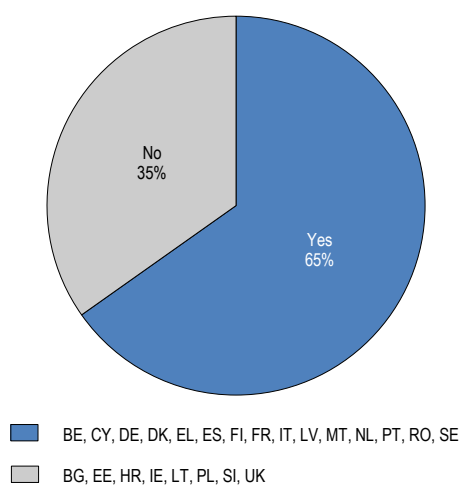
Another consequence of the Portuguese legislation is that cargo handling operators cannot share their permanent labour force directly among each other in order to adjust for business fluctuations. Again, for that, cargo-handling operators would have to establish a port labour company with a pool of workers. This is what happens in many ports, where the cargo-handling operators invest and own a port labour company.

Harm to competition

The exclusivity right of port labour companies has the effect of excluding other companies with different corporate activities, such as temporary work agencies, from the market. While the Portuguese legal regime still enables temporary work agencies to supply labour indirectly to cargo handling operators, either by creating their own port labour company or by using an existing one as an intermediary, such an alternative implies high administrative burdens, bureaucracy and intermediary costs. In practice, the establishment of exclusive rights restricts the level of competition in the port labour market, increasing the costs of labour for cargo-handling operators and potentially leading to fewer job opportunities for temporary workers.

In addition, the legal requirement for an exclusive corporate objective prevents port labour companies from engaging in other economic activities that could potentially lead to economies of scope, such as professional training, human resources management and recruitment orientation. It also leads to a higher operational risk, as port labour companies cannot diversify their sources of revenues and are entirely dependent on a single type of client –cargo handling operators.

Figure 5.15. Restrictions on use of temporary agency workers in the European Union, 2013



Source: Hooydonk (2014), Port Labour in the EU, Volume I - The EU Perspective, International and EU Port Law Centre, Study commissioned by the European Commission, Brussels, <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/ports/doc/2014-ec-port-labour-study-vol-1-update-5-12-2014.pdf>.

Finally, apart from the risks of competition harm, the legal provisions have no clear policy objective that could justify such restriction. Even if the policy maker considers that port labour deserves special protection due to employment uncertainty and safety hazards, there is no clear reason to prevent temporary work companies from supplying port labour, as long as they are required to comply with the same regulations as port labour companies.

Despite the competitive concerns identified in the analysis, similar barriers to competition can be found in many OECD countries. In the European Union, 65% of the jurisdictions have some form of restrictions on the use of temporary agency work for port labour (see Figure 5.15). Nonetheless, the concerns identified herein have already been raised by independent studies that have advocated for opening market access for temporary work agencies (Hooydonk, 2014).

Recommendation

In order to promote competition in the provision of port labour, policy makers are recommended to open the market to temporary work agencies. This can be achieved by:

- Eliminating from the law any requirements for port labour companies to have the single corporate activity of providing manpower to cargo-handling operators, in this way enabling companies with multiple activities to obtain a license for the provision of port labour.
- Explicitly specifying in the law that the provision of port labour can be carried out by temporary work agencies and other companies, as long as they fulfil the same licensing requirements and are subject to the same rules as port labour companies.

5.5.2. Specific licensing regime for port labour companies

Description of the barrier

Port labour is often regulated by specific laws that differ from the general labour law, in order to provide special protection to workers that may be vulnerable to unstable and potentially high-risk working conditions.⁵³ In Portugal, the legal regime of port labour is established by the Decree-Law 280/93, which according to the recital aims at promoting stability of employment, qualification of workers and dignifying working conditions.

One of the main legal restrictions imposed by Portuguese law is the existence of a licensing regime for port labour companies that supply temporary labour to cargo-handling operators, under the supervision of the IMT. Although in Portugal temporary work can only be provided by licensed entities, the licensing regime of port labour companies is different and, arguably, more restrictive to competition than the general licensing regime of temporary work agencies.

In particular, the regulatory decree 2/94 imposes several requirements for the licensing of port labour companies, of which the following are worth emphasising:

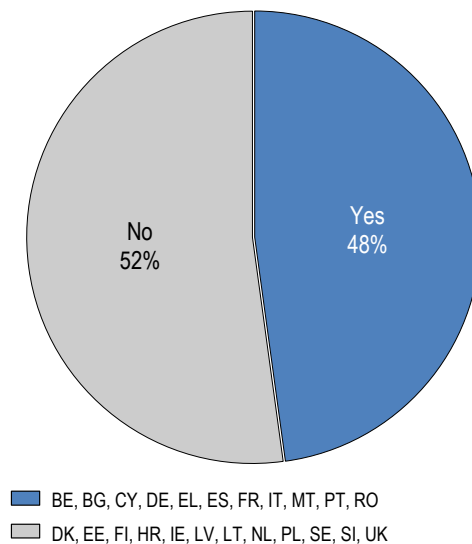
- Licensing is subject to the payment of a **financial guarantee** to the IMT, which amounts to the value of the national minimum wage multiplied by the number of workers employed by the port labour company. The value of the guarantee is updated every month based on the total number of employees.
- Licensing is also contingent on multiple **operational requirements**, including an obligation for the company to have separate premises for its exclusive use.

Harm to competition

The existence of a specific licensing regime for port labour companies increases the relative cost of port labour and, therefore, the prices of port services. While specific law on port labour exists in almost half of the EU jurisdictions (Figure 5.16), some of the licensing requirements identified in the Portuguese legislation can be particularly harmful to the competitive process and overly restrict the number of port labour companies in the market. Indeed, the legal requirements to pay a financial guarantee and to invest in exclusive premises raise entry and operational costs of port labour companies, potentially limiting competition in the market and increasing the costs of temporary port labour.

Furthermore, it is unlikely that these licensing requirements are the most effective way to achieve the policy objective of improving port labour working conditions. First, the payment of a financial guarantee may not assure the payment of workers' salaries when port labour companies face persistent financial difficulties.⁵⁴ Instead, this risk could be mitigated through an insurance scheme. Second, while the requirement for port labour companies to have separate premises may be intended to guarantee port workers' rights, including access to proper facilities, it is unclear whether a physical separation of premises will contribute to achieving this objective. Instead, this restriction may reduce room for innovation and prevent the port labour company from organising its operations and investing in infrastructure in a more efficient way.

Figure 5.16. Specific law on port labour in EU countries, 2013



Source: Hooydonk (2014), Port Labour in the EU, Volume I - The EU Perspective, International and EU Port Law Centre, Study commissioned by the European Commission, Brussels, <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/ports/doc/2014-ec-port-labour-study-vol-1-update-5-12-2014.pdf>.

Recommendation

The policy maker should consider abolishing the specific licensing regime of port labour companies, applying instead the general licensing regime of temporary work agencies. If the current regime is maintained, the two following recommendations should be implemented:

1. Abolish the licensing requirement to invest in separate premises.
2. Replace the financial guarantee with an insurance scheme to guarantee the payment of wages.

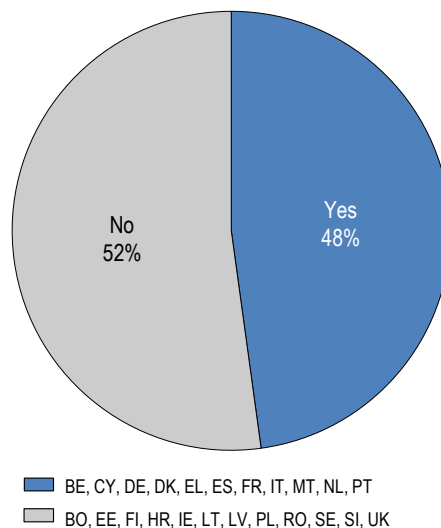
5.5.3. Priority rights for pool workers

Description of the barrier

In many countries, when cargo-handling operators are confronted with the need to hire additional manpower, they are often required to give priority to pool workers who are under the command of the port labour company. In other words, pool workers must be assigned first to all temporary or permanent job vacancies before any workers from other companies can be employed. Such priority clauses for pool workers exist in 48% of the EU countries (see Figure 5.17) and they can have the effect of further distorting competition, increasing the costs of port labour and reducing job opportunities for workers outside the pool.

In Portugal, priority clauses for pool worker cannot be found in the national legislation or sectoral regulations, but they might still result, for instance, from the collective agreements concluded between cargo-handling companies and representatives of workers.⁵⁵ Once the previous recommendations of this report are adopted and temporary work agencies are allowed to compete with port labour companies, no discriminatory behaviour providing preference to one type of workers based on their company should be allowed.

Figure 5.17. Priority rights for pool workers



Source: Hooydonk (2014), Port Labour in the EU, Volume I - The EU Perspective, International and EU Port Law Centre, Study commissioned by the European Commission, Brussels, <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/ports/doc/2014-ec-port-labour-study-vol-1-update-5-12-2014.pdf>.

5.6. Pilotage in ports

Maritime pilotage is a service of technical assistance provided by pilots to shipmasters during the navigation inside the port and surrounding area, which is typically the most dangerous part of any maritime route. For that reason, maritime pilots are navigation experts with highly developed skills and specialised knowledge about the particular navigation conditions of the port, such as the tide, direction of wind and depth of the sea. Their skills enable them to manoeuvre ships through the narrow channels of the port, to stop heavy vessels on time and avoid dangerous areas.

In Portugal pilotage is considered a public service, due to its role in protecting the safety of navigation, preserving the port infrastructure and preventing environmental hazards. Indeed, unsafe navigation inside a port can not only pose risks for the safety of the passengers and the cargo, but also threaten the safety of other port users, damage port infrastructure (possibly interrupting the functioning of the port for a long period of time) and result in high environmental costs to the population in general. This is particularly the case for vessels carrying dangerous cargo.

Accordingly, maritime piloting is subject to regulations that seek to promote safety and protect the environment, though some legal provisions might have the effect of restricting competition more than necessary to achieve the policy goal. In Portugal, the four following barriers to competition were identified as being particularly harmful:

- limited role of the private sector in the provision of piloting services⁵⁶
- regulation of piloting tariffs and discounts⁵⁷
- legal barriers to obtaining exemptions from compulsory piloting services
- restrictions on access to the piloting profession.

Due to the importance of piloting and the risk of competition harm identified, the OECD and the Portuguese Competition Authority commissioned an independent study that attempts to measure empirically some of the economic effects of regulation and lack of competition in piloting services. This study provides several relevant outputs, of which the following are worth emphasising: (1) a cost-efficiency analysis of the cost of pilotage services; (2) an analysis of whether pilotage fees are cost-driven; and (3) an international comparison of pilotage fees between Portugal and other countries that are comparable to the Portuguese reality.

First, the cost analysis of pilotage services attempts to measure for each port a cost-efficiency score, which can be broken down into technical and allocative efficiency. Technical efficiency refers to the ability of a port to produce an output (hours of pilotage service) using the minimum amount of input (pilots). Allocative efficiency consists in the choice of the optimal combination of inputs based on their prices, which in this case correspond to the pilots' wages. Table 5.4 provides the efficiency scores measuring the distance between each port and the most efficient unit.

While in a competitive environment companies are expected to be close to the efficient frontier, the low efficiency scores in Table 5.4 suggest that most Portuguese ports are cost-inefficient in the provision of piloting services. Indeed, each port has on average twice the cost of an efficient unit, due to a combined effect of low technical and allocative efficiency. On the one hand, low technical efficiency may be attributed to the fact that some ports have full-time pilots on call who are seldom requested to provide piloting services. On the other hand, low allocative

efficiency might result from the relatively high cost of maritime pilots, whose gross annual salary ranges from around EUR 60 000 to EUR 130 000 (Gonçalves et al., 2017).

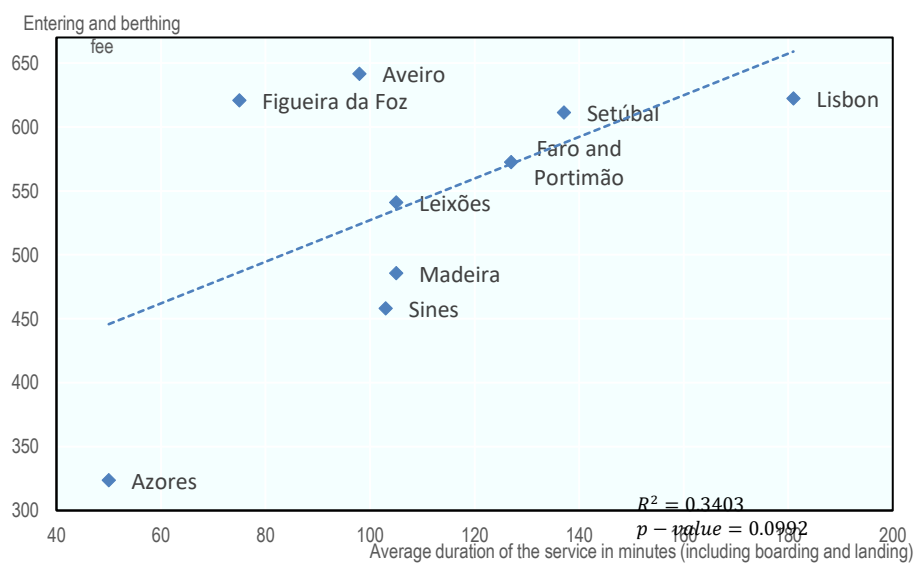
Table 5.4. Cost efficiency scores for Portuguese ports, 2015 and 2016

	Technical efficiency score (<i>a</i>)	Allocative efficiency score (<i>b</i>)	Cost efficiency score (<i>a</i> × <i>b</i>)
Port 1 – 2015	0.46	0.48	0.22
Port 1 – 2016	0.28	0.48	0.13
Port 2 – 2015	0.88	0.64	0.56
Port 2 – 2016	1.00	0.57	0.57
Port 3 – 2015	0.75	1.00	0.75
Port 3 – 2016	0.75	0.79	0.59
Port 4 – 2015	0.76	0.80	0.60
Port 4 – 2016	0.63	0.82	0.51
Port 5 – 2015	0.90	0.92	0.83
Port 5 – 2016	0.90	0.87	0.78
Port 6 – 2015	0.80	0.87	0.70
Port 6 – 2016	0.70	0.91	0.64
Port 7 – 2015	0.90	0.50	0.45
Port 7 – 2016	0.65	0.67	0.43
Port 8 – 2015	0.65	0.36	0.24
Port 8 – 2016	0.57	0.36	0.20
Mean	0.72	0.69	0.51

Note: A cost-efficiency score of 0.20 implies that the port can reduce costs to 20% of the current value, by improving both technical and allocative efficiency.

Source: Gonçalves, R. et al. (2017), “The Economic Impact of Deregulation: Transport and Liberal Profession Sectors in Portugal”, Report prepared for the Portuguese Competition Authority and the OECD.

Figure 5.18. Relation between pilotage fees and cost drivers



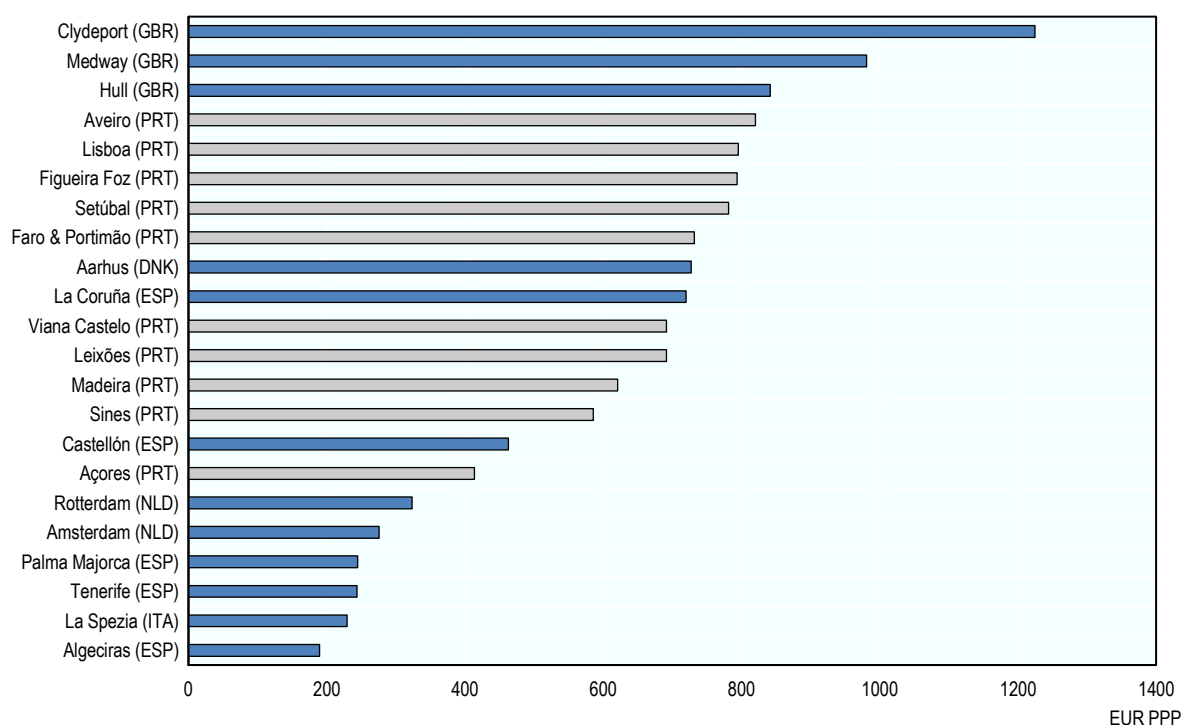
Note: The entering and berthing fees are estimated for a general cargo representative ship.

Source: Adapted from Gonçalves, R. et al. (2017), “The Economic Impact of Deregulation: Transport and Liberal Profession Sectors in Portugal”, Report prepared for the Portuguese Competition Authority and the OECD.

Second, the analysis of the pilotage fees in Portugal indicates that fees are somehow related to costs, although the significance of this relation is not clear. For instance, Figure 5.18 illustrates a positive relationship between pilotage fees and the average duration of the service (cost driver), but some ports diverge considerably from the regression line. Moreover, additional data reveals that operational results from pilotage services vary substantially across ports, with a port authority reporting an operational profit of almost EUR 1.5 million, and another reporting a loss of almost EUR 2 million (Gonçalves et al., 2017). This suggests that pilotage fees exceed costs in some ports and are cross-subsidised in others.

Finally, an international comparison reveals that pilotage fees in Portugal far exceed the levels observed in some European ports. As shown in Figure 5.19, the entering and berthing pilotage fee charged to a general cargo ship in Portuguese ports is, on average, two to three times higher than the equivalent fee set by Dutch, Italian and most Spanish ports, and around the same value set by the Danish Port of Aarhus.⁵⁸ As a result, the high pilotage fees observed in Portugal might reduce the competitiveness of the national port sector and contribute to diverting commerce by sea to other European countries. The only exception is the United Kingdom, where pilotage fees are slightly higher or, in the case of the Port of Bristol, over twice the value charged in Portugal.

Figure 5.19. Entering and berthing pilotage fees for a general cargo ship



Note: All fees were calculated for a representative general cargo ship. In order to improve readability, an outlier observation was removed (Bristol port, which has an estimated fee of EUR 1975).

Source: Gonçalves, R. et al. (2017), “The Economic Impact of Deregulation: Transport and Liberal Profession Sectors in Portugal”, Report prepared for the Portuguese Competition Authority and the OECD.

The lack of competitiveness of Portugal in the provision of piloting services may be the result of several regulatory barriers, some of which are specific to pilotage while others are also observed in other port services. The following sections focus only on the

piloting-specific barriers that were not addressed earlier in the chapter, namely the regulatory barriers to obtain pilot exemption certificates and the restrictions on access to the piloting profession.

The proposed reduction of PEC fees and renewal requirement, and the increase in the share of PEC-exempt missions in Portugal, may generate annual net saving of between EUR 1.4 million and EUR 4.7 million for shipping companies (see Annex 5.A1).

5.6.1. Pilot Exemption Certificates

Description of the barrier

A Pilot Exemption Certificate (PEC) is an authorisation that allows the holder to navigate and manoeuvre within a compulsory pilotage area without necessarily using the services of a maritime pilot. This way, PECs enable skilful shipmasters who do frequent routes to autonomously navigate in a port area without incurring piloting costs. In the absence of a PEC, shipmasters have to be assisted by a designated pilot from the port and pay the respective piloting fee, since piloting services are mandatory by law.

In Portugal, PECs can only be issued by port authorities and are valid for the respective port area. In addition, PECs are subject to the following conditions:

1. Each PEC has an issuing fee of EUR 1 246 and a renewal fee of EUR 997.⁵⁹
2. PECs are valid for one year in the mainland and Madeira⁶⁰ and four months in Azores, after which they must be renewed.⁶¹
3. Foreign candidates for a PEC must demonstrate knowledge of the Portuguese language (although the Portuguese Government has already attempted to recognise English as an alternative language).⁶²

In light of the administrative burden required to obtain a PEC, Portugal is one of the European countries with the least active PECs. According to data collected from major Portuguese ports, there were only 28 active PECs in Portugal in 2016 and they represented 2% of the ships entering the ports. In comparison, data from PwC and Panteia (2012) reveals that in other small European countries such as Belgium, Denmark and Netherlands there are more than 100 PECs in force, while in larger countries like Germany, Finland and Sweden there are over 1 000 PECs.

Harm to competition

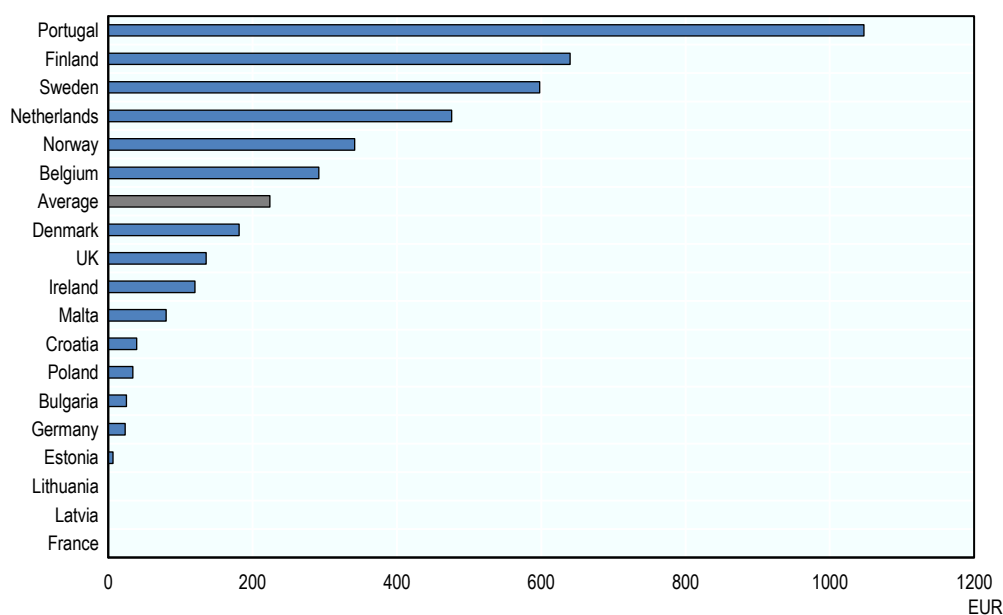
The legal requirements to obtain a PEC in Portugal have the effect of distorting competition, leading to an inefficient allocation of public resources and, potentially, to a discriminatory treatment of shipping lines based on nationality. Indeed, due to the difficulty of obtaining a PEC, some shipmasters familiar with the navigation conditions inside the port are forced to unnecessarily use piloting services, resulting in a waste of pilot and equipment resources, and leading to longer waiting periods in ports.

Foreign shipmasters are particularly likely to be subject to discrimination, as they may have the necessary skills to navigate inside a port even if they do not speak Portuguese. Among the 22 coastal EU Member States, Portugal is one of only four countries reported to have a requirement for exclusive knowledge of the national language (PwC, 2012).⁶³ The competitive impact of such discriminatory treatment might be substantial, given that the vast majority of shipmasters entering national ports are non-Portuguese.

In addition, the high cost of obtaining a PEC reduces the international competitiveness of the Portuguese port sector. Currently, the average annual cost of holding a PEC to enter a Portuguese port is over EUR 1 000, which largely exceeds the cost observed in other European countries (see Figure 5.20). This striking difference is explained by the fact that Portuguese ports have the highest issuing and renewal fees while, at the same time, the certificates have a very short duration. The duration of a PEC ranges from one year to five years in other European countries (PwC and Panteia, 2012).

Finally, there is a risk of conflict of interest deriving from the fact that, in Portugal, the provision of piloting services and the issuing of PECs are under the responsibility of the same entity. This could create perverse incentives to restrict the number of PECs granted. Accordingly, in many other European countries PECs are issued by transportation authorities or agencies.

Figure 5.20. Average annual cost of holding a PEC in European countries



Note: Given the different cost structure of obtaining a PEC across countries, average annual costs were estimated assuming that the PEC is held for a five-year period, in order to enable international comparison.

Source: Calculations based on data from Tables 54 and 59 in PwC and Panteia (2012), "Study on Pilotage Exemption Certificates", Report submitted to the European Commission Directorate-General for Mobility and Transport, <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/studies/doc/2012-09-18-pec.pdf>.

Recommendation

The four following recommendations should be cumulatively implemented, in order to facilitate the process of obtaining a PEC in Portugal:

- Attribute the responsibility of issuing PECs to an entity other than the port authorities.
- Set an issuing fee based on costs. Extensions should be automatically granted if certain conditions are verified, such as a minimum frequency of manoeuvres in the port area in the previous year.
- Reassess the length of PECs, which could be extended to five years.
- Amend Decree-Law 48/2002 to recognise English as an alternative language.

5.6.2. *Restrictions on access to the piloting profession*

Description of the barrier

Maritime pilotage is a regulated profession, whose access is restricted to certified professionals in order to preserve safety of navigation in ports and surrounding areas. According to the legal regime for the public service of piloting,⁶⁴ maritime pilots in Portugal must have the proper qualifications, experience in manoeuvring vessels in restricted waters, knowledge of the local port and awareness of the legal regime governing piloting services. In addition, the law specifies the following criteria to access the profession:

1. **Experience:** pilots must be naval officers with at least a “first class pilot” category.⁶⁵
2. **Language:** pilots must have knowledge of the Portuguese language, spoken and written.⁶⁶
3. **Training:** candidates must complete a piloting traineeship, subject to a process of continuous evaluation.⁶⁷

First, with respect to minimum experience, “first class pilots” must have a naval officer’s degree from the Portuguese Nautical School, a minimum of three years of experience on the sea (one as a trainee-pilot and two as a second class pilot) and a certification as a seafarer officer. The Pilot’s Association claims that the knowledge and experience acquired at the Naval School is essential to becoming a pilot, whereas other stakeholders suggest that such knowledge could be obtained in alternative ways, for instance by enrolling in a professional seafarers’ school or by working as a seaman.

Second, in terms of training requirements, the traineeship has a total duration of six to nine months and is provided by training pilots from the port. While the content of the traineeship is not clearly specified in the law, according to IMO Resolution A.960 it should include practical experience aboard vessels under actual piloting conditions. The training is accompanied by a process of continuous evaluation administered by the same pilots that train the candidates.

Third, the requirement of knowledge of the Portuguese language is intended to facilitate communication between pilots and other port staff. However, it should be noted that the vast majority of shipmasters entering Portuguese ports and using piloting services are non-national. In this matter, IMO Regulation A960 (6.2) states that “Communications on board between the pilot and bridge watch keeping personnel should be conducted in the English language or in a language other than English that is common to all those involved in the operation”.

Harm to competition

The imposition of multiple restrictions on access to the piloting profession may substantially reduce the supply of piloting services, artificially raise pilots’ wages and result in high prices for port users. Moreover, because piloting services are mandatory by law for most vessels, the imposition of such restrictions can be particularly harmful, increasing waiting times to enter the port and even reducing the total capacity of the port.

While the nature of piloting as a public service could justify some restrictions on access to the profession, in some cases there is no clear link between the legal provision and the policy objective of safety. For instance, it is striking that pilots are required to be fluent in

Portuguese even though the common language between the pilot and the commanding officer is English, as the vast majority of shipmasters entering Portuguese ports are non-national.⁶⁸ Likewise, there is no clear reason to require pilots to have a first class category and to block entry to seafarers of inferior rank, even though the latter could have the same or more years of experience in the sea.

Finally, there is a substantial risk of competition harm associated with the fact that active pilots conduct both the training and the examination of new candidates. This can create an incentive for existing pilots to foreclose entry of new professionals and restrict competition. Accordingly, proper mechanisms should be adopted to guarantee the quality and objectiveness of the evaluation procedures.

Recommendation

The following recommendations should be implemented with the purpose of opening access to the piloting profession:

1. Recognise English as an alternative language required to become a pilot.
2. Abolish the legal requirement to have a “first-pilot category”, replacing the provision with a requirement of three years of experience serving on board ships as seafarer.
3. Separate the activities of training and examining candidates to the piloting profession, creating if necessary an independent body responsible for supervising the quality and objectiveness of the evaluation procedures.

5.7. Maritime transport services

Maritime transport is the movement of people and freight by sea, and is one of the most fundamental services provided to cargo owners within a complex value chain. All port services and activities previously discussed have the ultimate purpose of supporting the work of maritime transport operators, who establish maritime routes connecting the Portuguese mainland and islands with the rest of the world.

The legal framework regulating the provision of maritime transport services depends on the geographical nature of the service:

- **International maritime transport** is mostly governed by international law and agreements.
- **National maritime transport** is subject to specific national law that might harm the competitive process. There are two types of national maritime transport that are subject to different regulations:
 - **Cabotage**, which consists of maritime transport between two ports located within the country.
 - **Local transport**, which is the transport confined to a restricted area within the jurisdiction of a specific port or maritime department.

Most regulatory barriers to competition can be identified in the cabotage regime for the Portuguese islands and in national rules for local maritime transport. In the first case, the regime of cabotage connecting the islands among each other and connecting the islands to the mainland is subject to public service obligations. In the second, local maritime transport is restricted by legal provisions that are aimed at protecting the domestic local

fleet and industries. Apart from this, the provision of maritime cabotage services in Portugal is free and open to all EU shipping companies, provided they comply with the national rules for carrying out such services.

This section discusses the main barriers to competition identified in the Portuguese legal framework governing national maritime transport. It addresses (1) the public service regime for cabotage in the islands, (2) the registration requirements for local maritime transport and (3) an obligation for maritime transport operators to hire the services of shipping agents. Finally, the section identifies certain obsolete provisions and administrative burdens that may result in legal uncertainty and unnecessarily raise costs for potential entrants.

5.7.1. Cabotage public services in the islands

Description of the barrier

Maritime transport has a crucial role for the regional economy and social well-being of the population in the Portuguese islands. Indeed, transport by sea is the main way of guaranteeing regular access of the islands to other markets, enabling consumers to buy essential products at affordable prices. Likewise, local producers rely heavily on the quality and reliability of the maritime cabotage service, in order to purchase raw material and commodities, as well as to export goods produced locally.

The Portuguese islands comprise two outermost regions, Azores and Madeira.⁶⁹ Azores is composed of nine populated islands, the furthest of which are 602 km away from each other (Santa Maria and Corvo). The biggest island (São Miguel) is located 1 643 km away from the mainland. On the other hand, the region of Madeira is composed of only two inhabited islands, Porto Santo and Madeira Island, which are 69 km apart and 968 km away from the mainland. In addition, there is a distance of around 1 200 km separating the regions of Azores and Madeira.

Due to the geographical dispersion of the islands and their long distance from the mainland, there is a risk of under provision of maritime transport services in both regions of Azores and Madeira. In other words, private operators may fail to provide essential transport services that do not meet their commercial interest, despite the dependence of the island population on reliable maritime transport. This is particularly likely to be the case for small remote islands, such as Corvo and Flores.

The right of providing regular transport of containerised and general cargo to Azores and Madeira is thus reserved for authorised operators that comply with the following public service obligations:⁷⁰

- **Minimum frequency of services:** Each operator must do at least a weekly connection between the mainland and the region where it operates⁷¹ and guarantee a stopover in each island every two weeks.⁷²
- **Continuity of service:** Operators entering the market must ensure continuity of the service for at least two years.⁷³
- **Regulation of the transport rate:** Each operator must set the same freight price for the same type of merchandise in all islands of the region where it operates.⁷⁴

First, the imposition of a minimum frequency of services requires operators to provide a minimum service to small and remote islands, whose maritime routes are cross-subsidised by profitable routes to the bigger islands. Second, the requirement for continuity of service prevents operators from entering the market in seasons of high demand, while

exiting in periods of low demand when public services are still needed. Third, the regulation of transport rates is intended to prevent price discrimination, guaranteeing that all islanders in the same region have equivalent living conditions.

There are four cabotage operators in the Portuguese islands under the current public service regime. Two of the operators serve both Azores and Madeira, while the other two operate only in each of the regions.⁷⁵ Other potential operators who wish to enter the market must satisfy the same public service obligations.⁷⁶ In addition to the public services provided by the current operators, the Government of Azores concluded a public service contract to guarantee a regular connection between the two most remote islands: Corvo and Flores.⁷⁷

Harm to competition

The current public service regime poses substantial barriers to entry, restricting the number of cabotage operators and potentially undermining the policy objective of promoting efficient and affordable cabotage services in the islands. In fact, to enter the market any potential operator has to comply with mandatory maritime routes, is obliged to stay in the market for at least two years and cannot set their prices to reflect costs. All together, these restrictions impose fixed, operational and exit costs that discourage the entry of low-scale local operators, preventing them from contesting the market with more innovative transport services.⁷⁸

Among the several barriers identified, the imposition of a single transport price for all the islands might be particularly harmful, as it prevents the price-mechanism from adjusting supply to fluctuations of demand across islands. This restriction can also inhibit cabotage operators from decreasing freight prices in routes to small islands where vessels are shipped almost empty, as that would require the operators to also decrease prices on profitable routes where vessels are used at full capacity. Alternatively, a maximum price regulation might help to achieve the policy objective and inflict less harm on the competitive process.

Apart from the inherent limitations of the existing regime, the compliance with the public service obligations has been subject to a lack of supervision and effective control by competent authorities. This is in part due to the fact that the law is not clear about the division of powers between IMT and AMT in the regulation of cabotage public services. In the absence of such supervision, cabotage operators have so far organised themselves to guarantee that they can jointly satisfy the public service obligations,⁷⁹ providing an opportunity for direct contact between competitors which might entail some risks for competition.

There also seems to be no effective mechanism to finance the public needs of the islanders. Under the existing regime, the routes to small islands are supposed to be fully financed by operators through cross-subsidisation between profitable and unprofitable routes. However, in reality the state has been granting annual subsidies to cabotage operators to modernise their fleet⁸⁰ and direct subsidies for wholesalers to cover transportation costs of essential goods to the islands.⁸¹ Likewise, the public service contract for the connection between Corvo and Flores involves the payment by the regional government of EUR 1 100 000 every three years to the local concessionaire.

In light of the shortfalls of the current public service regime, there is a clear need to consider alternative models that are less restrictive to competition and that successfully meet public needs without requiring additional funding mechanisms (see Box 5.5). Alternatively, if the current regime is to be kept, the legislator should at least review some of the existing public service obligations that might be particularly harmful to competition or that do not have a clear policy goal.

Box 5.5. Principles of public service obligations

Public service obligations (PSOs) are legal requirements to provide a minimum level of services to consumers who are usually underserved, due to the low profit or high business risk of serving them. PSOs are sometimes referred as universal service obligations, community service obligations or non-commercial service obligations.

When defining PSOs, the competent authorities should start by identifying the public needs and evaluate whether the minimum services to satisfy those needs can be provided in the absence of state intervention. If not, the authorities can decide to (1) directly provide the public service themselves or (2) regulate the market to create incentives for private operators to provide the service.

Regardless of the policy option, PSOs should be carefully designed in order to guarantee that public needs can be efficiently met, while minimising any distortions to competition. In particular, serious consideration should be given to the:

- **Definition of the service:** Service obligations should be objective, performance-based and general, not depending on the total number of providers. Input-based services and technology requirements should be avoided, as they may exclude alternative low-cost providers from the market and hinder innovation.
- **Beneficiaries of the service:** To avoid wasting funds, it is important to define a narrow class of the consumers that should benefit from the public service. If beneficiaries are instead broadly defined as all consumers, there is a risk that benefits are captured by individuals who need the service less and that poor consumers in isolated areas are still underserved. The benefits for end-consumers (beneficiaries) should be monitored by competent authorities.
- **Providers of the service:** The provision of public services should be open to any operator, as entry restrictions are rarely necessary to maintain the service obligation. As such, exclusive contracts should be avoided.
- **Price regulation:** The prices of public services should be based on costs, in order to promote an efficient allocation of resources and incentives for investment. Although uniform pricing across high-cost and low-cost areas is common, this practice might result in consumers in high-cost (low-cost) areas over-using (under-using) the service, while at the same time reducing incentives for operators to invest in the high-cost areas.
- **Public funding:** Public services can be funded by direct subsidies, fiscal advantages, compensation funds, ex-post deficit coverages, guarantees and loans, among others. Regardless of the funding mechanism, the same benefits should be offered to all operators. It is usually also preferable to have public services funded by the local budget instead of the national budget, in order to enable localities or regions to cautiously weight the benefits of public services against the costs.

Often PSOs generate an appropriate risk-adjusted rate of return and, thereby, do not merit public funding. A common finding in the literature is the arbitrary status of many PSOs, resulting sometimes in low subsidies for routes where they might be justified and high subsidies for routes that are commercially viable. In many cases, the financing of PSOs seems primarily driven by the insistence and success of regional lobby groups.

Source: OECD (2003), “Universal Service Obligations”, OECD Policy Roundtables, www.oecd.org/daf/competition/sectors/45036202.pdf.

Recommendation

It is recommended that the legislator identify and implement an alternative model of PSOs for cabotage in the Portuguese islands. The new model should be based on principles that promote efficiency of the public services and minimise distortions to competition, as defined in Box 5.5. In an interim period, until the conclusion of the above mentioned technical study, or in case the current regime is still kept, the legislator should at least replace the current price regulation with a maximum price regulation that should be common to all islands.

In any case, the competent authorities should effectively monitor the compliance of cabotage operators with PSOs.

5.7.2. Registration requirements for local operators

Description of the barrier

Local traffic operators are companies entitled to transport cargo and passengers within local waters under the jurisdiction of a port or captaincy. Due to geographic limitations, local maritime transport is mostly used for the transport of passengers and is generally executed with local vessels, which must be registered and comply with nautical requirements of the area where they operate. Local vessels have reduced dimensions and normally operate between specific piers or harbours accessible to the general public.

Local maritime transport is, in many countries, subject to regulations that aim at protecting national or local operators and preserving a domestic fleet. In Portugal, apart from the legal requirement to register local vessels with the captaincy of the area where they navigate, all local operators must also be registered with the Directorate General of Natural Resources, Safety and Maritime Services (DGRM). The registration of local operators is contingent on the following conditions:

- **Geographical requirement:** local operators must reside in Portugal or, in the case of a company, have the headquarters in Portugal.
- **Registration of vessels:** local operators must use vessels registered for local traffic or, alternatively, obtain a special authorisation from the DGRM to use a non-registered vessel. This special authorisation can only be given if the local operator proves that:
 - a. no other local operator is willing to provide the service or has the means to do so.
 - b. the vessel used does not cause any “disturbing changes to the normal functioning of the market”.

According to the Ministry of the Sea, these registration requirements are intended to protect local transport companies from non-local competition and, at the same time, to ensure compliance with maritime safety rules in congested local waters, by giving preference to vessels that are considered suitable for local conditions.

Harm to competition

The legal requirements for the registration of local operators restrict competition in the market, protecting established incumbents from potential entrants. The registration regime creates substantial barriers to entry for operators that are not based in Portugal or that do not use vessels registered for local traffic. This may prevent more efficient high-

scale operators from competing locally, ultimately increasing prices and reducing the quality of local transport services.

The requirement to have residence or headquarters in Portugal is particularly likely to harm the competitive process, as it may foreclose the market to non-national operators. Indeed, transferring the main residence or headquarters to Portugal may pose substantial costs to a non-national operator and, in some cases, it might be legally impossible if a similar rule applies at the operator's country of origin. This requirement may also reduce local interconnectivity of areas close to international borders.

Finally, while the obligation for local operators to use registered vessels could be justified by safety reasons, the conditions to obtain a special authorisation for the use of non-registered vessels appear to be excessively restrictive. In particular, the condition that the vessel used should not disturb the "normal functioning of the market" is unclear and can result in discriminatory treatment. Moreover, it is striking that the operator has the burden to prove that no other competitors are willing to provide the service. As a general rule, the requester should only have to prove this if it faces a contrary decision by the authorities and decides to contest such decision.

Recommendation

The legislator should abolish the requirement for local operators to have residence or headquarters in Portugal.

With respect to special authorisations for local operators to use non-registered vessels, the legislator should eliminate the clause requiring the vessel not to disturb "the normal functioning of the market". The legislator should also reverse the administrative burden to DGRM, which should be the entity responsible for verifying whether there are operators willing to provide the service and with the means to do so.

5.7.3. *Obligation of hiring a shipping agent for shipping companies*

Description of the barrier

Shipping companies and carriers are the international and national entities responsible for providing maritime transport services of freight and passengers. National shipping companies are registered in IMT and typically have their headquarters based in one of the Portuguese ports.

In Portugal, shipping companies are legally required to hire a shipping agent to represent them in ports where they are not based.⁸² This legal provision precludes international shipping companies from representing themselves before the Portuguese port authorities. It also applies to the national shipping companies, which cannot represent themselves except in the port where their headquarters are located. As a result, many shipping companies end up establishing themselves as shipping agents in ports where they regularly operate.

Harm to competition

The provision raises the operational costs of shipping companies, either by requiring them to hire a shipping agent whose services might not be necessary, or by forcing them to go through the administrative procedure of establishing themselves as shipping agents. The cost associated with any of these alternatives might be substantial, particularly given the excessive licensing requirements that restrict the entry of shipping agents described in

Section 5.4. In other words, the Portuguese law creates an artificial demand for shipping agents while at the same time restricting their supply, which is likely to result in distortions to competition.

Moreover the obligation to use a shipping agent for national operators appears to create an excessive burden in light of the existence of alternative methods to effectively communicate and interact at distance. For instance, in Portugal there is a “port single window” web platform (*Janela Única Portuária*) that regulates the interaction between port operators, shipping agents, and maritime and port authorities. It is foreseen that the use of this platform will be enlarged to include shipping companies and logistic operators, therefore facilitating the co-ordination of shipping companies and port authorities without the need for an intermediary. Overall, the decision to hire a shipping agent should be taken by the shipping company, taking into account existing alternatives.

Recommendation

Remove the last sentence of the disposition that limits the power of registered shipping companies to representing themselves “only in the port where their headquarters are based”.

5.7.4. Obsolete provisions and administrative burdens

Description of the barrier

Finally, it should be noted that some of the legal provisions regulating maritime transport services in Portugal are outdated, but legally still in force. Following exchanges with the Ministry of the Sea and other competent authorities, obsolete provisions were identified in the regulation of the following activities:

- conditions to navigate in the Douro Waterway⁸³
- registration of commercial vessels⁸⁴
- temporary registration of commercial vessels⁸⁵
- construction of commercial vessels.⁸⁶

In addition, there are several other provisions regulating maritime transport services that pose excessive administrative burdens in several domains (see Annex B).

Harm to competition

Obsolete provisions create legal uncertainty and might result in unintentional discriminatory treatment by competent authorities, who may apply different conditions to operators according to their legal understanding.

Provisions that pose an excessive administrative burden may significantly increase the costs for market operators and authorities, ultimately reducing the productivity and competitiveness of the port and maritime sector.

Recommendation

The legislator should expressly revoke legal provisions that are no longer in force. It should also ensure that administrative requirements are reduced and simplified as much as possible, enabling administrative procedures to be carried out through the internet.

Notes

- ¹ All major carriers are part of three global alliances that together represent around 95% of total east-west carrying capacity (Merk, 2017).
- ² The market share of top 4 container carriers has grown from a quarter to more than half of total global capacity over the last fifteen years.
- ³ An exclusive economic zone is an area over which a state has special rights of exploration and use of maritime resources.
- ⁴ Each quay can be composed of one or more berths for ships to dock.
- ⁵ See law no. 88-A/97.
- ⁶ The ILO or the IMO conventions are examples of such international agreements.
- ⁷ Decree-Law 18/2012 that transposes Directive 2009/18/CE.
- ⁸ Decree-Law 13/2012 that transposes Directive 2009/15/CE.
- ⁹ Decree-Law 161/2015 that transposes Directive 2014/111/EU.
- ¹⁰ Decree-Law 93/2012 that transposes Directive 2010/36/EU.
- ¹¹ Decree-Law 3/2016 that transposes Directive 2014/100/EU.
- ¹² Decree-Law 61/2012 that transposes Directive 2009/16/CE.
- ¹³ EC Regulation n. ° 392/2009.
- ¹⁴ Privatised ports only exist in very few jurisdictions, including the UK and New Zealand.
- ¹⁵ See Art. 59 of law no. 18/2003.
- ¹⁶ Although Decree-Law 298/93 already foresees that direct provision of cargo-handling should only be observed in exceptional circumstances, one of the exceptions is unclear (namely, the use of the concept of “free competition”) and appears to provide port authorities with some discretionary power to carry out cargo-handling activities themselves. Therefore, any exceptions that are not related to the lack of interest by the private sector should be eliminated.
- ¹⁷ See Art. 3(3) of the Decree-Law 298/93.
- ¹⁸ See Art. 37 of the Decree-Law 298/93.
- ¹⁹ While the nature of seaports as a natural monopoly could justify the regulation of port tariffs, it should be noted that Decree-Law 273/2000 is not a traditional price regulation, as it does not foresee the establishment of a maximum ceiling for port tariffs. In addition, it enables ports to create additional discounts and rebates based on the ports’ strategic interests.
- ²⁰ In Portugal, port authorities have several economic objectives, some of which may conflict with each other. For instance, Decree-Law 273/2000 states that port tariffs should be set to “promote a significant market share in the international market” and, at the same time, to “maximise income in order to cover operational and investment costs”.
- ²¹ Towing is subject to a concession in Porto de Sines and Porto de Aveiro.
- ²² See Art. 17 of Decree-Law 75/2001.
- ²³ See Art. 29(1) of Decree-Law 298/93 and also Decree-Law 324/94 (Bases XII).
- ²⁴ See Art. 410 of the Portuguese Code of Public Procurement.

²⁵ See Art. 18 of the EU Directive 2014/23/UE.

²⁶ The investment conducted by the private operator is not statistically significant in explaining the duration of the terminal award for significance levels of 1%, 5% or 10%. This conclusion is robust for alternative specifications of the model with other explanatory variables (such as the investment made by the port authority) and when removing recent observations where the operators may not have had enough time to invest.

²⁷ It should be noted, however, that contract extensions can be less harmful if awarded under the contingency of the operator achieving a minimum performance level.

²⁸ This conclusion results from an analysis of an ITF/OECD dataset on port concessions that covers 730 concession contracts in the port sector from 1990 to 2001.

²⁹ See Art. 18 of EU Directive 2014/23/UE.

³⁰ See Art. 74 of the Portuguese Code of Public Procurement (CPC).

³¹ A general principle for the distribution of the risk is that the concessionaire should only bear risks that he is able to assess and control. According to Klein (1998), shifting a controllable risk to the concessionaire reduces moral hazard, while shifting uncontrollable risk may excessively increase the required rate of return.

³² Whenever port regulations repeat legal provisions already foreseen in the general legislation, the analysis will refer to the primary provision.

³³ See regulation from Porto de Leixões, Porto de Viana do Castelo, Porto de Figueira da Foz, Porto de Lisbon, Porto de Sines and Porto de Setúbal. Some ports, such as Porto de Aveiro, do not have specific towage regulations.

³⁴ See Art. 14(1) and 14(3) of Decree-Law 298/93.

³⁵ See Art. 11 of Decree-Law 298/93.

³⁶ See Art. 5 of order (*Portaria*) 303/94.

³⁷ See Art. 11 of Decree-Law 75/2001 as last amended (also foreseen in the regulation of Porto de Setúbal, Porto de Lisbon and Porto de Sines and Algarve).

³⁸ See regulations of towing services in Porto de Lisbon, Porto de Setúbal and Porto de Sesimbra.

³⁹ See Art. 5(2) and Art. 5(3) of the Decree-Law 264/2012.

⁴⁰ The existence of a ceiling for the minimum share capital may also enable some incumbent operators to participate in other ports without increasing their share capital, giving them an advantage over potential entrants.

⁴¹ Art. 2 (E) of the Instruction from the Administration of the Port of Sines regarding the registry for the exercise of shipping agent states that he shall provide a financial, bank or insurance guarantee of € 7.482,00.

⁴² Accordingly, the financial guarantee imposed on towing companies may go against the rules set on EU regulation 2017/352, according to which the minimum requirements must be “transparent, objective, non-discriminatory and proportionate”.

⁴³ See Art. 9(3)(b) and Art. 9(3)(c) of Decree-Law 298/93.

⁴⁴ In the case of Porto de Lisbon, the towing regulation specifies that the operators must have an “adequate towing fleet”, which is defined as the minimum number of tugboats necessary to tow the ship with the highest tonnage and complexity that normally anchors there.

⁴⁵ See first part of the Art. 5(1) of the Decree-Law 264/2012.

⁴⁶ See second part of the Art. 5(1) of the Decree-Law 264/2012.

⁴⁷ See Art. 2(B) of the Instruction from Administração do Porto de Sines regarding the registry of shipping agents.

⁴⁸ In the particular case of towing services, the legal requirements identified do not appear to be aligned with the EU regulation 2017/352, as they are not based on objective and transparent criteria.

⁴⁹ In this context, the term port labour refers only to the workers responsible for the movement of cargo, that is, to the so-called “dockers”.

⁵⁰ See Art. 8 and Art. 9(1) of Decree-Law 280/93.

⁵¹ See Art. 3 of regulatory decree 2/94.

⁵² The legislations still refers to the ITP (Institute of Port Labour), which was replaced by the IMT.

⁵³ In legal terms, a specific labour law is known as a *lex specialis* on employment, in opposition to the *lex generalis*.

⁵⁴ It is also puzzling that, in case of financial difficulty of the port labour company, the IMT (technical public institute for transports) is in charge of guaranteeing the payment of temporary port workers' salaries. This responsibility is usually attributed to an insurance company or financial guarantee institution.

⁵⁵ Since labour law and collective labour agreements are out of the scope of this study, they were are not subject of analysis herein

⁵⁶ The role of the private sector in the provision of piloting and other port services is discussed in section 5.2.1.

⁵⁷ The regulation of piloting fees tariffs other port fees is discussed in section 5.2.3.

⁵⁸ Results are similar for other pilotage fees and for other types of ships, including container, liquid bulk, dry bulk and ro-ro.

⁵⁹ See Art. 7 of Ordinance 434/2002.

⁶⁰ See Art. 19 of Decree-Law 434/2002.

⁶¹ See Art. 3 of the order 43/2011 by the Regional Secretary for Economy on 14 June 2011.

⁶² The requirement of knowledge of Portuguese language is foreseen in Art. 17(2) of Decree-Law 48/2002. In 2012, the Government attempted to recognise English as alternative language through order 288/2012, but this order is considered legally void by several port authorities.

⁶³ The other three countries where only national language is required are Croatia, France and Spain.

⁶⁴ See Art. 3 of Decree-Law 48/2002.

⁶⁵ See Art. 9 and Art. 12(2) of Decree-Law 48/2002.

⁶⁶ See Art. 12(1) (B) of Decree-Law 48/2002.

⁶⁷ See Art. 13 of Decree-Law 48/2002.

⁶⁸ See recital of Order 434/2002: "the language commonly used for maritime communications is English and (...) it makes no sense to require only the knowledge of the Portuguese language for issuing a pilotage exemption certificate".

⁶⁹ See Art. 349 of TEU.

⁷⁰ The imposition of public service obligations is aligned with the Council Regulation (EEC) No 3577/92 on the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

⁷¹ See Art. 5(1)(a) of Decree-Law 7/2006.

⁷² See Art. 5(1)(c) of Decree-Law 7/2006.

⁷³ See Art. 5(1)(f) of Decree-Law 7/2006.

⁷⁴ See Art. 5(1)(g) of Decree-Law 7/2006.

⁷⁵ The companies Transinsular and Boxline connect Lisbon and Leixões to Azores and Madeira; Empresa de Navegação Madeirense connects Lisbon and Leixões to Madeira; Mutualista Açoreana de Transportes Marítimos connects Lisbon and Leixões to Azores.

⁷⁶ Art. 5 of Decree-Law 7/2006 foresees an exceptional regime to provide regular island cabotage services without complying with all the public service obligations. However, because in practice the conditions for this exceptional regime rarely apply, this is not subject of analyses.

⁷⁷ See Regulation (EEC) No 3577/92 for a distinction between “public service obligations” (Art. 2(4) and Art. 4(2)) and “public service contracts” (Art. 2(3)).

⁷⁸ For instance, in specific cases local operators could operate ferries to enable the transport of trucks with cargo between islands, thereby reducing the time of cargo movement in ports and potentially reducing the need to invest in port infrastructure.

⁷⁹ The EC Communication on how to interpret the Council Regulation (EEC) No 3577/92 on maritime cabotage COM (2014) 232 clarifies that public service obligations can be achieved as a result of all operators’ activities (not requiring each operator to individually fulfil the service public obligation).

⁸⁰ The IMT grants annual subsidies to cabotage operators in the framework of the (1) Project for modernization of the National Commercial Fleet and the (2) Project for the structural investment in the National Commercial Fleet.

⁸¹ The Programme of Options Specifically Relating to Remoteness and Insularity (POSEI) grants subsidies to regional wholesalers of essential products, covering the additional transport costs of supplying goods to the outermost regions.

⁸² See Art. 3(2) of Decree-Law 264/2012.

⁸³ See Decree-Law 344-A/98 on rules to be met by users of the Douro waterway.

⁸⁴ See Art. 73(4) and Art. 86 of Decree-Law 265/72 (lastly amended by Decree-Law 23/2007).

⁸⁵ See Decree-Law 287/83 (amended by Decree-Law 199/84).

⁸⁶ See Art. 51 of Decree-Law 265/72 (lastly amended by Decree-Law 23/2007).

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Annex 5.A. Quantification of the impact on pilotage fees and distribution of PECs

The review of the provision of pilotage services in Portuguese ports has revealed a number of barriers – in the form of restrictions and regulations – that are potentially harmful to competition. The OECD recommends that the relevant framework be amended in a number of ways, with a view to (a) allowing entry of private companies (and more pilots) into the relevant service, in order to foster competition for its provision; and (b) lower the cost of pilotage for users.

In what follows, we focus on two of the recommendations regarding pilotage services, as outlined in Section 5.6 above, and their likely impact.

Opening up participation to private operators

The OECD recommends that private companies are allowed to provide pilotage services. In particular the regulatory framework should be amended so that the provision of pilotage services directly by the port authority is only allowed when there is no interest by private operators.¹

This change will introduce competition for the right (licence or concession) to provide pilotage services in each port – for example, via a multi-annual tender process. If carefully designed, making this service contestable will have the effect of securing lower fees for users of pilotages services (cargo ships entering the port), potentially also increasing the attractiveness of the port to cargo-shipping companies. It also has the potential to improve the quality of the service offered, especially waiting times.

While the potential quality and improvement in service is difficult to measure,² we use information on the financial results of the sector and international comparisons to estimate the likely benefit to users from a reduction in pilotage fees.

The cargo shippers' benefit from lower fees is calculated as follows:

$$Benefit = \left(\rho + \frac{1}{2} |\varepsilon| \rho^2 \right) * R$$

Where ρ is the percentage change in pilotage fees as a result of opening up the market to entry by other operators, $|\varepsilon|$ is the absolute value of the elasticity of demand and R is the revenues from pilotage services. Alternative estimates for each of the constituent parts are set out below.

The total revenue from the provision of pilotage services in Portuguese ports is shown in Table 5.A.1 below. In each of the years 2015 and 2016, the value of fees collected in nine ports in Portugal for pilotage amounted to EUR 18 million.

Annex Table 5.A.1. Port authorities' revenue from the provision of pilotage services 2015 and 2016

	Total Revenues (EUR '000)	
	2015	2016
Port 1	182	140
Port 2	4 135	4 713
Port 3	2 847	3 093
Port 4	4 868	4 283
Port 5	3 187	3 168
Port 6	1 256	1 302
Port 7	465	491
Port 8	258	205
Port 9	769	690
Total	17 967	18 084

Source: Port authorities' information as included in Gonçalves et al., 2017.

Furthermore, we consider two scenarios for the likely impact of increased competition for the market on pilotage service fees. First, we rely on a paper by the European Conference of Ministers of Transport (ECMT, 2007) on competitive tendering of rail services, which found that the special regional authorities responsible for planning, managing and procuring regional rail transport in Germany realised savings of 20% after following tendering procedures. This estimation mirrors the analysis done in the OECD Competition Assessment Review of Romania in 2016 (OECD, 2016).³

As an alternative, we consider the change that would be needed for pilotage services in Portugal to be brought into line with those in other European ports (also see Figure 5.19 above). This is based on an implicit assumption that fees in Portuguese ports are higher due to the fact that providers other than the port authorities are not allowed to enter (or bid for) the supply of pilotage. This is shown in Table 5.6 below, which presents the average pilotage fees in ports in Portugal as well as in a number of other European countries. The cost of pilotage in Portuguese ports is found on average to be 50% (between 45% and 58%) higher than in Denmark, Italy, the Netherlands and Spain. UK ports (and the port of Bristol in particular)⁴ are in general more expensive meaning that the price differential is smaller: if the port of Bristol is excluded from the sample of ports used as a benchmark, pilotage in Portugal is found to be around 20% more expensive (ranging between 17% and 33%, depending on cargo ship type).

The calculations below rely on assumptions regarding the change in price of 20% (from ECMT, 2007) and differential to the average pilotage cost in the United Kingdom); 30% (differential to the upper bound of the pilotage cost in the United Kingdom); and 50% (differential to the average pilotage cost in other European countries).

Annex Table 5.A.2. Average pilotage fees in Portuguese and other European ports

	Average (EUR PPP)			Reduction in fees (%)	
	Average Portugal	Outside Portugal, excluding Bristol	Outside Portugal, excluding UK	Outside Portugal	Outside Portugal, excluding UK
General Cargo	693	539	380	22%	45%
Container	1 505	1 251	670	17%	55%
Liquid Bulk	1 194	931	605	22%	49%
Dry Bulk	1 208	949	619	21%	49%
RoRo	1 226	819	518	33%	58%
Overall	1 129	889	571	21%	49%

Note: All fees are calculated for a representative general cargo ship. Ports included in the comparisons are: Aarhus (Denmark); La Spezia (Italy); Amsterdam, Rotterdam (Netherlands); Algeciras, Castellón, La Coruña, Palma Mallorca, Santa Cruz de Tenerife (Spain); Açores, Aveiro, Faro & Portimão, Figueira de Foz, Leixões, Lisboa, Madeira, Setúbal, Sines, Viana do Castelo (Portugal); Bristol, Clydeport, Hull, Medway (United Kingdom).

Source: Gonçalves et al., 2017.

Finally, two assumptions are adopted as regards the elasticity of demand for pilotage services (also see OECD, 2016). First, a perfectly inelastic demand for pilotage is assumed – a conservative assumption: this is premised on the fact that pilotage is a necessary service required by a ship coming into a specific port and there is no substitute to hiring the services from the provider.⁵ An alternative assumption considers that an outside substitute does exist in the choice of a different port – meaning that the demand for pilotage services is elastic. While it is acknowledged that pilotage is only a fraction of the total cost incurred by cargo handlers and a number of other considerations influence the choice of the port used, an elasticity of -2 is considered as an upper limit for the sensitivity.⁶

Annex Table 5.A.3. Benefit to freight shippers from pilotage fee reduction

Price reduction	Elasticity	
	0%	2%
20%	3.6	3.6
30%	5.4	5.4
50%	9	9

Assuming that the value for pilotage remains constant at EUR 18 million (see Table 5.A.3) the annual benefit to freight handlers from a price drop is estimated between EUR 3.6 million and EUR 9 million (the former being the central scenario, assuming a price change to which two alternative approaches converge).

Changes to the Pilot Exemption Certificate scheme

An alternative to hiring pilots for ships entering the port is for the ship's own captain to obtain the authorisation to navigate within the pilotage area: this is issued as a Pilot Exemption Certificate (PEC). The review of the relevant regulatory framework has uncovered a number of conditions that have the effect of making the PEC more expensive and its take-up lower (for example, as compared to the cost of holding such a certificate in other European countries).

The OECD recommends that the fee for issuing or renewing a PEC be cost-based, and its duration extended.⁷ This is likely to have two effects, namely a decrease in the cost of the PEC for current holders and a possible increase in the number of certificates issued. The two effects are analysed in Tables 5.A.4 and 5.A.5.

There are currently 28 holders of an active PEC in Portugal. Each will have paid EUR 1 246 to obtain the certificate; and would be required to pay a renewal fee of EUR 997. Changing the duration of the validity of the PEC would have implications as to the average annual cost incurred: extending the duration to 2 years would imply an annual saving of just under EUR 500 or EUR 13 958 for all users; while extending it to 5 years would bring a saving of just under EUR 800 or EUR 22 333 for all current holders. If the renewal fee was eliminated (with renewal based on satisfying other conditions) then the annual saving would amount to EUR 27 916 for current holders of the PEC.

Annex Table 5.A.4. Cost of renewing a PEC for current holders (EUR)

	t+1	t+2	t+3	t+4	t+5	Over a 10-year period	Annual average
Currently (renewal every year)	997	997	997	997	997	9 970	997
Renewal every 2 years	0	997	0	997	0	4 985	499
Renewal every 5 years	0	0	0	0	997	1 994	199

Note: The 10-year cycle is not based on any information on the average time that a PEC is held. Rather it is used for the annual average cost to be estimated after at least two renewals in the case of a five-year cycle.

Extending the duration of the PEC and lowering its cost to align it to the cost of issuing it, and the renewal fee associated with it (or eliminating it) would have the secondary effect of increasing the number of shipmasters opting to obtain the certificate. While there are no estimates for the elasticity of demand for PECs, an analogy can be drawn with other European countries. There are 28 active PECs in Portugal and the missions undertaken using a PEC-exemption represented 2% of all missions of ships entering Portuguese ports.⁸

Data from PwC and Panteia (2012) suggests that already in 2011 PEC missions accounted for a higher share of all pilotage missions in other European countries:⁹ around 10% in Latvia and Belgium; around 20% in Denmark and Poland; around 25% in Finland, France and Ireland; and around 35% in Norway and Sweden. On the basis of the PEC-exempt share of missions in other European countries, it is possible to determine the benefit accruing from a larger number of PECs issued in Portugal. Given the number of vessels calling at national ports,¹⁰ Poland and Ireland are likely to be the better comparators.

Annex Table 5.A.5. Annual cost of pilotage and PEC missions in Portugal

Share of pilotage missions [1]	Cost of pilotage missions (EUR '000) [2]	Cost of PECs (EUR '000) [3]	Share of PEC missions [4]	Total cost (EUR '000) [5]	Savings (EUR '000) [6]
98%	18 000	28	2%	18 028	
90%	16 531	142	10%	16 673	1 355
80%	14 694	285	20%	14 979	3 049
70%	12 857	429	30%	13 286	4 742

Note: The cost of pilotage at current state (first row of column [2]) is taken from and is adjusted accordingly on the basis of the assumed shares of pilotage missions (column [1]). The annual cost of the PEC for current holders (first row of column [3]) is taken from the analysis in Table 5.A.4. ($28 \times \text{EUR } 997 = \text{EUR } 28\,000$). Additional PEC authorisations include the initial cost of obtaining the certificate, distributed across 10 years¹¹ – for the purpose of the exposition, the duration and cost/renewal of the PEC is assumed to be at current levels.

On the one hand, an increase in the share of PEC-exempt missions comes with an additional cost borne by shipmasters to obtain and hold a PEC. As explained above, lowering the cost of each PEC (by extending its duration and reducing the administrative fees for obtaining and renewing it) will lead to an uptake in PECs. While the annual average cost will be lower, the total spend on PECs will increase.¹²

On the other hand, an increase in the share of PEC-exempt missions means that there are significant savings from not incurring the fees for pilotage every time the ship uses a port in Portugal. As shown in the last column of Table 5.A.5, the annual net saving after achieving each of the thresholds referred to in column [4] ranges between EUR 1.4 million and EUR 4.7 million (depending on the rate of increase in the use of PECs). These amounts would be marginally higher after taking into consideration that the average annual cost of the PEC (column 3 of Annex Table 5.A.5. Annual cost of pilotage and PEC missions in Portugal will be lower following the recommendation to adjust its duration and issuing and renewal fees.¹³

Notes

¹ The OECD also recommends that restrictions for pilot certification (such as qualifications, training, language requirements etc.) are lifted. The impact of such a change in the certification requirements is not considered separately. Rather its effect can be thought as manifesting itself through lower fees charged to users of pilotage services, in a more competitive market.

² It is noted that such improvement can have a monetary value, for example given the cost of delays as a result of inefficient service provision.

³ Annex 3.A4 in OECD (2016).

⁴ The cost of pilotage in the port of Bristol is between 61% and 107% more expensive than the second more expensive port for each type of cargo ship.

⁵ This is a simplification, given the option to acquire a Pilot Exemption Certificate (PEC). However given that the take up for PECs is currently low in Portugal, this is not likely to have had a significant impact on the result obtained – at least for the short to medium term.

⁶ The range of results obtained is adequately narrow for this assumption not to be binding.

⁷ Two further recommendations are made regarding the authority responsible for issuing the PEC and the language requirements, to avoid conflict of interest and potential for discrimination among shipmasters. These are not addressed separately: they will complement the two effects identified and measured, namely a lower fee for issuing the PEC and an increase in its use by shipmasters.

⁸ Note that sometimes pilotage services are still hired, even if the captain of a vessel has a PEC.

⁹ See Tables 109 and 110 in PwC (2012). The only exception, among countries for which data is recorded, is Bulgaria with a PEC share of PEC missions of 3%.

¹⁰ See Eurostat, Country level - number and gross tonnage of vessels in the main ports (based on inwards declarations), by type of vessel (accessed on 6 March 2018).

¹¹ The average cost of the PEC is calculated as follows. First, the number of additional PEC holders in each scenario is calculated on the basis of the share of PEC missions and the current share (2%) that 28 PECs represent. (For example, in the case of a PEC mission share of 10%, the number of PEC holders is $140 = 28 * 10/2$ and the number of additional users is $112 = 140 - 28$). Next the annual average cost of the PEC for new users is calculated using $Initial\ fee + Renewal\ fee * \left(\frac{10}{Renewal\ frequency} - 1 \right) / 10$. Last, the annual average PEC cost (column [3] of Annex Table 5.A.5. Annual cost of pilotage and PEC missions in Portugal

) is calculated as the sum of the cost for new users (additional users * annual average cost for new users) and that for existing users ($28 * Renewal\ fee$).

¹² The additional costs incurred shown in Annex Table 5.A.5. Annual cost of pilotage and PEC missions in Portugal

(column [3]) are based on a simplifying assumption that the cost per PEC remains at current levels. Clearly this cannot be the case, given that for the uptake in PECs will be the result of lowering its average annual cost. However, whilst this change in the cost is an important element of the mechanism (to incentivise individuals to obtain the certificate), the impact of the simplification on the results is relatively small. For example, a scenario of renewal cost of 0, and initial certificate fee of half the current fee ($EUR623 = EUR1,246 / 2$) yields savings of EUR 1.5m, EUR 3.3m and EUR 5.1m instead of EUR 1.4m, EUR 3m and EUR 4.7m respectively.

¹³ *Ibid.* note 12.

References

European Conference of Ministers of Transport (ECMT) (2007), *Competitive Tendering of Rail Services*, available through OECD Publishing, Paris.

Gonçalves, R. et al. (2017), “The Economic Impact of Deregulation: Transport and Liberal Profession Sectors in Portugal”, Report prepared for the Portuguese Competition Authority and the OECD.

OECD (2016), “OECD Competition Assessment Reviews: Romania”, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264257450-en>

PwC and Panteia (2012), “Study on Pilotage Exemption Certificates”, Report submitted to the European Commission Directorate-General for Mobility and Transport, <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/studies/doc/2012-09-18-pec.pdf>.

Annex A. Methodology

This study covers the Portuguese land and maritime transport sectors as well as ports. In particular, the study analyses road transport, railway transport, maritime transport (with the exception of inland waters) and activities in ports. The transport sub-sectors covered by the study are as follows, accompanied by the corresponding codes according to the Statistical Classification of Economic Activities in the European Community (NACE). In some cases, the corresponding code encompasses a broader set of activities than the ones the project team identified; in that case, we list the category used in the report. In some cases the statistical information was complemented taking into account the Portuguese statistical code, CAE, as it includes an additional level of classification.

Table A A.1. Economic Activities (NACE codes) included in the study

NACE (CAE) code	Description	Sub-sector
H49.10	(Passenger rail transport, interurban): includes rail transportation of passengers using railroad rolling stock on mainline networks, spread over an extensive geographic area; and passenger transport by interurban railways).	Passenger rail transport services
H49.20	(Freight rail transport): includes freight transport on mainline rail networks as well as short line freight railroads.	Freight rail transport services
H49.32	(Occasional transportation of passengers in light vehicles): includes the non-regular passenger transport in light vehicles, with a driver, with or without a meter, according to itineraries and timetables.	Transport of passengers by taxi
H49.39 (1)	(Interurban transportation on buses): comprises the interurban transport of passengers in buses, by lines and according to fixed schedules, even on a seasonal basis.	Long-distance buses
H49.41	(Road transport of goods): covers the transport of goods by road, local or long distance, with regular or occasional service characteristics, by means of lorries or similar vehicles.	Trucks transportation
H50.10	(Sea and coastal passenger water transport): includes transport of passengers overseas and coastal waters, whether scheduled or not, such as operation of excursion, cruise or sightseeing boats and operation of ferries, water taxis, etc. It also includes renting of pleasure boats with crew for sea and coastal water transport.	Passenger maritime transport services
H50.20	(Sea and coastal freight water transport): includes transport of freight overseas and coastal waters, whether scheduled or not; and transport by towing or pushing of barges, oil rigs, etc. It also includes renting of vessels with crew for sea and coastal freight water transport.	Freight maritime transport services, including island cabotage
H52.21 (1)	(Other auxiliary transport activities): comprises the activities necessary for carrying out land transport, such as the operation of passenger and freight terminals; parking facilities and similar activities.	Central bus stations
M71.20	(Activities of tests and technical analysis): comprises the testing and technical analysis activities of all types of materials and products to determine their composition. The analyses and trials cover several areas, such as testing of the operating characteristics of equipment (engines, automobiles, electronic equipment, etc.).	Vehicle inspection centres
N77.11	(Rental of light vehicles): includes rental activities (short and long term) of light vehicles (less than 3.5 t), approved without a driver, with or without maintenance services.	Car rental services
N77.12	(Renting of heavy vehicles): comprises the activity of hiring (of short and long duration) of heavy vehicles (more than 3.5 t) of passengers and of goods (lorries, tankers, tippers, waste, etc.), approved for that purpose without a driver. Includes recreational vehicle rental.	Truck rental services
P85.53	(Driving and piloting schools): comprises driving schools of light or heavy vehicles with a view to obtaining a driving licence. It includes the preparation and obtaining of private (non-professional) certificates for the piloting of airplanes and ships.	Driving schools
P85.32	(Secondary technological, artistic and professional teaching): comprises the activities of technological, artistic and professional teaching, with a duration of three academic years, oriented towards a specialisation in a certain field. It also includes driving schools for professional drivers (of lorries, buses and trains).	
P85.59 (1)	(Vocational training): comprises organised training activities carried out to acquire or deepen professional knowledge and skills, developed by public or mixed training institutes, etc.	Training institutes

The sectors were selected by the Portuguese Competition Authority (AdC), based on their relevance for the Portuguese business sector.

The assessment of laws and regulations in these sectors has been carried out in four stages, with a fifth stage for review and drafting of the final report. The present annex describes the methodology followed in each of these stages.

Stage 1 – Mapping the sectors

The objective of Stage 1 of the project was to identify and collect all sector-relevant laws and regulations. As a prior condition, it was necessary to define the scope of the sectors in detail. Whenever possible, we adopted a definition consistent with the NACE classification in order to ensure consistency with international practice and to facilitate comparisons with other European countries. However this approach was not entirely sufficient to define the road transport sector and the ports and maritime transport sectors. For these two sectors, the definition was developed on the basis of NACE in conjunction with other sources, such as European Commission directives and implementing Portuguese laws, past competition assessment studies, and consultations with ministerial experts from the Portuguese government.

The task of collecting the legislation relevant for these sectors was conducted by the OECD team using a variety of sources. The LegiX legal database¹ together with the website of the official gazette (*Diario da Republica*, www.dre.pt) were the main tools used to identify the applicable legislation. These were complemented by the websites of the relevant transport authorities, and of the main industry associations. In addition, in order to ensure that all important pieces of legislation were covered by the study, input was solicited from all the competent line ministries and public bodies involved in the sectors, from the members of the High-level Committee (HLC) composed of senior government officials and from industry.

Over the course of the project, the mapping of the legislation was refined, as additional pieces of legislation were discovered by the team or were issued by the authorities, while other pieces initially identified were found not to be relevant to the sectors. In total, 904 pieces of legislation were selected for analysis (from a total of 14 667 relevant provisions for transport), including laws, ministerial decrees, ministerial decisions and circulars.

For each of the sectors, we collected data and information, covering industry trends and main indicators such as output, employment and prices. Input was solicited from industry associations, to improve the project team's understanding of the sectors and the challenges of the Portuguese market. A very important task that started during Stage 1 and was continued for the entire duration of the project was the establishment of contact with the different sectors and key agents through the main representative associations active in the sectors. The interviews with market participants contributed to a better understanding of how the sectors under investigation work in practice and helped in the discussion of potential barriers deriving from the legislation or misinterpretation of specific provisions.

Stage 2 – Screening of the legislation

In the second stage of the project, the main work stream was the screening of the legislation to identify potentially restrictive provisions. Pieces of legislation transposing EU directives were examined. EU directives need transposition into national legislation and grant Member States some consideration as to their implementation, for instance flexibility to impose additional requirements. Therefore, when transposing directives, the national policy maker may establish a stricter regulatory framework than originally intended in the directive (i.e. so-called gold-plating). These provisions, introduced at national level, were examined from a competition point of view. EU rules that are directly applicable in Portuguese legislation and require no further national legislation, i.e. regulations, were not screened to assess if they restricted competition. In addition, the project team checked Portuguese legislation for duplication with existing EU regulations.

The legislation collected in Stage 1 was analysed using the framework provided by the OECD "Competition Assessment Toolkit".² The Toolkit, developed by Working Party 2 of

the OECD Competition Committee, provides a general methodology for identifying potential obstacles in laws and regulations. One of the main elements of the Toolkit is a "Competition Checklist" that asks a series of simple questions to screen laws and regulations that have the potential to unnecessarily restrain competition.

Box A A.1. OECD Competition Checklist

Further competition assessment should be conducted if a piece of legislation answers "yes" to any of the following questions:

(A) Limits the number or range of suppliers

This is likely to be the case if the piece of legislation:

1. grants exclusive rights for a supplier to provide goods or services
2. establishes a licence, permit or authorisation process as a requirement of operation
3. limits the ability of some types of suppliers to provide a good or service
4. significantly raises the cost of entry or exit by a supplier
5. creates a geographical barrier to the ability of companies to supply goods services or labour, or invest capital.

(B) Limits the ability of suppliers to compete

This is likely to be the case if the piece of legislation:

1. limits sellers' ability to set the prices for goods or services
2. limits freedom of suppliers to advertise or market their goods or services
3. sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
4. significantly raises costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants).

(C) Reduces the incentive of suppliers to compete

This may be the case if the piece of legislation:

1. creates a self-regulatory or co-regulatory regime
2. requires or encourages information on supplier outputs, prices, sales or costs to be published
3. exempts the activity of a particular industry or group of suppliers from the operation of general competition law.

(D) Limits the choices and information available to customers

This may be the case if the piece of legislation:

4. limits the ability of consumers to decide from whom they purchase
5. reduces mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
6. fundamentally changes the information required by buyers to shop effectively.

Source: OECD (2011a).

Following the methodology of the Toolkit, the OECD team compiled a list of all the provisions which answered positively to any of the questions in the checklist. Government experts received draft lists and were given an opportunity to comment, as were the members of the HLC. After this stage, there were 2 162 individual articles remaining with the potential to restrict competition in the transport sectors in Portugal.

Stage 3 – Analysis of the selected provisions

The provisions carried forward to Stage 3 were investigated in order to (i) identify the objective of the policy maker; and (ii) assess whether they could result in harm to competition.

The team researched the policy objectives in order to examine the proportionality of the selected provisions with the intended policy objective. An additional purpose in identifying the objectives was to prepare for the formulation of alternatives to existing regulations, when required, taking account of the objective of the specific provisions. The objective of the policy maker was researched in the recitals of the legislation, when applicable, or through discussions with the relevant public authorities.

The analysis of the harm to competition was carried out qualitatively and involved a variety of tools, including economic analysis, collection of background information on the sector and its regulation, and research into the regulation applied in other OECD countries. All provisions were analysed, relying on the guidance provided by the OECD Competition Assessment Toolkit. Interviews with market participants and with government experts complemented the analysis, by providing crucial information on the actual implementation and effects of the provisions.

In the course of Stage 3, several more potential barriers were eliminated from the analysis because the boundaries of the sectors were further narrowed to focus exclusively on the most relevant services for business in the selected sectors. At the end of Stage 3, there were thus 485 barriers left which were deemed harmful to competition.

Stages 4 and 5 – Formulation of recommendations

The team developed draft recommendations for those provisions which were found to restrict competition. In this process, we relied on international experience whenever available. When it was not possible to identify from international practice examples of regulation with a lesser impact on competition, we favoured alternatives which were less restrictive for suppliers while still aiming at the initial objective of the policy maker. For instance, these could be policy changes likely to:

- lower barriers to entry into certain economic activities (e.g. when certain suppliers were prevented from engaging in related products or activities);
- improve the ability of suppliers to compete (e.g. restrictions to marketing and labelling).

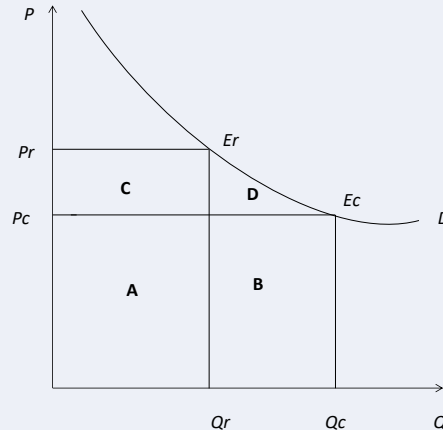
The benefits of removing barriers to competition were analysed qualitatively and, whenever feasible and meaningful, quantitatively. Whenever feasible and appropriate for the analysis of the issue under consideration, the OECD team gathered data that could be used for the quantification of the effects. In these cases, the data were analysed using econometric techniques. In other cases, the expected impact of lifting a regulatory restriction was not modelled directly, for instance because of the lack of sufficient data. Therefore, the OECD team relied on the standard methodology of measuring the effect of policy changes on consumer surplus. In particular, as a result of data limitations, we followed the approach in OECD (2015) which derives a formula for changes in consumer

benefits when only sector revenue and the average price effect of the restriction found are available. This is explained in Box A.2.

Box A A.2. Measuring changes in consumer surplus

The effects of changing regulations can often be examined as movements from one point on the demand curve to another. For many regulations that have the effect of limiting supply or raising price, an estimate of consumer benefit or harm from the change from one equilibrium to another can be calculated. Graphically, the change is illustrated for a constant elasticity demand curve. E_r shows the equilibrium with the restrictive regulation, E_c shows the equilibrium point with the competitive regulation. The competitive equilibrium is different from the restrictive regulation equilibrium in two important ways: lower price and higher quantity. These properties are a well-known result from many models of competition.

Figure A A.1. Changes in consumer surplus



Source: OECD (2015)

Under the assumption of constant elasticity of demand the equation for consumer benefit is:

$$CB = C + D \approx (P_r - P_c)Q_r + \frac{1}{2} (P_r - P_c)(Q_c - Q_r)$$

Where price changes are expected, a basic formula for such a standard measure of consumer benefit from eliminating the restriction is:

$$CB = \left(\rho + \frac{1}{2} \epsilon \rho^2 \right) R_r$$

where CB is standard measure of consumer harm, ρ is percentage change in price related to restriction, R is sector revenue and ϵ is demand elasticity. When elasticity is not known, a relatively standard assumption is that $|\epsilon|=2$. This value corresponds to more elastic demand than in a monopoly market, but also far from perfectly elastic as in a competitive market. Under this assumption, the expression above simplifies as:

$$CB = (\rho + \rho^2)R_r$$

Several economic assumptions were made:

1. We assume away any taxes, i.e., any implication resulting from the taxation regime on consumer surplus.
2. We assume a regular, linear, demand function, with no random term.
3. We do not factor in any interdependence between price and quality levels (although changes in any one of them may have an impact on the other). This is equivalent to assuming that the "quality" of the different services remains constant or experiences non-significant changes. By "quality", we mean a term that can involve a distribution of quality levels depending on who provides the service. The quality mean could remain unchanged as a result of implementing a certain recommendation, but the distribution of such quality over the different service providers could change (mean-preserving spread). In the latter case, even with an unchanged mean, there would be welfare effects just due to the change in the mean-preserving distribution of quality levels.
4. We make no distinction here between Marshallian (relation between prices and income) and Hicksian (relation between prices and utility) demand functions. In any case, since we will be assuming certain values for the demand elasticities ($\epsilon = 2$), these values could be assumed for any of these two types of demand functions.

Source: Prepared using OECD inputs, 2015.

Draft recommendations were submitted to the Portuguese administration. Following consultation with the ministerial experts and the stakeholders, the recommendations were finalised. In total, 417 recommendations (including those on obsolete provisions and administrative burden) were submitted to the Portuguese administration:

- Road: 203
- Rail: 77
- Ports and maritime: 116
- General transportation legislation: 19
- Horizontal: 2

Co-operation with the Portuguese administration

Another important component of the project was to provide assistance in building up the competition assessment capabilities of the Portuguese administration. The OECD organised four workshops during the course of the project, one in each of the stages. In Stage 1 of the project, we covered an introduction to competition and regulation, and provided an overview of the project and of our methodology in the mapping stage. In Stage 2, the team provided substantive training on the OECD Competition Assessment Toolkit applied in screening the legislation. In Stage 3, examples and applications of quantitative methods were presented. In Stage 4, OECD experts presented two topics relevant for the project: (i) the Product Market Regulation (PMR) index compiled by the OECD and policy analysis which relies on this indicator; (ii) the OECD guidelines on fighting bid-rigging in public procurement.

The government experts provided a significant contribution on the mapping exercise of the legislation by commenting on whether the regulations collected were comprehensive. Subsequently, the close co-operation with the government experts continued with the

identification of the objectives of the legislation in their sectors of expertise and discussion on the provisions identified by the OECD as restrictive on the basis of the Competition Assessment Checklist. More than 100 meetings and phone calls were held to discuss the provisions in detail, to understand to what extent they were implemented in practice and to provide feedback on the OECD's draft analysis of the selected provisions.

Notes

¹ The LegiX database is owned, operated and managed by Priberam Informática, S.A.

² OECD (2011a), Competition Assessment Toolkit: Principles, OECD, www.oecd.org/daf/competition/46193173.pdf ;

OECD (2011b), Competition Assessment Toolkit: Guidance, OECD, www.oecd.org/daf/competition/45544507.pdf

OECD (2015), Competition Assessment Toolkit: Operational manual, OECD, www.oecd.org/daf/competition/COMP_Toolkit_Vol.3_ENG_2015.pdf

Annex B. Legislation screening by sector

Horizontal legislation

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
1	Decree-law 18/2008 (last modification by Decree-law 111-B/2017) "Code of Public Contracts"	Art. 138	Public procurement	The provision requires the contracting authority to publish the entire list of bidders participating in the public tender and their respective bids.	To improve transparency in the procurement process, allowing bidders to verify whether their offer was considered by the contracting authority and possibly preventing cases of corruption or favouritism.	The timing for the disclosure of information in Portugal poses a particular risk of restricting competition, as contracting authorities are required to publish the list of participants and their initial offers prior to the award. This enables bidders to identify each other, to become aware of their offers and to co-ordinate bids in later stages of the process (for instance, during electronic auctions and negotiation procedures). Moreover, allowing bidders to access business-sensitive information can reduce the incentive of companies to submit competitive bids in future procurement processes.	Amend the legal provision to guarantee that bids are disclosed at the moment of the awarding (after any electronic auctions and negotiation procedures have taken place). In addition, the identity of the bidders and other business sensitive information should not be revealed at any point, except when necessary to preserve the right to defence.
2	Decree-law 18/2008 (last modification by Decree-law 111-B/2017) "Code of Public Contracts"	Arts. 140 (1), 141 (b), 143(2) and 145.	Public procurement	The provisions establish the conditions for the use of electronic auctions and determine their format as a "reverse English auction", where bidders improve their offers iteratively through an automated system.	To regulate the use of electronic auctions in public procurement, enabling bidders to improve their offer in a transparent process.	In general, the use of electronic auctions of the "English" type in procurement processes poses a risk of fostering collusion due to two main factors: first, this type of auction creates a mechanism for bidders to instantaneously monitor and punish any participant that deviates from an agreed bid; second, the dynamic nature of English auctions might facilitate signalling and co-ordination of a strategy, even when the process is done electronically. The risk of collusion is particularly likely in public tenders that are periodically repeated or divided in slots, allowing bidders to share the gains of the cartel by rotating or diving markets. The risk of collusion is also aggravated by the fact that, in Portugal, bidders are sometimes provided with detailed bidding information and the identity of the competitors is disclosed earlier in the procurement process.	Contracting authorities should refrain from using dynamic electronic auctions in procurement processes that are susceptible to collusion, namely whenever the number of bidders is small or when the tender is periodically repeated. In those cases, contracting authorities should use first-price sealed-bid auctions instead.
3	Law 58/2005 (last modification by Law 44/2017) "Water Law: foundations and institutional framework for sustainable water management"	Art. 68/6	Water management / National maritime space	The concession for the use of the public water domain is regulated by the rights and obligations of the contracting parties foreseen in a contract that will not exceed 75 years.	According to the recital, the provision limits the period of the private right to use a public domain good (water) for reasons of sustainable use of water, environmental safety, prevention and precaution of water pollution.	The provision limits access to a public domain good that might be essential to an economic activity, requesting a "title" (contract) that can only be awarded for a 75-year period. On the one hand, this limitation might dissuade investors from investing in certain long-term infrastructures such as power plants and others, if they consider the period too short. On the other hand, excessive concession periods harm competition for the market, reducing competitive pressure for incumbents. During this period of exclusivity there is no competition among players in the market and the holder of the title is not compelled to innovate or to develop a better performance as there is no incentive to do so. The use of a public domain good must be well protected and preserved as it is a common good. The 75-year period can be considered proportionate to this policy objective as a shorter concession limit might exclude investors or generate higher prices to consumers of public interest goods (e.g. electricity). However the time limit of this concession should not be used to other ends that are not directly related with the use of water. According to stakeholders, in some cases, the ports have used this regime to avoid the regime applicable to port concessions. This can generate distortion of the port operations market.	No recommendation

General transport

No	No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
Inland framework law							
1	Law 10/90 (modified lastly by Decree-Law 43/2008) "Framework Law of Inland Transportation"	Art. 13 (1)	Inland Transportation - Framework law	The rail transport of passengers and freight is considered to be a public service which shall be granted through a concession or delegation procedure.	The official recital states that the fundamental objective of the organisation and operation of the rail transport system is to ensure national economic development and to promote the welfare of the population, being considered a public service.	This provision corresponds to an entry barrier since it limits the ways in which an operator can access the market. Moreover, more recent amendments were adopted in other legislative acts, at national and European level, having rendered this provision partially revoked: a) Art. 4 of Decree-Law 270/2003 (as amended by Decree-Law 217/2015, which transposes Directive 2012/34/UE establishing a single European railway area) states that: certain services are already carried out under a liberalised regime (such as: international rail transport of passengers and freight; national rail transport of freight; and national rail transport of passengers limited to irregular or touristic services); other services must be carried out under a concession regime (such as the national rail transport of passengers by regular routes); and other services may be pursued, exceptionally, through a concession regime or by a delegation procedure (such as the national rail transport of freight); b) Arts. 2, 3 and 5 of Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable, implemented into the national framework regime by Law 52/2015 establishing the national legal regime on public passenger transport services, determine that transport of passengers can be pursued through alternative ways, such as: public service contracts (under a services concession contract, a services contract, or a contract with a combination of characteristics of a concession and a services contract); direct award under certain thresholds; carried out directly by the transport authorities with own resources (that is, through an internal operator); or authorisation procedure. Hence, this provision is partially revoked, which gives place to legal uncertainty, possibly leading to unintended discriminatory behaviour from competent transport authorities. It might also jeopardise the interest of new entrant operators. With fewer operators in the market there is also the possibility of less competition and a greater probability of higher prices.	Expressly amend the provision in line with more recent amendments adopted in other legislative acts: a) Art. 4 of Decree-Law 270/2003; b) Art. 2, Art. 3 and Art. 5 of Regulation (EC) 1370/2007, and Law 52/2015.
2	Law 10/90 (modified lastly by Decree-Law 43/2008) "Framework Law of Inland Transportation"	Art. 13 (4) (c)	Inland Transportation - Framework law	The prices for rail public services transportation to be charged to consumers are determined by the concessionaire, taking into consideration the two criteria established in the law, that is, its production costs and the situation of the transport sector market. Exceptionally, the government may also determine the prices according to the criterion it wants.	The official recital states that the fundamental objective of the organisation and operation of the rail transport system is to ensure maximum contribution to the economic development and to promote the highest welfare of the population, including through: a) the permanent adequacy of the provision of transport services to the needs of users, in terms of both quantity and quality, and b) the progressive reduction of social and economic costs of transport.	This provision limits the ability for a concessionaire of rail services transporting passengers or freight to define the prices to be charged to consumers. Neither of the criteria is defined in the law. This may lead to unintended disproportionate prices being set given the vague language and absence of transparent, non-discriminatory and cost-based criteria, which ultimately may lead to loss of consumer welfare. Moreover, more recent amendments were adopted in other legislative acts, at national and European level, which impose criteria regarding the determination of prices to be charged to consumers when public service obligations are imposed on concessionaires of public passenger transport services: - Arts. 3, 4, 5, 6, 9 and Annex of Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable, implemented into the national framework regime by Law 52/2015 establishing the national legal regime on public passenger transport services, determine that when the public authority wishes to impose public service obligations with regard to prices, the competent authority shall compensate the public service operators taking into consideration the criteria, such as "the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents overcompensation". This shall be so	Expressly amend the provision in line with more recent amendments adopted in other legislative acts: - Art. 3, Art. 4, Art. 5, Art. 6, Art. 9 and Annex of Regulation (EC) 1370/2007, and Law 52/2015.

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						notwithstanding the right of competent authorities to integrate public service obligations establishing maximum tariffs in public service contracts. Hence, this provision gives place to legal uncertainty, possibly leading to unintended discriminatory behaviour from competent transport authorities. It might also jeopardise the interest of new entrant operators. With fewer operators in the market there is also the possibility of less competition and a greater probability of higher prices.	
3	Law 10/90 (modified lastly by Decree-Law 43/2008) "Framework Law of Inland Transportation"	Art. 13 (4) (d)	Inland Transportation - Framework law	Under a concession contract, rail public services transportation obligations grant the right to the rail operator for financial compensation. The criterion established in the law foreseeing public service obligations is that the concessionaire entity must maintain equipment or supply services in conditions or with prices incompatible with balanced management or support abnormal fees, differently from the transport undertakings of other competitors.	The official recital states that the fundamental objective of the organisation and operation of the rail transport system is to ensure maximum contribution to the economic development and to promote the highest welfare of the population, including through: a) the permanent adequacy of the provision of transport services to the needs of users, in terms of both quantity and quality, and b) the progressive reduction of social and economic costs of transport. The financial compensation intends to guarantee that public service is ensured, even if it causes financial loss.	This provision limits the ability for a concessionaire of rail services transporting passengers or freight to define the prices to be charged to consumers. Neither of the criteria is defined in the law. This may lead to unintended disproportionate prices being set given the vague language and absence of transparent, non-discriminatory and cost-based criteria, which ultimately may lead to loss of consumer welfare. Moreover, more recent amendments were adopted in other legislative acts, at national and European level, which impose criteria regarding the determination of prices to be charged to consumers when public service obligations are imposed on concessionaires of public passenger transport services: - Arts. 3, 4, 5, 6, 9 and Annex of Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable, implemented into the national framework regime by Law 52/2015 establishing the national legal regime on public passenger transport services, determine that when the public authority wishes to impose public service obligations with regard to prices, the competent authority shall compensate the public service operators taking into consideration the criteria, such as "the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the tariff obligations established through general rules in a way that prevents overcompensation". This shall be so notwithstanding the right of competent authorities to integrate public service obligations establishing maximum tariffs in public service contracts. Hence, this provision gives place to legal uncertainty, possibly leading to unintended discriminatory behaviour from competent transport authorities. It might also jeopardise the interest of new entrant operators. With fewer operators in the market there is also the possibility of less competition and a greater probability of higher prices.	Expressly amend the provision in line with more recent amendments adopted in other legislative acts: - Art. 3, Art. 4, Art. 5, Art. 6, Art. 9 and Annex of Regulation (EC) 1370/2007, and Law 52/2015.
4	Law 10/90 (modified lastly by Decree-Law 43/2008) "Framework Law of Inland Transportation"	Art. 21 (3) (a), (b) and (c)	Inland transportation - Framework law	The operation of regular interurban road passenger transportation routes depends on an authorisation for each route (see Art. 21(1) of Law 10/90). Granting of the authorisations may be refused on the grounds that the applicant's operations have no access to the activity or that the conditions set out in their operating/management programme are likely to: (a) disturb the organisation of the market; (b) affect the operation of urban and local transport in their area of influence; or (c)	The official recital states that the fundamental objective of the organisation and operation of the road transport system is to ensure maximum contribution to the economic development and to promote the highest welfare of the population, including through: a) the permanent adequacy of the provision of transport services to the needs of users, in terms of both quantity and quality, and b) the progressive reduction of social and economic costs of transport. These clauses were intended to ensure that the state maintain control of the market as the best option for market flow and consumers protection.	These provisions correspond to entry barriers and limit incentives to compete since they impose the need for an authorisation on operators to join the market for regular interurban road transportation routes, e.g. for carrying out long-distance buses routes, which can be refused on criteria that seem to be unjustified. Moreover, more recent amendments were adopted in other legislative acts at national level, having rendered this provision revoked. Law 52/2015, Art. 33, which sets the national legal regime on public passenger transport services, determines that access to the market for long-distance bus routes is to be liberalised, needing solely a prior notification to IMT. Even if the necessary secondary legislation to regulate the requirements for access to this market was not yet adopted, such criteria are not foreseen in the law. Hence, this provision gives place to legal uncertainty, possibly leading to unintended discriminatory behaviour from competent transport authorities. It might also jeopardise the interest of new entrant operators. With fewer operators in the market there is also the possibility of less competition and a greater probability of higher prices.	Expressly amend the provision in line with more recent amendments adopted in other legislative acts: - Law 52/2015, Art. 33.

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5	Law 10/90 (modified lastly by Decree-Law 43/2008) "Framework Law of Inland Transportation"	Art. 24 (2)	Inland transportation - Framework law	The rules governing the operation of public freight road transportation should safeguard competition and transport safety, without prejudice to the establishment of geographical constraints or quantitative restrictions on market access.	The official recital states that the fundamental objective of the organisation and operation of the road transport system is to ensure maximum contribution to the economic development and to promote the highest welfare of the population, including through: a) the permanent adequacy of the provision of transport services to the needs of users, in terms of both quantity and quality, and b) the progressive reduction of social and economic costs of transport. These clauses were intended to ensure that the state maintain control of the market as the best option for market flow and consumers protection.	This provision corresponds to an entry barrier and to a geographical restriction, which might lead to lower efficiency and higher prices charged to consumers. Furthermore, the quantitative restriction clause can also limit incentives to compete. Such restrictions are typically excessive because they unduly restrict the number of suppliers participating in the market, reducing competition between suppliers and resulting in higher prices or less desirable contract terms. Additionally, there is a need for amendment of the provision in line with more recent amendments adopted in other legislative acts: Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009, as well as Decree-Law 257/2007 (as amended), state that the activity of road transport of freight, national or international is fully liberalised, under a licensing scheme, provided that the licensed undertakings fulfil the requirements for access to the activity. No geographical or quantitative restrictions to the activity are foreseen. Hence, this provision gives place to legal uncertainty, possibly leading to unintended discriminatory behaviour from competent transport authorities. It might also jeopardise the interest of new entrant operators. With fewer operators in the market there is also the possibility of less competition and a greater probability of higher prices.	Expressly amend the provision in line with more recent amendments adopted in other legislative acts, which state that the activity of road transport of freight, national or international, is fully liberalised, under a licensing scheme, and where no geographical restrictions or quantitative restrictions on market access are allowed: - Regulation (EC) 1071/2009 and Regulation (EC) 1072/2009; - Decree-Law 257/2007 (as amended).
6	Law 10/90 (modified lastly by Decree-Law 43/2008) "Framework Law of Inland Transportation"	Art. 25 (3)	Inland transportation - Framework law	The state can determine, exceptionally, in case there is the need to safeguard the organisation of the transport market, maximum and minimum limits for tariffs regarding regular road passenger transportation, either towards liberalised services or under public services.	The official recital states that the fundamental objective of the organisation and operation of the road transport system aim to ensure maximum contribution to the economic development and to promote the highest welfare of the population, including through: a) the permanent adequacy of the provision of transport services to the needs of users, in terms of both quantity and quality, and b) the progressive reduction of social and economic costs of transport. The maximum and minimum limits for tariffs are established in order to guaranteeing access to all consumers/clients, at affordable prices, given the social purpose of the transport of passengers.	This provision limits the incentives and the ability of operators to compete since the State can limit the range of tariffs that can be charged to consumers. These limits can reduce the intensity and dimensions of rivalry, yielding higher prices for consumers (or, at least, lower the incentives of operators to charge lower prices) and less product variety. On one hand, the imposition of a minimum price seems not to be justified since it might prevent more efficient operators from winning market share by providing better value to consumers. On the other hand, the imposition of a maximum tariff can lower the incentives of operators to innovate and to provide new and/or high-quality products. Sometimes, operators also seem to coordinate their tariffs around the maximum tariff, which leads to higher tariffs charged for consumers, leading to lower consumer welfare. Furthermore, for road regular passenger transportation carried out through a public service regime, the possibility foreseen in the law for the State (and or all transport authorities) to determine minimum tariffs, either set by general rules or under public service contracts, seems not to be in line with Art. 3 of Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable, which only allows to be established maximum tariffs. Finally, for road regular passenger transportation to be carried out through a liberalised regime, the possibility foreseen in the law for the State (and or all transport authorities) to determine maximum and minimum tariffs seems unnecessary, inadequate and disproportional to the policy objective of consumer protection and transportation mobility, finding that there is harm to competition.	Recommendation 1: For road regular passenger transportation carried out through a public service regime, there is the need for expressly amending the provision with more recent amendments adopted in other legislative acts: - Art. 3 of Regulation (EC) 1370/2007, and Law 52/2015, states that only maximum tariffs can be set (not minimum). Recommendation 2: For regular road passenger transportation to be carried out through a liberalised regime, there is the need to abolish the possibility foreseen in the law for maximum and minimum tariffs to be determined.

No	No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
Public passenger transport service - public service and flexible transport							
7	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	Art. 6 (1) (3); Art. 15; and Art. 16 (b) (c) (e)	Transport of passengers - Public service	Several legal regimes were expressly revoked. However, since 2015 no new legislation or regulatory frameworks have been adopted with regard to: (b) access to the market of regular passenger long-distance bus routes of more than 100 km and with a high-quality service offer ("high quality" bus routes); (c) access to the market of regular passenger long-distance bus routes of more than 50 km ("express services" bus routes); and (e) transport tickets. According to Art. 16 of this law, the revoked regimes shall remain in force until new legislation is adopted.	No official recital. Our understanding is that the provisions aim to clarify the legal and regulatory regimes in force, imposing a specific deadline for the legislator to adopt the new provisions.	These provisions create legal uncertainty and increase search costs since there is lack of adoption of the legislative and regulatory norms, after the 90-day period announced with the entry into force of Law 52/2015. More than two and half years have passed and, to the best of our knowledge, no new legislation has been adopted. This lack of legislation and of a regulatory framework leads to higher costs due to legal advice that transport operators and consumers need to address. Moreover, if an operator would like to enter the market of regular passenger transport long-distance bus routes of more than 50 km ("express services" bus routes), at the current date, it would had to follow Decree-Law 326/83, Decree-Law 399-F/84 (as amended) and Ordinance 23/91 (as amended), which requires, among other things, that a potential entrant would need to be a concessionary of an inter-urban route before applying for an authorisation to IMT, notwithstanding, Law 52/2015 announcing a "liberalisation" spirit for access to this market. The same concerns apply as regards the unknown structure of tariffs for these services.	Regulate the provisions and adopt the necessary secondary legislation relating to access to the market of regular passenger transport of long-distance bus routes.
8	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 27 (3) (c) and (5) (6)	Transport of passengers - Public service	An operator already holding an exclusive right has a preference right to explore "additional demand". If this operator show no interest in operating: (a) another public service operator may show an interest in operating or (b) a competent transport authority may wish to operate it itself. In either of the scenarios (a) or (b), a new agreement must be reached with the initial holder of the exclusive right amending the existing contract, taking into account the provisions and limits applicable to public procurement. If this agreement cannot be reached, the competent transport authority may, on its own initiative, start the necessary procedures for the	No official recital. Based on stakeholders' opinion, our understanding is that this provision aims to minimise the administrative and procedural costs for the transport authorities in providing adequate and efficient transport services.	These provisions make reference to a legal concept referred to as "additional demand" for which no criterion is foreseen in the law. Hence, operators cannot understand the impact on their existing agreement. Nevertheless, the operators can count on the need to sign an agreement to meet the additional demand. This enables us to infer that this "additional demand" must have a relatively high impact on the existing contract on vehicle/kilometres/passengers. Otherwise, a simple "adjustment" of the initial agreed terms would occur, as also foreseen in Art. 31 (2) (a) and (3) of this Law 52/2015, without the need for a formal amendment, under the terms of the Public Procurement Code, nor the payment of any compensation for the "adjustment" levels of public services. In any case, the existing preference right criterion attributed to a given operator seems not to be justified. It diminishes the bargaining power of the transport authorities when negotiating within the initial contract terms since the initial operator is aware of this preference right. Hence, if this preference right did not exist, transport authorities could start negotiating with other potential operators, which would increase their bargaining power. Indeed, this would possibly increase the willingness of the initial operator to perform an additional service at a lower cost, which would benefit not only the state but also consumers.	Recommendation 1: Amend the provision and clarify the definition of an "additional demand". Recommendation 2: Abolish the preference right to explore an additional demand, given to the operator already holding an exclusive right, to explore the public service for the transport of passengers, within a given specific geographical area.

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				purpose of allocating the operation of the public passenger transport service concerned, under the several procedures available within this legal framework (i.e., a new bid; a direct award; or by an internal operator).			
9	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 28	Transport of passengers - Public service	The competent transport authority may make the attribution of the right to operate a public passenger transport service subject to the payment of a financial contribution (contrapartida financeira) by the public service provider.	No official recital. It was not possible to identify the policy objective.	The rationale for making the attribution of a public service transport of passengers depending on a financial compensation to be paid by the public service operator is not clear. In fact, it is inherent in the definition of the supply of services under a public service regime that private operators have no interest in entering the market and providing the corresponding service since it is not economically profitable. Moreover, there are no specific criteria for calculating this financial compensation, which can lead to distortions in the market, and also increase the costs for only some operators. Furthermore, it may create discrimination amongst the several transport authorities. Those that establish financial compensations and others that do not. An operator may, before one transport authority, be subject to a payment by the public service which it carries out in a given geographical area, but by another similar public service under the jurisdiction of another transport authority, it may pay nothing.	Option 1: Abolish the payment of a financial contribution by the public service provider for the right to operate a public passenger transport service. Option 2: Alternatively, define the criteria to set the financial contribution in light of the principles of transparency, non-discrimination, and proportionality.
10	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 31 (2) (a) and (3)	Transport of passengers - Public service	The transport authority can impose on the operator the obligation to "adjust" the terms of its service with regard to: a) routes and stops; b) schedules and frequencies; and c) regime of regularity and flexibility of the service. These adjustments must comply, cumulatively, with the following requirements: a) not involving, in each contract year, a modification that affects more than 10% of the total of vehicles/km foreseen in the contract or 25% if during the first two years of the contract; b) not resulting in a total annual balance of vehicles/km higher or lower than that established in the contract; c) not anticipating or exceeding the daily start and	No official recital. Based on stakeholders' opinion, our understanding is that this provision aims to guarantee that, in spite of the terms agreed upon, the transport authorities have the right to introduce some adjustments to the administrative contracts, besides the ones established under the Public Procurement Code, as long as these are in full compliance with the legal requirements of this law, without the need to financially compensate the operator.	The criterion included in the law does prevent the entry into the market and the award of a new public tender to face additional demand. The question is whether to consider the criterion as proportional or not. The criterion seems to aim at protecting both the public authorities' interest as well as the concessionaires' rights within the framework of an eventual need for amendment of a given administrative contract. In fact, the criterion allows for adjustments to the administrative contracts, but setting specific limitations, thus aiming to safeguard the financial equilibrium of the execution of the contract. However, thresholds such as the ones fixed in item a), of not involving, in each contract year, a modification that affects more than 10% of the total of vehicles/km foreseen in the contract or 25% if during the first two years of the contract, do pose the questions of whether these thresholds are duly justified, are proportional, and if they follow the Code of Procurement Rules. Indeed, if these thresholds lead to financial instability of the execution of the contract, they might lead to judicial disputes and hence increase costs for operators. Moreover, these thresholds, together with the other cumulative criteria, do prevent the entry into the market or the award of a new public tender to face the additional demand. From the stakeholder's point of view, these criteria are not much different from the usual ones inserted in the concession contracts, which, according to their understanding, follow the Code of Procurement Rules. As such, these provisions seem to be proportional to the policy objective.	No recommendation.

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				end time of operation of each line; d) not adding days of operation to those specified in the contract; e) not entailing an increase in the fleet or human resources necessary for the operation of the network in question; and, cumulatively, f) not resulting in a change in the annual remuneration of the public service operator, where applicable. Furthermore, this law establishes that no compensation is foreseen for the "adjustment" levels of public services.			
11	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 32 (4) (5)	Transport of passengers - Public service	Two or more public service operators in close geographical areas or on routes with fully or partially coincident routes or schedules, may propose to the competent transport authorities a joint operation of all or part of the services they operate, subject to an agreement duly authorised by the competent transport authorities. The competent transport authorities may give the authorisation for a joint operation, conditioned on the sharing of profits between the public service operators and the transport authorities, or to impose public service obligations so as to adopt specific routes, timetables or tariffs/prices.	No official recital. Based on stakeholders' opinion, our understanding is that this provision aims to promote public service through the increase of mobility of passengers.	The possibility of performing a joint operation by operators with exclusive rights in a certain geographical area, may influence competition between neighbouring markets. In fact, the joint agreement may diminish the incentives to compete against each other upon the renewal of the authorisations/contracts of public service. However, the transport authorities retain the power to authorise joints operations, i.e., can balance the gains and losses of the proposed joint operation, preventing a possible higher bargaining power from the operators. In this sense it can ensure: that financially it does not create a disequilibrium in which it would have to pay additional compensation for public service; and that mobility is compromised and it is rather increased, since it can impose public service obligations as to adopt specific routes, timetables or tariffs/prices. Therefore, these provisions can be considered proportional to the policy objective. Nevertheless, the possibility of imposing the sharing of profits between public service operators and the transport authorities seems to impede innovation and better management of the operators, since it forces operators to share the profits. This restriction does not seem duly justified.	Amend the provision and abolish the possibility of imposing as a condition to be given the authorisation for sharing of profits between the public service operators and the transport authorities.

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12	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [Implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 33 (1)	Transport of passengers - Public service	Access to the market of regular passenger transport of long-distance bus routes of more than 50 km ("express service") is to be liberalised, needing solely prior notification to the IMT, although subject to requirements to be established in secondary legislation.	No official recital. Based on stakeholders' opinion, our understanding is that it aims to liberalise the entry into the market of potential operators aiming to provide long-distance buses routes, either in a liberalised market, or carrying out public service contracts.	This provision creates legal uncertainty and increases search costs for operators, who have long been waiting for full liberalisation of the rules for access to the regular long-distance bus market. Law 52/2015 revoked several legal regimes [Decree-Law 399-F / 84 (as amended by Decree-Law 190/90), which complements Decree-Law 326/83, and also Decree-Law 399-E/84, which complements Decree-Law 375/82]. However, this revocation only takes effect on the date of entry into force of legislation and specific regulations provided for in the law itself, in relation to the matters under analysis. To the best of our knowledge, to date, no new legislation or regulation has been adopted (see IMT website, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx). Even if the spirit of Law 52/2015 seems to be to liberalise access to this activity, the specific requirements to be granted an authorisation to operate are unknown. Legal uncertainty persists since Law 52/2015 uses two different terminologies, either the need for an "authorisation" (see Annex, Art. 16 (1) (c) of Law 52/2015) or the need for a "communication" (see Annex, Art. 33 (1) of Law 52/2015). Moreover, a rationale for the regime for long-distance busses in general (> 50 Km, and > 100km) was not found, to be framed under a public service framework regime, which is foreseen in the Annex of Law 52/2015. Hence, to enter the market of long-distance bus services, and to exercise this activity, operators must follow the rules in force. Indeed, from meetings with an international stakeholder it results that legal uncertainty is discouraging and delaying potential entry into the domestic market. Finally, a brief overview, based on a report from DG MOVE, European Commission, entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across EU Member States shows that there is an increasing tendency in the last few years to promote a liberalisation of access to these long-distance bus services, as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have shown a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.), contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move).	Regulate the provision and adopt the necessary secondary legislation to implement the liberalised regime relating to the access to the market of regular passenger transport of long-distance bus routes (foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015).
13	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [Implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 33 (2)	Transport of passengers - Public service	The legislation to be adopted for operators wishing to enter the market for long-distance buses of more than 50 km ("express service") shall establish the general rules applicable to the titles and tariffs to be in force for public service transportation.	No official recital. Based on stakeholders' opinion, our understanding is that it aims to liberalise the entry into the market of potential operators aiming to provide long-distance buses routes, either in a liberalised market, or carrying out public service contracts.	This provision creates legal uncertainty and increases search costs for operators, who have long been waiting for full liberalisation of the rules for access to the regular long-distance bus market. Law 52/2015 revoked several legal regimes [Decree-Law 399-F / 84 (as amended by Decree-Law 190/90), which complements Decree-Law 326/83, and also Decree-Law 399-E/84, which complements Decree-Law 375/82]. However, this revocation only takes effect on the date of entry into force of legislation and specific regulations provided for in the law itself, in relation to the matters under analysis. To the best of our knowledge, to date, no new legislation or regulation has been adopted (see IMT website, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx). Even if the spirit of Law 52/2015 seems to be to liberalise access to this activity, the specific requirements to be granted an authorisation to operate are unknown. Legal uncertainty persists since Law 52/2015 uses two different terminologies, either the need for an "authorisation" (see Annex, Art. 16 (1) (c) of Law 52/2015) or the need for a "communication" (see Annex, Art. 33 (1) of Law 52/2015). Moreover, a rationale for the regime for long-distance busses in general (> 50 Km, and > 100km) was not found, to be framed under a public service framework regime, which is	Regulate the provision and adopt the necessary secondary legislation to implement the liberalised regime relating to the access to the market of regular passenger transport of long-distance bus routes (foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015).

No	No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
						foreseen in the Annex of Law 52/2015. Hence, to enter the market of long-distance bus services, and to exercise this activity, operators must follow the rules in force. Indeed, from meetings with an international stakeholder it results that legal uncertainty is discouraging and delaying potential entry into the domestic market. Finally, a brief overview, based on a report from DG MOVE, European Commission, entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across EU Member States shows that there is an increasing tendency in the last few years to promote a liberalisation of access to these long-distance bus services, as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have shown a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.), contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move).	
14	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [Implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 33 (4)	Transport of passengers - Public service	The transport interfaces shall ensure non-discriminatory access and equal opportunities for all public long-distance bus operators of more than 50 km ("express service"), in particular with regard to facilities, workshops, parking, ticket offices, customer service, sales and information systems for the public. The respective regime may be established by ordinance of the member of the government responsible for transport or by a resolution of the Authority for Mobility and Transport (AMT).	No official recital. Based on stakeholders' opinion, our understanding is that it aims to liberalise the entry into the market of potential operators aiming to provide long-distance buses routes, either in a liberalised market, or carrying out public service contracts.	This provision creates legal uncertainty and increases search costs for operators, who have long been waiting for full liberalisation of the long-distance bus market. The transport interfaces need to be regulated to guarantee transparent, non-discriminatory and proportional access by all potential entrants into this market.	Regulate the provision and adopt the necessary secondary legislation to implement the access to infrastructures to be used by operators in the market of regular passenger transport long-distance bus routes. To regulate the provision, an agreement between the member of the government responsible for transport and the AMT must be reached, regarding this sharing of attributions and competences within transport interfaces.
15	Law 52/2015 (modified lastly by Decree-Law 86-D/2016) "Legal Regime of the Public Passenger Transport Services" [Implements the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable]	(Annex to the Law) Art. 39 (2)	Transport of passengers - Public service	In order to issue its own ticket for one mode of transport, operators need an authorisation by the transport competent authorities, taking into account the planning, articulation, integration, sustainability and optimisation of the transport system.	No official recital. Based on stakeholders' opinion, our understanding is that the competent transport authorities aim to control the public service of transport of passengers awarded to private companies, ensuring the success of the intermodality and sustainability of the designed transport system. By authorising the creation of one-mode tickets by public service operators, it aims to ensure that there is no deviation from the acquisition of the intermodal tickets, most probably imposed as public service obligations.	The need for authorisation corresponds to an entry barrier taking into account that a one-mode ticket does not entitle the operator to public service compensation. However, taking into account that the authorisation process serves as a way of controlling that there is no deviation from the acquisition of the intermodal tickets, most probably imposed as public service obligations, preventing a diminishing of revenues, and hence, leading the transport authority to pay higher compensations for the services provided, we consider the need for this authorisation as proportional to the policy objective.	No recommendation.

No	No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
16	Decree-Law 8/93 "Legal Regime for the Transport Tickets of Combined Means of Transport"	Art. 4 (2) (3)	Transport of passengers - Transport tickets - Prices / Tariffs	The prices of the combined tickets offered by concessionary operators of regular public transport services should result from the weighting of the tariffs applicable to the different transport services that integrate them, taking into account their tariff systems. In the revision of the prices of combined tickets, the maximum average increase limits established by order of the competent members of the government, for each of the modes of transport covered by them shall be observed. In price changes, the tariff rules and the maximum percentages of average increase established in accordance with the applicable legislation shall be observed. In price changes, the tariff rules and the maximum percentages of average increase established in accordance with the applicable legislation shall be observed.	No official recital. Based on stakeholders' opinion, our understanding is that this provision sets the criteria for the revision of the price applicable to combined tickets to be charged by the operators, aiming to protect consumers from disproportional prices.	First, Art. 16 (e) of Law 52/2015, which approves the legal regime for the public passenger transport service, repeals the current Decree-Law 8/93, which establishes the legal regime for the combined transport tickets (i.e., without financial compensation from transport authorities). Nevertheless, according to Art. 6 (1) and Art. 15 of Law 52/2015, Decree-Law 8/93 is still in force until new regulation is approved to replace it. To date, no regulation has been approved, creating legal uncertainty and search costs for operators. Hence, the regime in force sets the criterion as "the maximum average increase limits". This criterion has the advantage of setting a maximum level of increase in prices, which contributes to consumer protection by guaranteeing that consumers will not pay a disproportional or unexpected increase in prices. However, the criterion establishes the maximum increase as an average. According to stakeholders, this may lead to an increase in the ticket price that are most demanded by consumers above the maximum average, which will be compensated by a decrease in the price of tickets that are less demanded by consumers. Overall, this leads to a "de facto" increase in the price of tickets that consumers prefer above the maximum average established, contributing to a decrease in consumer welfare.	Adopt the necessary secondary legislation to implement the legal regime for the transport tickets of combined means of transport (foreseen in Art. 6 (1), Art. 15 and Art. 16 (e) of Law 52/2015). To regulate the provision, consider redefining the maximum average increase limits by taking into account the relative demand for each ticket and not only the absolute price itself.
17	Decree-Law 8/93 "Legal Regime for the Transport Tickets of Combined Means of Transport"	Art. 10 (2) (b)	Transport of passengers - Transport tickets - Prices / Tariffs	In revising the prices offered by concessionary operators of regular public transport services, the tariff rules and the maximum percentages of average increase established in accordance with the applicable legislation shall be determined by the competent members of the government.	No official recital. Based on stakeholders' opinion, our understanding is that this provision sets the criteria for the revision of the price applicable to combined tickets to be charged by the operators, aiming to protect consumers from disproportional prices.	First, Art. 16 (e) of Law 52/2015, which approves the legal regime for the public passenger transport service, repeals Decree-Law 8/93, which establishes the legal regime for the combined transport tickets (i.e., without financial compensation from transport authorities). Nevertheless, according to Art. 6 (1) and Art. 15 of Law 52/2015, Decree-Law 8/93 is still in force until new regulation is approved to replace it. To date, no regulation has been approved, creating legal uncertainty and search costs for operators. Hence, the regime in force sets the criterion as to "the maximum average increase limits". This criterion has the advantage of setting a maximum level of increase in prices, which contributes to consumer protection by guaranteeing that consumers will not pay a disproportional or unexpected increase in prices. However, the criterion establishes the maximum increase as an average. According to stakeholders, this may lead to an increase in the ticket price that are most demanded by consumers above the maximum average, which will be compensated by a decrease in the price of tickets that are less demanded by consumers. Overall, this leads to a "de facto" increase in the price of tickets that consumers prefer above the maximum average established, contributing to a decrease in consumer welfare.	Adopt the necessary secondary legislation to implement the legal regime for the transport tickets of combined means of transport (foreseen in Art. 6 (1), Art. 15 and Art. 16 (e) of Law 52/2015). To regulate the provision, consider redefining the maximum average increase limits by taking into account the relative demand for each ticket and not only the absolute price itself.

No	No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
18	Decree-Law 60/2016 "Flexible Public Transport Service of Passengers"	Art. 6 (3)	Transport of passengers - Flexible transport	Conversion from regular passenger transport to "flexible public transport service of passengers" depends on the authorisation of the competent authorities, as well as on fulfilment of the requirements for "flexible public transport service of passengers" listed in this legal act.	No official recital. Based on stakeholders' opinion, our understanding is that this provision attempts to ensure that, for safety reasons and on account of the nature of the activity at stake, the entities responsible have the capacity and the adequate experience to perform such activity. Furthermore, it aims to ensure that the transport authorities have data to monitor the performance of the flexible transport services.	The need to require an authorisation delays entry into the flexible transport services market and raises costs as the operators must fulfil a set of requirements. This restricts access to an economic activity and may lower the number of well-qualified entities able to provide such services. However, the nature of this authorisation seems rather simplistic, deriving from a conversion from regular passenger transport to "flexible public transport service of passengers". Furthermore, it allows the transport authorities to have data to monitor the performance of the flexible transport services. Hence, it seems proportional.	No recommendation.
Logistics platforms							
19	Decree-Law 152/2008 "Legal Regime of the National Network of Logistics Platforms"	Art. 3 (a); Art. 10(1)(4); Art. 11(1); Art. 11(2b); Art. 17(2); Art. 19(3); Art. 20	Logistics platforms	<p>1) The installation and management of each logistics platform is carried out by a management company under an operating contract. The managing company should be approved by the IMT, according to a number of criteria, such as the level of risk assumed by the managing entity; the volume of investment required from the state and demonstrated financial and technical capacity to implement the project.</p> <p>2) The participation of the management company in the capital stock of companies that install or provide services in the area of the logistics platform depends on prior authorisation from the IMT.</p> <p>The management company of a logistical platform has preference rights in the sale of the land included in the area of the logistics platform. This land is limited to 40% of its total management area and cannot be located within a strategic location within the logistics platform.</p> <p>3) The operating contract of a logistical platform is concluded</p>	In 2006, the Portuguese government presented the strategic guidelines for the area of logistics, embodied in the Portugal Logístico (Logistic Portugal) project. One of the main purposes was the creation of the National Network of Logistics Platforms (RNPL), with 11 logistics platforms. This legal regime, although it is in force, was never totally implemented.	<p>1) To the best of our knowledge, there is no regulation adopted by the IMT concerning any criteria stated in the provisions. Hence, it creates legal uncertainty and search costs for new potential applicants to manage a logistics platform. This may constitute barriers to entry for entrepreneurs, also at EU level, since it may prevent a European operator from entering the domestic market, in case it has a different level of financial or technical standing (see judgment in Case C-438/08 [2009], paras. 18, 28, 29, 53).</p> <p>The limitation on the capital participation limits the ability to compete since it prevents the managing company from being vertically integrated or having minority shareholdings in other companies, and hence, from benefiting from an advantage and from occupying the entire or majority logistic platform with companies in which it is possible to obtain dividends. However, this provision also serves to safeguard that there are no exclusive or preferential rights to provide goods or services given by the managing company to one of the companies with which it has corporate relations, which might result in an increase in prices and not necessarily improve consumer welfare. The authorisation from IMT may also prevent collusion between independent companies. We assume that this authorisation will take into consideration measures to avoid higher prices and lower efficiency. Finally, although this authorisation from the IMT might be justified in order to promote competition, the absence of any technical and legal criteria for the analysis to be carried out by the IMT are, to best of our knowledge, not specified, which creates legal uncertainty and might promote discretionary treatment between managing companies.</p> <p>2) The provision that defines the preference rights in the sale of the land corresponds to an entry barrier and limits the ability of operators to compete since it grants preference rights to a specific company to acquire land located in a strategic geographical area connected to ports, rail, or road infrastructures, which may give an advantage towards others companies. It seems that there is no reason to justify this preference right criterion, and, hence, the competitive sale of respective land is not allowed, thus discriminating amongst operators.</p> <p>3) The legislator established an initial maximum time period for the concession, extendable without limitation in time. A 30-year duration extendable indefinitely forecloses entry into the market. This limits the potential number of operators in this market, which could influence the prices and quality of the services provided to users. The most effective way to regulate the duration of the concession would be not to establish a priori a cap. However, the duration of a concession should be limited in order to avoid market foreclosure and restriction of competition taking into account that a concession limits competition for the market, but it also promotes competition upon renewal of a</p>	<p>1) Regulate the provision. Adopt the criteria for the installation and management of each logistics platform by adopting the necessary secondary legislation to define the criteria that applicants for managing a logistic platform must demonstrate in terms of what can be considered financial and technical capacity, the level of risk to be assumed by the managing entity and the volume of investment required from the state. Also, abolish the possibility of allowing a vertical integrated entity to manage a logistics platform.</p> <p>2) Abolish the managing company's preference right in the sale of land included in the area of the logistic platform.</p> <p>3) Amend the provision that defines the maximum time period for the operating contracts in a way to implement the principle that the duration of a concession should be limited to the time period strictly necessary to recover the investment made, together with a remuneration adequate for its level of risk. The specific time</p>

No	No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
				for a maximum period of 30 years, renewable for periods not exceeding 10 years.		concession. A concession's time limits also result from a public policy objective to prevent excessive length of concessions and transparency of awarding processes. The duration of a concession shall be established as the minimum time period required to recover and repay the capital invested under normal conditions of return of the exploitation of the concession [as defined in Recital 52 and Art. 18 of EU Directive 2014/23/UE and Art. 410 of Decree-Law n.º 111-B/2017 (Portuguese Public Procurement Code)]. Moreover, the contracting entity should establish a specific time limit, considering the criteria mentioned above and the need to justify concessions with durations over five years. Indeed, there could be many parameters to the concession, including specification of tariffs, of investment, of levels of service or of fees to be paid to the government/grantor, but also, of its time period, typically, from 5 to 30 years.	limit should be established, considering the criteria mentioned above and the need to justify concessions with durations over five years.
Freight forwarding							
20	Decree-Law 255/99 (as amended by Law 5/2013) "Regime for Access and Exercise of the Services Activity of Freight Forwarding"	Art. 2 (2)	Freight forwarding	The activity of freight forwarding services can only be carried out by operators holding a licence issued by the IMT. The licences are non-transferable and issued for a term not exceeding five years, renewable by proving that the requirements for access to the activity are maintained.	There is no official recital. Our understanding is that it aims to better monitor and check whether all the requirements are fulfilled by operators working as freight forwards.	Licences required for operation restrict entry, have an associated cost, and have the ability to restrict competition, possibly leading to higher prices and harming consumers. Freight forwarders act as service supplier intermediaries between clients (importers or exporters) and freight transportation companies. They might also advise clients on how to secure the transported goods within insurance companies or the transporters themselves. Hence, they do not hold the risk associated with the transportation of goods. Nevertheless, Art. 7 of this Decree-Law already imposes on freight forwarders that they must have civil liability insurance in the minimum amount of EUR 100 000. Freight forwarders also bear administrative costs related with the issuing and renewal of the licence every five years, in the amounts of EUR 350 and EUR 250, respective (see Ordinance 1165/2010). There are other alternative and less restrictive forms of pursuing the same policy objective based on Decree-Law 92/2010, which transposes into national law the Directive of Services (Directive 2006/126/CE), such as a mere administrative communication to IMT through the electronic platform of IMT. Indeed, according to the official Recitals and Arts. 5, 6 and 23 of Decree-Law 92/2010, there are limited cases in which it is possible to require a licence or authorisation for the provision of services in national territory. In this way, licences or authorisations corresponding to more complex and time-consuming administrative procedures are now required only in exceptional situations where compelling reasons of public interest so warrant. The streamlining of procedures is accompanied by the necessary strengthening of means and modes of supervision. The simplification introduced thus has, on the one hand, the accountability of economic agents, and on the other, the strengthening of supervision. Examples, at national level are the rental services regime for rent-a-car.	Option 1: Abolish the need for a licence. Option 2: Alternatively, consider if a simple administrative communication to the IMT would be reasonable, through the electronic platform of the IMT, in line with the legal regime foreseen in other services which do not require a licencing regime, following Decree-Law 92/2010, Art. 5, Art. 6 and Art. 23, which transposes, in Portugal, the Services Directive (Directive 2006/126/EC).
21	Decree-Law 255/99 (as amended by Law 5/2013) "Regime for Access and Exercise of the Services Activity of Freight Forwarding"	Art. 6 (1) (2)	Freight forwarding	To obtain a licence to access the freight forwarding services market an operator must prove that it has financial capacity: at the beginning of its activity, an operator must hold capital of EUR 50 000 (IMT website).	The official recital aims to define the financial capacity of the operators. It consists of having the necessary financial resources to guarantee the good management of the company.	The Portuguese Companies Code and the Portuguese Commercial Registration Code allow for the creation of a single shareholder limited liability company (with a minimum share capital of EUR 1.00), a private limited company or partnership (with a minimum share capital of EUR 1.00), a public limited company (with a minimum share capital of EUR 50 000), and co-operatives (with a minimum share capital of EUR 2 500) in one hour. This procedure can be done online through an electronic platform called "Create-a-firm-on-the-spot" (www.empresanahora.mj.pt/ENH/sections/PT_inicio.html). These values differ from the ones set in this Decree-Law. Hence, this provision imposes a standard of financial capacity, which constitutes a barrier to entry for entrepreneurs (SMEs). This may also constitute a barrier to	Abolish the financial criteria. Any amount required as initial capital to start a business should comply with the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.

No	No and title of Regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objective	Harm to competition	Recommendation
						entry at EU level, since it may prevent a European operator from entering the domestic market, in case it has a different level of financial standing (see judgment in Case C-438/08 [2009], paras. 18, 28, 29, 53 and C-171/02 Commission v Portugal [2004] ECR I 5645, para. 53 and 54). Moreover, to get a licence to access freight forwarding services an operator must also have civil liability insurance in the minimum amount of EUR 100 000 (see Art. 7 of this Decree-Law). This insurance safeguards risk management tools. Hence, it is our understanding that this insurance already fulfils the policy objective of the need to ensure the necessary financial resources to guarantee the good management of the company.	
Railway and road administrative fees							
22	Ordinance 1165/2010 (amended by Ordinance 97-A/2013) "List of Administrative Fees due to IMT, I.P."	Annex - ALL	Railway and road administrative fees	List of administrative fees, to be paid by operators to the IMT, within the road and railway sectors, without any criteria for its quantification.	The official recital states that this list of administrative fees is aimed to cover the expenses related to the administrative burden due for processing documents, analysing and assessing applications and submissions, and monitoring and inspections, due by the public competent authority, the IMT.	This ordinance sets a list of administrative fees, to be paid by operators, within the road and railway sectors. As administrative fees, this is understood to be payments due for services rendered by a public entity, in this case the IMT. However, none of the amounts due listed, specified in the Ordinance 1165/2010 (as amended by Ordinance 97-A/2013), give any indication as to the objective criteria on how these amounts were initially set or updated. Hence, the ordinance in force may, even unintentionally, give rise to administrative fees charged by the public administration that can negatively affect competition, by generating extra costs to potential or already installed market operators, depending on the market structures and capacity of operators to absorb or transfer such costs. With fewer operators in the market, there is less competition and the prices will remain high. The process of analysing documents or requests submitted by several applicants may be of a certain degree of complexity and might require specialised human resources within the IMT. However, it was not possible to identify an economic rationale for any of the established administrative fees. The constitutional principle of proportionality (see Art. 266 (2) of the Constitution of the Portuguese Republic) applies to administrative fees, imposing a correlation between the cost (the means used by the administration) and fees charged. Fees should be based on a transparent methodology, be non-discriminatory, not exceed the cost, and should not be a means for the administration to collect revenues. Hence, all the amounts listed, charged by the IMT, do not seem to be proportional to the policy objective pursued. Finally, one illustrative example is given – see Annex, Section XI, A, 1: an operator must submit an application to IMT, I.P., for the opening of a new vehicles inspection centre and must pay an administrative fee, due for the submission and assessment of its application [see Law 11/2011 (as amended), Art. 35 (1)], in the value of EUR 5 000, as set in this Ordinance 1165/2010 (as amended by Ordinance 97-A/2013), in Annex, Section XI, A, 1. Until 2013 (before the amendment of Ordinance 1165/2010, as amended by Ordinance 97-A/2013), this value was of only EUR 1 000. It was also not possible to determine the rationale or the aim for the five-fold increase in this value. Additionally, it is also to note a differential in cost between old (previous to 2013) and new entrants (after 2013). The amount due seems not to be proportional to the policy objective pursued.	Amend the wording of the ordinance by inserting criteria to be followed to determine the administrative fees due, in respect of the following criteria: fees should be based on a transparent methodology, be non-discriminatory, not exceed the costs, and should not be a means for the IMT to collect revenues.

Road transport

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
Transport and services ancillary to transport of passengers and freight by road							
1	Deliberation 1065/2012 (IMT) "Regulates the requirements of financial and professional capacity for obtaining licences for the activity of road passenger transport or road freight transport, for hire or reward, regulating Decree-Law 257/2007 (freight) and Decree-Law 3/2001 (passengers)"	Paras. 4 and 6	Transport of passengers and freight - access to the activity	To obtain the licence, the applicant must fulfil the requirement of professional capacity. This requirement must be met by a natural person acting as a transport manager. The appointment of this transport manager is subject to the following optional conditions: Para. 4: if it has a "genuine link" with an undertaking, that is, is an employee, director, owner, shareholder or manager of the undertaking, it can only be a transport manager within 3 separate transport operators; or Para. 6: if it is an "independent" third party, such as a transport consultant, whereby it does not have a "genuine link" with an undertaking, it may serve up to 3 separate transport operators as long as their combined fleet does not exceed 50 vehicles.	The official recital states that it aims to establish in the Portuguese legal regime, the regime set in Art. 4 of Reg. (CE) 1071/2009, regarding the transport managers' requirement, by introducing alternative ways for demonstrating that requirement, in line with the limits established by the EU regulation itself. According to a stakeholder, it aims to ensure the quality of transport manager services since, if a transport manager works for several separate companies at the same time, the manager might not always be available to manage the company, brief drivers or to respond to client demands.	These provisions are in line with Art. 4 of Reg. (CE) 1071/2009, but the restrictions that the transport manager can only be a transport manager within 3 separate transport operators (Para. 4 of this deliberation) or can only serve up to 3 separate transport operators as long as their combined fleet does not exceed 50 vehicles (Para. 6 of this deliberation) are more stringent. Thus, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to 4 separate operators, as long as their combined fleet does not exceed 50 vehicles. Although the Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, which is more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger transport operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than 3 operators (Para. 4) even if limited by a fleet of 50 vehicles (Para. 6). This might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially for the small ones, which must bear the cost of hiring an independent transport manager, limiting the provision of services for a certain number of more than 3 undertakings.	Amend these provisions, in line with Art. 4 (1) (2) (c) of Reg. (CE) 1071/2009, where transport managers can cover up to four companies and up to 50 vehicles. Consider including these provisions, amended as recommended above, in the Decree-Law 257/2007 (as amended) and in the Decree-Law 3/2001 (as amended) containing the framework rules for access requirements for the exercise of the activities.

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2	Deliberation 1065/2012 (IMT) "Regulates the requirements of financial and professional capacity for obtaining licences for the activity of road passenger transport or road freight transport, for hire or reward, regulating Decree-Law 257/2007 (freight) and Decree-Law 3/2001 (passengers)"	Para. 7	Transport of passengers and freight - access to the activity	To obtain the licence, the applicant must fulfil the requirement of financial capacity. This requirement implies that the applicant must dispose, every year, of capital and reserves totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle, following Art. 7 (1) of Regulation (EC) 1071/2009. By way of derogation, the company may demonstrate its financial standing by means of a certificate such as a bank guarantee "on first demand", in respect of the amounts specified.	The official recital states that it aims to establish in the Portuguese legal regime, the regime set in Art. 7 (2) of Reg. (CE) 1071/2009, regarding financial capacity, introducing alternative ways for demonstrating that requirement, in line with the limits established by the EU regulation itself.	This provision corresponds to an entry barrier since it restricts alternative forms for operators to demonstrate the financial requirement, which is likely to limit the number or range of suppliers, as well as limiting the ability of suppliers to compete. Hence, it also has the ability to influence the costs, prices and the quality of services provided. According to Art. 7 (2) of Regulation (CE). 1071/2009, the financial capacity requirement may be demonstrated, alternatively, by means of a certificate such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the company. This restriction is particularly relevant due to the fact that Portuguese road freight and passengers operators generally have small fleets (SMEs). This might be preventing Portuguese companies from expanding their business and raising costs since, at first, it is not clear which option (bank guarantee versus insurance) is the most economically advantageous. Also, based on the "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 - Final Report, MOVE/D3/2014 - 254", (p. 29, and 105-107), the use of insurance is permitted in at least in eight Member States (Austria, Germany, Bulgaria, Czech Republic, Denmark, Estonia, Sweden and Italy). Finally, according to well-established case law of the Court of Justice of the European Union (CJEU), e.g., in Case C-171/02, Commission v. Portugal [2004], para. 55, we can still identify another less restrictive means to provide for the payment, such as taking out an insurance contract.	Amend this provision, taking into account the alternatives for demonstrating financial capacity, as an insurance contract, in line with Art. 7 (2) of Reg. (CE) 1071/2009; and judgment of the CJEU, Case C-171/02, Commission v. Portugal [2004], para. 55. Consider including these provisions, amended as recommended above, in the Decree-Law 257/2007 (as amended) and in the Decree-Law 3/2001 (as amended) containing the framework rules for access requirements for the exercise of the activities.
3	Decree-Law 117/2012 "Regulates the organisation of working time of self-employed drivers in road transport activities, transposing Directive 2002/15/EC"	Art. 7 (1)	Transport of passengers and freight - tachographs	Self-employed drivers are exempt from tachographs. However, they should keep records for five years to be put at the disposal of entities with audit powers. The form of the register is to be defined by ordinance of members of the government.	There is no official recital. Our understanding is that it aims to ensure that the information is made available to public entities with supervising attributions.	This provision imposes an extra cost and an administrative burden in keeping records for five years. Indeed, this subject matter is regulated at the EU level - Directive 2002/15/EU, Art. 2(1) and Art. 9(b) – which establishes only two years as a minimum requirement. Additionally, no governmental guidance was provided as to the method to be used to register the data required.	Recommendation 1: Change the minimum requirement in keeping records from five to two years, in line with the Directive 2002/15/EU, Art. 2(1) and Art. 9(b). Recommendation 2: Regulate the Decree-Law, adopting the necessary secondary legislation regarding the method of registering the data required, thus conferring legal certainty.

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4	Ordinance 222/2008 "Lays down which transports are exempted from the provisions on driving and rest times and the obligation to use recording equipment (tachograph)"	Art. 2 (c) (d)	Transport of passengers and freight - tachographs	Exemptions from the use of tachograph within a 50-km radius are given for the following vehicles in line with Art. 5 to Art. 9 of Reg. 561/2006 (as amended by Reg. 165/2014): (c) vehicles or combinations of vehicles with a maximum permissible weight not exceeding 7.5 t (t) used for carrying materials, equipment or machinery for the driver's use in the course of his work and used only within a 50-km radius from the base of the company and on the condition that driving the vehicle does not constitute the driver's main activity; (d) vehicles used for the carriage of goods within a 50-km radius from the base of the company and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7.5 t.	The official recital states that it is necessary to redefine, in accordance with the specific conditions of the Portuguese territory, the type of transports which must be exempted from the provisions on driving time and rest and the obligation to use recording equipment (tachograph), as regulated at EU level by Regulation 561/2006/EU (as amended by Regulation 165/2014/EU).	These provisions impose an extra cost and administrative burden on transport companies. Indeed, tachographs are regulated at EU level, by Regulation (EC) No 561/2006 (as amended by Regulation (EC) 165/2014). The exemptions foreseen at the EU level were updated, in line with Art. 3 (aa), extending the exemption radius from 50 km to 100 km (resulting from the amendment of Regulation (EC) 165/2014). However, the national provisions were not updated and, therefore, are more stringent, and seem not to be justified.	Amend the provisions, and update the scope of the exemptions, excluding the need for tachographs in these type of vehicles/services, to distances up to 100 km, in line with Art. 3 (aa) of Regulation 561/2006/EU (as amended by Regulation 165/2014/EU).
5	Order No. 13449/2006 "Implementation and issuing of new tachograph cards (for a digital tachograph), and definition of maximum intervals between discharge of data recorded by the tachograph"	Paras. 2, 3, 4.1	Transport of passengers and freight - tachographs	The request for tachograph cards must be made to the IMT. Applicants must present themselves, in person, to confirm the data, to collect their signature and photograph, as well as to provide the payment of the administrative fee.	The official recital states that this order aims to adopt procedural measures to ensure the safety of the issuance of new tachograph cards and their use, in line with Regulation No. 561/2006 (as modified by Regulation 165/2014).	The need to request a tachograph card at the IMT in person seems to be an administrative burden which increases operating costs. Indeed, Portuguese citizens and companies already have the possibility to identify themselves electronically through a governmental website - https://bde.portaldocidadao.pt – with their identification card to perform acts with legal value. This electronic tool could be used to make requests to the IMT enabling it to confirm the data, as well as carrying out the payment of the administrative fee.	Consider using the already existing online official citizen's portal - https://bde.portaldocidadao.pt – managed by the public administration to make the requests for the first issue, renewal, substitution or exchange of tachograph cards.

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6	Law 45/2012 "Framework law regarding the access and exercise of the profession of driving examiner (partially transposing the Services Directive 2006/126/EC)"	Art 5/2	Driving schools and driving examiners	The driving examiner whose ascendant, descendant or respective spouse or person with whom they live in conditions analogous to those of the spouses is associated with the activity of driving education, cannot conduct examinations in the district where their relative carries out the activity (either as owner, shareholder, manager, or driving instructor - see Art. 5 (1) (a) (b) (c) of Law 45/2012.	No official recital. According to information from a public institute, this provision aims to avoid conflicts of interest and to ensure that examinations are impartial.	On the one hand, this restriction imposes a geographical limitation to drivers-examiners whose family works in the driving school sector. Note that Portugal has 18 districts and the prohibition extends up to 1 district, forcing the driver-examiner to operate in another district, increasing operational costs, and diminishing the options for consumers. According to a stakeholder, the choice of a driver-examiner is random, and they have no prior knowledge of the student until a few minutes before the examination. On the other hand, it is necessary to ensure that there is no conflict of interest. This can be achieved by ensuring that the candidate is not examined by a relative of the driving school owner, regardless of the location of the driving school premises, which is far less restrictive.	Amend the wording of this provision: it should state that candidates cannot be examined by a relative of their driving school owner or driving instructor, regardless of the location of the driving school premises should be amended. The possible conflict of interest can be solved by imposing a restriction on the random matching process, run a few minutes before the examination.
7	Law 45/2012 "Framework law regarding the access and exercise of the profession of driving examiner (partially transposing the Services Directive 2006/126/EC)"	Art. 10/1	Driving schools and driving examiners	The initial training course for driving examiners has a minimum duration of 290 hours and consists of a theoretical part, with a minimum duration of 200 hours, and a practical part in a real evaluation context, with a minimum duration of 90 hours.	No official recital. Based on a stakeholder's opinion, this provision aims to ensure the technical qualification and capacity needed to be a driving examiner, due to public safety reasons related to the activity.	This provision corresponds to an entry barrier since it imposes mandatory attendance at an initial training course. Indeed, this provision is in line with Directive 2006/126/EC (as amended) which requires initial training, but it is more stringent since the directive does not impose a specific duration.	Consider reducing the 290 hours of minimum duration, maintaining the purpose, the adequacy and proportionality of the policy objective.
8	Law 45/2012 "Framework law regarding the access and exercise of the profession of driving examiner (partially transposing the Services Directive 2006/126/EC)"	Art. 24/2	Driving schools and driving examiners	Driving examiners-supervisors who are recognised as such by the IMT, must have at least 10 years of activity as an accredited driving examiner.	No official recital. Based on a stakeholder's opinion, this provision aims to ensure the technical qualification and capacity needed to be an examiner-supervisor.	This provision imposes a minimum requirement, as a proxy for a quality standard, for qualified professionals to be examiner-supervisors, since it imposes 10 years of activity as an accredited driver-examiner, thus limiting access to the profession. This entry barrier into the profession extends to an entry barrier into the market, hence restricting competition, possibly leading to higher prices and harming consumers. This ultimately has the ability to harm market dynamics.	The requirement of years of experience may not be sufficient as a proxy for professional knowledge and experience. We recommend amending the provision allowing for alternative routes to access the profession, available to professionals who do not have the 10 years of experience, but have a relevant professional background. In this way well-qualified professionals who have the knowledge and experience, but do not meet the requirement of years of experience will not be excluded. The IMT could be the body granting the exception. The granting of the exception could be carried out by the IMT.

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9	Law 14/2014 "Framework law regarding driving schools and the profession of a driving instructor"	Art. 14 (1)	Driving schools and driving instructors	To operate a driving school a licence is needed. It should be requested from the IMT and is subject to several requirements.	No official recital.	Licences required for operation restrict entry, have the ability to restrict competition, possibly leading to higher prices and harming consumers. There are other alternative and less restrictive forms of pursuing the same policy objective based on Decree-Law 92/2010, which transposes into national law the Directive of Services (Directive 2006/123/CE), such as a simple administrative communication to the IMT through the electronic platform of the IMT. Indeed, according to the official recitals and Art. 5, Art. 6 and Art. 23 of Decree-Law 92/2010, there are limited cases in which it is possible to require a licence or authorisation for the provision of services in national territory. In this way, licences or authorisations corresponding to more complex and time-consuming administrative procedures are now required only in exceptional situations where compelling reasons of public interest warrant it. The streamlining of procedures is accompanied by the necessary strengthening of means and modes of supervision. The simplification introduced thus has, on the one hand, the accountability of economic agents and, on the other, the strengthening of supervision. Finally, it would also allow for cost savings of around EUR 350 for each administrative fee that each operator needs to pay the IMT for the licensing procedure (see Ordinance 1165/2010, Annex, Section X, A1).	Option 1: We recommend abolishing the need for a Portuguese licence. Option 2: Alternatively, consider a simple administrative communication to the IMT through the electronic platform of IMT, IP, following Decree-Law 92/2010, Art. 5, Art. 6 and Art. 23, which transposes the Services Directive (Directive 2006/123/EC) in Portugal.
10	Law 14/2014 "Framework law regarding driving schools and the profession of a driving instructor"	Art. 16 (2)	Driving schools and driving instructors	Natural persons cannot operate a driving school if their spouse (or a person who lives with them), ascendants or descendants are driving examiners, or if they work at a driving test centre within the district where they want to operate a driving school.	No official recital. According to information from a public institute, this provision aims to avoid conflicts of interest and to ensure that examinations are impartial.	On one hand, this restriction imposes a geographical limitation on the relatives of driver-examiners working in the driving school sector. Note that Portugal has 18 districts and the prohibition extends up to 1 district. According to a stakeholder, the choice of a driving examiner is random, and they have no prior knowledge of the student until a few minutes before the examination. On the other hand, it is necessary to ensure that there is no conflict of interest. This can be achieved by ensuring that the candidate is not examined by a relative of their driver-examiner, regardless of the location of the driving school premises, which is far less restrictive.	Amend the wording of this provision: it should state that to obtain a driver's licence, the candidate is not examined by a relative associated with the activity of a driving school, regardless of the location of the driving school premises.
11	Law 14/2014 "Framework law regarding driving schools and the profession of a driving instructor"	Art. 37	Driving schools and driving instructors	The following items are requirements for access to the profession of driving instructor: (b) possessing a definitive category B driving licence for at least two years; (c) holding a certificate of pedagogical aptitude or of a certificate of pedagogical competence as a trainer or an equivalent qualification, recognised under the terms of Law no. 9/2009 (as amended by Law No. 41/2012); (d) having attended a training course for driving instructors taught by a certified training entity.	No official recital. According to information from a public institute, these requirements aim to ensure that the technical qualifications and capacity needed to become a driving instructor are fulfilled.	Item (b) corresponds to an entry barrier since it limits the number of applicants to become a driving instructor by requiring a prior five-year period of private driving experience. This period corresponds to a three-year period in order to obtain a full driver's licence (see Road Code, Art. 122, Art. 129, Art. 144), followed by an additional two-year period. This entry barrier might lead to an increase in the operational costs of driving schools which can be reflected in the prices charged to consumers. Furthermore, comparing with other EU Member States, such as the UK, the required prior experience is lower; where the full licence is acquired within three weeks of passing the driving exam; and the prior experience is limited to three years of full licence (see www.gov.uk/become-a-driving-instructor). Items (c) and (d) correspond to entry barriers since they limit the number of applicants to become a driving instructor by requiring two training courses, one for acquiring pedagogical skills to teach candidates to obtain a driving licence, and another one to teach candidates to drive. Item (c) seems disproportional to the policy objective since item (d) already has a 25-hour training to teach pedagogical skills to help future instructors to teach candidates more effectively. Furthermore, item (d) corresponds to a mandatory course of 280 hours. These entry barriers might lead to an increase in the operational costs of driving schools	Recommendation 1: In item (b) abolish the additional two years of private driving experience since the driving instructor already has a full licence of category B (i.e., already has three years of private driving experience). Recommendation 2: Abolish item (c) since item (d), i.e., the training course (with 280 hours), already has 25 hours of classes to teach pedagogical skills to help future driving instructors to better teach candidates to drive. Recommendation 3: In item (d), consider reducing the 280 hours of minimum duration for the training course, maintaining the purpose of the policy objective.

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						which can be reflected in the prices charged to consumers. Finally, comparing with other EU Member States, such as the UK, the two mandatory courses are not required; instead, the candidates must pass practical and written tests; to demonstrate pedagogical skills, the candidate will be tested by an examiner, who will assess these skills by playing the role of two different pupils (see www.gov.uk/adi-part-3-test), and for theoretical capacities the candidates must pass online tests (see www.gov.uk/adi-part-1-test and www.gov.uk/adi-part-2-test).	
12	Law 14/2014 "Framework law regarding driving schools and the profession of a driving instructor"	Art. 42/1	Driving schools and driving instructors	To be a driving instructor in categories AM, A1, A2, A, BE, C1, C1E, C, CE, D1, D1E, D and DE, the instructor must fulfil the following requirements: (a) having been a Category B instructor for at least one year; (b) holding a driving licence for the category in which they have been teaching for at least two years; (c) having attended a specific training course of categories A, C, D or E, according to the category of education they are qualifying for.	No official recital. According to information from a public institute, these requirements aim to ensure that the technical qualifications and capacity needed to be a driving instructor are fulfilled.	Items (a) and (b) correspond to entry barriers since they limit the number of applicants for the profession of driving instructor by requiring a prior six-year period of private driving experience. This period corresponds to a three-year period in order to obtain a full driver's licence B (see Road Code, Art. 122, Art. 129, Art. 144), followed by an additional two-year period of driving in categories A, C or D, plus an additional one year of experience as a driving instructor in category B. These entry barriers might lead to an increase in the operational costs of driving schools, due to a possible shortage of professionals, which can be reflected in the prices charged to consumers. Furthermore, comparing with other countries, such as the UK, the required prior experience is lower; the full licence B is acquired within three weeks of passing the driving exam; and the prior experience is limited to three years of full licence (see www.gov.uk/become-a-driving-instructor). In addition, to teach category C and D only three years of experience are required, with no need to take a training course but rather to pass the exams (see www.gov.uk/become-an-lgv-driving-instructor ; www.gov.uk/supervise-small-lorry-and-minibus-learner-drivers). Item (c) corresponds to an entry barrier since it limits the number of applicants to the profession of driving instructor of categories A, C, or D by requiring a training course, in addition to the ones already required to become a driving instructor for category B (see Art. 37 (c) (d)). Due to a possible shortage of professionals, this entry barrier might lead to an increase in the operational costs of driving schools which can be reflected in the prices charged to consumers. Finally, comparing with other countries such as the UK, the required prior experience is lower and the training course is non-existent; indeed, the full licence B is acquired within three weeks of passing the driving exam; and prior experience is limited to three years of a full licence (see www.gov.uk/become-a-driving-instructor). Furthermore, to teach category C and D only three years of prior experience are required, with no need to take a training course but rather to pass the exams (see www.gov.uk/become-an-lgv-driving-instructor ; www.gov.uk/supervise-small-lorry-and-minibus-learner-drivers).	Recommendation 1: In item (b) abolish the additional two years of private driving experience since the driving instructor already has a full licence of category A, B, C and D (i.e., already has three years of private driving experience). Recommendation 2: Abolish item (c) since it imposes an additional course further to the ones already required to become a driving instructor of category B (see Art. 37 (c) (d)).
13	Law 14/2014 "Framework law regarding driving schools and the profession of a driving instructor"	Art. 53 (1) Art. 54 (1)	Driving schools and driving instructors	The activity of director of a driving school depends on fulfilling the following requirements: (b) have a valid professional title of driving instructor for at least five years; (c) hold a certificate of pedagogical aptitude or a certificate of pedagogical competences of trainer or an	No official recital. According to a public institute, this is to ensure that the director has the correct pedagogical component that it is needed, taking into account that it is the director who is responsible for co-ordinating the driving school.	Items (b) and (c) correspond to entry barriers and seem unnecessary since they are designed specifically for a driver instructor and not a manager having a function such as a director of a driving school. Item (d) also corresponds to an entry barrier and, according to a stakeholder representing the sector, the training required to be a director is practically the same as the one for an instructor, in which case, the candidate needs to have a valid professional title as a driving instructor for at least five years. Hence, the proportionality and adequacy of these three criteria are not proven since the position of a driving school director relates to a managing function and not a teaching function.	Abolish the requirements b), c) and d) to become a director of a driving school, taking into account that managing functions and teaching functions are two different activities.

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				equivalent qualification, recognised under the terms of Law no. 9/2009 (as amended by Law No. 41/2012); (d) have attended a training course for director of a driving school taught by a certified training entity.			
14	Ordinance 185/2015 "Regulation of Law 14/2014 (Framework law regarding driving schools and the profession of a driving instructor)"	Art. 19/2/c	Driving schools	The opening of a new driving school depends on the applicant confirming, to the IMT that the location of the new driving school is within a radius of more than 500 metres (m) of an existing driving school.	There is no official recital. According to the stakeholders consulted, there seems to be no specific justification for imposing this 500-metre distance requirement. However, a public institute has enhanced the need to safeguard eventual traffic issues related to the parking of the driving-school cars in urban agglomerations which could eventually justify a minimum geographical distance between driving schools in urban agglomerations.	This provision limits the entry into the market and the number of suppliers available since an operator who is already established does not allow a second operator to join the market within this 500-metre radius. It also limits the incentives to compete since it is not possible to have two schools near each other that could compete for customers; this is likely to lead to higher prices or services of a lesser quality, as well as to generate excess rents. An empirical econometric entry model was conducted to study this geographical restriction. After mapping all the driving schools and their respective location in Portugal, two approaches were followed to define the relevant geographical market to test whether the 500-metre restriction is binding (i.e., if it prevents entry of driving schools into the market). The first one consists of a "municipality approach", where we assumed that the relevant geographic market is at the municipal level. The second one consists of a "distance approach", where we identified the geographical market based on distances between schools (less than 1 km). We were able to identify 308 and 754 geographical markets under the first and second approaches, respectively. As a rule, we assume that the constraint is binding if an additional driving school reduces the population per school to a level below the national mean (or median) for the municipal approach, or if an additional driving school reduces the population per school to a level below the mean in markets with N_i+1 schools. Hence, we found out that the constraint was binding for the municipal approach in 55 (out of 264) municipalities and 76 (out of 264) municipalities, depending on whether we consider the mean or median value; and 146 (out of 737) municipalities for the distance approach. Finally, we also found evidence that the geographical restriction constraint is active and is indeed preventing otherwise profitable entry from occurring. Our estimates point to a potential increase in the number of driving schools between 6% (municipal approach) and 21% (distance approach).	Abolish the geographical restriction of 500 metres.
15	Ordinance 185/2015 "Regulation of Law 14/2014 (Framework law regarding driving schools and the profession of a driving instructor)"	Art. 19/4	Driving schools	The opening of a new driving school depends on IMT performing an inspection (e.g. of compliance with the requirements imposed on the premises of a driving school, with its location plan, as well as on the documents proving the professional competence of the workers) within 20 days, counted from the date of payment of the respective administrative fee.	No official recital. According to information from a public institute, this provision aims to ensure that the new driving school starts operating within a reasonable period, since without this inspection, it cannot begin operations.	On the one hand, according to the same public institute, most of the time, the 20-day period is not enough to perform the inspection due to a lack of personnel. On the other hand, taking into account that the driving school cannot operate without this inspection, this delays entry into the market and potentially discourages new companies from entering the market. This could lead to fewer choices available to consumers and might lead to an increase in prices charged to consumers. Furthermore, this inspection may even be unnecessary due to the fact that the business activity is not related to public health or other public policy objectives to start the activity (such as a hospital or a restaurant).	Amend the provision stating that in case the inspection is not carried out within 20 days, a tacit deferral occurs, and the driving school should consider that its licence has been granted and can start operating.

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16	Ordinance 185/2015 "Regulation of Law 14/2014 (Framework law regarding driving schools and the profession of a driving instructor)"	Art. 21	Driving schools	Driving schools cannot operate on Sundays or on public holidays.	No official recital. According to information from a public institute, this relates to social protection norms of the workers within driving schools, given the fact that public entities with supervising powers would not be able to monitor/supervise respect for the rules on driving schools on Sundays and public holidays, since public officials, in general, do not work on these specific days.	The scheduled limitations (i.e., public holidays and Sundays) correspond to entry barriers since they limit the match process between demand and supply. Furthermore, they impose higher operational costs, leading to higher prices, and do not proportionally lead to better quality of services. The policy objectives argued do not seem to serve consumer interests, nor do they respond to the labour protection argument or the lack of possibility of inspection of these activities argument by the competent authorities. Note that: a) a substantial part of services (restaurants, shopping malls, etc.) can operate on public holidays and Sundays; and international comparison states that Sunday clauses are to be fully liberalised (see OECD Competition Assessment Review – Greece, 2013, Retail Sector); and b) the lack of resources to monitor these activities should be weighed in the face of the freedom to offer more services to consumers, especially since other inspection entities (e.g. police, ASAE) perform their duties on these days.	Abolish the limitations imposed on public holidays and Sundays.
17	Ordinance 185/2015 "Regulation of Law 14/2014 (Framework law regarding driving schools and the profession of a driving instructor)"	Art. 25/7	Driving schools	In a driving school vehicle, advertising is only allowed if it relates to the identification of the driving school itself or to the group of companies it belongs to, and their contacts.	No official recital. According to a stakeholder, this provision aims to ensure that there is no misleading advertising in terms of prices. Furthermore, according to information from a public institute, for safety reasons, it aims to better identify the vehicle in question to other drivers to announce that the trainee does not have the same experience as a normal driver.	On the one hand, it is a barrier on the exercise of the activity since it limits the ability for third parties to advertise and only allows to the name of the driving school to be shown, but no prices or discounts for groups, etc. Hence, it limits the ability of reducing costs since it is not possible to advertise other unrelated services (e.g., a restaurant, a coffee-shop, etc.). On the other hand, note that there is a system for advertising in taxis which is more favourable: it is possible for third parties to advertise on specific parts of the car (see Ordinance 277-A/99, Art. 3(2) "Advertising displays on taxis can only be displayed on the mudguards and on the side doors of the vehicle, excluding the windows, or on the roof"). Finally, since all driving school cars are identified with a "sign", the safety purpose of this provision could still be met even with publicity on restrictive parts of the car.	Amend the provision to allow advertising on the driving school car, taking into account that the car will continue to be identified as a driving school car.
18	Ordinance 185/2015 "Regulation of Law 14/2014 (Framework law regarding driving schools and the profession of a driving instructor)"	Annex VI (1) (3)	Driving schools	Driving school facilities should have several specific rooms/divisions, with specific dimensions. For instance, the director's office should be at least 10 m ² ; the teaching room should be at least 30 m ² ; the administrative office, 15 m ² . Driving school facilities are limited to a maximum of 20 students per classroom.	No official recital. According to information from a public institute this relates to safety issues, namely to ensure that there are minimum conditions for running a business.	This provision establishes minimum requirements and, hence, it is restrictive, limits entry, imposes operational costs, possibly leading to higher prices, and does not proportionally lead to better quality services. According to a stakeholder, it limits the adjustment between supply and demand. For instance, it imposes that a classroom needs to have a minimum of 30 m ² . If an operator only has 5 students, it does not need a room with 30 m ² . This increases the costs of small operators and even prevents entrepreneurs (SMEs) from starting a business. Also, the limitation of having only 20 students per room imposes the need for two rooms in the case of 21 students. Furthermore, driving courses have two parts: a theoretical and a practical one. If online distance courses would be allowed for the theoretical part of the driving course, in line with the possibility of having a distance learning degree, physical installations would not be required.	Abolish the provisions regarding: <ul style="list-style-type: none"> - minimum dimensions imposed on the rooms/divisions of driving schools; - the limit of a maximum 20 students per classroom.

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19	Decree-Law 126/2009 (as modified by Decree-Law 65/2014) "Licensing for training institutes and training courses for drivers"	Art. 5/5	Training institutes and training courses for drivers (passengers and freight)	The CAM must be issued on paper, in order to allow for the issuance of another certificate, the CQM. The CQM together with the driving licence entitle the driver to exercise the profession.	The official recital states that the initial and continuous training (every five years) are proven by means of a Certificate of Professional Competence for drivers (CAM), indispensable for obtaining the Driver Qualification Card (CQM).	The physical issuance of the CAM represents an administrative burden and a cost for companies since, according to a stakeholder, the only two documents required either for access to the profession or required upon road inspections by the competent authorities, are the CQM and the driving licence of the driver. Hence, according to Ordinance 1165/2010, Annex, Section I (passengers) and Section III (freight), B, the savings cost would be EUR 30 per each professional driver. Furthermore, according to a stakeholder, in some EU Member States, in line with Annex II of the Directive 2003/59/CE (which harmonises the requirements on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers), the CQM itself may dispense with the display of the driving licence, since the relevant information is already stated in the CQM. Indeed, this regime is harmonised at EU level, by Directive 2003/59/CE (as amended). Under Recital 15 of Directive 2003/59/CE (as amended): "Member States should affix the harmonised Community code [95] (...), either to the driving licence or to the new driver qualification card [CQM], to be mutually recognised by Member States (...). This card should meet the same security requirements as the driving licence, given the importance of the rights which it confers for road safety and the equality of conditions of competition". Moreover, Art. 10 (1) of the same directive confirms that "Member States' competent authorities shall mark (...) the Community code [95] (...) alongside the corresponding categories of licence: either on the driving licence, or on the driver qualification card [CQM] drawn up in accordance with the model shown in Annex II". Finally, the proposal for a directive amending Directive 2003/59/EC (training of drivers) and Directive 2006/126/EC (driving licences) [see COM(2017) 47 final] proposes to amend Art. 10 (1) of Directive 2003/59/EC "to ensure that all holders of a [CAM] are issued either with mutually recognised code 95 on their driving licence, or with a mutually recognised driver qualification card [CQM]. This addresses mutual recognition difficulties when a driver obtains a [CAM] in a Member State which is not his place of normal residence and which issues only code 95 on driving licences".	Recommendation 1: Amend this provision in line with Directive 2003/59/EC, Art. 10 (1) (as amended) abolishing the need to issue, physically, the CAM, to obtain the CQM and abolishing the associated administrative fee. Recommendation 2: In line with the proposal to amend Art. 10 (1) of Directive 2003/59/CE (as amended), Annex II - COM(2017) 47 final - consider inserting the information of the driving licence into the CQM, thus abolishing the need to issue, physically, upon renewable, the driving licence and abolishing the associated administrative fee.
20	Decree-Law 126/2009 (as modified by Decree-Law 65/2014) "Licensing for training institutes and training courses for drivers"	Art. 7 (b)	Training institutes and training courses for drivers (passengers and freight)	The CAM obtained after the initial common qualification (280 hours of training) allows the holder to obtain the CQM under the following conditions: (b) from the age of 21, to drive vehicles of categories D and D + E (passengers).	The official recital states that the national regime aims to combine both the objective of improving safety conditions with the national reality. In this regard, the new qualification system for drivers of certain vehicles (passengers and freight) aims to improve safety conditions, focusing both on road safety and on the safety of the drivers themselves.	This age limit restricts the number of candidates that can apply for a driver's licence for passenger vehicles of category D1, D1+E, D and D+E. Indeed, according to a stakeholder (representing the sector), there is shortage of drivers for the public road transport of passengers. The fact that only 21-year old candidates can apply for this category of drivers' licence may explain this shortage. For freight, 18-year olds are allowed to apply (see Art. 7 (a) of this Decree-Law). Hence, the provision corresponds to an entry barrier which can lead to an increase in wages and operational costs. Note that Art. 5 (3) (a) (ii) of Directive 2003/59/CE (as amended) allows EU Member States to authorise, with the same type of CAM: (i) drivers of vehicles of categories D and D+E to drive such vehicles within its national territory from the age of 20; (ii) this age may be reduced to the age of 18 where the driver drives such vehicles without passengers. Also note that Art. 5 (3) (a) (i) (2nd para.) of Directive 2003/59/CE (as amended)	Amend this provision, regarding the initial common qualification system (280 hours of training), to obtain the CAM, in use of the prerogative given in Art. 5 (3) (a) (i) (ii) of Directive 2003/59/CE (as amended), for the public road transport of passengers of categories D1, D1+E, D, and D+E: - from the age of 20 (limited to national territory) or 18 years of age (empty bus).

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21	Decree-Law 126/2009 (as modified by Decree-Law 65/2014) "Licensing for training institutes and training courses for drivers"	Art. 8 (c)	Training institutes and training courses for drivers (passengers and freight)	The CAM obtained after the accelerated initial qualification (140 hours of training) allows the holder to obtain the CQM under the following conditions: (c) from the age of 23, vehicles of categories D and D + E (passengers).	The official recital states that the national regime aims to combine both the objective of improving safety conditions with the national reality. In this regard, the new qualification system for drivers of certain vehicles (passengers and freight) aims to improve safety conditions, focusing both on road safety and on the safety of the drivers themselves.	allows EU Member States to authorise, with the same type of CAM: (i) drivers of vehicles of categories D1 and D1+E to drive such vehicles within its national territory from the age of 18. This age limit restricts the number of candidates that can apply for a driver's licence for passenger vehicles of category D and D+E. Indeed, according to a stakeholder (representing the sector), there is shortage of drivers for public road of passengers. The fact that only 23-year old candidates can apply for this category of driver licence may explain this shortage. For freight, 18-year olds can apply (see Art. 7 (a) of this Decree-Law). Hence, the provision corresponds to an entry barrier which can lead to an increase in wages and operational costs. Note that Art. 5 (3) (a) (i) of Directive 2003/59/CE (as amended) allows EU Member States to authorise, with the same type of CAM: (i) drivers of vehicles in categories D and D+E to drive such vehicles within its territory from the age of 21 on regular services where the route does not exceed a distance of 50 km.	Amend this provision, regarding the initial common qualification system (140 hours of training), to obtain the CAM, in use of the prerogative given in Art. 5 (3) (a) (i) of Directive 2003/59/CE (as amended), for the public road transport of passengers of categories D and D+E: - from the age of 21.
22	Decree-Law 126/2009 (as modified by Decree-Law 65/2014) "Licensing for training institutes and training courses for drivers"	Art. 13/1	Training institutes and training courses for drivers (passengers and freight)	The licensing of the training activity is within the responsibility of IMT. This licence consists of a charter (alvará), issued for a period of five years, renewable upon fulfilling the licence requirements.	The official recital states that the training should be provided by entities duly licensed by the IMT, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this decree-law. Recital 12 of the Directive 2003/59/EU (as amended) states that only training centres which have been approved by the competent authorities of the Member States should be able to organise the training courses laid down for the initial qualification and the periodic training. To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism.	Licences required for operation restrict entry have the ability to restrict competition, possibly leading to higher prices and harming consumers. There are other alternative and less restrictive forms to pursue the same policy objective based on Decree-Law 92/2010, which transposes into national law the Directive of Services (Directive 2006/123/CE), such as a simple administrative communication to the IMT through the electronic platform of the IMT. Indeed, according to the official recitals and Arts. 5, 6 and 23 of Decree-Law 92/2010, there are limited cases in which it is possible to require a licence or authorisation for the provision of services in national territory. In this way, licences or authorisations corresponding to more complex and time-consuming administrative procedures are now required only in exceptional situations where compelling reasons of public interest so warrant. The streamlining of procedures is accompanied by the necessary strengthening of means and modes of supervision. The simplification introduced thus has, on the one hand, the accountability of economic agents and, on the other, the strengthening of supervision. Taking into consideration, e.g., the regime for rental services of a car rental company (Art. 3 (1) of Decree-Law 181/2012, as amended) which does not require a licence, only a simple administrative communication to the IMT, it also seems possible to defend the application of a simple administrative communication to the IMT, for the opening of new training institutes. Finally, it would also allow cost savings of around EUR 350 per each administrative fee, that each operator needs to pay to the IMT for the licensing procedure (see Ordinance 1165/2010, Annex, Section X, A1).	Option 1: We recommend abolishing the need for a Portuguese licence. Option 2: Alternatively, consider a simple administrative communication to the IMT, through the electronic platform of the IMT, in line with the legal regime foreseen in other rental services which do not require a licencing regime, following Decree-Law 92/2010, Art. 5, Art. 6 and Art. 23, which transposes, in Portugal, the Services Directive (Directive 2006/123/EC).

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23	Decree-Law 126/2009 (as modified by Decree-Law 65/2014) "Licensing for training institutes and training courses for drivers"	Art. 16/2	Training institutes and training courses for drivers (passengers and freight)	To obtain the licence, a training institute must fulfil the financial capacity criteria, i.e., having a share capital or statutory capital or constituting a reserve fund, in the minimum amount of EUR 50 000 or EUR 25 000, depending on whether it takes the form of a commercial company or a single shareholder limited liability company, respectively.	The official recital states that the training should be provided by entities duly licensed by the IMT, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this decree-law. Recital 12 of the Directive 2003/59/EU (as amended) states that only training centres which have been approved by the competent authorities of the Member States should be able to organise the training courses laid down for the initial qualification and the periodic training. To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism.	The Portuguese Companies Code and the Portuguese Commercial Registration Code allow the creation of a single shareholder limited liability company (with minimum share capital of EUR 1.00), a private limited company or partnership (with minimum share capital of EUR 1.00), a public limited company (with minimum share capital of EUR 50 000), and co-operatives (with a minimum share capital of € 2 500) in one hour. This procedure can be done online through an electronic platform called "Create-a-firm-on-the-spot" (www.empresanahora.mj.pt/ENH/sections/PT_inicio.html). These values differ from the ones set in this decree-law. Hence, this provision imposes a standard of financial capacity, which constitutes a barrier to entry for entrepreneurs (SMEs). This may constitute a barrier to entry also at EU level, since it may prevent a European operator from entering the domestic market, in case it has a different level of financial standing (see judgments in cases C-438/08 [2009], paras. 18, 28, 29, 53; and C-171/02 Commission v Portugal [2004] ECR I 5645, para. 53 and 54). In addition, in comparison with other regimes, as for the licensing regime for driving schools (see Law 14/2014), there is no financial requirement for access to the activity.	Abolish the financial criteria. Any amount required as initial capital to start a business should comply with the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.
24	Decree-Law 126/2009 (as modified by Decree-Law 65/2014) "Licensing for training institutes and training courses for drivers"	Art. 24 (1)	Training institutes and training courses for drivers (passengers and freight)	The training courses for drivers to obtain the CAM, elaborated by the training entities, require prior homologation by the IMT. This homologation is issued for a period of five years, renewable by proving that the necessary requirements for its operation are being maintained.	The official recital states that the training should be provided by entities duly licensed by the IMT, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this decree-law. Recital 12 of the Directive 2003/59/EU (as amended) states that only training centres which have been approved by the competent authorities of the Member States should be able to organise the training courses laid down for the initial qualification and the periodic training. To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their	This provision establishes the need for homologation of the training courses for drivers to obtain their respective CAM (for passengers and freight), which should follow Annex I of Directive 2003/59/CE (as amended). The need for an homologation implies an operational cost, namely through the payment of an administrative fee, which may prevent entry into the market. This administrative fee amounts to EUR 150 for each manual, to be paid to the IMT (according to Ordinance 1165/2010, Annex, Section I, B (11) - passengers, and Section III, B (11) - freight). However, according to a stakeholder, the possibility of having national manuals (for passengers and freight, CAMs) elaborated by the IMT, to be used by all training entities is not desirable. Instead, the stakeholder highlighted the advantages of the current solution, i.e., the possibility of having one's own manual to teach the subjects that are mandatory, established in the Annex I of the Directive 2003/59/CE. Furthermore, according to this stakeholder, the cost seems not to be disproportional for the operators.	No recommendation.

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25	Ordinance 1200/2009 "Licensing of training institutes for drivers of certain vehicles used for the carriage of goods by road and passengers [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]"	Art. 2 (1) (a) (b)	Training institutes and training courses for drivers (passengers and freight)	To obtain the licence, a training entity must prove that it fulfils the financial capacity criteria (as stated in Art. 16 (2) of Decree-Law 126/2009, as amended), exhibiting the following elements: a) a recent commercial registration, certificate or access code to the same or equivalent document depending on the legal nature of the applicant; b) a document proving the amount of the reserve fund, when applicable.	The official recital states that the training should be provided by entities duly licensed, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this Decree-Law 126/2009 (as amended), which transposed Directive 2003/59/EU (as amended). approval including that of a well-established high level of professionalism.	The Portuguese Companies Code and the Portuguese Commercial Registration Code allow the creation of a single shareholder limited liability company (with minimum share capital of EUR 1.00), a private limited company or partnership (with minimum share capital of EUR 1.00), a public limited company (with minimum share capital of EUR 50 000), and co-operatives (with a minimum share capital of € 2 500) in one hour. This procedure can be done online through an electronic platform called "Create-a-firm-on-the-spot" (www.empresanahora.mj.pt/ENH/sections/PT_inicio.html). These values differ from the ones set in this decree-law. Hence, this provision imposes a standard of financial capacity, which constitutes a barrier to entry for entrepreneurs (SMEs). This may constitute a barrier to entry also at EU level, since it may prevent a European operator from entering the domestic market, in case it has a different level of financial standing (see judgments in cases C-438/08 [2009], paras. 18, 28, 29, 53; and C-171/02 Commission v Portugal [2004] ECR I 5645, para. 53 and 54). In addition, in comparison with other regimes, as for the licensing regime for driving schools (see Law 14/2014), there is no financial requirement for access to the activity.	Abolish the financial criteria. Any amount required as initial capital to start a business should comply with the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.
26	Ordinance 1200/2009 "Licensing of training institutes for drivers of certain vehicles used for the carriage of goods by road and passengers [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]"	Art. 4 (3)	Training institutes and training courses for drivers (passengers and freight)	Only trainers, instructors and tutors authorised to drive the vehicles concerned and with professional experience of at least two years, can provide practical driving training for drivers to obtain the CAM (Certificate of Professional Competence for Drivers) and the CQM (Drivers Qualification Card).	The official recital states that the training should be provided by entities duly licensed, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this Decree-Law 126/2009 (as amended), which transposed Directive 2003/59/EU (as amended).	This provision imposes a minimum requirement, as a proxy for a quality standard, for qualified professionals to be trainers, instructors and tutors, since it imposes two additional years of professional experience in addition to the five years of prior experience of private driving to become a driving instructor [composed of three years to obtain a full driver's licence (see Road Code, Art. 122, Art. 129, Art. 144), followed by an additional two-year period (see Art. 37 and Art. 42(1) of Law 14/2014)]. This entry barrier might lead to an increase in the operational costs of training institutes (through the increase of the wages of the professionals) which can be reflected in the prices charged to consumers. This ultimately has the ability to harm market dynamics.	Abolish the additional two years of professional teaching experience required since the driving instructor already has five years as private driving experience (see Art. 37 and Art. 42 (1) of Law 14/2014).

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27	Ordinance 1200/2009 "Licensing of training institutes for drivers of certain vehicles used for the carriage of goods by road and passengers [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]"	Art. 6 (2)	Training institutes and training courses for drivers (passengers and freight)	The training rooms must have an area of not less than 25 m2, and the maximum capacity established at the rate of 1.5 m2 per student/trainee.	Article 6 (1) of Ordinance 1200/2009 states that the installation of the training centres must be adequate for the practice of the training for which they are intended.	This provision establishes minimum requirements and, hence, it is restrictive, limits entry, and freedom of establishment. According to a stakeholder, it also corresponds to an operational cost since it limits the adjustment between supply and demand. For instance, it imposes that a classroom needs to have a minimum of 25 m2 and a rate of 1.5 m2 per trainee. If an operator only has five students, it does not need a room with 25 m2. This increases the costs of small operators and even prevents entrepreneurs from starting a business. The rate of 1.5 m2 per trainee seems to be proportional and adequate. Additionally, one should take into consideration the fact that the classes are composed by adults/professionals. Furthermore, if online distance courses were to be allowed for the theoretical part of the training course, physical installations would not be required.	Abolish the provision regarding minimum dimensions imposed on the training rooms (25 m2).
28	Deliberation (IMT) 3256/2009 "Conditions for ratification, organisation and administration of training courses for drivers (to obtain the CAM) for certain vehicles used for the carriage of passengers and goods by road" [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]	Title 1 (1) (2) + Title 2 (1)	Training institutes and training courses for drivers (passengers and freight)	The approval of the training courses, to be taught by the training institutes, is given by the IMT, and is valid for a period of five years, renewable by proving that the requirements are still being maintained.	The official recital of Decree-Law 126/2009 (as amended) states that the training should be provided by entities duly licensed by the IMT, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this decree-law, which transposes Directive 2003/59/EU (as amended). To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism.	This provision regulates Art. 24 (1) of Decree-Law 126/2009 (as amended), establishing the need for approval of the training courses for drivers to obtain the respective CAM (for passengers and freight), which should follow Annex I of Directive 2003/59/CE (as amended). The need for an approval implies an operational cost, namely through the payment of an administrative fee. According to Ordinance 1165/2010, Annex, Section I, B (11) - passengers, and Section III, B (11) - freight, the amount to be paid is EUR 150 for each manual. However, according to a stakeholder, the possibility of having national manuals (for passengers and freight CAMs) elaborated by the IMT, to be followed by all training entities is not desirable. Instead, the stakeholder highlighted the advantages of the current solution, i.e., the possibility of having one's own manual to teach the mandatory subjects in the Annex I of the Directive 2003/59/CE. Furthermore, according to a stakeholder, the cost seems not to be disproportional to the policy objective.	No recommendation.

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29	Deliberation (IMT) 3256/2009 "Conditions for ratification, organisation and administration of training courses for drivers (to obtain the CAM) for certain vehicles used for the carriage of passengers and goods by road" [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]	Title III (3)	Training institutes and training courses for drivers (passengers and freight)	The classes of the training courses for drivers are composed of a maximum of 25 trainees, taking into account the provisions of 1Art. 6 (2) of Ordinance 1200/2009. Any change to training shall be communicated to the IMT at least two working days in advance.	The official recital of Decree-Law 126/2009 (as amended) states that the training should be provided by entities duly licensed by the IMT, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this decree-law, which transposes Directive 2003/59/EU (as amended). To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism.	This provision, which takes into account Art. 6 (2) of Ordinance 1200/2009 (as amended), establishes minimum requirements and, hence, it is restrictive, limits entry, expansion, and freedom of establishment. According to a stakeholder, it also corresponds to an operational cost since it limits the adjustment between supply and demand. Further to the imposition of having a classroom of at least 25 m ² , with a rate of 1.5 m ² per trainee, it limits the maximum number of students per classroom, or up to 25 trainees. If an operator has 26 students, it is obliged to have two classrooms, even if one is 50 m ² . This increases the costs of small operators and even prevents entrepreneurs from starting or expanding a business. On the one hand, the limitation of the classes to be composed of a maximum of 25 trainees seems not to be adequate, necessary or proportional. Additionally, one should take into consideration the fact that the classes are composed of adults/professionals. Furthermore, if online distance courses were to be allowed for the theoretical section, physical installation would not be required.	Abolish the provision regarding the maximum number of 25 trainees per classroom.
30	Deliberation IMT 3257/2009 "Formalities for the establishment of licensed training institutes [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]"	Title I (1) + Title II	Training institutes and training courses for drivers (passengers and freight)	The opening of a training centre depends on the prior authorisation of the IMT.	No official recital. According to a stakeholder, to ensure that the new training institute starts operating as soon as possible. Indeed, without this inspection, the training institute cannot begin operations.	This provision does not foresee a time limit for the IMT to perform the required analyses of the documentation submitted prior to entry into activity of a training institute. Hence, this corresponds to an entry cost, delaying entry into the market and potentially discouraging new companies from entering the market. This could lead to fewer choices available to consumers and might lead to an increase in prices charged to consumers. Furthermore, this procedure may even be unnecessary due to the fact that the business activity is not related to public health or have other public policy objectives to start the activity (such as a hospital or restaurant) and, as such, we find that a need for prior authorisation may be disproportional and unnecessary.	Insert a time frame for the IMT to perform the analyses of the documentation submitted. In case this analysis is not carried out within a specific time frame, it should be considered that the training institute's licence has been tacitly granted and it can start operating.
31	Deliberation IMT 3257/2009 "Formalities for the establishment of licensed training institutes [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]"	Title IV	Training institutes and training courses for drivers (passengers and freight)	Training centres shall keep for a period of at least five years the records of the training activities carried out as well as the individual files of the trainees.	The official recital of Decree-Law 126/2009 (as amended) states that the training should be provided by entities duly licensed by the IMT, by complying with a set of specific requirements aimed at ensuring the provision of quality training and ability to train drivers according to the required standards and the objectives pursued by this decree-law, which transposes Directive 2003/59/EU (as amended). To ensure the quality of these	There is no harm on competition grounds. There might be an administrative burden due to the fact that training institutes must keep, for five years, documentation that, to the best of our knowledge, the IMT already has. Indeed, the public institute charges for (a) approval of the training courses every five years (EUR 150) and (b) to issue certificates of professional competence for trainees [i.e., CAM and CQM] (EUR 110) - See Ordinance 1165/2010, Annex, Section I and III (B) (1) (2) and (7) respectively]. Further, even if the rationale is to protect trainees (if, for instance, they lose their certificates), we believe that the IMT, as an administrative body, must have digitally archived this documentation. Hence, we consider that trainees could have access to these documents held at the IMT.	Option 1: Consider abolishing the need to keep the registration of the training courses carried out for five years, as well as the individual files of the trainees. Option 2: Alternatively, consider reducing this period of five years, to another time limit, in light of the principles of adequacy, necessity and proportionality.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
					approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established, high level of professionalism.		
32	Deliberation IMT 3257/2009 "Formalities for the establishment of licensed training institutes [Regulates Decree-Law 126/2009, as modified by Decree-Law 65/2014]"	Title V	Training institutes and training courses for drivers (passengers and freight)	Training centres are not allowed to operate on Sundays or public holidays.	No official recital. According to information from a public institute, it relates to social protection norms for the candidates and auditing purposes for the officials.	The scheduled limitations (i.e., public holidays and Sundays) correspond to entry barriers since they limit the match process between demand and supply. Further, they impose higher operational costs, leading to higher prices, and do not proportionally lead to better quality of services. The policy objectives do not seem to serve consumer interest, nor does it serve the labour protection argument or the lack of possibility of inspection of these activities by the competent authorities. Note that: a) a substantial part of services (restaurants, shopping malls, etc.) can operate on public holidays and Sundays; and international comparison states that Sunday clauses are to be fully liberalised (see OECD Competition Assessment Review – Greece, 2013, Retail Sector); and b) the lack of resources to monitor these activities should be weighed in the face of the freedom to offer more services to consumers, especially since other inspection entities (e.g. police, ASAE) perform their duties on those days.	Abolish the limitations imposed on public holidays and Sundays.
33	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 2 (a) (b) (c) (d) ; and Art. 5	Inspection centres	Art. 2 - The opening of a new vehicles inspection centre must respect geographical and population criteria, as follows: (a) In a given municipality with more than 27 500 registered voters it may be authorised provided that the ratio between the number of inspection centres already in existence and the number of registered voters does not exceed one inspection centre for every 27 500 registered voters; (b) In a given municipality with a registered number of less than 27 500 voters it may also be authorised provided that in the municipality and in the neighbouring municipalities there is no inspection centre; (c) a new inspection centre may not be authorised in locations where the distance to existing inspection centres within the municipality limits is less than 10 km measured in a straight line by GPS co-	According to the official recital of the provisions under analysis, the location criteria, dictating the mandatory distance between new vehicles inspection centres in the various municipalities, at national level, is measured taking into account the territorial dimension of the respective areas, as well as the population density of those municipalities, aiming to translate an adequate adjustment to the existing demand, and to allow, in light of the legal criteria, the authorisation of new centres. It also states that asymmetries were detected in the location criteria in the most populous municipalities of the metropolitan areas of Lisbon and Oporto. In these terms, an exception was made to the localisation criterion applicable in the municipalities of the metropolitan areas of Lisbon and Oporto, allowing a minimum distance between centres of 1.5 km, a distance that is compatible with the area and the population	These restrictions are barriers to entry since they make the issue of a prior administrative authorisation subject to conditions under which the centres of a single company or group of companies must comply with certain minimum permitted distances, a minimum population and must not hold a market share in excess of 30%. First, these provisions are incompatible with the principle of European law on the freedom of establishment (see Art. 49 TFEU) which precludes any national measure which is liable to hinder or render less attractive the exercise by EU nationals of the freedom of establishment (see judgment C-327/12, para. 45 and the case law cited). Indeed, these provisions apply indiscriminately to Portuguese nationals and to nationals of other Member States, and are capable of falling within the scope of the provisions relating to the fundamental freedoms established by the TFEU to the extent to which it applies to situations connected with trade between Member States. Second, and consequently, it is necessary to establish whether the restrictive conditions of the provisions are appropriate for ensuring the achievement of the objectives pursued and do not go beyond what is necessary in order to attain those objectives. In accordance with the settled case law of the ECJ, provisions that impose compliance with minimum distances between roadworthiness testing centres, namely to encourage operators to establish themselves in remote areas of the territory, imposed on all companies, whether or not belonging to competing operators, but also applicable to a single company or a group of companies, does not immediately appear to contribute to consumer protection or to ensure road safety (see judgment C-168/14, para. 78). With regard to prohibiting operators from holding a market share in excess of 30% on the roadworthiness testing market, accordance with the settled case law of the ECJ, insofar as such a condition is liable to affect the prior activity of the roadworthiness testing centres in Portugal and the structure of the market, it therefore does not immediately appear to contribute to consumer protection or to ensure road safety (see	Abolish the geographical restrictions (minimum requirements of distance and population and market share criteria) and introduce a fully liberalised regime.

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				<p>ordinate points, except in municipalities with more than 150 000 voters and less than 300 000 voters, in which case the minimum distance should be 5 km measured in a straight line by points of GPS co-ordinates, and in municipalities with more than 300 000 voters, in which case the minimum distance shall be 2.5 km measured in a straight line by points of GPS co-ordinates;</p> <p>(d) In municipalities within the metropolitan areas of Lisbon and Oporto due to the territorial dimension of the municipalities, to install new centres, the criteria is a distance of 1.5 km between centres;</p> <p>Art. 5: no managing entity of an inspection centre, individually or through direct or indirect participation in other companies, may carry out the inspection activity in more than 30% of the inspection centres operating in a given geographical area - NUTS II (see Regulation (EC) No 1059/2003 and Decree-Law 46/89, as amended).</p>	<p>density of these and adequate to the demand in those areas. Additionally, based on stakeholders' opinion, the provisions would also serve the objective of granting a given profitability/sustainability for a new vehicles inspection centre to open, especially located in remote areas. Finally, there is no official recital for market share restrictions. However, based on stakeholders' opinions, this provision aims to operate as a proxy for market power, preventing companies from engaging in unfair competition. It also seeks to safeguard that competition does not harm the quality of the service which, in turn, could generate less concern for road safety, stemming from the fact that the only way to attract and retain customers, given the prices set, could be through the allocation of more approvals and/or a faster service.</p>	<p>Judgment, C-168/14, para. 79-80). Moreover, it is not duly justified why the rules on competition law, established for merger control or at antitrust level, both at EU and/or at national level are not sufficient to tackle a market share as a proxy for market power (see Arts. 101 and 102 TFEU; Regulation 139/2004; Regulation 1/2003; and Law 19/2012). On the other hand, it should be noted, in relation to the objective connected with the quality of the service, that the content of roadworthiness testing is harmonised at EU level, by Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in Portugal by Decree-Law 144/2017). Indeed, Directive 2014/45/EU, read in conjunction with its Annexes, provides for a precise categorisation of the vehicles to be tested, the frequency of the testing and the items of testing which are obligatory, in order to ensure a high quality of roadworthiness testing within the EU. That categorisation constitutes, according to its recitals in the preamble to that directive, standards and methods which should be taken into account in the context of the review of proportionality (see Judgment C-168/14, para. 82). As demonstrated, the national provisions in analysis are not duly justified and override reasons of general interest, consumer safety and quality of the service and unjustifiably limit competition by restricting market access of new operators.</p> <p>Finally, benchmarking with other Member States shows that the policy objectives of guarantee of road safety and quality of the technical inspections may also be achieved by other less restrictive measures, and respecting the principle of EU Law of the freedom of establishment. In the UK, to set up a "MOT station", a company must ask for authorisation with only an "approval in principal", without any prior geographical, census or market share conditions (see the Driver and Vehicle Standards Agency (DVSA) website, www.gov.uk/government/organisations/driver-and-vehicle-standards-agency). In France, to set up a Contrôleur agréé par l'Etat, if not organised in a réseau structure, independent operators must only ask for an authorisation procedure, unlimited in time, and auditable every two years to ensure the fulfilment of the standards (see the Ministry of Transport/Préfet du département website; and the Code de la Route, Arts. L.311-1, L.323-1, R. 323-1 to R. 323-26) and Decree June, 18, 1991). Lastly, in Spain, although there are four regimes at national level to manage a vehicle inspection centre (managed directly by the Autonomous Regions (CC.AA); directly by the Autonomous Regions with other companies with private and public capitals; by private entities through concession; and by private entities through authorisation), indeed, in two regions (Madrid and the Canarias), the activity is liberalised (see Report from the Spanish Competition Authority of the Spanish legislation, CNMC, IPN/CNMC/18/16 www.cnmc.es/sites/default/files/1503105_0.pdf).</p>	

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34	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 3; and Art. 11 (1)	Inspection centres	The right to exercise the activity of vehicle inspection is not liberalised, as it may only be carried out by management entities which, following the conclusion of an administrative management contract with the IMT, in respect of geographical, population and market shares conditions (following the provisions of Art. 2 and Art. 5 of this Law), acquire the right to exercise the activity in their approved inspection centres. The administrative management contract is established for a period of 10 years, renewable for equal periods (without limitation), provided that the legal conditions for its attribution are still followed.	According to the official recital, with the submission of new applications for the conclusion of administrative management contracts for new inspection centres, equal treatment is guaranteed to all candidates, honouring both the principle of transparency, and the principle of efficiency in the balancing of the general interest. Based on a stakeholder's opinion, the period of 10 years is intended to correspond to a generic period for the attribution of licences/ authorisations in line with common national and international practice. Furthermore, it also intends to allow for the recoupment of the investments made by the operator. In this respect, according to some stakeholders, the initial 10-year period may not be enough for the entire recoupment of the investment made, depending on the location and population census of the inspection centres, therefore, arguing for an extension of this initial period, such as for a 20-year period.	First, within the context of our recommendation in regard to Art. 2 (a) (b) (c) (d) and Art. 5 of Law 11/2011, that is, proposing to abolish the geographical restrictions (minimum requirements of distance and population and market share criteria) and introducing a fully liberalised regime, if implemented, then a 10-years period renewable without limitation would pose no harm to competition since operators could enter and exit the market freely. However, within the current scenario, this provision further enhances the existing barrier to entry by the fact that a supplier is only awarded such an authorisation as a new entrant into the market, if the legal conditions for its attribution are followed, that is, in respect of Arts. 2, 4 and 5 of this law (which dictate respect for the geographical, population and market share restrictions, as well as for the technical capacity and suitability requirements). Second, and consequently, it is necessary to establish whether the restrictive conditions of the provisions are appropriate for ensuring the achievement of the objectives and do not go beyond what is necessary in order to attain those objectives. As benchmarking, note that: - In the U.K., to set up a "MOT station", a company must ask for an authorisation with only an "approval in principal", without any period of limitation (www.gov.uk/government/organisations/driver-and-vehicle-standards-agency); - In France, to set up a Contrôleur agréé par l'État, if not organised in a réseau structure, independent operators must only ask for an authorisation procedure, unlimited in time, and auditable every two years to ensure the fulfilment of the standards (see, the Ministry of Transport/Préfet du département website; and the Code de la Route, Arts. L.311-1, L.323-1, R. 323-1 to R. 323-26) and Decree June, 18, 1991); - In Spain, although there are four regimes at national level to manage a vehicle inspection centre, in two regions (Madrid and the Canarias), the activity is liberalised (www.cnmc.es/sites/default/files/1503105_0.pdf).	Within the context of our recommendation in regard to Art. 2 (a) (b) (c) (d) and Art. 5 of Law 11/2011, that is, proposing to abolish the geographical restrictions (minimum requirements of distance and population and market share criteria) and introducing a fully liberalised regime, if implemented, a 10-year period, renewable without limitation, would pose no harm to competition. Hence, no recommendation.
35	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 4 (2) (a) and (6); and Art. 20 (1) (2) (3) (5) and (6)	Inspection centres	Access to and permanence of the activity of technical inspection of vehicles depends on the verification of the need for a vehicles inspection centre to have human resources of 4 types: inspectors, a quality director, a technical director and the manager responsible to IMT, as follows: (a) a "quality officer" is the technician appointed by the management body to manage the quality management system; (b) a "technical director" is the technician appointed by the management body to ensure	According to the official recital, high standards of roadworthiness testing require that testing personnel have a high level of skills and competences.	These provisions, at national level, represent entry barriers as well as operational costs, imposing highly qualified human resources of four different types, to operate, permanently, in a vehicle inspection centre. These provisions demand, at least, besides a minimum of two inspectors per inspection centre, more three categories of human resources: one quality director, one technical director and one manager responsible to the IMT. First, these provisions are more exigent on the need for personnel than the regime harmonised under EU Law. Following recitals 33 and 34, and Art. 13 of Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in Portugal by Decree-Law 144/2017), high standards of roadworthiness testing require that testing personnel have a high level of skills and competences. However, provisions are uniquely and specifically addressed to inspectors, determining that when carrying out roadworthiness tests, they should act independently and their judgment should not be affected by conflicts of interest, including those of an economic or personal nature. Second, we question whether the national provisions, which raise the costs of suppliers, are necessary, adequate and proportional to the policy objective pursued of road safety and a high quality of	No recommendation; the provision is considered proportional in line with the policy objectives.

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				compliance with all technical regulations applicable to the inspection activity of motor vehicles and their trailers; (c) a "responsible manager" is the technician appointed by the management body responsible to IMT for all matters relating to the administrative management contract; (d) an "inspector" is the technician duly authorised by IMT for the purpose of carrying out the professional inspection of motor vehicles and their trailers.		roadworthiness testing. With respect to the quality director: since they can accumulate functions as a quality director and as a technical director if the managing entity only manages one inspection centre or if so required by the IMT (see Art. 20 (5) and (6) of this Law), the provision is justified as proportional. With respect to the technical director: since they can accumulate duties as an inspector in one and the same inspection centre (see Art. 18 (2) of this Law) and can also accumulate functions as a quality director and as a technical director if the managing entity only manages one inspection centre or if so required by the IMT (see Art. 20 (5) and (6) of this Law), the provision is also proportional. With respect to the manager responsible to the IMT: since they can manage more than one inspection centre if it belongs to one and the same company (see Art. 20 (2) of this Law) and it can also accumulate its functions as a quality director and as a technical director if the managing entity only manages one inspection centre or if so required by the IMT (see Art. 20 (5) and (6) of this Law), this provision is also proportional.	
36	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 6 (4)	Inspection centres	Following the submission of a first application to manage a technical inspection centre for a particular municipality, other applications may only be submitted to the same municipality within a period of 30 days. After this 30-day period, all applications will be judged on their merit.	There is no official recital. Based on a stakeholder's opinion, the 30-day period is intended to publicly announce the application to invite other interested candidates to apply to that same municipality/region, thus promoting transparency in the administrative procedure to grant the authorisation to install new inspection centres. Instead of setting a legal deadline for applications, the deadline starts to run from the first application. It was not possible to identify the reason for the deadline being 30 days, although some stakeholders say it is time enough to prepare the procedure.	The imposition of the 30-day deadline period can restrict entry into the market, and make it difficult for competing applications to appear after the first one. In fact, other candidates must gather a certain number of documents related to their technical capacity and suitability, namely a certificate issued by the respective town hall proving that the site meets the necessary conditions for the installation of an inspection centre and a certificate of suitability (as requested under Art. 4 (3) and (4) of this Law). Even if it were not possible to identify the rationale for the 30-day deadline, and even if some stakeholders say it is insufficient time to prepare the procedure, we question whether the stakeholders who are already installed wish to keep other potential new entrants out of the market. As such, we consider that this 30-day deadline might restrict entry. Therefore, we consider assessing if another deadline would be more adequate and proportional. However, within the context of our recommendation in regard to Art. 2 (a) (b) (c) (d) and Art. 5 of Law 11/2011, that is, proposing to abolish the geographical restrictions (minimum requirements of distance and population and market share criteria) and introducing a fully liberalised regime, if implemented, then a 30-day deadline period for applicants to prepare the procedure after the first proposal to the IMT, to manage an inspection centre would pose no harm to competition.	Within the context of our recommendation in regard to Art. 2 (a) (b) (c) (d) and Art. 5 of Law 11/2011, that is, proposing to abolish the geographical restrictions (minimum requirements of distance and population and market share criteria) and introducing a fully liberalised regime, if implemented, then a 30-day deadline period for applicants to prepare the procedure after the first proposal to the IMT to manage an inspection centre would pose no harm to competition. Hence, no recommendation.
37	Law 11/2011 (mod. by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 9 (2) (g)	Inspection centres	The operating regime of inspection centres entrusted to private bodies, under the terms established in an administrative management contract, requires that the management entities pay a certain financial guarantee, through a bail or a bank guarantee, in favour of IMT, for the exact and timely fulfilment of all legal and contractual obligations assumed, in an amount to be	There is no official recital. Based on a stakeholder's opinion, the objective of this provision is to provide a financial guarantee in order to cover eventual contractual breaches or financial insolvency of the entities authorised to perform the activity of vehicle inspection centres.	This provision imposes a financial guarantee, which constitutes a barrier to entry for entrepreneurs (SMEs), requiring that the management entities of vehicle inspection centres pay a certain monetary amount, in favour of the IMT, to be fixed in a resolution of the IMT. This may also constitute a barrier to entry at EU level, since it may prevent a European operator from entering the domestic market, in a case where it has a different level of financial guarantee in its original Member State (see judgment in Case C-438/08 [2009], paras. 18, 28, 29, 53). Notwithstanding, the rationale for demanding a financial guarantee seems to be in line with the policy objective. To the best of our knowledge, the resolution was not yet been adopted by the IMT, which may result in an unintended discretionary action by the public institute fixing different levels of financial guarantees for two similar situations. Additionally, in accordance with the ECJ's settled case law, we can still identify other less restrictive means to provide for the payment, besides a bail or a bank guarantee, as foreseen in	Recommendation 1: Regulate the provision and adopt the necessary secondary legislation in order to determine the criteria to fix the amount of the financial guarantee due through transparent, non-discriminatory and risk-based criteria. Recommendation 2: Amend the provision in order to introduce the possibility of the financial guarantee to be guaranteed by other alternatives as an insurance contract.

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38	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 13 (3)	Inspections centres	In the premises of the inspection centres no other activities may be carried out, except those provided for in the administrative management contract or expressly authorised by the IMT (see Art. 8 of Ordinance 221/2012 which regulates this provision).	There is no official recital. Based on a stakeholder's opinion, the objective of the provision is to prevent other activities related to the automotive industry from being performed on the premises of an inspection centre, as specifically provided for in Art. 8 of Ordinance 221/2012, such as automobile repairs (in order to avoid an eventual profit from the eventual mechanic's work on improperly inspected vehicles); manufacture; import or commercialisation of vehicles, their components and accessories; or rental of vehicles. Hence, to guarantee consumer protection and road safety.	<p>this provision, such as taking out an insurance contract (see judgment of the ECJ, C-171/02 Commission v Portugal [2004] ECR I 5645, para. 55).</p> <p>This provision (as regulated by Art. 8 of Ordinance 221/2012, analysed above) establishes a restriction to entry since it limits the social object of the activities that can be carried out on the premises of a vehicle inspection centre. Hence, it has the ability to limit the number of players in the market as well as the services provided to consumers. It limits economies of scope for the operators. First, this provision is incompatible with the principle of European law on the freedom of establishment (see Art. 49 TFEU) which precludes any national measure which is liable to hinder or render less attractive the exercise by EU nationals of the freedom of establishment (see Judgments C-327/12, para. 45 and the case law cited; and C – 438/08, paras. 19, 43). Indeed, this provision applies indiscriminately to Portuguese nationals and to nationals of other Member States, and is capable of falling within the scope of the provisions relating to the fundamental freedoms established by the TFEU to the extent to which it applies to situations connected with trade between the Member States: operators legally providing other services in their home Member State are forced, in order to carry out their activity in Portugal, to amend their company objectives and even their internal structure. The objective of road safety cannot be relied on, because the provision concerned is not appropriate to attain that objective and the quality of the inspection can be ensured by means of quality control procedures. Lastly, with regard to the objective of minimising fraudulent inspections, it cannot simply be assumed that an inspection is fraudulent where linked activities are carried out and that the risk of fraudulent inspections does not exist where activities not linked to vehicle inspection are carried out. Customers can always go and repair their vehicles in another garage. Moreover, the current legislation does not preclude the owner of a garage from holding an administrative management contract to manage an inspection centre, which can be located in front or next to an inspection centre. Second, according to well established case law, the EU jurisprudence has already confirmed that under recital 15 of Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in Portugal by Decree-Law 144/2017) or previous, under Art. 2 of the revoked Directive 2009/40/EC, that Member States should invariably remain responsible for roadworthiness testing, even where the national system allows for private bodies, including those which also "perform vehicle repairs", to carry out roadworthiness testing (see Judgment C - 168/14, para. 16). Finally, benchmarking with other EU Member States provides evidence that there are other less restrictive measures. In the UK, an "MOT Station" and a repair centre can be set up together (see announced services, www.fleetstationmot.co.uk/; and information given at the Driver and Vehicle Standards Agency (DVSA), www.gov.uk/government/publications/mot-modernisation-it-specification). In France, as a general rule, it is forbidden; exceptionally, operators may conduct repair activities in order to guarantee geographical coverage for all consumers (see Code de la Route, R. 323-11). In Spain, shareholder participation is allowed in repair shops, and the Competition Authority has found the national provision prohibition to be restrictive and unjustified (see IPN/CNMC/018/16, www.cnmc.es/sites/default/files/1503105_0.pdf). In the Netherlands authorised garages can also work as vehicle inspection centres (www.swov.nl/en/publication/periodic-vehicle-inspection-cars-mot).</p>	Abolish this provision on the duty to separate the activities, namely those on repair and vehicles inspection, and to implement a fully liberalised system.

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39	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 15 (1) and (6)	Inspection centres	Any changes which entail the extension or reduction of the scope of the activity of the inspection centres or the change of their installations, including the installation of new lines, depend on the approval of the respective project, by the IMT. The provision dictates a specificity in the law in which, during the first period of 10 years, for the first management contract, enacted after the entry into force of this law, requiring such a reduction of the scope of the activity or a change of the installations is forbidden.	There is no official recital. Based on a stakeholder's opinion, the objective of the provision seems to impose the need for an authorisation – to change the installations of an inspection centre, either for installing or reducing lines, or for changing its location – in order to allow the IMT to exercise its supervisory powers over the private bodies exercising the activity of inspection centres. This would ensure that the technical capacity and proper resources to operate efficiently are met and to safeguard road safety in the public interest.	These provisions aim to guarantee that the conditions imposed on operators are authorised, under an administrative management contract, to perform the activity of vehicle inspection centres are respected. As such, these provisions reiterate the restrictions imposed previously on the freedom of establishment restriction (see Art. 49 TFEU), and on the imposition of geographical, population and market share restrictions (see Art. 2, Art. 4 and Art. 5 of this Law, as amended). That is, any changes which entail, for example, the change of installations, including displacement, depend on the approval of the respective project, by the IMT. As considered above (see analysis of Art. 2, Art. 4 and Art. 5 of this Law, as amended), these restrictions are entry barriers, which limit market entry of new operators, and reduce competition for and in the market, and are unjustified. These provisions also dictate that during the first period of 10 years, for the first management contract enacted after the entry into force of this Law, it is forbidden to require such a reduction of the scope of activity or any change in installations. These provisions discriminate between operators, without proper justification, dictating that, for those who have signed their first management contract, enacted after the entry into force of this Law, it is forbidden to require such a reduction of the scope of the activity or change of the installations.	Abolish the provisions that discriminate between operators dictating that those who have signed their first management contract enacted after the entry into force of this law are forbidden to require a reduction of the scope of the activity or a change of the installations.
40	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 16 (2) and (3)	Inspection centres	Interruptions in the services provided at vehicles inspection centres of longer than 10 days are subject to authorisation, to be issued by the IMT, within 48 hours, after communication, being considered tacitly granted when that period has elapsed. The resumption of the activity of the inspection centre, in this situation, is subject to prior authorisation of the IMT, to be issued within 10 days under tacit deferral.	No official recital. Based on a stakeholder's opinion, this procedure intends to regulate the interruptions necessary for any work, improvement or change in an inspection centre. Taking into account the supervisory powers of the IMT, an interruption of more than 10 days could be detrimental to the service in question, given the restriction of freedom of establishment for these services, which prevents consumers in a given municipality from getting their vehicles inspected in a given area, possibly preventing them from pursuing their activities as transporters. As such, the authorisation of the public institute that oversees the activity could be seen as justified.	These provisions intend to regulate the interruptions necessary for any work, improvement or change in an inspection centre. Taking into account the supervisory powers of the IMT, an interruption of more than 10 days could be detrimental to the service in question, given the restriction of freedom of establishment for these services, and other geographical, population and market share restrictions, which prevent consumers in a given municipality from getting their vehicles inspected in a given area, possibly preventing them from pursuing their activities as transporters (see the analysis of the harm to competition carried out regarding Art. 2, Art. 4 and Art. 5 of this Law, as amended). However, given the fact that this provision foresees a tacit deferral mechanism, obliging the IMT to act diligently, both for interruptions and for the resumption of the activity of the inspection centre, the administrative procedure can be seen as justified.	No recommendation; the provision is considered proportional in line with the policy objectives.

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41	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 20 (4)	Inspection centres	This provision imposes, at the national level, a standard for the technical capacity of the "quality director" and the "technical director" of a vehicle inspection centre, imposing that they should have: a) a bachelor's degree or a degree in mechanics, mechanical engineering, automotive engineering or in a similar area, alternatively, b) have proven experience of at least six years in the effective exercise of these posts.	According to the official recital, high standards of roadworthiness testing require that testing personnel have a high level of skills and competence.	<p>This provision impose minimum requirements as a proxy for quality standards, on the "quality director" and on the "technical director" of a vehicles inspection centre, demanding that they shall have a bachelor's degree or a degree in a given mechanic technical subject area or have proven experience in the effective exercise of these posts of at least six years. These alternative criteria represent entry barriers and also operational costs, since they impose standards of high qualifications for human resources.</p> <p>It is therefore, to ascertain if these are proportional, adequate and necessary for the functions performed. Indeed, a "quality director" is a technician appointed by the management body to manage the quality management system and the "technical director" is a technician appointed by the management body to ensure compliance with all technical regulations applicable to the inspection activity of motor vehicles and their trailers (Law 11/2011).</p> <p>First, the activity is reserved only for those with a bachelor's degree or a degree in mechanics, mechanical engineering or automotive engineering or similar areas seems to be justified regarding the functions of these directors, which deal with technical functions and can be accumulated (see Art. 20 (5) and (6) of this Law). Indeed, the fact that this provision considers a broad scope of bachelor's and other degrees and opens the possibility for other courses to be taken into consideration "in other similar areas" is taken into account.</p> <p>Second, the activity can also be reserved, alternatively, for those proving to have experience in the effective exercise of these functions for at least six years. Even if the requirement of six years of experience may not be sufficient as a proxy for professional knowledge and experience, since it may exclude well-qualified professionals that can have the knowledge and experience but do not meet the requirement of years of experience, this is nonetheless an alternative and not a cumulative criterion.</p> <p>Finally, benchmarking with other Member States, such as Spain, allows us to affirm that the national provision does not carry the same restrictions as therein. The Spanish Competition Authority recommends abolishing the need for a specific title/reserved tasks only to those technicians with "an engineering degree" and cumulatively holding "previous experience" to act as "technical director" (see Report from the Spanish Competition Authority of the Spanish legislation, CNMC, IPN/CNMC/18/16 www.cnmc.es/sites/default/files/1503105_0.pdf).</p>	No recommendation; the provision is considered proportional in line with the policy objectives.

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42	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 21 (1)	Inspection centres	Inspection and reinspection prices are fixed, based on the type of inspection and the category of the vehicle, as provided for in an ordinance of the members of the government responsible for the areas of finance and transportation (see Ordinance 378-A/2013), and are updated annually, in accordance with the inflation rate (see Deliberation 95/2017, for the fixed prices to be charged in 2017).	There is no official recital. Based on a stakeholder's opinion, the price is fixed in order to guaranteeing access to inspections of all vehicle owners, at affordable prices, given the compulsory nature of the technical periodic inspections of vehicles, and as such, also to achieve road safety.	This provision establishes a restriction on the prices for the services of vehicle inspections centres and, therefore, prevents suppliers from competing on prices, since this provision sets fixed prices. This provision also reduces the intensity and dimension of rivalry and creates less product variety. It is therefore questioned whether the policy objective can be achieved in other alternative and less restrictive ways. According to stakeholders' opinions, the regime of fixed prices guarantees access for all vehicle owners to inspections, at affordable prices, given the compulsory nature of the technical periodic inspections of vehicles, and as such, it also promotes and achieves road safety. Furthermore, the fixed price regime would also help consumers, protecting them from potential higher prices and/or lack of alternatives, given the compulsory nature of the technical periodic inspections of the vehicles. However, note that: On the one hand, fixed prices at which goods or services are sold limits the ability of suppliers to compete, can reduce the intensity and dimensions of rivalry and create less product variety, particularly in an activity such as vehicles inspection centres, where the technical requirements are already harmonised at EU level, by Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in Portugal by Decree-Law 144/2017). Indeed, this limits the incentive for competition, namely for operators to develop new techniques to be more efficient and expeditious, and also to be able to offer low prices, maintaining the same level of quality. On the other hand, benchmarking with other EU Member States demonstrates that there are other alternative measures which are less restrictive than a regime based on fixed prices, which could promote competition and still achieve the policy objectives pursued. The UK has a system of rules for maximum fees (see the Driver and Vehicle Standards Agency (DVSA) website, www.gov.uk/government/uploads/system/uploads/attachment_data/file/487115/mot-test-fees-and-appeals-poster.pdf). In France, fees are freely set (see Ministry of Transport/Préfet du département, see Code de la Route – Articles L.311-1, L.323-1, R. 323-1 to R. 323-26) and Decree June, 18 1991). In Spain, there is a system of regional fees that coexist with fixed fees, maximum fees and liberalised fees (in two regions, Madrid and the Canarias, prices are set freely).	The fixed regulated price regime should be abolished and a maximum price system should be introduced to allow for discounts and other commercial acts.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
43	Law 11/2011 (modified by Decree-Law 26/2013) "Legal regime for access to and permanence in the activity of technical inspection of motor vehicles and their trailers and the operating regime of inspection centres"	Art. 35 (1)	Inspection centres	An operator wishing to enter into the activity, must submit an application to the IMT for the opening of new vehicle inspection centres, and must pay an administrative fee, due for the submission and assessment of its application. The value of the administrative fee should be set by a joint ordinance of the members of the government responsible for the finance and transport sectors. Currently, this administrative fee was set by Ordinance 1165/2010 (as amended by Ordinance 97-A/2013; Annex, Section XI, A, 1) in the amount of EUR 5 000.	The official recital states that this administrative fee is to cover the expenses related to the administrative burden created by the analysis and assessment of the applications for the installation of a new vehicle inspection centre, by the public competent authority, the IMT.	This provision sets the need to be paid an administrative fee. It is understood to be a payment due for a service rendered by a public entity, in this case the IMT. However, the amount due of EUR 5 000, specified in Ordinance 1165/2010 (as amended by Ordinance 97-A/2013), is made without any indication as to the objective criteria on how this amount was initially set or updated. Hence, the provision in force may, even unintentionally, give rise to an administrative fee charged by the public administration that can negatively affect competition, by generating extra costs to potential or already installed market operators, depending on the market structure and capacity of operators to absorb or transfer such a cost. With fewer operators in the market, there is less competition and the prices will be and remain high. The process of analysing all the documents submitted by an applicant may have a certain degree of complexity and might require specialised human resources within the IMT. However, it was not possible to identify an economic rationale for the administrative fee established of EUR 5 000. Furthermore, taking into consideration the previous value of the administrative fee due, until 2013 (before the amendment of Ordinance 1165/2010, as amended by Ordinance 97-A/2013), of only EUR 1 000, it was also not possible to determine the rationale or the aim for the five-fold increase. Additionally, also noted is a differential in cost for old (previous to 2013) and new entrants (after 2013). The constitutional principle of proportionality (see Art. 266 (2) of the Constitution of the Portuguese Republic) applies to administrative fees, imposing a correlation between the cost (the means used by the administration) and fees charged. Fees should be based on a transparent methodology, be non-discriminatory, not exceed the cost, nor should they be a means for the administration to collect revenues. In this case, the amount of EUR 5 000, charged by IMT, does not seem proportional to the policy objective pursued.	Amend the wording of the provision, by inserting a formula with criteria to be respected, in order to determine the administrative fee due, in respect of these following criterion: the fee should be based on a transparent methodology, be non-discriminatory, not exceed the cost and should not be a means for the IMT to collect revenues.
44	Ordinance 378-A/2013 "Establishes the fixed prices for inspections and reinspections to be charged by vehicles inspection centres, regulating Art. 21 of Law 11/2011 (as amended)"	Art. 2 and Annex	Inspection centres	The tariffs are fixed, both for the periodic and for the voluntary technical inspections and reinspections of vehicles. As of 1 January 2015, rates are updated annually (see Deliberation 95/2017, for the fixed prices to be charged in 2017).	The official recital stipulates that the tariffs provided for in Art. 21 of Law 11/2011 (as amended) are of fixed value, although different depending on the type of inspection and category of vehicle to be inspected. They are updated annually, according to the inflation rate measured by the Total Consumer Price Index (without Housing) at an average annual rate of exchange by reference to month available, published by the Institute of National Statistics Institute (INE).	This provision, which regulates Art. 21 (1) of Law 11/2011 (as amended), establishes a restriction over prices at which the services of vehicle inspections centres are sold and, therefore, prevents the ability of suppliers to compete on prices, since this provision sets fix prices. This provision also reduces the intensity and dimension of rivalry and offers less product variety. It is therefore to understanding if the policy objective can be achieved by other alternative and less restrictive ways. According to stakeholder's opinions, the regime of fixed prices guarantees access to all vehicle owners to inspections, at affordable prices, given the compulsory nature of the technical periodic inspections of vehicles, and as such, it also promotes and achieves road safety. Furthermore, the fixed price regime would also help consumers, protecting them from potential higher prices and/or lack of alternatives, given the compulsory nature of the technical periodic inspections of the vehicles On the one hand, fixed prices at which goods or services are sold limit the ability of suppliers to compete, can reduce the intensity and dimensions of rivalry and offer less product variety, particularly in an activity such as the inspection of vehicles, where the technical requirements are already harmonised at EU level, by the Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in	The fixed regulated price regime should be abolished and a maximum price system should be introduced to allow for discounts and other commercial acts.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
45	Ordinance 221/2012 (modified by the Declaration of Rectification 49/2012 and by the Ordinance 378-E/2013) "Technical requirements to be met by the technical vehicles inspection centres (CITV) [Regulates Law 11/2011]"	Art. 8	Inspection centres	At the premises of the technical vehicle inspection centres it is prohibited to carry out activities related to the manufacture, repair, rental, import or commercialisation of vehicles, their components and accessories, as well as the display of advertising related to these activities (see Art. 13 (3) of Law 11/2011, as amended).	There is no official recital. Based on a stakeholder's opinion, the objective of the provision is to regulate Art. 13 (3) of Law 11/2011, which prevents other activities related to the automotive industry from being located inside an inspection centre, as the ones specifically provided for in Art. 8 of this ordinance, such as automobile repairs (in order to avoid an eventual profit from the eventual mechanic's work on improperly inspected vehicles); manufacture; import or commercialisation of vehicles, their components and accessories; rental of vehicles; or marketing of these activities. Hence, to guarantee consumer protection and road safety.	<p>Portugal by Decree-Law 144/2017). Indeed, this limits the incentive for competition, namely for operators to develop new techniques to be more efficient, and also to be able to offer low prices, maintaining the same levels of quality. On the other hand, benchmarking with other EU Member States demonstrates that there other alternative measures which are less restrictive than a regime based on fixed prices, which could promote competition and still achieve the police objectives pursued. In the UK, it rules a system of maximum fees (see the Driver and Vehicle Standards Agency (DVSA) website, www.gov.uk/government/uploads/system/uploads/attachment_data/file/487115/mot-test-fees-and-appeals-poster.pdf).</p> <p>In France, fees are freely set (see Ministry of Transport/Préfet du département, see Code de la Route – Articles L.311-1, L.323-1, R. 323-1 to R. 323-26) and Decree June, 18 1991). In Spain, there is a system of regional fees, coexisting fixed fees, maximum fees and liberalised fees (in two regions, Madrid and Canarias, prices are set freely).</p> <p>This provision establishes a restriction to entry since it limits the social object of the activities that can be carried out on the premises of a vehicle inspection centre. Hence, it has the ability to limit the number of players in the market as well as the services provided to consumers. As referred to above, this provision also regulates Art. 13 (3) of Law 11/2011 (as amended). First, this provision is incompatible with the principle of European law on the freedom of establishment (see Art. 49 TFEU) which precludes any national measure which is liable to hinder or render less attractive the exercise by EU nationals of the freedom of establishment (see Judgments C-327/12, para. 45 and the case law cited; and C – 438/08, paras. 19, 43). Indeed, this provision applies indiscriminately to Portuguese nationals and to nationals of other Member States, and is capable of falling within the scope of the provisions relating to the fundamental freedoms established by the TFEU to the extent to which it applies to situations connected with trade between the Member States: operators legally providing other services in their home Member State are forced, in order to carry out their activity in Portugal, to amend their company objectives and even their internal structure. The objective of road safety cannot be relied on, because the provision concerned is not appropriate to attaining that objective and the quality of the inspection can be ensured by quality control procedures. With regard to the objective of minimising fraudulent inspections, it cannot simply be assumed that an inspection is fraudulent where linked activities are carried out and that the risk of fraudulent inspections does not exist where activities not linked to vehicle inspection are carried out. Customers can always go and repair their vehicles in another garage. Moreover, the current legislation does not preclude the owner of a garage from holding an administrative management contract to manage an inspection centre, which can be located in front of or next to an inspection centre. Second, according to well established case law, EU jurisprudence has already confirmed, namely that under recital 15 of Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in Portugal by Decree-Law 144/2017) or previously, under Art. 2 of the revoked Directive 2009/40/EC, that Member States should invariably remain responsible for roadworthiness testing, even where the</p>	Abolish this provision on the duty to separate the activities, namely those on repair and vehicle inspection, and to implement a fully liberalised system.

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						national system allows for private bodies, including those which also "perform vehicle repairs", to carry out roadworthiness testing (see Judgment C - 168/14, para. 16). Finally, benchmarking with other EU Member States shows that there are other less restrictive measures. In the UK, an "MOT Station" and a repair centre can be set up together (see announced services, www.fleetstationmot.co.uk/ ; and information given at the Driver and Vehicle Standards Agency (DVSA), www.gov.uk/government/publications/mot-modernisation-it-specification). In France, as a general rule, it is forbidden; exceptionally, operators may conduct repair activities in order to guarantee geographical coverage for all consumers (see Code de la Route, R. 323-11). In Spain, shareholder participation is allowed in repair shops and the Competition Authority has found the national provision prohibition to be restrictive and unjustified (see IPN/CNMC/018/16, www.cnmc.es/sites/default/files/1503105_0.pdf).	
46	Ordinance 221/2012 (modified by the Declaration of Rectification 49/2012 and by the Ordinance 378-E/2013) "Technical requirements to be met by the technical vehicles inspection centres (CITV) [Regulates Law 11/2011]"	Art. 9 (1)	Inspections centres	Each technical vehicle inspection centre must have at least two inspectors permanently, and for each line in operation, there must be one inspector in function, one of whom may accumulate his/her functions as the technical director of the technical vehicle inspection centre (see Art. 18 (2) of Law 11/2011).	According to the official recital, high standards of roadworthiness testing require that testing personnel have a high level of skills and competences.	On the one hand, this provision imposes a minimum requirement, that two inspectors work, on a permanent basis in a vehicle inspection centre. This provision raises costs of entry as well as operational costs, as it imposes costs associated with the salaries of two inspectors, which might not be necessary, to work on the premises on a permanent basis, that is, to meet the demands of a vehicle inspection centre. On the other hand, the provision allows that one of the two inspectors may accumulate his/her functions as the technical director of the technical vehicle inspection centre (see Art. 18 (2) of Law 11/2011). In turn, in case this inspector acting as technical director can also accumulate its functions as a quality director and as a technical director, if the managing entity only manages one inspection centre or if so required by the IMT (see Art. 20 (5) and (6) of Law 11/2011). As such, these arguments are able to justify the proportionality of the provision in analysis, in order to guarantee the quality and the safety of the inspection centres.	No recommendation; the provision is considered proportional and in line with the policy objectives.
47	Ordinance 221/2012 (modified by the Declaration of Rectification 49/2012 and by the Ordinance 378-E/2013) "Technical requirements to be met by the technical vehicle inspection centres (CITV) [Regulates Law 11/2011]"	Art. 9 (4)	Inspection centres	Each inspector may carry out no more than four inspections per hour in a normal working day, and up to 32 inspections per day. Reinspections are excluded from these limits.	According to the official recital, this provision is intended to avoid vehicle approvals without effective and properly inspected vehicles. According to a stakeholder's opinion, increasing the speediness of inspections in order to attract more clients, may reduce the quality of the inspection.	This provision, by setting a maximum number of services to be supplied, on an hourly basis and on a daily basis, imposes standards on the performance of the supply of services by vehicle inspection centre operators. It limits the ability of the suppliers to provide its services which is likely to limit the number or range of suppliers. There is also an opportunity price-cost lost based on the waiting time of costumers for an inspection to be carried out in case the inspector is free but has already carried out four inspections within the hour or 32 on a daily basis. This provision also sets standards for services quality, in the assumption that, by limiting the number of inspections carried out, both on an hourly basis and on a daily basis, also limits the ability of suppliers to compete, namely by not encouraging technological innovation, and hence, forbidding a combination of speed with efficiency and quality, and at the same time guarantying road safety. The restrictions identified also limit the freedom of establishment of operators (see Art. 49 TFEU), as operators in other Member States do not face this type of restrictions (i.e., be forbidden to expand the number of services provided per	Abolish the maximum number of services to be supplied by an individual inspector, on an hourly and on a daily basis. Additionally, consider introducing a procedure that reinforces effective supervision by the state.

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						<p>instructor). In the UK there is no quantitative limitation (see DVSA). Further, Recitals 33 and 34, and Art. 13 of Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in Portugal by Decree-Law 144/2017) do not impose such quantitative restrictions. They only state that there should be no direct correlation between the reward of inspectors and the results of roadworthiness tests. In case, EU operators would like to install in Portugal, they would have to adjust their business model. Note that the EU directive harmonises the technical aspects of the inspections to be carried out and, as such, it guarantees that the policy objective of consumer safety and road safety are met by other less restrictive and alternative means.</p> <p>Finally, we consider that this provision has restrictions that are not properly justified, neither in terms of adequacy, necessity or proportionality. Less restrictive alternatives do exist, which should be accountable by means of proper supervision by the state.</p>	
48	Deliberation (IMT) 95/2017 "Establishes the fixed prices of inspection and reinspection of the vehicle inspection centres, for 2017, regulating Art. 21 of Law 11/2011 (as amended)"	ALL	Inspections centres	Inspection and reinspection tariffs are fixed, based on the type of inspection and the category of the vehicle. These are the fixed prices for 2017.	There is no official recital. Based on a stakeholder's opinion, the price is fixed in order to guaranteeing access to inspections of all vehicle owners, at affordable prices, given the compulsory nature of the technical periodic inspections of vehicles, and as such, also to achieve road safety.	<p>This provision establishes a restriction on prices for the services of vehicle inspection centres and, therefore, prevents suppliers from competing on price, since this provision sets fixed prices. This provision also reduces the intensity and dimension of rivalry and creates less product variety.</p> <p>The policy objective should be achieved by other alternative and less restrictive ways. According to stakeholders' opinions, the regime of fixed price guarantees access for all vehicle owners to inspections, at affordable prices, given the compulsory nature of the technical periodic inspections of vehicles. As such, it also promotes and achieves road safety. Furthermore, the fixed price regime would also help consumers, protecting them from potential higher prices and/or a lack of alternatives. On the one hand, fixed prices at which goods or services are sold limits the ability of suppliers to compete, can reduce the intensity and dimensions of rivalry and create less product variety, particularly in an activity such as that of vehicle inspection centres, where the technical requirements are already harmonised at EU level, by the Directive 2014/45/EU (which revokes Directive 2009/40/EC, transposed in Portugal by Decree-Law 144/2017). Indeed, this limits the incentive for competition, namely for operators to develop new techniques to be more efficient and quick, and also to be able to offer low prices, maintaining the same levels of quality. On the other hand, benchmarking with other EU Member States demonstrates that there other alternative measures which are less restrictive than a regime based on fixed prices, which could promote competition and still achieve the policy objectives pursued. UK rules include a system of maximum fees (see the DVSA website, www.gov.uk/government/uploads/system/uploads/attachment_data/file/487115/mot-test-fees-and-appeals-poster.pdf). In France, fees are freely set (see Ministry of Transport/Préfet du département, see Code de la Route – Articles L.311-1, L.323-1, R. 323-1 to R. 323-26) and Decree June, 18 1991). In Spain, there is a system of regional fees, coexisting fixed fees, maximum fees and liberalised fees (in two regions, Madrid and Canarias, prices are set freely).</p>	The fixed regulated price regime should be abolished and a maximum price system should be introduced to allow for discounts and other commercial acts.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
Transport of passengers by road							
49	Decree-Law 3/2001 (modified by Decree-Law 90/2002) "Legal regime for access to the activity of transport of passengers by road by means of vehicles with more than nine seats"	Art. 3 (3)	Transport of passengers - access to the activity	To perform the activity of transporting passengers by road, in a vehicle with more than nine seats, at national or international level, the company must hold a licence or a community licence, issued for a period not exceeding five years, which is non-transferable, but renewable, provided that the requirements for access to the activity are maintained.	According to the official recital, the licensing requirement attested by information from a public institute aims to guarantee the quality standards of the service provided and the fulfilment of common rules for access to the activity, both for national and international transporters, inspected with a frequency of, at least, every five years.	By limiting the issuance/renewal of licences for access to the activity of transport of passengers by road, by means of vehicles with more than nine seats, at national level and only up to five years, this corresponds to an operational cost which may deter entrepreneurs, especially SMEs, from entering the market. It may also increase prices. Operators have to pay an administrative fee of EUR 250, every five years, to the public institute, for the renewal of their licences (see Ordinance 1165/2010, Annex, Section I, Subsection A, 2). The licensing regime is harmonised at EU level. Hence, this provision is in line with Regulation (CE) 1073/2009, although the national regime is more stringent: regarding the community licence, Regulation (CE) 1073/2009, Art. 4(4), states that it can be issued for renewable periods of up to 10 years. EU operators wishing to enter the national market would face national measures, with monitoring/inspections carried out, at least every five years. Furthermore, Regulation (CE) 1073/2009, Art. 4 (8), allows Member States to decide whether or not to consider the validity of the community licence also for national transport operations. If following this approach into the national regime, it would be possible to reduce costs and reduce the administrative burden by having only one licence, and possibly extending the renewal of licences up to 10 years, in line with other potential EU operators. However, from the market interviews carried out, according to the stakeholders' opinions, the need to renew licences, having to demonstrate the fulfilment of the licensing requirements, and carrying out the payment of an administrative fee, at least, every five years, is considered not to be burdensome or costly, but rather proportional and needed, and seen as a positive way to motivate operators not to operate illegally.	No recommendation; the provision is considered proportional and in line with the policy objectives.
50	Decree-Law 3/2001 (modified by Decree-Law 90/2002) "Legal regime for access to the activity of transport of passengers by road by means of vehicles with more than nine seats"	Art. 6 (2)	Transport of Passengers - access to the activity	To obtain a licence, companies must guarantee that the professional capacity criteria are fulfilled by an administrator, director or manager who runs the company permanently and effectively or, in the case of public companies or municipal services, by the person who is in charge of the management of the company's transport operation service.	There is no official recital. Based on stakeholders' opinions, our understanding is that this provision aims to ensure the quality of transport manager services, ensuring an adequate management of transport operators. According to an association representing the sector it also takes into consideration the fact that if a transport manager works for several separate companies at the same time, they may not always be available to brief shareholders and drivers or to respond to a client's demands.	Although the national requirements are in line with Regulation (EC) 1071/2009, the conditions imposed that the professional capacity must be provided by a person who permanently and effectively runs the company are more stringent. Even considering that the deliberation of the IMT allows this person, typically known as the transport manager, to work as a transport consultant, who does not have a genuine link with a company, and may serve up to three separate transport operators as long as their combined fleet does not exceed 50 vehicles, the national requirement continues to be more stringent than the EU regulation. According to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies in which a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. More restrictive provisions than those in the EU regulation are not justified since, in particular, Portuguese passenger transportation companies generally are SMEs, with small fleets. Managers could carry out their tasks for more than one operator, and should be able to work for up to a four companies, with a link to the total combined fleet of a maximum of 50 vehicles.	Recommendation 1: Introduce the possibility that the professional capacity could be performed by an employee with a genuine link to the company. Recommendation 2: Introduce the possibility that the professional capacity could be performed by an external consultant, which could cover up to four companies and up to a fleet of 50 vehicles.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
51	Decree-Law 3/2001 (modified by Decree-Law 90/2002) "Legal regime for access to the activity of transport of passengers by road by means of vehicles with more than nine seats"	Art. 8 (2)	Transport of passengers - access to the activity	To obtain a licence for transporting passengers by road, in a vehicle with more than nine seats, the applicant must prove they have a minimum capital of EUR 100 000 for starting a business. Additionally, during the financial year, companies must prove that they have an amount in terms of capital and reserves not lower than EUR 5 000 for each licensed vehicle they own, whether under property ownership or under a leasing or long-term lease agreement.	According to the official recital, the licensing requirement attested by information from a public institute aims to guarantee the quality standards of the service provided and the fulfilment of common rules for access to the activity, both for national and international transporters. Furthermore, based on a stakeholder's opinion, the financial guarantee serves to cover eventual contractual breaches or insolvency of the operators.	The financial requirement for access to the activity of transport of passengers by road, by means of vehicles with more than nine seats, is harmonised at EU level. Hence, this provision is in line with Regulation (CE) 1071/2009, although the national regime is more stringent, by imposing a minimum share capital to start the activity that is not required at EU level. Art. 7 (1) of Regulation 1071/2009 imposes that a company should demonstrate, every year, that it has at its disposal capital and reserves totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle used. Based on the "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 - Final Report, MOVE/D3/2014 - 254", (p. 29), "it is relatively rare for Member States to require a higher level of capital and reserves per vehicle than the minimum levels set out in the Regulations". As such, this provision imposes a standard of financial capacity, which may constitute a barrier to entry for entrepreneurs. This may constitute a barrier to entry also at EU level, since it may prevent a European operator from entering the domestic market, in case it has a different level of financial standing (see judgment in Case C-438/08 [2009], paras. 18, 28, 29, 53; and C-171/02 Commission v Portugal [2004] ECR I 5645, para. 53 and 54). Moreover, the IMT has the same interpretation of Regulation (EC) No. 1071/2009, Art. 7 (1), that is, is that no minimum share capital is required to start the activity, and, therefore, it should be sufficient to cover the company's fleet of vehicles of EUR 9 000 for the first licensed vehicle and EUR 5 000 for each additional vehicle (see Deliberation 1065/2012, Para. 7). However, in a Legal Opinion (2012), adopted by the Institute of Registries and Notaries (IRN, IP), it has a different interpretation of Reg. (EC) 1071/2009, Art. 7 (1), applying the article of national legislation, since the EU regulation allows Member States to set other monetary values (see "Proc. Co. 10/2012 SJC-CT", available at www.im.mj.pt/sections/irm/doutrina/pareceres/comercial/2012/p-c-co-10-2012-sjc-ct/downloadFile/file/CCo_10-2012_SJC-CT.pdf?nocache=1347529658.83). It also takes into account the fact that there are other less restrictive alternatives that could be considered. The Portuguese Companies Code and the Portuguese Commercial Registration Code allow the creation of a single shareholder-limited liability company (with a minimum share capital of EUR 1.00), a private limited company or partnership (with minimum share capital of EUR 1.00), a public limited company (with minimum share capital of EUR 50 000), and co-operatives (with minimum share capital of EUR 2 500) in one hour. This procedure can be done online through an electronic platform, "Create-a-firm-on-the-spot" (www.empresanahora.mj.pt/ENH/sections/PT_inicio.html). These values differ from the ones set in this decree-law.	Abolish the need for a minimum capital amount to start the business, in line with Art. 7 (1) of Reg. (CE) 1071/2009, which states that operators must have capital and reserves totalling at least EUR 9 000 when only one vehicle is used and EUR 5 000 for each additional vehicle used. Any other amount of required initial capital to start a business should be ruled under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
52	Decree-Law 3/2001 (modified by Decree-Law 90/2002) "Legal regime for access to the activity of transport of passengers by road by means of vehicles with more than nine seats"	Art. 8 (3)	Transport of passengers - access to the activity	Proof of the financial capacity requirement shall be made, for the purposes of starting the activity, by a certificate of the commercial register containing the share capital and, during the exercise of the activity, by a duplicate or a certified copy of the last balance presented for the purposes of tax on the income of legal persons (IRC) or by bank guarantee.	According to the official recital, the licensing requirement attested by information from a public institute aims to guarantee the quality standards of the service provided and the fulfilment of common rules for access to the activity, both for national and international transporters. Furthermore, based on a stakeholders' opinion, the financial guarantee serves to cover eventual contractual breaches or insolvency of the operators.	The financial capacity requirement for access to the activity of transport of passengers by road, by means of vehicles with more than nine seats, is harmonised at EU level. Hence, this provision is in line with Regulation (CE) 1071/2009. According to Art. 7 (2) of Regulation (CE) 1071/2009, the financial capacity requirement may be demonstrated, alternatively, by means of a certificate such as a bank guarantee or an insurance policy (including professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the undertaking). Although Reg. (CE) 1071/2009 allows Member States to choose how a company can alternatively demonstrated its financial capacity, the Portuguese regime is more restrictive, not allowing the possibility to choose between a bank guarantee or an insurance policy, in line with Art. 7 (2) of Reg. (CE) 1071/2009. Moreover, based on the "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 - Final Report, MOVE/D3/2014 - 254", (p. 29, and 105-107), the use of insurance is permitted in at least in 8 Member States (Austria, Germany, Bulgaria, Czech Republic, Denmark, Estonia, Sweden and Italy). Finally, in accordance with the ECJ's settled case law, we can still identify another less restrictive means to provide for the payment, besides bail or a bank guarantee, as foreseen in this provision, such as taking out an insurance contract (see judgment of the ECJ, C-171/02 Commission v Portugal [2004] ECR I 5645, para. 55).	Amend this provision, in line with Art. 7 (2) of Reg. (CE) 1071/2009: include the possibility of the financial guarantee to also be guaranteed by an insurance contract.
53	Decree-Law 3/2001 (modified by Decree-Law 90/2002) "Legal regime for access to the activity of transport of passengers by road by means of vehicles with more than nine seats"	Art. 15 (1) (2)	Transport of passengers - access to the activity	The vehicles to be used for the transport of passengers by road, in a vehicle with more than nine seats, are subject to a licence, issued by the IMT (formerly, the DGT). The licensing conditions and the requirements of the vehicles are defined by an ordinance of the member of the government responsible for transport.	According to the official recital, the licensing requirement attested by information from a public institute aims to guarantee the quality standards of the service provided and the fulfilment of common rules for access to the activity, both for national and international transporters.	To the best of our knowledge, there is no ordinance to regulate this provision, creating legal uncertainty and search costs for operators, given the fact that requirements for the vehicles have an important impact on competition, as a means to develop the activity. As an example, the regulatory gap on setting common rules concerning an age limit for buses or a lifespan for the bus fleet in road passenger transport can be seen as a discriminatory measure and a competitive advantage for other road transporters, such as road freight hauliers (see Decree-Law 257/2007, as amended).	Regulate this provision and adopt the necessary secondary legislation.

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54	Decree-Law 3/2001 (modified by Decree-Law 90/2002) "Legal regime for access to the activity of transport of passengers by road by means of vehicles with more than nine seats"	Art. 37	Transport of passengers - access to the activity	The regime for access to the activity of transport of passengers by road, in a vehicle with more than nine seats, exempts the transport activities carried out directly and exclusively by municipal services. However, municipal entities are not exempted of one licensing requirement: the professional capacity requirement (Art. 6 (2) of this Decree-Law). That is to say that municipal entities are exempted from two other licensing requirements: the suitability (Art. 5 of this Decree-Law) and the financial capacity requirement (Art. 8 of this Decree-Law).	No official recital. It was not possible to find the public rationale for this provision.	This provision treats private operators and public owned operators differently when the transport activities are carried out directly and exclusively by municipal services, since the latter are exempt from: the suitability/good repute requirement and the financial capacity requirement of having EUR 100 000 and EUR 5 000 for each vehicle. There seems to be no reasoning in treating municipalities differently from private operators when operating with a commercial purpose. Indeed, with the entry into force of Law 52/2015 (as amended) establishing the national legal regime on public passenger transport services, implementing the Regulation (EC) 1370/2007 on public passenger transport services by rail and road, directly applicable, municipalities act as transport authorities, and may also provide the transport services directly or act as internal operators. This differential treatment without a duly justified reason, regarding access to the activity, is an entry barrier for private operators, both national and European, and causes cost advantages and distortions in the market, which may lead to an increase in prices and ultimately, harm consumers.	Amend the provision, in order to eliminate the possibility of treating municipalities differently from private operators, when carrying out transport activities directly and exclusively, with commercial purposes.
55	Decree-Law 326/83 "Legal regime for long distance buses referred to as "Express Services"	Art. 3 (1) (2)	Long-distance buses ("Express Services")	To operate long-distance buses, on direct routes of not less than 50 km (referred as "Express Services") operators must require an authorisation from the minister responsible (nowadays, the IMT). This authorisation depends on fulfilling two cumulative requirements: (a) to be already concessionary companies of public passenger road transport, individually or in a joint-venture with other concessionaires; and (b) provided that they serve, with interurban routes, at least one of the termination points of the service required and part of the journey on the same itinerary or parallel itinerary, in the terms to be defined in an Ordinance (see Ordinance 23/91).	The official recital states that this provision aims to regulate the generic demand for interurban routes in Portugal, and hence, to create a legal regime for the access and the exercise of that activity, following a request for authorisation to perform this activity based on the private initiative of the operators. The official recital further adds that it was considered an advantage to render the conditions of access to the exploration of these services only to those who are already concessionaires of public passenger transport. According to a stakeholder's opinion, the public policy behind this provision aimed at lowering the compensatory indemnities to be paid by the state to private operators to fulfil public service obligations in certain areas to cover the need for quick and	The required authorisation and entry requirements correspond to entry barriers which limit the number of operators in the market. By reducing the supply structure this leads to higher fares for consumers, fewer available routes, and lower welfare. First, Law 52/2015, which approved the new Legal Regime of the Public Transport Service of Passengers (RJSPTP) by intermodal mode, revoked Decree-Law 399-F / 84 (as amended by Decree-Law 190/90), which complements this Decree-Law 326/83, and the provision under analysis. However, this revocation only takes effect on the date of entry into force of legislation and specific regulations provided for in the law itself and in relation to the matters under analysis. To the best of our knowledge, to date, after more than two and a half years, no new legislation or regulation has been adopted (see IMT website, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaricos/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx). Moreover, even if the legislators' spirit of Law 52/2015 seems to be to "liberalise" access to this market, the specific requirements to be granted an authorisation to operate are unknown. Legal uncertainty persists. In addition, Law 52/2015 uses two different terminologies, either referring to the need for an "authorisation" (see Annex, Art. 16 (1) (c) of Law 52/2015) or the need for a "communication" (see Annex, Art. 33 (1) of Law 52/2015) to the competent authority. Moreover, no rationale was found for the regime for the "Express Services" to be framed under a public service framework regime, as foreseen in the Annex of Law 52/2015. Hence, to enter the market of long-distance bus services, and to exercise this activity, operators must follow the rules in force. Indeed, from meetings with an	Recommendation 1: Expressly revoke this Decree-Law 326/83 for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-F/84 (as amended by Decree-Law 190/90), which also complements this Decree-Law 326/83. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015, in order to implement the "liberalised" regime for access to the market for long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their offer. In the meantime: abolish the need to have an authorisation requiring the applicants to already be concessionaire companies of public passenger road transport; and/or provided that they serve on inter-urban routes, at least one of the termination points of the service required and part of the journey on the same itinerary or parallel itinerary.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
					direct routes, i.e., "Express Services". At the time, in the 1980s this would have been thought to help the state to organise the transport mobility map since it allowed the state to take advantage of the already existing concessionary operators on interurban routes. To that end, it contributed the fact that these companies already had drivers, parking lots and buses to operate these new long-distance services.	international stakeholder it results that legal uncertainty is discouraging and delaying potential entry into the domestic market. Second, regarding the requirements to obtain authorisation to enter the market which restricts non-concessionary companies from obtaining the needed authorisation to operate these long-distance "Express Services", we consider that they are not adequate, necessary or proportional. Finally, a brief overview, based on a report from DG MOVE, European Commission, entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016) of the regulatory regime across EU Member States shows that there is an increasing tendency over the last few years to promote a liberalisation of access to these long-distance bus services, as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have shown a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.), contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move).	
56	Decree-Law 399-F/84 (amended by Decree-Law 190/90) "Legal regime for long distance buses referred to as "Express Services"	Art. 1(1)(2) and Art. 7	Long-distance buses ("Express Services")	To operate long-distance buses, on direct routes of not less than 50 km (referred as "Express Services") operators must require an authorisation from the minister responsible (nowadays, the IMT). This authorisation depends on fulfilling two cumulative requirements: (a) to be already concessionary companies of public passenger road transport, individually or in a joint-venture with other concessionaires; and (b) provided that they serve, with interurban routes, at least one of the termination points of the service required and part of the journey on the same itinerary or parallel itinerary, in the terms to be defined in an Ordinance (see Ordinance 23/91).	The official recital states that this provision aims to complement the legal regime of Decree-Law 326/83 which regulated, for the first time, a generic demand for interurban routes in Portugal, and hence, created a legal regime for the access and the exercise of that activity, following a request for authorisation to perform this activity based on the private initiative of the companies. In this sense, the official recital further adds, that it considered that there was an advantage in rendering the conditions of access to the exploration of these services more flexible, by also extending this possibility to travel and tourist agencies as long as this was under a joint-venture agreement with other concessionaires. According to a stakeholder's opinion, the public policy behind this provision aimed at lowering the compensatory indemnities to be paid by the state to private operators to fulfil public service	The required authorisation and entry requirements correspond to entry barriers which limit the number of operators in the market. By reducing the supply structure this leads to higher fares for consumers, fewer available routes and lower welfare. First, Law 52/2015, which approved the new Legal Regime of the Public Transport Service of Passengers (RJSPTP) by intermodal mode, revoked Decree-Law 399-F / 84 (as amended by Decree-Law 190/90), which complements this Decree-Law 326/83 and the provision under analysis. However, this revocation only takes effect on the date of entry into force of legislation and specific regulations provided for in the law itself, in relation to the matters under analysis. To the best of our knowledge, to date more than two and a half years have passed, and no new legislation or regulation has been adopted (see IMT website, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx). Moreover, even if the legislators' spirit of Law 52/2015 seems to be to "liberalise" access to this market, the specific requirements to be granted an authorisation to operate are unknown. Legal uncertainty persists. In addition, Law 52/2015 uses two different terminologies, either referring the need for an "authorisation" (see Annex, Art. 16 (1) (c) of Law 52/2015) or the need for a "communication" (see Annex, Art. 33 (1) of Law 52/2015) to the competent authority. Moreover, no rationale was found for the regime for the "Express Services" to be framed under a public service framework regime, as is foreseen in the Annex of Law 52/2015. Hence, to enter the market of long-distance bus services and to exercise this activity, operators must follow the rules in force. Indeed, from meetings with an international stakeholder it results that legal uncertainty is discouraging and delaying potential entry into the domestic market. Second, regarding the requirements to obtain the authorisation to enter into the	Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their offer. In the meantime: abolish the need to have an authorisation requiring the applicants to be already concessionaire companies of public passenger road transport; and/or provided that they serve, with interurban routes, at least one of the termination points of the service required and part of the journey on the same itinerary or a parallel itinerary.

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					obligations in certain areas to cover the need for quick and direct routes, i.e., "Express Services". At the time, in the 1980s this would have been thought to help the state to organise the transport mobility map since it allowed the state to take advantage of the already existing concessionary operators in the interurban routes. To that end, it contributed the fact that these companies already had drivers, parking lots and buses to operate these new long-distance services.	market which restricts non-concessionary undertakings from obtaining the needed authorisation to operate these long distance "Express Services", we consider that they are not adequate, necessary or proportional. Finally, a brief overview, based on a report from DG MOVE, European Commission, entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across EU Member States shows that there is an increasing tendency over the last few years to promote liberalisation of access to these long-distance bus services, as it in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have shown a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.), contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move).	
57	Decree-Law 399-F/84 (amended by Decree-Law 190/90) "Legal regime for long distance buses referred to as "Express Services"	Art. 4	Long-distance buses ("Express Services")	To operate long distance buses, on direct routes of not less than 50 km (referred to as "Express Services") operators must use vehicles with standards of comfort, with minimum vehicles of category II, according to the terms further defined in an ordinance (see Ordinance 23/91) and the Portuguese Road Traffic Law (Código da Estrada).	No official recital. Based on a stakeholder's opinion, it is our understanding that this provision aims to guarantee minimum quality standards for vehicles used in this type of service. The imposition of these type of vehicles would serve as a differentiating characteristic in comparison with other bus routes, due to the fact that these journeys are over a long distance. Thus, it would be seen by the customers as a very positive characteristic besides serving as a differentiating product.	This provision imposes a minimum requirement of comfort standards for the buses, imposing a minimum category of standard II for the vehicles used on long-distance bus routes. This standard imposes an entry cost as well as an operational cost for the companies which may deter entrepreneurs and small and medium enterprises (SMEs) from entering the market. This may ultimately lead to higher prices for consumers. Surveys on the relationship between service quality (i.e., characteristics of the bus) and demand for interurban buses seems to suggest that little value is placed on the features of the bus, except on long-distance journeys. This preference can also be seen in the willingness to pay a premium for each kilometre travelled if the vehicle were upgraded to "high standard". According to Rojo et. al. (2012), "passengers would be willing to pay an additional EUR 0.010 for each kilometre travelled if the vehicle were upgraded to "high standard". For example, the willingness to pay value would be 2.00 € in a 200 km journey, a value which is much lower than expected according to the results of the user satisfaction models." (www.sciencedirect.com/science/article/pii/S0965856412001176). With a view to liberalising the market, the regulatory framework should give consumers the choice of paying a higher price for comfort. Regulation should not be imposed on issues related to comfort. However, in this case, it seems that the mandatory requirement regarding a minimum level of comfort might also seek to achieve road safety on long-distance routes. A vehicle of category I might not have seating places and seat belts, features that guarantee road safety on long-distance journeys of more than 50 km (and that can go up to hundreds of kms). Hence, it seems to be proportional to the policy objective.	No recommendation.

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58	Decree-Law 399-F/84 (amended by Decree-Law 190/90) "Legal regime for long distance buses referred to as "Express Services"	Art. 14	Long-distance buses ("Express Services")	To operate long-distance buses, on direct routes of not less than 50 km (referred as "Express Services") operators are forbidden to pick up and deposit passengers from and to intermediate stops, except in any of the following situations: a) if the respective route is also served by another passenger bus route concessionated to the same operator of the "express service"; b) if there are no regular passenger bus routes on the respective route granted to a concessionaire; c) if, between the place of entry and exit of each passenger stop, the distance is not less than 150 km.	The official recital states that this provision aims to complement the legal regime of Decree-Law 326/83 which regulated, for the first time, the demand for interurban routes in Portugal, and hence, created a legal regime for the access and the exercise of that activity, following a request for authorisation to perform this activity based on the private initiative of the companies. In this sense, the official recital further adds, that it considered that there was an advantage in rendering the conditions of access to the exploration of these services more flexible, by also extending this possibility to travel and tourist agencies as long as this was under a joint-venture agreement with other concessionaires.	Further to the analysis above of the harm to competition of Art. 1 of Decree-Law 399-F/84 (as amended) concerning the requirements for obtaining authorisation, this provision enhances the associated issues regarding the authorisation requirements related to intermediate stops. Limiting the number of intermediate stops of an "Express Service" route corresponds to an entry barrier since companies are not able to fix and determine their intermediate stops freely in order to better adjust their offer to the demand. This provision limits the number of operators in the market and can possibly lead to an increase in prices. Indeed, taking into account that an intermediate stop does not imply the need to use a central bus station infrastructure, there is no fear of lacking terminal capacity. Furthermore, a brief overview, based on a report from DG MOVE European Commission entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across Member States shows that there is an increasing tendency over the last few years to promote liberalisation of "Express Services", as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have shown a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.) contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move). Therefore, taking into consideration the public policy objective and the restrictions for freely setting intermediate stops by a company to obtain the authorisation to operate "Express Services", we consider that they are not adequate, necessary or proportional.	Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their offer. In the meantime: abolish the need to have an authorisation restricting operators to pick up and deposit passengers at intermediate stops.
59	Ordinance 23/91 "Regulates Decree-Law 326/83 and Decree-Law 399-F/84 (amended by Decree-Law 190/90) - Legal regime long distance buses referred to as "Express Services"	Art. 1 (1) (b) and Art. 9 (1)	Long-distance buses ("Express Services")	To operate long distance buses, in direct routes of not less than 50km (referred as "Express Services") companies must submit a request for authorisation to the competent authorities (IMT), with express indication of the concessions of the interurban routes explored by the applicants for the required service. To operate an "Express Service", the requesting companies must hold a concession of interurban routes on at least: a) one of the termination points of the proposed "Express Service" route; or	The official recital states that this ordinance implements the legal regime of Decree-Law 326/83 and Decree-Law 399-F/84 (as amended) by clarifying the administrative procedure for the attribution of the authorisation to the applicants for the operation of the "Express Service" routes.	Further to the analysis above of the harm to competition of Art. 1 of the Decree-Law 399-F/84 (as amended) concerning the requirements for authorisation, this provision confirms the issues associated with authorisation requirements, i.e., the applicants need (a) to be already a concessionary company of public passenger road transport, individually or in co-operation with other concessionaires or with travel and tourism agencies; and (b) to serve, with interurban routes, at least one of the termination points of the service required or part of the journey on the same itinerary or parallel itinerary, such as 10% or 20% as indicated in the brief description. These requirements correspond to an entry barrier, limiting the number of operators in the market and possibly leading to an increase in prices. Therefore, taking into consideration the public policy objective and the restrictions for a non concessionary undertaking to obtain the authorisation to operate "Express Services", we consider that they are not adequate, necessary or proportional.	Recommendation 1: Expressly revoke this ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-F/84 (as amended by Decree-Law 190/90), which also complements Decree-Law 326/83, which this ordinance also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their offer. In the meantime: abolish the need to have an authorisation requiring the applicants to be already concessionaire companies of public passenger road transport; and/or provided that they serve, with interurban routes, at least one of

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				b) 20 % of the length of the required course for the "Express Service" routes, if the distance between terminals is greater than 50 km, taking into account that one of these shall be situated at a city or a county seat ; or c) 10% of the length of the required course for the "Express Service" routes, in routes equal to or greater than 100 km, taking into account that one of these shall be situated in a city.			the termination points of the service required and part of the journey on the same itinerary or parallel itinerary.
60	Ordinance 23/91 "Regulates Decree-Law 326/83 and Decree-Law 399-F/84 (amended by Decree-Law 190/90) - Legal regime long distance buses referred to as "Express Services"	Art. 6	Long-distance buses ("Express Services")	Establishes a maximum number of intermediate stops, depending on the kilometres of the total route to be operated, for long-distance buses, in direct routes of not less than 50 km (referred as "Express Services").	No official recital. Our understanding, based on a stakeholder's opinion, is that this provision aims to ensure that (a) the "Express Services" are as direct and fast as possible, namely able to compete with trains and private car as a means of transportation; and (b) public service obligations imposed on other regular routes are respected, thus avoiding competition on the routes.	Further to the analysis above of the harm to competition of Art. 1 of the Decree-Law 399-F/84 (as amended) concerning the requirements for authorisation, this provision enhances the issues associated with authorisation requirements related to intermediate stops. Limiting the number of intermediate stops of an "Express Service" route corresponds to an entry barrier since companies are not able to fix and determine their intermediate stops freely in order to better adjust their offer to the demand. This provision limits the number of operators in the market and can possibly lead to an increase in prices. Indeed, taking into account that an intermediate stop does not imply the need to use a central bus station infrastructure, there is no fear of lacking terminal capacity. Furthermore, a brief overview, based on a report from DG MOVE European Commission entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across Member States shows that there is an increasing tendency in the last few years to promote liberalisation of the "Express Services", as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have shown a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.) contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move). Therefore, taking into consideration the public policy objective and the restrictions for freely setting intermediate stops by an undertaking to obtain the authorisation to operate "Express Services", we consider that they are not adequate, necessary or proportional.	Recommendation 1: Expressly revoke this ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-F/84 (as amended by Decree-Law 190/90), which also complements Decree-Law 326/83, which this Ordinance also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their offer. In the meantime: abolish the need to have an authorisation restricting operators to establish a maximum number of intermediate stops.

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61	Ordinance 23/91 "Regulates Decree-Law 326/83 and Decree-Law 399-F/84 (amended by Decree-Law 190/90) - Legal regime long distance buses referred to as "Express Services"	Art. 7 (1)-(3)	Long distance buses ("Express Services")	<p>The process of calculating prices for long-distance bus routes obliges the companies to impose a minimum price scheme, and obliging them to respect the following legal framework:</p> <p>(i) first, the companies must start with the "maximum reference price values" for the road kilometre of interurban road passenger public services, for routes of less than 50 km (see Order 15417-A/2016; and Normative Order 14-A/2016, which established a 1.5% "maximum average increase limit" over the last revision of the price values (2013), to be in force on 1 January 2017);</p> <p>(ii) second, the companies must add a minimum percentage of an additional 10% or 15%, depending on whether type II or type III vehicles are used, for the price of simple long-distance passenger tickets with the same mileage, up to a length of 100 km per passenger and with a minimum charge corresponding to the price applicable to a 25-km journey. For an extension of more than 100 km, the operator shall determine the prices to be charged, starting from a minimum amount corresponding to that calculated in accordance with a 100-km route.</p>	<p>The official recital states that this ordinance implements the legal regime of Decree-Law 326/83 and Decree-Law 399-F/84 (as amended) by clarifying the administrative procedure regarding the price regime to the applicants for the operation of the "Express Service" routes. There is no official recital as to the minimum price scheme for long-distance buses as determined over the "maximum reference price values" for road-kilometre of interurban road passenger public services, for routes of less than 50 km, with 10% or 15% plus, depending on the type of vehicle.</p>	<p>This fare scheme imposes a minimum price level to be charged to consumers. This limits the incentives to compete, innovate and explore new ways of cutting costs and providing better services. This provision also prevents competition based on prices between interurban and long-distance bus routes. Indeed, it our understanding, based on stakeholders' opinions, that a potential entrant into the long-distance bus routes in the domestic market, could not offer a price for a certain journey, above 50km, for EUR 1.00, given the regulatory minimum process scheme. Moreover, this provision prevents competition based on prices between interurban and long-distance bus routes. Furthermore, a brief overview, based on a report from DG MOVE European Commission entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across Member States shows that there is an increasing tendency over the last few years to promote liberalisation of the "Express Services", as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have showed a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.) contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move). As such, these provisions seem not to be adequate, necessary or proportional.</p>	<p>Recommendation 1: Expressly revoke this ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-F/84 (as amended by Decree-Law 190/90), which also complements Decree-Law 326/83, which this ordinance also regulates.</p> <p>Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their offer. In the meantime: abolish the restriction on operators to impose a minimum price level to be charged to consumers.</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
62	Ordinance 23/91 "Regulates Decree-Law 326/83 and Decree-Law 399-F/84 (amended by Decree-Law 190/90) - Legal regime long distance buses referred to as "Express Services"	Art. 8	Long-distance buses ("Express Services")	To operate long-distance buses in direct routes of not less than 50 km (referred as "Express Services"), companies must use vehicles with some standards regarding comfort, such as heating, forced ventilation, individual reclining seat benches spaced apart from each other by at least 68 cm (minimum vehicles of category II).	No official recital. Based on a stakeholders' opinion, it is our understanding that this provision aims to guarantee minimum quality standards for vehicles used in this type of service. The imposition of these type of vehicles would serve as a differentiating characteristic from these services in comparison with other bus routes, due to the fact that these journeys are long distance journeys. Thus, it would be seen by the customers as a very positive characteristic besides serving as a differentiating product.	This provision imposes a minimum requirement on comfort standards for buses, imposing a minimum category of standard II for the vehicles used on long-distance bus routes. This standard vehicles imposes an entry cost as well as an operational cost for the companies which may deter entrepreneurs and small and medium-size enterprises (SMEs) from entering the market and may lead, ultimately, to higher prices being charged to consumers. Surveys on the relationship between service quality (i.e., characteristics of the bus) and demand for interurban buses seems to suggest that little value is placed on the features of the bus, except on long-distance journeys. This preference can also be seen in the willingness to pay a premium for each kilometre travelled if the vehicle were upgraded to "high standard". According to Rojo et. al. (2012), "passengers would be willing to pay EUR 0,010 for each kilometre travelled if the vehicle were upgraded to "high standard". For example, the willingness to pay value would be EUR 2.00 in a 200 km journey, a value which is much lower than expected according to the results of the user satisfaction models." (www.sciencedirect.com/science/article/pii/S0965856412001176). With a view to setting a liberalised market, the regulatory framework should allow for consumer choice to pay a higher price for comfort. Regulation should not be imposed on issues related with comfort. However, in this case, it seems that the mandatory requirement regarding a minimum level of comfort might also achieve road safety on long-distance routes. A vehicle of category I might not have seating places and seat belts, features that guarantee road safety on long-distance journeys of more than 50 km (and that can go up to hundreds of kms). Hence, this provision seems to be proportional to the policy objective.	No recommendation.
63	Ordinance 23/91 "Regulates Decree-Law 326/83 and Decree-Law 399-F/84 (amended by Decree-Law 190/90) - Legal regime long distance buses referred to as "Express Services"	Art. 12 (1) (2) (4)	Long-distance buses ("Express Services")	To operate long-distance buses in direct routes of not less than 50 km (referred as "Express Services") companies must pay a security deposit amount (caução) of EUR 250 (50 000 escudos) to the IMT. Failure to provide the payment of the security deposit results in rejection of the request for authorisation to pursue access to the market.	No official recital. Our understanding is that, normally, these type of provisions which demand a security deposit, aim to guarantee to the state that the company will fulfil its obligations in case of insolvency or to guarantee the payment of fines. However, the low amount requested under this provision raises doubts in our understanding of the policy objective.	This provision imposes a security deposit, corresponding to an entry cost, which might deter small companies from joining the market. However, the low amount requested under this provision raises questions on our understanding of the policy objective or even if it is obsolete. Therefore, if the amount is not justified as a security deposit, because it is not sufficient to fulfil the obligations of the undertakings, in case of insolvency or for due payment of fines, it should be abolished as it might be considered as a second administrative fee, on top of the fee to be paid for the administrative procedure analysis carried out by the IMT. If the amount of the security deposit is considered justified, then, in accordance with the ECJ's settled case law, we can still identify other less restrictive means to provide for the payment, such as a bank guarantee or an insurance contract (see judgment of the ECJ, C-171/02 Commission v Portugal [2004] ECR I 5645, para. 55).	Recommendation 1: Expressly revoke this Ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-F/84 (as amended by Decree-Law 190/90), which also complements Decree-Law 326/83, which this ordinance also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (c) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify elements of their offer. In the meantime: if the need for a financial guarantee is maintained, introduce the possibility for it to be guaranteed by alternative ways as a bank guarantee or an insurance contract (see judgment in Case C-171/02 Commission v Portugal [2004] ECR I 5645, paragraph 55).

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64	Decree-Law 375/82 "Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 1	Long-distance buses ("High Quality Services")	Companies are limited to operating in a given road axis, defined at national level, to operate long-distance buses, in direct routes of not less than 100 km (referred to as "High Quality Services"). This provision establishes that by ordinance of the minister of the transport sector, interurban road axes shall be defined in the national territory where high-quality road transport of passengers with special characteristics of commercial speed, comfort and equipment may be authorised (see Order MES 151/85, as amended). This provision also establishes that in view of the tourist interest of certain connections, the member of the government responsible for the tourism sector may, by order, select from among the interurban road axes referred to, those where it is important to satisfy tourist demand with transportation.	The official recital states that this provision aims to regulate the demand for tourist and fast routes in Portugal, and hence, to create a legal regime for the access and the exercise of that activity, following a request for authorisation to perform this activity.	First, Law 52/2015, which approved the new RJSPTP by intermodal mode, revoked Decree-Law 399-E / 84, which complements this Decree-Law 375/82, and the provision under analysis. However, this revocation only takes effect on the date of entry into force of legislation and specific regulations provided for in the law itself, in relation to the matters under analysis. To the best of our knowledge, to date, since 2015, no new legislation or regulation has been adopted (see IMT website, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviarios/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx). Even if the spirit of Law 52/2015 seems to be to liberalise access to this activity, the specific requirements to be granted an authorisation to operate are unknown. Moreover, the rationale for the regime for the "high quality services" to be framed under a public service framework regime was not found, which is foreseen in the Annex of Law 52/2015. Hence, to enter the market of long-distance buses, and to exercise this activity, operators must follow the rules in force. Indeed, from meetings with an international stakeholder it results that legal uncertainty is discouraging and delaying potential entry into the domestic market. Second, the requirements to obtain authorisation (namely the need to already be a concessionary company of public passenger road transport or a travel and tourism agency) correspond to an entry barrier, limiting the number of operators in the market and possibly leading to an increase in prices. Moreover, it seems that the definition by the state of the product and geographical market, i.e., the definition of the interurban road axes where High Quality services may be offered to consumers, is not necessary, adequate or proportional.	Recommendation 1: Expressly revoke this Decree-Law 375/82 for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements this Decree-Law 375/82. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the need to have an authorisation requiring the applicants to operate in a given road axis defined at ministerial or parliamentary level.
65	Decree-Law 375/82 "Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 2	Long-distance buses ("High Quality Services")	To operate long-distance buses, on direct routes of not less than 100 km (referred as "High Quality Services") companies must require authorisation from the minister responsible. Only concessionary companies of public passenger road transport or travel and tourism agencies may apply for authorisation.	The official recital states that this provision aims to regulate the demand for tourist and fast routes, in Portugal, and hence, to create a legal regime for the access and the exercise of that activity, following a request for authorisation to perform this activity.	First, Law 52/2015, which approved the new RJSPTP by intermodal mode, revoked Decree-Law 399-E / 84, which complements this Decree-Law 375/82, and the provision under analysis. However, this revocation only takes effect on the date of entry into force of legislation and specific regulations provided for in the law itself, in relation to the matters under analysis. To the best of our knowledge, to date, since 2015, no new legislation or regulation has been adopted (see IMT website, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviarios/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx). Even if the spirit of Law 52/2015 seems to be to liberalise access to this activity, the specific requirements to be granted an authorisation to operate are unknown. Moreover, the rationale for the regime for the "high quality services" to be framed under a public service framework regime was not found, which is foreseen in the Annex of Law 52/2015. Hence, to enter the market of long-distance buses, and to exercise this activity, operators must follow the rules in force. Indeed, from meetings with an	Recommendation 1: Expressly revoke this Decree-Law 375/82 for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements this Decree-Law 375/82. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the need to have an authorisation requiring the applicants to already be concessionaire companies of

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						international stakeholder it results that legal uncertainty is discouraging and delaying potential entry into the domestic market. Second, the requirements to obtain authorisation (namely the need to already be a concessionary company of public passenger road transport or a travel and tourism agency) correspond to an entry barrier, limiting the number of operators in the market and possibly leading to an increase in prices. Moreover, it seems that the definition by the state of the product and geographical market, i.e., the definition of the interurban road axes where High Quality services may be offered to consumers, is not necessary, adequate or proportional.	public passenger road transport or travel and tourism agencies.
66	Decree-Law 375/82 "Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 6	Long-distance buses ("High Quality Services")	The tariff regime for long-distance buses on direct routes of not less than 100 km (referred to as "High Quality Services") is established by different government entities depending on the type of operator: a) if the operators are concessionary transport companies, it is established by an ordinance of the minister in charge of the transport sector; b) if the operators are travel and tourism agencies, it is established by an ordinance of the ministers in charge of the transport and tourism sectors.	No official recital. Based on stakeholders' opinions, it is our understanding that this provision aims to account for the different economic rationales behind the business models for transport operators and travel agencies, which influences the costs and prices of the service provided.	First, prices seem to be regulated by a general tariff regulation, which limits the incentives to compete, innovate and explore new ways of cutting costs and providing better services. Second, there seems to be possible discrimination between operators (concessionary companies versus tourism and travel agencies) since the prices applicable seem to differ for the same service. As such, this provision seems to be not justified and not proportional. Finally, to the best of our knowledge, this provision wasn't regulated, which adds legal uncertainty and search costs for operators.	Recommendation 1: Expressly revoke this Decree-Law 375/82 for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements this Decree-Law 375/82. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the need to have an authorisation restricting operators to freely set the prices to be charged to consumers.
67	Decree-Law 399-E/84 "Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 1 (1)	Long-distance buses ("High Quality Services")	To operate long-distance buses on direct routes of not less than 100 km (referred to as "High Quality Services") companies require authorisation from the minister responsible. Only concessionary companies of public passenger road transport or travel and tourism agencies may apply for authorisation, individually or in a joint venture with other concessionaries, or with travel and tourism agencies.	The official recital states that this provision aims to regulate the demand for tourist routes in Portugal, and hence, to create a legal regime for the access and the exercise of that activity, following a request for authorisation to perform this activity.	First, Law 52/2015, which approved the new RJSPPT by intermodal mode, revoked Decree-Law 399-E / 84, which complements this Decree-Law 375/82, and the provision under analysis. However, this revocation only takes effect on the date of entry into force of legislation and specific regulations provided for in the law itself, in relation to the matters under analysis. To the best of our knowledge, to date, more than two and a half years have passed, and no new legislation or regulation has been adopted (see IMT website, www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransportePublicoPassageiros/ServicoExpresso/Paginas/ServicosExpressoseAltaQualidade.aspx). Even if the spirit of Law 52/2015 seems to be to liberalise access to this activity, the specific requirements to be granted authorisation to operate are unknown. Hence, to enter the market of long-distance buses, and to exercise this activity, operators must follow the rules in force. Indeed, from meetings with an international stakeholder it results that legal uncertainty is discouraging and delaying a potential entry into the domestic market. Second, the requirements to obtain the authorisation (namely the need to be already a concessionary company of public passenger road transport or a travel and tourism agency) correspond to an entry barrier, limiting the number of operators in the market and possibly leading to an increase in prices.	Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the need to have an authorisation requiring the applicants to already be concessionaires companies of public passenger road transport or travel and tourism agencies.

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						<p>Moreover, a brief overview, based on a report from DG MOVE European Commission entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across Member States shows that there is an increasing tendency in the last few years to promote liberalisation of access to the "Express Services", as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have shown a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.) contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move).</p> <p>Therefore, taking into consideration the public policy objective and the restrictions for a non-concessionary company to obtain authorisation to operate "High Quality Services", we consider that they are neither adequate, necessary nor proportional.</p> <p>Finally, according to a stakeholder, very few authorisations for this type of service are in force today, possibly due to these very high initial investments and the fact that operators tend to operate within the framework of occasional tourist services.</p>	
68	Ordinance 22/91 "Regulates Decree-Law 375/82 and Decree-Law 399-E/84 - Legal regime for long distance buses referred to as "High Quality Services"	Art. 1 (b) (e) and Art. 9 (d)	Long-distance buses ("High Quality Services")	<p>To operate long-distance buses on direct routes of not less than 100 km (referred to as "High Quality Services") companies must:</p> <ul style="list-style-type: none"> i) use vehicles with standards of comfort, such as a bathroom, air conditioning and individual reclining seats spaced at least 74 cm apart (minimum vehicles of category III); ii) have a fleet of at least six vehicles of category III; iii) have an employee as a crew member of the bus. 	<p>No official recital. Based on a stakeholder's opinion, it is our understanding that this provision aims to guarantee minimum quality standards for vehicles used in this type of service. The imposition of these type of vehicles would serve as a differentiating characteristic in comparison with other bus routes, due to the fact that these journeys are long distance journeys and of a more touristic need. Thus, it would be seen by the customers as a very positive characteristic besides serving as a differentiating product.</p>	<p>Firstly, this provision imposes a minimum requirement, on comfort standards for buses, imposing a minimum category of standard III for the vehicles used on long-distance bus routes. This standard on the vehicles imposes an entry cost as well as an operational cost for companies which may deter entrepreneurs and small and medium-size enterprises (SMEs) from entering the market and may lead, ultimately, to higher prices for consumers.</p> <p>Surveys on the relationship between service quality (i.e., characteristics of the bus) and demand for interurban buses seems to suggest that little value is placed on the features of the bus, except on long-distance journeys. This preference can also be seen in the willingness to pay a premium for each kilometre travelled if the vehicle were upgraded to "high standard". According to Rojo et. al. (2012), "passengers would be willing to pay EUR 0.010 for each kilometre travelled if the vehicle were upgraded to "high standard". For example, the willingness to pay value would be EUR 2.00 in a 200 km journey, a value which is much lower than expected according to the results of the user satisfaction models." (www.sciencedirect.com/science/article/pii/S0965856412001176).</p> <p>With a view to setting a liberalised market, the regulatory framework should allow for consumer choice to pay a higher price for comfort. Regulation should not be imposed on issues related with comfort. However, in this case, it seems that the mandatory requirement regarding a minimum level of comfort might also achieve road safety on long-distance routes. A vehicle of category I might not have seating places and seat belts, features that guarantee road safety on long-distance journeys of more than 50 km (and that can go up to hundreds of kms). A vehicle of category II would not have this issue of safety but, without a WC, would force more intermediate stops within the journey, given the fact that these routes are more than 100 kms long.</p> <p>Second, the requirement to have a crew member per bus and a fleet of at least 6 vehicles of category III also create entry barriers. A smart regulatory framework</p>	<p>Recommendation 1: Expressly revoke this Ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements Decree-Law 375/82, which this Ordinance also regulates.</p> <p>Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the need to have a fleet of at least six vehicles as well as the need to have a crew member on board; no recommendation on category III of vehicles.</p>

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69	Ordinance 22/91 "Regulates Decree-Law 375/82 and Decree-Law 399-E/84 - Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 2 (1) (b) and Art. 9 (a)-(c)	Long-distance buses ("High Quality Services")	To operate long-distance buses on direct routes of not less than 100 km (referred to as "High Quality Services"), companies must submit to the competent authorities (IMT) a request for authorisation. The requesting companies must prove: a) for concessionaires of interurban public passenger transport, they must hold a concession route in operation that touches one of the terminal points of the service that is the object of the present provision; b) travel and tourism agencies must have a registered office or branch located and active for more than three years in the area of the municipality in which an end point of the service of the present provision is located; c) one of the terminals is located in a city or within the tourist areas defined by Law.	The official recital states that this Ordinance implements the legal regime of Decree-Law 375/82 and Decree-Law 399-E/84 by clarifying the administrative procedure for the attribution of the authorisation to the applicants for the operation of "High Quality" service routes.	should allow operators to choose the type of service they wish to offer and allow consumers to choose to pay a higher price for comfort. Clearly, the imposition of a fleet of at least six vehicles is not proportional. As far as a crew member concerns we have the same concern: that it might not be proportional; although it has the purpose to distinguish the High-Quality Service from other regular long-distance services. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. Finally, according to a stakeholder, very few authorisations are in force today for this type of service, possibly due to these very high initial investments and the fact that operators tend to operate within the framework of occasional tourist services. Further to the analysis above of the harm to competition of Art. 2 of Decree-Law 375/82, Art. 1 of the Decree-Law 399-E/84, and of Art. 1 (b) (e) and Art. 9 (d) of this ordinance concerning the requirements to obtain the authorisation, these norms confirm the associated issues regarding the authorisation requirements, i.e., the applicants need to be already a concessionary company of public passenger road transport or a travel and tourism agency, as indicated in the brief description. In particular, travel and tourism agencies must have a registered office or branch located and be active for more than three years in the area of the municipality in which an end point of the service objective of the present provision is located. These correspond to an entry barrier, limiting the number of operators in the market and possibly leading to an increase in prices. Therefore, taking into consideration the public policy objective and the restrictions for a non-concessionary company to obtain the authorisation to operate "High Quality Services", we consider that they are neither adequate, necessary, nor proportional.	Recommendation 1: Expressly revoke this Ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements Decree-Law 375/82, which this Ordinance also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the need to have an authorisation requiring the applicants to already be concessionaire companies of public passenger road transport; or travel and tourism agencies.

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70	Ordinance 22/91 "Regulates Decree-Law 375/82 and Decree-Law 399-E/84 - Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 7	Long-distance buses ("High Quality Services")	Establishes a maximum number of intermediate stops, depending on the kilometres of the total route to be operated, for long-distance buses on direct routes of not less than 100 km (referred to as "High Quality Services").	No official recital. Our understanding, based on a stakeholder's opinion, is that this provision aims to ensure that the services are as direct and fast as possible.	Further to the analysis above of the harm to competition of Art. 2 of Decree-Law 375/82, Art. 1 of the Decree-Law 399-E/84, and of Art. 1 (b) (e) and Art. 9 (d) of this ordinance, concerning the requirements for authorisation, this provision enhances the issues associated with authorisation requirements related to intermediate stops. Limiting the number of intermediate stops of a "High-Quality Service" route corresponds to an entry barrier since companies are not able to fix and determine their intermediate stops freely in order to better adjust their offer to the demand. This provision limits the number of operators in the market and can possibly lead to an increase in prices. Indeed, taking into account that an intermediate stop does not imply the need to use a central bus station infrastructure, there is no fear of lacking terminal capacity. Furthermore, a brief overview, based on a report from DG MOVE European Commission entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across Member States shows that there is an increasing tendency over the last few years to promote liberalisation of the "Express Services", as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have showed a positive outcome in terms of price competition and product differentiation (number of routes, schedules, etc.) contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move). Therefore, taking into consideration the public policy objective and the restrictions for freely setting intermediate stops by a company to obtain the authorisation to operate these long-distance routes, we consider that they are neither adequate, necessary nor proportional.	Recommendation 1: Expressly revoke this Ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements Decree-Law 375/82, which this Ordinance also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the need to have an authorisation requiring the applicants to define a maximum number of intermediate stops.
71	Ordinance 22/91 "Regulates Decree-Law 375/82 and Decree-Law 399-E/84 - Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 8	Long-distance buses ("High Quality Services")	The general tariff for long-distance passenger services shall apply to the services covered by this ordinance. The prices to be charged shall include a minimum of 15% additional to the price of simple long-distance passenger tickets with the same mileage, up to a length of 100 km per passenger and with a minimum charge corresponding to the price applicable to a 50 km journey. For an extension of more than 100 km, the operator shall determine the prices to be charged, starting from a minimum amount corresponding to that	The official recital states that this ordinance implements the legal regime of Decree-Law 375/82 and Decree-Law 399-E/84 by clarifying the administrative procedure regarding the price regime to the applicants for the operation of "High Quality" services routes.	Prices for long-distance bus routes seem to be regulated through the existence of a minimum price level over a general tariff regulation, determined over the "maximum reference price values" for the road kilometre of interurban road passenger public services, for routes of less than 50 km. This regime limits incentives to compete, innovate and explore new ways of cutting costs and providing better services. This price regulation structure prevents operators from competing on the price of the services. Low cost operators are prevented from competing on prices. Indeed, it our understanding, based on a stakeholder's opinion, that a potential entrant into the long-distance bus routes domestic market, could not offer a price for a certain journey, above 50 km, for EUR 1.00, given the regulatory minimum process scheme. Moreover, this provision prevents competition based on prices between interurban and long-distance buses routes. Furthermore, a brief overview, based on a report from DG MOVE European Commission entitled "Comprehensive Study on Passenger Transport by Coach in Europe" (April, 2016), of the regulatory regime across Member States shows that there is an increasing tendency over the last few years to promote liberalisation of the "Express Services", as in the case of Germany (fully liberalised since 2013 for routes above 50 kms) and France (since 2015 for routes above 100 km). Indeed, several post-study evaluations for Germany have showed a positive outcome in	Recommendation 1: Expressly revoke this Ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements Decree-Law 375/82, which this Ordinance also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the restriction on operators to impose a minimum price level to be charged to consumers.

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				calculated in accordance with paragraph 2, for a 100 km route.		terms of price competition and product differentiation (number of routes, schedules, etc.) contributing to an increase in the welfare of consumers (see Discussion Paper No. 15-062, ZEW, and "Comprehensive Study on Passenger Transport by Coach in Europe" from DG Move). As such, these provisions seem not to be adequate, necessary or proportional.	
72	Ordinance 22/91 "Regulates Decree-Law 375/82 and Decree-Law 399-E/84 - Legal regime for long distance buses referred to as 'High Quality Services'"	Art. 12 (1) (2) (4)	Long-distance buses ("High Quality Services")	To operate long-distance buses on direct routes of not less than 100 km (referred to as "High Quality Services") companies must pay a security deposit (caução) of EUR 250 (50 000 escudos) to the IMT. Failure to provide payment of the security deposit results in rejection of the request.	No official recital. Our understanding is that, normally, these type of provisions which demand a security deposit, aim to guarantee to the state that the company will fulfil its obligations in case of insolvency or to guarantee the payment of fines. However, the low amount requested under this provision raises some questions for our understanding of the policy objective.	The need for a security deposit corresponds to an entry cost, which might deter small companies from joining the market. However, the low amount requested under this provision raises some questions on our understanding of the policy objective or even if it is obsolete. Therefore, if the amount is not justified as a security deposit to fulfil the obligations of the companies in case of insolvency or for due payment of fines, it should be abolished as it might be considered as a second fee on top of the fee to be paid for the administrative procedure analysis carried out by the IMT.	Recommendation 1: Expressly revoke this Ordinance for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements Decree-Law 375/82, which this Ordinance also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: if the need for a financial guarantee is maintained, introduce the possibility for it to be guaranteed by alternative ways such as a bank guarantee or an insurance contract.
73	Order MES 151/85 (as amended by Order MOPTC 35 - XII/92) "Regulates Decree-Law 375/82, defining interurban road axes for "High Quality Services""	Art. 1 and Art. 2	Long-distance buses ("High Quality Services")	Undertakings are limited to operating on 11 road axes, defined at national level, to operate long-distance buses on direct routes of not less than 100 km (referred to as "High Quality Services"), as defined by law, by the minister responsible for the transport sector. Other road axes may be authorised, following this procedure: first, a request is made by operators; second, a proposal from the IMT is made in line with the request, and third, an opinion is given by the competent ministry of tourism.	The official recital from Decree-Law 375/82 states that an order would be adopted to regulate the demand for tourist and fast routes in Portugal, and hence, to create a legal regime for the access and the exercise of that activity, following a request for authorisation to perform this activity.	Further to the analysis above of the harm to competition of Art. 2 of Decree-Law 375/82, Art. 1 of the Decree-Law 399-E/84, and of Art. 1 (b) (e) and Art. 9 (d) of this ordinance, concerning the requirements for authorisation, these norms confirm the issues associated with the authorisation requirements. Indeed, it seems that the definition by the state of the product and geographical market, i.e., the definition of the interurban road axes where high quality services may be offered to consumers, is not necessary, adequate or proportional. These long-distance services aim to be liberalised. As such, operators should be able to define their competitive strategy, especially the road axes, as a form of differentiating their offer from other operators/potential operators.	Recommendation 1: Expressly revoke this order for legal certainty purposes, since Law 52/2015 only revoked Decree-Law 399-E/84, which also complements Decree-Law 375/82, which this order also regulates. Recommendation 2: Adopt the new regulatory framework foreseen in Art. 6 (1), Art. 15 and Art. 16 (b) of Law 52/2015, in order to implement the "liberalised" regime for access to the market of long-distance buses. The new framework should allow operators to freely decide their business strategy and identify the elements of their high-quality offer. In the meantime: abolish the possibility of only having authorisation for a given 11 pre-defined road axes.

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74	Order (Despacho) 15417-A/2016) "Approves the maximum price values per km for road passenger public services of routes up to 50km - [Regulates Normative Order (Despacho Normativo) 14-A/2016]"	Para. 1	Transport of passengers - transport tickets - prices/tariffs	Approves the maximum reference price values per road kilometre of interurban road passenger public services, for routes of less than 50 km, in accordance with Normative Order 14-A/2016, which established a 1.5% maximum average increase limit, since the last revision of prices, in force since 1 January, 2017.	No official recital as to the rationale behind the existence of a maximum price level. Our understanding is that it relates to consumer protection. As to the rationale behind the periodic revision of the tariffs, according to the official recital, it takes into consideration the national economic and social situation, as well as the cost-of-production factors, in particular the energy costs and employee wages.	On the one hand, the general rules regarding maximum tariffs seem proportional as aiming to protect consumers from higher prices. On the other hand, only the system of the revision of maximum tariffs is subject to the following analysis. First, by defining the criteria as "the maximum average increase limits" it has the advantage of setting a maximum level of increase in prices, which contributes to consumer protection by guaranteeing that consumers will not pay a disproportionate and unexpected increase in prices. Second, the criterion establishes the maximum increase as an average. According to stakeholders, this may lead to an increase in the price of the tickets that are most demanded by consumers above the maximum average, which will be compensated by a decrease in the price of tickets that are less demanded by consumers. Overall, this leads to a de facto increase in price of tickets that consumers prefer above the maximum average established, contributing to a decrease in consumer welfare.	Consider redefining the criteria for the determination of the "maximum average increase limits" by taking into account criteria such as the relative demand of each ticket, amongst others, and not only the absolute price itself.
75	Decree-Law 297/92 "Taxi fares"	Art. 1; Art. 2(1)	Taxis - administrative prices	The services provided by taxis are subject to a price structure defined by a price convention regime between the Directorate-General for Economic Activities (DGAE) and the representative associations of the sector, with contributions from the IMT. The current price convention regime in place is from 2012. The 2012 Price Convention provides for the current applicable tariffs, stipulates that: i. different tariffs will apply for daytime and, with a surcharge, for night-time service; ii. urban fares and kilometre fares consist of an initial fee and itinerary and duration fractions; iii. itinerary and duration fractions are calculated according to negotiated kilometre and waiting-time prices; iv. prices for specific itineraries may be fixed in a supplement to the convention; v. taxis (bearing licence labels) have a daytime fare (between 6 a.m. and 9	According to the official recital, it aims to ensure that citizens have proper knowledge of all transport conditions before using a taxi. Furthermore, it increases transparency between operators and consumers. Finally, according to our understanding, based on stakeholders' opinions, it prevents operators from charging higher prices when consumers have no other option for transportation.	The prices convention regime, considered analogous to a "fixed fare structure regime", limits price competition and prevents the normal response of supply to different conditions of demand, potentially leading to economic inefficiencies. Furthermore, it limits the ability and incentives to compete on binomial price/quality. A more flexible fare regulation, for instance, allowing taxi drivers to give discounts on the metered fare, as well as allowing for a deregulated price system (i.e., a pre-fare arrangement between the operator and the consumer) when a taxi is hired in advance (e.g., by phone booking; internet booking, mobile app, etc.) could stimulate competition. This would allow consumers to check prices from different providers and possibly negotiate prices beforehand, without the typical pressure to pick up a taxi at a taxi rank or by hailing. Within the European Union fixed prices are the exception rather than the norm. Half of the Member States allow for maximum prices (14) and five countries have a free price regime (see report "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)).	Recommendation 1: Allow maximum prices for pre-booked services (online, by phone, by mobile application, etc.) with a view to a possible liberalisation in the medium/long term. Recommendation 2: Allow for possible discounts on the metered fare.

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				<p>p.m.) and a night-time fare (between 9 p.m. and 6 a.m. and for 24 hours on Saturdays, Sundays and public holidays);</p> <p>vi. a supplementary fare may be charged for services requested by phone, for luggage and for pet transport.</p> <p>The 2012 Price Convention also provides for the calculation and collection of several applicable fares: i) fare no. 3 - one way trip (to a destination outside the taxi's operational area); ii) fare no. 5 - round trip service ; and iii) fare no. 6 - per-hour fare.</p> <p>In general, the final fare paid by the passenger consists of an initial fee and itinerary and duration fractions calculated according to the prices set per kilometre and waiting times, respectively. As a requirement for applying the tariffs, the taxi must have a duly approved and accredited taximeter (visible to the passenger).</p>			
76	Law 18/97 "Authorises the government to transfer to municipalities powers regarding the transportation of passengers in light cars and to create specific rules on access to the profession of taxi driver"	Art. 2 (1) (a)	Taxis	<p>Municipalities have the power to set the maximum number of quotas available for licensed vehicles operating within each municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality. Each time there is an available quota, a public tender is announced and candidates must apply directly to the municipality, which then follows a set of criteria for ordering the applications. Hence, the licence to access the activity is issued by the IMT, but the licence to access</p>	<p>No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disable people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy,</p>	<p>Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. Furthermore, this restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and lower safety and comfort conditions.</p> <p>The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the higher the welfare loss. Even if in 2016 there were licences not attributed in almost every municipality in Portugal (in total, 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessary mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire";</p>	<p>Quotas: Abolish the quota regime restrictions as defined at municipal level.</p> <p>Geographical restrictions: Abolish the geographical restrictions at municipal level.</p>

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				<p>the market is issued by the municipalities. In the latter case, one licence corresponds to one vehicle.</p> <p>These quantitative restrictions on the number of licensed taxis operating within each municipality also impose a geographical restriction on licensed taxis, since a taxi in municipality A cannot take passengers in municipality B.</p>	<p>historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.</p>	<p>and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099") shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). This allows even the circumvention of ordering criteria for the attribution of licences through the public tender procedure to obtain a licence at the municipal level. Note that at municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quanto-custa). The difference in monetary values between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers.</p> <p>Geographical restrictions: Due to the existence of the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire").</p> <p>Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].</p>	
77	Decree-Law 251/98 (modified by Law 35/2016) "Framework law regarding taxis"	Art. 3(3); Art. 12(4)	Taxis	<p>To pursue the activity of transport by taxi an operator must:</p> <p>a) hold a licence (alvará) for the company, issued by the IMT, which is not transferable and is issued for a period not exceeding five years, renewable by proving that the requirements for access to the activity are maintained;</p> <p>b) hold a licence for a taxi vehicle, attributed by a given municipality, in respect of a quantitative quota contingent,</p>	<p>No official recital. It was not possible to obtain a public stakeholders' rationale.</p>	<p>A licensing scheme for companies to enter the activity corresponds to an entry barrier which might limit the number of operators in the market. However, it can be seen as a common mechanism within several jurisdictions, aiming to guarantee that an operator fulfils minimum access requirements, as to hold the capacity and the ability to perform the activity of transport by taxi, in respect of the related quality and safety aspects. According to the "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085), all Member States require a licensing regime. This terminology also covers the terms "authorisations", "concessions" and "permits". Hence, the non-transferable characteristic of the alvará seems proportional to the policy objective.</p> <p>However, the licensing of taxi vehicles, attributed by a given municipality in the context of quantitative quota contingencies, does not seem proportional, for the reasons already set forth above [see Law 18/97, Art. 2 (1) (a); and Decree-Law</p>	<p>Licensing for taxi companies: No recommendation.</p> <p>Licensing of taxi vehicles: In the context of our previous recommendations on abolishing the quota regime and the geographical restrictions defined at Municipal level [Law 18/97, Art. 2 (1) (a)], our recommendation regarding this provision is to consider having a licensing regime that is valid for the entire national territory (a national licence). Keeping licensing at local level should allow nonetheless for operation in a certain region or at national level.</p>

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				which is transferable between companies duly authorised with a licence (alvará), needing only to communicate it to the city council of the municipality whose quota the licence is part of.		251/98, Art. 13(1)(a)]. Indeed, the quotas contingencies have the ability to hamper consumer welfare. And, by allowing the possibility of freely transferring these quotas between companies duly authorised with a licence (alvará), need only to communicate it to the city council of the municipality whose quota the licence belongs to (see www.imt-ip.pt/sites/IMTT/Portugues/TransportesRodoviaros/TransporteTaxi/LicenciamentoVeiculos/Paginas/LicenciamentoVeiculos.aspx). This creates a "secondary market" where these licences are charged up to EUR 150 000 in Lisbon (for example), denoting a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). This allows circumvention of the criteria and the process of municipal allocation of licences, initially allocated according to a public tender procedure.	
78	Decree-Law 251/98 (modified by Law 35/2016) "Framework law regarding taxis"	Art. 7	Taxis	The financial capacity requirement consists of having the necessary financial resources to guarantee good management of the company. According to Ordinance 334/2000, Art. 6 (2), this requirement of financial capacity consists, during the exercise of the activity and upon renewal of the licence, of ensuring that the capital and the reserves of the company are equivalent to at least EUR 1 000 for each licensed taxi.	No official recital. According to our understanding, based on information from a public institute, the amount requested on capital and reserves equivalent to at least EUR 1 000 for each licensed taxi aims to guarantee the financial stability of the operator.	This provision increases the costs of entry into the market since it imposes a requirement of financial capacity equivalent to capital and reserves of at least EUR 1 000 for each licensed taxi, to be demonstrated at least upon the renewal of the licence. This cost of entry could impede other potential operators from entering the market, hence, the market would lose in diversity of operators and eventually quality of the suppliers.	We recommend abolishing the financial capacity requirement equivalent to at least EUR 1 000 for each licensed taxi.
79	Decree-Law 251/98 (modified by Law 35/2016) "Framework law regarding taxis"	Art. 13 (1) (2)	Taxis	The municipalities have the powers to set the maximum number of quotas available for licensed vehicles operating within each municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality. Each time there is an available quota, a public tender is announced and candidates should apply directly to the municipality, which then follows a set of criteria for ordering the applications. Hence, the licence to access the activity is issued by the IMT, but the	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy,	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. Furthermore, this restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and lower safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the higher the welfare loss. Even if in 2016 there were licences not attributed in almost every municipality in Portugal (in total, 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessary mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire";	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

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				<p>licence to access the market is issued by the municipalities. In the latter case, one licence corresponds to one vehicle.</p> <p>These quantitative restrictions on the number of licensed taxis operating within each municipality also impose a geographical restriction on licensed taxis, since a taxi in municipality A cannot take passengers in municipality B.</p>	<p>historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.</p>	<p>and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099") shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). This allows even the circumvention of ordering criteria for the attribution of licences through the public tender procedure to obtain a licence at the municipal level. Note that at municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quanto-custa). The difference in monetary values between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers.</p> <p>Geographical restrictions: Due to the existence of the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].</p>	
80	Decree-Law 251/98 (modified by Law 35/2016) "Framework law regarding taxis"	Art. 15 (c)	Taxis	<p>Taxi services can be provided on a distance travelled and waiting time basis or based on a contract. If based on a contract it must be drafted under a written agreement, for a period term of not less than 30 days, and must include the respective terms, the identification of the parties and the agreed price.</p>	<p>No official recital. Based on a stakeholders' opinion, our understanding is that this provision aims to enable the possibility for operators to offer to customers a different price regime whenever the service is provided on a long-term basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.</p>	<p>This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices than the ones established under the price structure in the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2 (1); and in Decree-Law 251/98, Art. 20.</p> <p>However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.</p>	<p>Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking).</p> <p>Recommendation 2: Consider if 30 days can be reduced to promote competition.</p> <p>Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.</p>

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81	Decree-Law 251/98 (modified by Law 35/2016) "Framework law regarding taxis"	Art. 20	Taxis	The services provided by taxis are subject to a price structure set out in special legislation [see Decree-Law 297/92, Art. 1 and Art. 2 (1)]. The price structure consists of a price convention regime between the Directorate-General for Economic Activities (DGAE) and the representative associations of the sector, with contributions from the IMT. The current price convention regime in place is from 2012.	According to the official recital, it aims to ensure that citizens have proper knowledge of all transport conditions before using a taxi. Furthermore, it increases transparency between operators and consumers. Finally, according to our understanding, based on stakeholders' opinions, it prevents operators from charging higher prices when consumers have no other option for transportation.	The prices convention regime, considered analogous to a "fixed fare structure regime", limits price competition and prevents the normal response of supply to different conditions of demand, potentially leading to economic inefficiencies. It also limits the ability and incentives to compete on binomial price/quality. More flexible fare regulation, for instance, allowing taxi drivers to give discounts on the metered fare, as well as allowing for a deregulated price system (i.e., a pre-fare arrangement between the operator and the consumer) when a taxi is hired in advance (e.g., by phone booking; internet booking, mobile app, etc.) could stimulate competition. This would allow consumers to check prices from different providers and possibly negotiate prices beforehand, without the typical pressure to pick up a taxi at a taxi rank or by hailing. Within the European Union, fixed prices are the exception rather than the norm. Half of the Member States allow for maximum prices (14) and five countries have a free price regime (see report "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)).	Recommendation 1: Allow maximum prices for pre-booked services (online, by phone, by mobile application, etc.) with a view to a possible liberalisation in the medium/long term. Recommendation 2: Allow for possible discounts on the metered fare.
82	Law 6/2013 "Legal regimes of accessing and exercising the profession of taxi driver and the certification of the respective training entities"	Art. 5 (1) (d)	Taxis	An examination is required to obtain the Taxi Driver Certificate (CMT). The course duration is 125 hours.	No official recital. Based on stakeholders' opinions, our understanding is that it aims to check whether the driver has the capacity to provide a good service, namely in terms of road safety, but also in terms of courtesy, the ability to help disabled people and speaking English.	The need to attend initial training, within a duly authorised training institute, corresponds to a barrier to entry which can limit the number of suppliers and increase entry costs for potential entrants into the market who will have to pay for this training. Also, the 125 hours duration might disincentivise potential candidates from entering into the activity as its thematic categories/disciplines might not be proportional to the activity in question which is mainly driving passengers from point A to point B in a safe and correct way. Benchmarking with other EU Member States confirms that seven Member States impose an initial training course (Portugal, Estonia, Hungary, Croatia, Denmark, Finland and Malta) and that at least 10 Member States impose only a mandatory exam (Austria, Czech Republic, Estonia, France, Hungary, Ireland, United Kingdom, Estonia and Slovakia) (see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)). For example, in Ireland, the training course is not mandatory and the potential candidate can instead read the official manual and study the local map to apply for the entry test. Hence, Portugal imposes not only a mandatory training course but also an entry exam.	Option 1: Consider abolishing the need for mandatory initial training, imposing only a mandatory entry exam. Option 2: Alternatively, consider reducing the number of hours of this initial training course to be proportionally adapted to fulfil its policy objectives.
83	Law 6/2013 "Legal regimes of accessing and exercising the profession of taxi driver and the certification of the respective training entities"	Art. 7 (1) (d)	Taxis	The renewal of the CMT is subject to attending a continuous training course. The course duration is 25 hours.	No official recital. Based on stakeholders' opinions, our understanding is that it aims to provide updated information and training not covered in the initial training of 125 hours, due to certain technological innovations or changes in city maps/routes.	The need to attend a continuous training course, within a duly authorised training, corresponds to a cost which can limit the number of suppliers having to pay for this training, which is only valid for five years. The 25 hours of additional training after an initial training of 125 hours increases the costs to operators and, therefore, may limit the number of operators in the market or who must pass on these costs to consumers, with a limitation of its welfare. Moreover, the 25 hours duration might not be proportional to the activity in question which is mainly driving passengers from point A to point B in a safe and correct way (e.g., the current draft-law for analogous transportation, in a non-characterised vehicle through an electronic platform, only imposes 8 hours for the duration of the ongoing training).	Consider reducing the number of hours of this continuous training course to be proportionally adapted to fulfil its policy objectives.

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84	Law 6/2013 "Legal regimes of accessing and exercising the profession of taxi driver and the certification of the respective training entities"	Art. 9 (1) (4)	Taxis	Initial and ongoing training is compulsory and applies to candidates obtaining the CMT and to taxi drivers, respectively. The minimum duration of the initial training course and the ongoing training course is, respectively, 125 hours and 25 hours.	No official recital. Based on stakeholders' opinions, our understanding is that it aims to check whether the driver has the capacity to provide a good service, namely in terms of road safety, but also in terms of courtesy, the ability to help disabled people and speaking English.	<p>The need to attend an initial training, within a duly authorised training institute, corresponds to a barrier to entry which can limit the number of suppliers and increase entry costs for potential entrants into the market having to pay for this training. Further, the 125 hours duration might disincentivise potential candidates from enter into the activity as its thematic categories/disciplines might not be proportional to the activity in question which is mainly driving passengers from point A to point B in a safe and correct way. Benchmarking with other EU Member States confirms that seven Member States impose an initial training course (Portugal, Estonia, Hungary, Croatia, Denmark, Finland and Malta) and that at least 10 Member States impose only a mandatory exam (Austria, Czech Republic, Estonia, France, Hungary, Ireland, United Kingdom, Estonia and Slovakia) (see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)). For example, in Ireland, the training course is not mandatory and the potential candidate can instead read the official manual and study the local map to apply for the entry test. Hence, Portugal imposes not only a mandatory training course but also an entry exam.</p> <p>The need to attend a continuous training course, within a duly authorised training institute, corresponds to a cost which can limit the number of suppliers having to pay for this training, which is only valid for five years. The additional 25 hours of training after an initial training of 125 hours increases the costs to operators and, therefore, may limit the number of operators in the market or may have to pass these costs to consumers, with a limitation of its welfare. Moreover, the 25-hour duration might not be proportional to the activity in question which is mainly driving passengers from point A to point B in a safe and correct way (e.g., the current draft-law for analogous transportation, in a non-characterised vehicle through an electronic platform, only imposes 8 hours for the duration of the ongoing training).</p>	<p>For the initial training course: Option 1: Consider abolishing the need for mandatory initial training, imposing only a mandatory entry exam. Option 2: Alternatively, consider reducing the number of hours of this initial training course to be proportionally adapted to fulfil its policy objectives.</p> <p>For the continuous training course: Consider reducing the number of hours of the continuous training course to be proportionally adapted to fulfil its policy objectives.</p>
85	Ordinance 277-A/99 (modified by 134/2010) "Taxi characteristics and specifications"	Art. 1 (1)	Taxis	1. Taxi cars must be passenger vans (i.e., not convertible cars) and need to have at least four doors. 5. Taxi cars should be painted in beige-ivory or sea-green and black, in the latter case the first of these colours corresponding to the upper half of the vehicle and the second to the lower half.	No official recital. Our understanding, based on stakeholders' opinions, is that both provisions relate to safety, comfort and logistic issues.	<p>These prohibitions correspond to entry barriers since they limit the type of vehicles and colours that can be licensed. The imposition of four doors excludes passenger cars with two seats and also motorcycles. These types of vehicles could be a mechanism to better match supply and demand. As an example, French legislation already allows motorcycles to perform taxi services (www.service-public.fr/professionnels-entreprises/vosdroits/F32753). The suggested colours for the taxi car impose an additional cost on taxi car owners to paint them and do not allow the differentiation of taxis through the look of the car. Note that all taxi cars, independent of their colour, must have, on the top of the car, a light display identifying the car as a "TAXI" (https://fr.wikipedia.org/wiki/Taxis_en_France).</p>	<p>Recommendation 1: Access the possibility of including other types of vehicles, namely of three-door vehicles or moto-taxis.</p> <p>Recommendation 2: Abolish the imposition of the set of colours demanded for the taxi car.</p>

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86	Ordinance 334/2000 "Rules regarding professional and financial capacity for taxis"	Art. 2	Taxis	Professional capacity is confirmed by a certificate issued by the Directorate-General for Land Transport (currently, the IMT) to candidates who show that they are in one of the following situations: (a) examination approval on the subjects listed in Annex I; (b) professional experience of at least five years in the management of a road transport company, proven curricularly.	No official recital. Based on stakeholders' opinions, our understanding is that it aims to ensure that the operator has the necessary professional capacity to operate.	This provision is no longer in force since Art. 4 of Decree-Law 251/98, as amended by Law 5/2013, eliminated the need for a professional capacity. Hence, it is our understanding that it is tacitly revoked, creating legal uncertainty.	Expressly revoke this provision. It is our understanding that this provision is no longer in force since Art. 4 of Decree-Law 251/98, as amended by Law 5/2013, eliminated the need for a professional capacity.
87	Ordinance 334/2000 "Rules regarding professional and financial capacity for taxis"	Art. 6 (2)	Taxis	During the exercise of the activity, the requirement of financial capacity, namely for the renewal of the licence, is fulfilled provided that the capital and the reserves of the company are equivalent to at least EUR 1 000 for each licensed taxi.	No official recital. According to our understanding, based on information from a public institute, the amount requested in capital and reserves equivalent to at least EUR 1 000 for each licensed taxi aims to guarantee the financial stability of the operator.	This provision increases the costs of entry into the market since it imposes a requirement of financial capacity equivalent to capital and reserves of at least EUR 1 000 for each licensed taxi, to be demonstrated at least upon the renewal of the licence. This cost of entry could impede other potential operators from entering the market, hence, the market would lose its diversity of operators and eventually its quality of suppliers.	We recommend abolishing the financial capacity requirement equivalent to at least EUR 1 000 for each licensed taxi.
88	Ordinance 251-A/2015 "Establishes the terms of initial training and continuing training, the organisation and prior communication of training actions, trainee assessment characteristics and procedures, and the specific certification requirements of taxi driver training entities"	Art. 2 (9)	Taxis	Each training session for taxi drivers is limited to 30 trainees, and no training activity is allowed on Sundays or holidays.	No official recital. According to our understanding, based on an opinion of a public institute, the aim of this provision is twofold. First, it aims to ensure that workers who need this training are not obliged by their employer to attend the training on Sundays and holidays (i.e., it corresponds to the social protection norm) and, at the same time, it aims to guarantee that these activities are effectively inspected by the competent authorities which, due to the lack of human resources, it might not be possible to do on Sundays/holidays. Second, the limit of 30 trainees aims to ensure minimum levels of efficacy and attention within a small room during the training.	First, the 30 trainee limit per training room seems not to be adequate, necessary or proportional, as the classes are composed of adults/professionals. Additionally, if online distance courses were to be allowed for the theoretical part, physical installations would not be required for training. Second, the scheduled limitations (i.e., holidays and Sundays) correspond to entry barriers since they limit the match process between demand and supply. They also impose higher operational costs, leading to higher prices, and not proportionally leading to a better quality of services. The policy objectives argued do not seem to serve consumer interests, as does not the labour protection argument or the lack of possibility of inspection of these activities argument by the competent authorities. Note that: a) a substantial part of services (restaurants, shopping malls, etc.) can operate on holidays and Sundays; and international comparison states that Sunday clauses are to be fully liberalised (see OECD Competition Assessment Review – Greece, 2013, Retail Sector); and b) the lack of resources to monitor these activities should be weighed in light of the freedom to offer more services to consumers, especially since other inspection entities (e.g. police, ASAE) perform their duties on these days.	Recommendation 1: Abolish the limitations imposed on holidays and Sundays. Recommendation 2: Abolish the maximum number of students per classroom.

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89	Ordinance 251-A/2015 "Establishes the terms of initial training and continuing training, the organisation and prior communication of training actions, trainee assessment characteristics and procedures, and the specific certification requirements of taxi driver training entities"	Art. 3 (1)	Taxis	The initial training course, with a minimum duration of 125 hours, includes a theoretical component and a practical component.	No official recital. Based on stakeholders' opinions, our understanding is that it aims to check whether the driver has the capacity to provide a good service, namely in terms of road safety, but also in terms of courtesy, helping disabled people, and speaking English.	The need to attend initial training, within a duly authorised training institute, corresponds to a barrier to entry which can limit the number of suppliers and increase entry costs for potential entrants into the market having to pay for this training. Furthermore, the 125-hour duration might disincentivise potential candidates from enter into the activity as its thematic categories/disciplines might not be proportional to the activity in question which is mainly driving passengers from point A to point B in a safe and correct way. Benchmarking with other EU Member States confirms that seven Member States impose an initial training course (Portugal, Estonia, Hungary, Croatia, Denmark, Finland and Malta) and that at least 10 Member States impose only a mandatory exam (Austria, Czech Republic, Estonia, France, Hungary, Ireland, United Kingdom, Estonia and Slovakia) (see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085). For example, in Ireland, the training course is not mandatory and the potential candidate can instead read the official manual and study the local map to apply for the entry test. Hence, Portugal imposes not only a mandatory training course but also an entry exam.	Option 1: Consider abolishing the need for mandatory initial training, imposing only a mandatory entry exam. Option 2: Alternatively, reduce the number of hours of this initial training course to be proportionally adapted to fulfil its policy objectives.
90	Ordinance 251-A/2015 "Establishes the terms of initial training and continuing training, the organisation and prior communication of training actions, trainee assessment characteristics and procedures, and the specific certification requirements of taxi driver training entities"	Art. 4 (1)	Taxis	The ongoing training course, with a minimum duration of 25 hours, aims to update fundamental knowledge for the taxi driving profession.	No official recital. Based on stakeholders' opinion, our understanding is that it aims to provide updated information and training not covered in the initial training of 125 hours, due to certain technological innovations or changes in city maps/routes.	The need to attend a continuous training course, within a duly authorised training institute corresponds to a cost which can limit the number of suppliers who must pay for this training, which is only valid for five years. Also, the 25-hour training after an initial training of 125 hours increases the costs to operators and, therefore, may limit the number of operators in the market or be passed on to consumers, with a limitation of its welfare. Moreover, the 25-hour duration might not be proportional to the activity in question which is mainly driving passengers from point A to point B in a safe and correct way (e.g., the current draft-law for analogous transportation, in a non-characterised vehicle through an electronic platform, only imposes 8 hours for the duration of the ongoing training).	Consider reducing the number of hours of this continuous training course to be proportionally adapted to fulfil its policy objectives.

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91	Ordinance 251-A/2015 "Establishes the terms of initial training and continuing training, the organisation and prior communication of training actions, trainee assessment characteristics and procedures, and the specific certification requirements of taxi driver training entities"	Art. 9 (1)	Taxis	Training entities wishing to be certified as taxi driver trainers shall have, as regards the structure and internal organisation, theoretical training rooms with a minimum area of 25 m ² , and a maximum capacity established at the rate of 1.5 m ² per trainee.	No official recital. According to our understanding, based on information from a public institute, it relates to safety and comfort issues, namely ensuring that there are minimum conditions for teaching.	This provision establishes minimum requirements and, hence, is restrictive and limits entry and freedom of establishment. According to a stakeholder, it also corresponds to an operational cost since it limits the adjustment between supply and demand. For instance, it imposes that a classroom needs to have 25 m ² minimum size and a rate of 1.5 m ² per trainee. If an operator only has 5 students, it does not need a room of 25 m ² . This increases the costs of small operators and even prevents entrepreneurs from starting a business. Also, if online distance courses were allowed for the theoretical exam, physical installation would not be required.	Abolish the minimum requirement of 25 m ² per classroom.
92	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 7 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting time basis or based on a contract. If based on a contract it must be draft under a written agreement, for a period of not less than 30 days, and must include the respective term, the identification of the parties and the agreed price.	No official recital. Based on a stakeholder's opinion, our understanding is that this provision aims to provide the possibility for operators to offer customers a different price regime whenever the service is provided on a long-term basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices from those established under the price structure of the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and creates an administrative burden not taking into account modern technologies where this contract between an operator and a client could be made via other technological tools, as by the internet (e.g., email) or via a mobile application.	Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking). Recommendation 2: Consider if 30 days can be reduced to promote competition. Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.
93	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 8 (1)	Taxis	In the Lisbon municipality area, taxis can be parked in any of the places reserved for the purpose, up to the limit of the places demarcated, and can also take passengers when they circulate on the public highway with the indication of free parking, except if the nearest parking place is less than 50 m away, provided that the parked vehicle is visible.	No official recital. Based on stakeholders' opinions, our understanding is that the provision enforces the system of reserved parking for taxis, not only for organisation of traffic purposes, but also to guarantee a place where customers may expect to find a taxi for their transportation needs.	This provision limits the incentives to innovate and to provide a better service since it splits the taxi services between the ones parked in any of the places reserved for this purpose, and the ones that can take passengers when they circulate on a public highway indicating that they are free. Furthermore, the limitation of 50 metres further limits consumer welfare: first, it limits consumers' choice since in some situations a client may need to walk specifically to a taxi rank; and also, this distance is not identical in other parishes within a same municipality (in the case of outside the Lisbon area, this restriction is of 100 m). However, given the fact that taxis can take passengers when they circulate on public highways with the indication that they are free, reduces the harm of the provision, allowing it to be considered proportional to the policy objectives.	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
94	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 8 (2)	Taxis	The choice of a taxi within a parking taxi rank is made according to the order of arrival (i.e. the order in which taxis are parked).	No official recital. Our understanding, taking into account the stakeholders consulted, is that this provision aims to ensure public order and to settle conflicts among taxi drivers (i.e., it is a rule of social and moral order).	This provision limits the incentives to innovate and to provide a better service since it does not reward taxis with greater cleanliness, better appearance or type of vehicle. Indeed, given the fact that there is no age limit for taxi cars (due to a regulatory gap), a taxi car can perform its activity over more than 20/30 years, without air conditioning, and even with visible dents, as long it passes its periodic technical inspection, in prejudice for consumer choice over quality aspects of the activity performed. Therefore, it also limits consumer choice. Benchmarking allows us to affirm that, for example, in the municipality of Paris, clients can take whatever taxi they wish (see site de l'Office du Tourisme et des Congrès: www.parisinfo.com/paris-pratique/infos/questions-frequentes2).	Abolish this provision imposing that consumers must choose a taxi within a parking taxi rank according to the order of arrival of the taxi car.
95	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 9 (2)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/revised/appraised with a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi car in municipality A cannot take passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessarily mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099") shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quantocusta). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers. Geographical restrictions: Due to the quota regime restrictions at the municipal	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

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						level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].	
96	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 13 (2)	Taxis	The call for public tender will be advertised simultaneously with publication in a newspaper with a national circulation or local or regional circulation, as well as by a public notice to be published in the municipal bulletin and to be displayed in the standard places.	No official recital. Based on stakeholders' opinions, our understanding is it aims to give publicity to the public tender within the municipality concerned.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at the municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations to Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, the need to advertise the public tender.
97	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 19 (1) (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: first, location of the registered office in the municipality or, in the case of natural persons (e.g., employees), with residence in the municipality.	No official recital. According to our understanding, based on a stakeholder's opinion, the preferred criterion for the allocation of quotas within the municipality aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at the municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations to Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
98	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 19 (1) (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: third, the number of years of activity in the sector.	No official recital. According to our understanding, based on a stakeholder's opinion, the preferred criterion for the allocation of quotas within the municipality aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at the municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations to Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

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99	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 19 (1) (d)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: fourth, the number of years of the registered office in the municipality or residence in it.	No official recital. According to our understanding, based on a stakeholder's opinion, the preferred criterion for the allocation of quotas within the municipality aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at the municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations to Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
100	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Lisbon" (Bulletin 463/2003)	Art. 30 (4)	Taxis	The transport of luggage and animals may give rise to the payment of supplements, in accordance with the price structure defined through a price convention regime between the Directorate-General for Economic Activities (DGAE) and the representative associations of the sector, with contributions from the IMT. The current price convention regime in place is from 2012.	No official recital. According to our understanding, it aims to ensure that the transportation of luggage and animals gives rise to a fair payment for this extra service.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at the municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	Abolish the possibility of charging consumers a price supplement for the transport of luggage and animals.
101	Order from the municipality of Lisbon, DRE 160, II, 14/07/1992 "Sets a new maximum number (quota) of light passenger vehicles that can be available for the exercise of the taxi activity"	ALL	Taxis	In 1992, the City Council of Lisbon published its decision to fix the number of quotas for taxi vehicles: 3 550 licences for general use (prior to that, there were 3 400) and 50 licences for special purposes (designed for people with reduced mobility). This quotas are still in force in 2018. Along with the quantitative restrictions on the number of licensed taxis operating within each municipality, there is also a geographical restriction imposed on licensed taxis, since a taxi car in municipality A cannot take passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessary mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099")	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

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					subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quanto-custa). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers.	
						Geographical restrictions: Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].	
102	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 7 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting-time basis or based on a contract. If based on a contract it must be drafted as a written agreement, for a period term of not less than 30 days, and must include the respective term, the identification of the parties and the agreed price.	No official recital. Based on a stakeholder's opinion, our understanding is that this provision aims to provide the possibility for operators to offer customers a different price regime whenever the service is provided on a long-term basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow charging of different prices than the ones established under the price structure established in the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.	Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking). Recommendation 2: Consider if 30 days can be reduced to promote competition. Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
103	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 9 (2)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/revisted/appraised with a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi car in municipality A cannot take passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessary mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099") shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quanto-custa). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers. Geographical restrictions: Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
104	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 13 (2)	Taxis	The call for public tender will be advertised simultaneously with publication in a local or regional newspaper, as well as by the display of a public notice in standard places.	No official recital. Based on stakeholders' opinions, our understanding is it aims to give publicity to the public tender within the municipality concerned.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at Municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, the need to advertise the public tender.
105	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 19 (1) (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: first, location of the registered office in the parish council.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
106	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 19 (1) (b)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: second, location of the registered office in a parish council within the municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate to abolish the quota regime and geographical restrictions defined at Municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference right criterion.
107	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 19 (1) (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: third, number of permanent jobs allocated to each vehicle for the two years prior to the application for public tender.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate to abolish the quota regime and geographical restrictions defined at Municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference right criterion.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
108	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 19 (1) (d)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: fourth, location of the registered office or domicile in a contiguous municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents. However, allowing for the application of the preferred criterion to a broader area of influence up to the immediate contiguous municipality.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
109	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Mafra (2009)"	Art. 19 (1) (e)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: fifth, number of years of the registered office in the parish council.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate to abolish the quota regime and geographical restrictions defined at Municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference right criterion.
110	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 7 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting-time basis or based on a contract. If based on a contract it must be draft under a written agreement, for a period of not less than 30 days, and must include the respective terms, the identification of the parties and the agreed price.	No official recital. Based on a stakeholders' opinion, our understanding is that this provision aims to enable the possibility for operators to offer to customers a different price regime whenever the service is provided on a long term basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring the respect, by the taxi operators, on the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow the charging of different prices than those established in the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly sets the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.	Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking). Recommendation 2: Consider if 30 days can be reduced to promote competition. Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
111	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 9 (1) (2)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/ revised/ appraised with a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi car in municipality A cannot take passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessary mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099") shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quantocusta). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers. Geographical restrictions: Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
112	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 13 (2)	Taxis	The call for public tender will be advertised simultaneously with publication in two local or regional newspapers, by a public notice to be displayed in the standard places, and on the web page of the municipality. The municipality can also decide on additional ways to advertise.	No official recital. Based on stakeholders' opinions, our understanding is that it aims to give publicity to the public tender within the municipality concerned.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, the need to advertise the public tender.
113	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 17 (d)	Taxis	An applicant needs to submit a document stating the number of permanent jobs assigned to the activity and with the category of driver, except in the case of individual competitors.	No official recital. Our understanding is that it relates to the need to confirm information in ordering applicants for the attribution of quotas.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
114	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 17 (e)	Taxis	In the case of individuals, an applicant needs to submit a document proving the place of residence, such as a copy of a voter registration card.	No official recital. Our understanding is that it relates to the need to confirm information in ordering applicants for the attribution of quotas.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
115	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 19 (1) (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: first, location of the registered office in the parish council.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
116	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 19 (1) (b)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: second, location of the registered office in a parish council within the municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
117	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 19 (1) (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: third, number of years of the registered office in the parish council.	No official recital. According to our understanding, based on a Public stakeholders' opinion, the preference criterion for the allocation of the quotas, within the municipality quotas contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
118	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 19 (1) (e)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: fifth, number of years of activity in the sector.	No official recital. According to our understanding, based on a Public stakeholders' opinion, the preference criterion for the allocation of the quotas, within the municipality quotas contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
119	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 26 (4) (a)	Taxis	In the Municipality of Sintra, taxis can be parked in any of the places reserved for this purpose, up to the limit of the places demarcated, and can also take passengers when they circulate on the public highway with the indication that they are free, except when it is less than 100 m from a marked rank and provided that the parked vehicle is visible.	No official recital. Based on stakeholders' opinions, our understanding is that the provision enforces the system of reserved parking for taxis, not only for organisation of traffic, but also to guarantee a place where customers may expect to find a taxi for their transportation needs.	This provision limits the incentives to innovate and to provide a better service since it splits the taxi services between those parked in any of the places reserved for this purpose, and the ones who can take passengers when they circulate on the public highway indicating that they are free. Furthermore, the limitation of 100 metres has additional limitations on consumer welfare: first, it limits consumer choice since in some situations a client may need to walk specifically to a taxi rank; and also, on the fact that this distance is not identical in other parishes within a same municipally (in the case of the Lisbon area this restriction is only 50 m). However, given the fact that taxis can take passengers when they circulate on the public highway and indicating that they are free, this reduces the harm of the provision, allowing it to be considered proportional to the policy objectives.	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
120	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Sintra (2014)"	Art. 28/4	Taxis	The transport of luggage and animals may give rise to the payment of supplements, in accordance with price structure defined through a price convention regime between the Directorate-General for Economic Activities (DGAE) and the representative associations of the sector, with contributions from the IMT. The current price convention regime in place is from 2012.	No official recital. According to our understanding, it aims to ensure that the transportation of luggage and animals gives rise to a fair payment for this extra service.	The price structure imposing a payment for the transport of luggage and/or animals in addition to the price charged to the customer may be considered as neither necessary nor adequate for the service provided, and as such, not proportional. Moreover, first, it does not allow a taxi operator to charge different prices depending on the size or weight of the luggage. Second, it is not clear what the rationale behind the payment of such a service is since it seems not to be an extra burden if the owner is transported at the same time. Finally, in other public passenger transport services, as in regular bus or metro services, customers are allowed to transport a pet as well their luggage without paying any extra amount.	Abolish the possibility of charging consumers a price supplement for the transport of luggage and animals.
121	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Loures (2011)"	Art. 7 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting-time basis or based on a contract. If based on a contract it must be drafted as a written agreement for a period of not less than 30 days, and must include the respective terms, the identification of the parties and the agreed price.	No official recital. Based on a stakeholder's opinion, our understanding is that this provision aims to provide operators with the possibility of offering customers a different price regime whenever the service is provided on a long-term basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices than the ones established under the price structure established in the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.	<p>Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking).</p> <p>Recommendation 2: Consider if 30 days can be reduced to promote competition.</p> <p>Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.</p>
122	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Loures (2011)"	Art. 8 (1)	Taxis	In the Municipality of Loures, taxis can be parked in any of the places reserved for this purpose, up to the limit of the places demarcated, and can also take passengers when they circulate on the public highway with the indication of free, except less than 100 m from a marked rank and provided that the parked vehicle is visible.	No official recital. Based on stakeholders' opinions, our understanding is that the provision enforces the system of reserved parking for taxis, not only for organisation of traffic, but also to guarantee a place where customers may expect to find a taxi for their transportation needs.	This provision limits the incentives to innovate and to provide a better service since it splits the taxi services between those parked in any of the places reserved for its purpose, and the ones who can take passengers when they circulate on the public highway indicating they are free. Furthermore, the limitation of 100 metres has additional limitations on consumer welfare: first, it limits consumer choice since in some situations a client may need to walk specifically to a taxi rank; and also, on the fact that this distance is not identical in other parishes within a same municipality (in the case of the Lisbon area this restriction is only of 50 m). However, given the fact that taxis can take passengers when they circulate on the public highway with the indication that they are free, this reduces the harm of the provision, allowing it to be considered proportional to the policy objectives.	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
123	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Loures (2011)"	Art. 9 (2)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/revised/appraised with a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi in municipality A cannot pick up passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessary mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099") shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quantocusta). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers. Geographical restrictions: Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
124	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Loures (2011)"	Art. 13 (2)	Taxis	The call for public tender should be advertised simultaneously with publication in local or regional newspapers, as well as by a public notice to be displayed in the standard places.	No official recital. Based on stakeholders' opinions, our understanding is it aims to give publicity to the public tender within the municipality concerned.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
125	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Loures (2011)"	Art. 19 (1) (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: first, location of the registered office in the municipality, or living in the municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
126	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Loures (2011)"	Art. 19 (1) (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: third, location of the registered office or domicile in a contiguous municipality.	No official recital. According to our understanding, based on a public stakeholders' opinion, the preference criterion for the allocation of the quotas, within the municipality quotas contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents. However, allowing for the application of the preference criterion to a broader influence area up to the immediate contiguous municipality.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
127	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Loures (2011)"	Art. 19 (1) (d)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: fourth, number of years of activity in the sector.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
128	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 5 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting-time basis or based on a contract. If based on a contract it must be drafted as a written agreement, for a period of not less than 30 days, and must include the respective terms, the identification of the parties and the agreed price.	No official recital. Based on a stakeholders' opinion, our understanding is that this provision aims to operators with the possibility of offering customers a different price regime whenever the service is provided on a long-term basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices than the ones established under the price structure established in the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.	<p>Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking).</p> <p>Recommendation 2: Consider if 30 days can be reduced to promote competition.</p> <p>Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.</p>
129	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 6 (5)	Taxis	Taxis in the free and conditioned free parking regime can only take passengers on public roads when they are within the geographical limits of the parish where they are licensed, except by phone call.	No official recital. To the best of our knowledge, to ensure that taxis can only operate within their geographical limits.	This provision limits the operations of taxi cars since they cannot take passengers outside their geographical licensed area. This can lead to a shortage of taxis and longer waiting times. Indeed, due to the existence of the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member-countries do not have any sort of geographical restrictions, as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].	Abolish the geographical restrictions.
130	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 14 (2)	Taxis	The call for public tender will be advertised simultaneously with publication in national, local or regional newspapers, as well as by a public notice to be displayed in the standard places.	No official recital. Based on stakeholders' opinions, our understanding is it aims to give publicity to the public tender within the municipality concerned.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	<p>In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level.</p> <p>Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, the need to advertise the public tender.</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
131	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 20 (1) (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: first, location of the registered office in the parish council.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
132	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 20 (1) (b)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: second, location of the registered office in a parish council within the municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
133	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 20 (1) (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: third, number of permanent jobs allocated to each vehicle for the two years prior to the application for the public tender.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
134	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 20 (1) (d)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: fourth, location of the registered office or domicile in a contiguous municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents. However, allowing for the application of the preferred criterion to a broader influence area up to the immediate contiguous municipality.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
135	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Vila Franca de Xira (2001)"	Art. 20 (1) (e)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: fifth, number of years working in the sector.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
136	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Oeiras (2005)"	Art. 12 (1)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/revised/appraised with a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi car in municipality A cannot take passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessarily mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099") shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quantocusta). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers.	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

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						<p>Geographical restrictions: Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].</p>	
137	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Oeiras (2005)"	Art. 13 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting time basis or based on a contract. If based on a contract it must be drafted under a written agreement, for a period term of not less than 30 days, and must include the respective terms, the identification of the parties and the agreed price.	No official recital. Based on stakeholders' opinion, our understanding is that this provision aims to provide operators with the possibility of offering customers a different price regime whenever the service is provided on a long term-basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.	<p>This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices than the ones established under the price structure established in the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.</p>	<p>Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking).</p> <p>Recommendation 2: Consider if 30 days can be reduced to promote competition.</p> <p>Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.</p>
138	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Oeiras (2005)"	Art. 18 (2)	Taxis	The call for public tender will be advertised simultaneously with a publication in a newspaper of national or local or regional circulation, as well as by a public notice to be displayed in the standard places.	No official recital. Based on stakeholders' opinion, our understanding is it aims to give publicity to the public tender within the respective municipality.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
139	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Oeiras (2005)"	Art. 28 (1) (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: 1st, location of the registered office in the municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
140	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Oeiras (2005)"	Art. 28 (1) (b)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: 2nd, number of years working in the sector.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at Municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
141	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Oeiras (2005)"	Art. 28 (1) (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: 3rd, number of permanent jobs allocated to each vehicle for the two years prior to the application to the public tender.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
142	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality bulletin)"	Art. 395 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting time basis or based on a contract. If based on a contract it must be drafted under a written agreement, for a period term of not less than 30 days, and must include the respective term, the identification of the parties and the agreed price.	No official recital. Based on a stakeholders' opinion, our understanding is that this provision aims to provide operators with the possibility of offering customers a different price regime whenever the service is provided on a long term-basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices than the ones established under the price structure established in the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.	Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking). Recommendation 2: Consider if 30 days can be reduced to promote competition. Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.
143	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality Bulletin)"	Art. 398 (1) (2)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/revised/appraised with	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aims to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em TÁxi. A realidade atual e a	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
				a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi car in municipality A cannot pick up passengers in municipality B.	special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	evolução na última década), this does not necessary mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099) shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quantocusta). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers. Geographical restrictions: Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].	
144	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality Bulletin)"	Art. 402 (1)	Taxis	The call for public tender will be advertised simultaneously with publication in a regional or local newspaper, as well as by a public notice to be published in the municipal bulletin and to be displayed in the standard places.	No official recital. Based on stakeholders' opinion, our understanding is it aims to give publicity to the public tender within the municipality concerned.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at Municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

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145	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality Bulletin)"	Art. 405 (1) (d)	Taxis	An applicant needs to submit a document stating the number of permanent jobs assigned to the activity having the category of driver, except in the case of individual competitors.	No official recital. Our understanding is that it relates to the need to confirm information for ordering applicants for the attribution of quotas.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
146	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality Bulletin)"	Art. 405 (1) (e)	Taxis	Proof of residence, in case of individual candidates.	No official recital. Our understanding is that it relates to the need to confirm information for ordering applicants for the attribution of quotas.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
147	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality Bulletin)"	Art. 406 (1) (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: 1st, location of the registered office or residence, if the applicant is an individual, in the municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
148	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality Bulletin)"	Art. 406 (1) (b)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: 2nd, number of years of the registered office, or of residence, if the applicant is an individual, the municipality.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
149	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Amadora (2014, Municipality Bulletin)"	Art. 406 (1) (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: third, number of years working in the sector.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
150	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Cascais (2013, Code of Regulations of the Cascais Municipality)"	Art. 1307 (1) (2)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/revised/appraised with a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi car in municipality A cannot pick up passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aim to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessarily mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested interests in taxis in Ireland: a tale of two statutory instruments", MPRA 74099) shows that abolishing quotas can have a substantial positive impact on consumer welfare [see ""Study on passenger transport by taxi, hire car with driver and ridesharing in the EU"" (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quantocusta). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

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						<p>proves the inefficiency of the quota regime and the corresponding welfare loss to consumers.</p> <p>Geographical restrictions:</p> <p>Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire").</p> <p>Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see "Study on passenger transport by taxi, hire car with driver and ridesharing in the EU" (MOVE/D3/SER/2015-564/S12.715085)].</p>	
151	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Cascais (2013, Code of Regulations of the Cascais Municipality)"	Art. 1321	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account, without specification of any order of the classification of the criterion: (a) their economic and social profitability; (b) the location of their headquarters; (c) the number of years performing in the market; (d) the fact that they have not been granted a licence for the past five years.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
152	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Cascais (2013, Code of Regulations of the Cascais Municipality)"	Art. 1326 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting-time basis or based on a contract. If based on a contract it must be drafted as a written agreement, for a period of not less than 30 days, and must include the respective terms, the identification of the parties and the agreed price.	No official recital. Based on a stakeholders' opinion, our understanding is that this provision aims to enable the possibility for operators to offer to customers a different price regime whenever the service is provided on a long term basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring the respect, by the taxi operators, on the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices to those established under the price structure of the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.	<p>Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking).</p> <p>Recommendation 2: Consider if 30 days can be reduced to promote competition.</p> <p>Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
153	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Odivelas (2005, Municipality Bulletin)"	Art. 7 (c)	Taxis	Taxi services can be provided on a distance travelled and waiting-time basis or based on a contract. If based on a contract it must be drafted as a written agreement, for a period of not less than 30 days, and must include the respective terms, the identification of the parties and the agreed price.	No official recital. Based on stakeholders' opinions, our understanding is that this provision aims to provide operators with the possibility of offering customers a different price regime whenever the service is provided on a long term-basis, that is, for a period over 30 days. The written agreement would be foreseen to protect customers, ensuring respect, by the taxi operators, of the agreed terms.	This provision appears to aim to increase competition amongst operators since it seems to allow the practice of different prices to those established under the price structure of the Price Convention Regime (2012), adopted under the terms settled in Decree-Law 297/92, Art. 1 and Art. 2(1) and in Decree-Law 251/98, Art. 20. However, first, this provision does not expressly set the possibility for taxi operators to implement a fully liberalised free price agreement between the operator and the client. Second, it limits the range of this price system since it can only be applied to written contracts longer than 30 days. Third, the need for a written contract corresponds to an extra cost and an administrative burden not taking into account modern technologies whereas this contract between an operator and a client could be made via other technological tools, such as the internet (e.g., email) or via a mobile application.	Recommendation 1: Abolish the need for a written agreement and allow for the possibility of using the most modern means of technology to set the agreement (e.g., by phone booking; internet booking). Recommendation 2: Consider if 30 days can be reduced to promote competition. Recommendation 3: Amend the provision to expressly set the possibility of free price agreement between the operator and the client.
154	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Odivelas (2005, Municipality Bulletin)"	Art. 8 (5)	Taxis	In the Municipality of Odivelas, taxis can be parked in any of the places reserved for this purpose, up to the limit of the places demarcated, and can also take passengers when they circulate on the public highway with the indication that they are free, except less than 100 metres from a taxi market square and provided that the parked vehicle is visible.	No official recital. Based on stakeholders' opinion, our understanding is that the provision enforces the system of reserved parking for taxis, not only for organisation of traffic, but also to guarantee a place where customers may expect to find a taxi for their transportation needs.	This provision limits the incentives to innovate and to provide a better service since it splits taxi services between those parked in any of the places reserved for this purpose, and those who can take passengers when they circulate on the public highway with the indication that they are free. Furthermore, the limitation of 100 metres has additional limitations for consumer welfare: first, it limits consumer choice since in some situations a client may need to walk specifically to a taxi rank; and also, the fact that this distance is not identical in other parishes within a same municipality (in the case of the Lisbon area this restriction is only of 50 m). However, given the fact that the taxis can take passengers when they circulate on the public highway with the indication that they are free, this reduces the harm of the provision, allowing it to be considered proportional to the policy objectives.	No recommendation.
155	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Odivelas (2005, Municipality Bulletin)"	Art. 9 (1) (2)	Taxis	The quota (i.e., the number of taxi licences available) is fixed by the city council of the municipality. The contingencies are established by parish, for a set of parishes or for the parishes that constitute the municipality [see Law 18/97, Art. 2 (1) (a); and Decree-Law 251/98, Art. 13 (1) (2)]. The quotas are updated/revised/appraised with a frequency of not less than two years by the city council, upon prior hearing of the entities representing the sector. Along with this quota regime, there is also a geographical restriction since a taxi car in municipality A cannot pick up passengers in municipality B.	No official recital. Based on stakeholders' opinions, our understanding is that the quantitative restrictions imposed, at the municipal level, aims to ensure that the supply is adjusted to the demand, and periodically checked, with special attention to the geographical distribution of the supply. This would aim to guarantee that less populated or remote areas or clients with special needs (e.g. elderly and disabled people), would still have access to taxi services. The model of municipal contingencies was also originally adopted on grounds of social/labour policy, historically, in a time when there was a concern of the legislator to	Quotas: This quantitative restriction limits the number of taxis available within each municipality and the normal adjustment between demand and supply. This restriction can also compromise the overall quality of the service because of longer waiting times, one of the factors that consumers most value, and reduced safety and comfort conditions. The welfare loss related to the imposition of quotas depends on the difference between the number of taxis that would be available in a free entry market equilibrium and those available under the current framework. If positive, the restriction is binding and the larger the gap, the greater the welfare loss. Even if in 2016 licences were not attributed in almost every municipality in Portugal (in total 1 081, corresponding to 7% of the total seats (see AMT (2016), Relatório Estatístico – Serviços de Transporte em táxi. A realidade atual e a evolução na última década), this does not necessarily mean that quotas are not binding. For example, the Municipality of Lisbon decided not to allocate the remaining licences (103) for several reasons, therefore limiting the number of taxis available below the defined number (see AdC [2016], "Report on Competition and Regulation of Public Passenger Transport Services by Car Hire"; and see City Council of Lisbon website, Order, DRE 160, II, 14/07/1992). Additionally, almost half (12) of the EU Member States do not have quantitative restrictions; the Irish example (see Gorecki, P., 2016, "Competition and vested	Quotas: Abolish the quota regime restrictions defined at municipal level. Geographical restrictions: Abolish the geographical restrictions at municipal level.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
					ensure that the owner of the licence had a means of subsistence. Reasons for environmental protection have also been raised, given that market liberalisation could lead to a further increase in car traffic, and also for reasons of public spatial planning by the state authorities.	interests in taxis in Ireland: a tale of two statutory instruments”, MPRA 74099”) shows that abolishing quotas can have a substantial positive impact on consumer welfare [see “Study on passenger transport by taxi, hire car with driver and ridesharing in the EU” (MOVE/D3/SER/2015-564/S12.715085)]. Finally, the existence of a secondary market, where these licences are charged up to EUR 150 000 in Lisbon, for example, denotes a possible consumer welfare loss (see AdC Report on Taxis, December 2016, p.14). . This allows even the circumvention of ordering criteria for the attribution of licences through a public tender procedure to obtain a licence at the municipal level. Note that at the municipal level, through a public tender procedure, it costs less than EUR 500 (www.cm-lisboa.pt/servicos/pedidos/mobilidade-e-transportes/taxis/quanto-custa). The difference in monetary value between obtaining a licence through the public tender procedure and obtaining one in the secondary market somehow proves the inefficiency of the quota regime and the corresponding welfare loss to consumers. Geographical restrictions: Due to the quota regime restrictions at the municipal level, a taxi can only take passengers with their origin in its municipality, which leads to a higher price charged to consumers. According to the 2012 Price Convention Regime (see tariffs 3 and 5), when a passenger is taken from one municipality to another, the price scheme changes due to the fact that, when the taxi returns to its own municipality, it must return empty. Hence, the return costs will be charged to the initial passenger. This type of restriction can significantly hamper competition (see AdC (2016), “Report on Competition and Regulation of Public Passenger Transport Services by Car Hire”). Finally, several (5) EU Member States have no geographical restrictions, such as the Netherlands and Sweden; [see “Study on passenger transport by taxi, hire car with driver and ridesharing in the EU” (MOVE/D3/SER/2015-564/S12.715085)].	
156	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Odivelas (2005, Municipality Bulletin)"	Art. 13 (1)	Taxis	The call for public tender will be advertised simultaneously with publication in national, regional or local newspapers, as well as by a public notice to be displayed in the standard places. The entities representing the sector should also be informed.	No official recital. Our understanding is that it relates to the need to confirm information for ordering applicants for the attribution of quotas.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at Municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2) , we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
157	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Odivelas (2005, Municipality Bulletin)"	Art. 17 (2) (b)	Taxis	In the case of individual candidates, applicants must submit a document with proof of residence.	No official recital. Our understanding is that it relates to the need to confirm information for ordering applicants for the attribution of quotas.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
158	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Odivelas (2005, Municipality Bulletin)"	Art. 19 (a)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: first, location of the registered office in the parish council.	No official recital. According to our understanding, based on stakeholders' opinions, the preferred criterion for the allocation of quotas, within the municipality quota contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
159	"Regulation of the exercise of the transport activity on light passenger vehicles (taxis) for the municipality of Odivelas (2005, Municipality Bulletin)"	Art. 19 (c)	Taxis	In the classification of competitors and in the allocation of licences, the following preference criteria should be taken into account in descending order: third, number of years of activity in the sector.	No official recital. According to our understanding, based on a Public stakeholders' opinion, the preference criterion for the allocation of the quotas, within the municipality quotas contingencies, aims to bring transparency into the procedure, and at the same time, aims to promote the local economy and residents.	In the context of our previous analysis of the harm to competition contained in Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate that the quota regime and geographical restrictions defined at Municipal level limit the number of taxis available within each municipality and the normal adjustment between demand and supply. Accordingly, the procedure to attribute the licences through a public tender is also harmful in the sense that it confirms the existence of a quota system, regardless of the publicising of notices of invitation to tender and the respective transparency of the ordering criteria to evaluate the results of the applications.	In the context of our previous recommendations for Law 18/97, Art. 2 (1) (a) and Decree-Law 251/98, Art. 13 (1) (2), we reiterate abolishing the quota regime and geographical restrictions defined at municipal level. Accordingly, we also recommend abolishing the need to have a public tender to attribute a licence to enter the market and, therefore, this preference criterion.
160	Decree-Law 181/2012 (as modified by Decree-Law 207/2015) "Legal regime on the use of vehicles hired without drivers for the carriage of passengers by road"	Art. 4 (1) (c)	Car rental without a driver	To start operating, operators must have at least one fixed establishment open to the public for public service purposes.	According to the official recital, the minimum requirement of having a fixed establishment open to the public is in line with Decree-Law 92/2010 (as amended), which transposes the Services Directive 2006/123/CE. Further, according to an association representing the sector, there are two objectives, namely to ensure that: (a) clients have the opportunity to check whether the car is in good shape;	This corresponds to an entry barrier and having physical premises imposes an extra cost on operators. Although this provision already corresponds to an update of the previous legislation in terms of promoting competition (since the previous requirement was to have the principal office in Portugal), this requirement can still deter small and medium-size enterprises (SMEs) from entering the market. This could lead to fewer operators and, therefore, higher prices charged to consumers. Also, according to an association representing the sector, clients have been expressing openness to the use of the most modern technologies to do business; as such clients would be willing to have access to the service simply through email/app. Additionally, in some countries (e.g., Australia, see www.drivemycar.com.au/Home/HowItWorks), there are already security cameras installed in the place where the client goes to get the car (e.g., parking lot), which	Abolish the requirement for operators to have one fixed establishment open to the public to start operating. Study the possibility of making use of the most modern technologies to do business (amongst others, access to the service through email/app, parking lots with cameras and other technological tools).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
161	Decree-Law 181/2012 (as modified by Decree-Law 207/2015) "Legal regime on the use of vehicles hired without drivers for the carriage of passengers by road"	Art. 4 (2) (a) (b)	Car rental without a driver	To start operating, operators must have a minimum number of: (a) seven vehicles for the rental of passenger cars; and (b) three vehicles for the rental of motorcycles, tricycles and quadricycles.	According to the official recital, the reduction of a minimum requirement from 25 to 7 cars aims to promote competition and the entry of small and medium-sized companies. Furthermore, according to an association representing the sector, the minimum number of vehicles required (even 7 or 3) ensures that, in case of an accident, the operator has a replacement vehicle.	(b) there is a way clients can talk to the company in person, and not only on the phone/by email. ensures that there is a record of the conditions when the car leaves and enters the parking lot. This corresponds to an entry barrier since it imposes a specific minimum number of vehicles in order to start a business. Taking the average cost of a light car (EUR 25 000 based on stakeholders' information), this represents an initial investment of EUR 175 000. This level of initial investment can deter SMEs from entering the market. Additionally, this minimum number of vehicles does not guarantee a replacement car since the company can rent out the entire fleet at the same time.	Option 1: Abolish this provision imposing a minimum of seven vehicles for the rental of passenger cars and of three vehicles for the rental of motorcycles, tricycles and quadricycles. Option 2: Alternatively, consider lowering the minimum number of required vehicles to start operating.
162	Decree-Law 181/2012 (as modified by Decree-Law 207/2015) "Legal regime on the use of vehicles hired without drivers for the carriage of passengers by road"	Art. 6 (1) (c)	Car rental without a driver	The lifespan of vehicles for car rental activity is five years from the date of first registration, extendable up to seven years. The lifespan for vehicles with special characteristics will be defined in a deliberation from the IMT.	No official recital. According to an association representing the sector, this may be related to client protection in the sense that, on average, these cars perform 40 000 km per year, which means that after five years the car has 200 000 km, which might compromise its performance, requiring garage repairs which might affect its ability to continuing operating.	This provision corresponds to an entry barrier since it limits the number of vehicles available in the market, based only on the number of years they have, independently on their mileage or the fact that these vehicles have to pass the mandatory vehicle technical inspection, which means that they meet all the safety requirements for driving on public roads. This increases not only the initial level of investment in new (or almost new) cars, but also the prices charged to consumers, which can deter particularly SMEs from starting and continuing operating. Furthermore, it is important to take into account the following lifespan discrepancies in the national framework: there is no lifespan limit for taxi cars; there is no lifespan limit for buses for the transport of passengers by road; there is a 10-year average lifespan for truck fleets for the transport of freight by road for hire or reward (see Art. 14 (3) of Decree-Law 257/2007, as amended); for the rental of trucks without a driver the lifespan limit is five years extendable up to eight years (see Art. 14 (1) (2) (3) of Decree-Law 15/88, as amended). Finally, as far as we understand, there is no deliberation adopted by the IMT regarding the lifespan of vehicles with special conditions.	Recommendation 1: Regulate the provision and adopt the necessary secondary legislation regarding the lifespan for vehicles with special conditions. Recommendation 2: Consider revising the provision by studying and reassessing the policy objectives related to the setting of a given limit of age for the vehicles, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, choosing another criterion that better reflects the usage and depreciation of the vehicles (e.g. mileage).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
Transport of freight by road							
163	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 3 (1)	Transport of freight - access to the activity	The activity of road freight transport, for hire or reward, national or international, is subject to mandatory licensing, by the IMT when hauliers use vehicles weighing more than 2 500 kg.	The official recital states that it aims to establish the legal regime of access to the activity, aiming to improve general conditions for the provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of light transport vehicles (LTVs; from 2.5 t to 3.5 t) sector. Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	This provision imposes, at national level, a more stringent regime than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is above 3.5 t. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, impeding operators from other EU Member States from entering the national market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts from a mandatory licensing regime hauliers using solely vehicles that do not exceed 3.5 t. Although these EU Regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing on the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regimes, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.	Option 1: Abolish the mandatory licensing regime for operators using only vehicles between 2.5 t and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1(4)(a) and Art. 3(2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using only vehicles between 2.5 t and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and having an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity.
164	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 3 (2)	Transport of freight - access to the activity	The licence consists of a national licence (alvará) or a community licence, non-transferable, issued for a period not exceeding five years, and renewable for the same period, provided that the requirements for access to and exercise of the activity are maintained.	The official recital states that it aims to establish the legal regime of access to the activity, aiming to improve general conditions for the provision of services regarding road freight transport for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the sector, adapting the licensing regime for undertakings operating exclusively with light truck vehicles (LTVs), i.e., between 2.5 t and 3.5 t gross weight. The	Limiting the issuance/renewal of the licences for access to the activity of road freight transport, for hire or reward, national or international, for only up to five years, corresponds to an operational cost, which may deter entrepreneurs, especially SMEs, from entering the market, or from an increase in prices due to a pass-through effect. Operators have to pay EUR 250, every five years to the public institute for the renewal of their licences (see Ordinance 1165/2010, Annex, Section III, Subsection A, 2). The licensing regime is harmonised at EU level. Hence, this provision is in line with Regulation (CE) 1072/2009, although the national regime is more stringent: as far as the community licence is concerned, Regulation (CE) 1072/2009, Art. 4(2), states that it can be issued for renewable periods of up to 10 years. EU operators wishing to enter into the Portuguese national market would face national measures, with monitoring/inspections carried out, at least, every five years. If following this approach into the national regime, it should be possible to reduce costs, to reduce the administrative burden, and possibly extend the renewal of licences for up to 10 years, in line with other potential EU operators.	No recommendation with regard to the period for renewal of the licence, that is, a period not exceeding five years.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
165	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 6 (1) (2)	Transport of freight - access to the activity	The professional capacity requirement for access to the activity of road freight transport, for hire or reward, by vehicles of more than 2 500 kg must be filled by a person who, holding the certificate of professional capacity, has permanent and effective executive responsibilities/powers in the company. For this purpose the person must prove that they are registered in the social security system as the managerial board of the company.	There is no official recital. Based on stakeholders' opinions, our understanding is that this provision aims to ensure the quality of transport manager services, ensuring adequate management of transport operators. According to an association representing the sector, it should also be taken into consideration that if a transport manager works for several separate companies at the same time, they may not always be available to brief shareholders and drivers or to respond to clients' demands.	However, from the market interviews carried out to obtain stakeholders' opinions, the need to renew the licences, having to demonstrate the fulfilment of the licensing requirements, and paying an administrative fee at least every five years, is considered not to be burdensome or costly, but rather proportional and needed, and it is seen as a positive way to motivate operators not to operate illegally, with prejudice to compliance with the licensing criteria. This provision imposes, at national level, a more stringent regime than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, impeding operators from other EU Member States from entering the national Portuguese market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts from a mandatory licensing regime hauliers using solely vehicles that do not exceed 3.5 t. Although these EU regulations allow Member States to lower this limit of 3.5 t for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. This is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely this type of vehicle. It is also a disproportionate entry requirement towards operators also using vehicles with a higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese	Option 1: Abolish the mandatory licensing regime for operators using only vehicles between 2.5 t and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1(4)(a) and Art. 3(2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using only vehicles between 2.5 t and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and having an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity. In particular, reassess the need for imposing the licensing requirement to have a transport manager. If it is considered that there is a need to keep a transport manager, amend this provision, in line with Art. 4 (1) and Art. 4 (2) of Reg. (CE) 1071/2009, where transport managers, if acting as an external consultant, can cover up to four companies and up to 50 vehicles.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
						regime, which is more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than one operator, even if limited by a fleet of 50 vehicles (see Deliberation of IMT 1065/2012, paras. 4 and 6, which interpreters the provision as able to allow a transport manager to manage up to three companies with a cap to the fleet of 50 vehicles). Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially the small ones, which must bear the cost of hiring an independent transport manager, who is limited to providing services for a certain number of no more than three companies. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regimes, but ii) excluding them from some, but not all the licensing requirements. Requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.	
166	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 6 (3)	Transport of freight - access to the activity	The same person cannot insure the professional capacity requirement to more than one company, unless 50 % of equity of each of the companies managed belongs to the same shareholder.	There is no official recital. Based on stakeholders' opinion, our understanding is that this provision aims to ensure the quality of transport manager services, ensuring adequate management of transport operators. According to an association representing the sector it should also be taken into consideration that if a transport manager works for several separate undertakings at the same time, they may not always be available to brief shareholders and drivers or to respond to clients' demands.	This provision imposes, at national level, a more stringent regime than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfillment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, impeding operators from other EU Member States from entering the national Portuguese market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts from a mandatory licensing regime hauliers using solely vehicles that do not exceed 3.5 t. Although these EU regulations allow Member States to lower this limit of 3.5 t for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. This is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely this type of vehicle. It is also a disproportionate entry requirement towards operators also using vehicles	Option 1: Abolish the mandatory licensing regime for operators using only vehicles between 2.5 t and 3.5 t. This will be in line with EU Regulation 1071/2009, arts. 1 (4) (a) and 3 (2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using only vehicles between 2.5 t and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and having an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity. In particular, reassess the need for imposing the licensing requirement to have a transport manager. If it is considered that there is a need to keep a transport manager, amend this provision, in line with Art. 4 (1) and Art. 4 (2) of Reg. (CE) 1071/2009, where transport managers, if acting as an external consultant, can cover up to four companies and up to 50 vehicles.

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						with a higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, which is more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than one operator, even if limited by a fleet of 50 vehicles (see Deliberation of IMT 1065/2012, paras. 4 and 6, which interpreters the provision as able to allow a transport manager to manage up to three companies with a cap to the fleet of 50 vehicles). Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially the small ones, which must bear the cost of hiring an independent transport manager, who is limited to providing services for a certain number of no more than three companies. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regimes, but ii) excluding them from some, but not all the licensing requirements. Requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.	
167	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 9 (2)	Transport of freight - access to the activity	The financial capacity requirement for access to the activity of freight road transport, for hire or reward, by vehicles of more than 2 500 kg consists in the company having a minimum capital of EUR 125 000 or EUR 50 000 (in case of the exercise of the activity exclusively with vehicles between 2.5 t and 3.5 t) for starting the business.	The official recital states that it aims to establish the legal regime of access to the activity, aiming to improve the general conditions for provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicles sector (LTVs: from 2.5 t to 3.5 t). Furthermore, the official recital clearly states that there is a need to	This provision imposes, at national level, a more stringent regime than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, impeding operators from other EU Member States from entering the national Portuguese market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts from a mandatory licensing regime hauliers using solely vehicles that do not exceed 3.5 t. Although these EU regulations allow Member States to lower this limit of 3.5 t for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European	Recommendation 1: Regarding operators using only vehicles between 2.5 t and 3.5 t: Option 1: Abolish the mandatory licensing regime for operators using only vehicles between 2.5 t and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1(4)(a) and Art. 3(2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using only vehicles between 2.5 t and 3.5 t have to fulfil, by reassessing each of the current licensing requirements. In particular, abolish the need for imposing a

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
					proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	<p>Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level.</p> <p>Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. This is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely this type of vehicle. It is also a disproportionate entry requirement towards operators also using vehicles with a higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, which is more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than one operator, even if limited by a fleet of 50 vehicles (see Deliberation of IMT 1065/2012, paras. 4 and 6, which interpreters the provision as able to allow a transport manager to manage up to three companies with a cap to the fleet of 50 vehicles). Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially the small ones, which must bear the cost of hiring an independent transport manager, who is limited to providing services for a certain number of no more than three companies.</p> <p>Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regimes, but ii) excluding them from some, but not all the licensing requirements. Requirements on the transport manager, good reputation, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.</p>	<p>financial requirement to start the business, in line with Art. 7 of Reg. (CE) 1071/2009. Any other amount of required initial capital to start a business should be ruled under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.</p> <p>Recommendation 2 - Regime regarding operators using vehicles above 3.5 t: Abolish any minimum capital amount required for operators to start a business, using vehicles above 3.5 t, in line with Art. 7 of Reg. (CE) 1071/2009. Any other amount of required initial capital to start a business should be ruled under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
168	Decree-Law 2571/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 9 (3)	Transport of freight - access to the activity	The financial capacity requirement for access to the activity of freight road transport, for hire or reward, by vehicles of more than 2 500 kg consists in the company having, during the financial year, an amount of capital and reserves not less than EUR 9 000 for the first vehicle and EUR 5 000 or EUR 1 500 for each licensed vehicle, in case of heavy (vehicles above 3.5 t) or of light vehicles (vehicle between 2.5 t and 3.5 t), respectively.	The official recital states that it aims to establish the legal regime of access to the activity, aiming to improve the general conditions for provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicles sector (LTVs: from 2.5 t to 3.5 t). Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	This provision imposes, at national level, a more stringent regime than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, impeding operators from other EU Member States from entering the national Portuguese market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts from a mandatory licensing regime hauliers using solely vehicles that do not exceed 3.5 t. Although these EU regulations allow Member States to lower this limit of 3.5 t for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. This is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely this type of vehicle. It is also a disproportionate entry requirement towards operators also using vehicles with a higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, which is more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than one operator, even if limited by a fleet of 50 vehicles (see Deliberation of IMT 1065/2012, paras. 4 and 6, which interpreters the provision as able to allow a transport manager to manage up to three companies with a cap to the fleet of 50 vehicles). Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially the small ones, which must bear the cost of hiring an independent transport manager, who is limited to providing services for a certain number of no	Option 1: Abolish the mandatory licensing regime for operators using only vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1(4)(a) and Art. 3(2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using only vehicles between 2.5 and 3.5 t have to fulfil, by reassessing each of the current licensing requirements. In particular, reassess the need for imposing a financial requirement on the company, during the financial year, of capital and reserves. Consider reducing the current financial requirement to a more proportional one, taking as proxy the proposal to amend EU Regulation 1071/2009, Art. 7 (1), in consideration at EU level (see COM(2017) 281 final) which requires an equity capital totalling at least EUR 1 800 when only one vehicle is used and EUR 900 for each additional vehicle used.

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						more than three companies. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regimes, but ii) excluding them from some, but not all the licensing requirements. Requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.	
169	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 9 (4)	Transport of freight - access to the activity	The proof of the financial capacity requirement shall be made by (i) a certificate of the commercial register containing the share capital and by a duplicate or certified copy of the last balance presented for corporate income tax (IRC) or by (ii) a bank guarantee.	The official recital states that it aims to establish the legal regime of access to the activity, aiming to improve the general conditions for provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicles sector (LTVs: from 2.5 t to 3.5 t). Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	This provision corresponds to an entry barrier since it restricts the alternative forms for operators to demonstrate the required financial requirement, which is likely to limit the number or range of suppliers, as well limiting the ability of suppliers to compete. Hence, it also has the ability to influence the costs and the prices and the quality of services provided. According to Art. 7 (2) of Regulation (CE) 1071/2009, the financial capacity requirement may be demonstrated, alternatively, by means of a certificate such as a bank guarantee or an insurance policy, including professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the company. This restriction is more stringent than the EU regime. It is particularly relevant due to the fact that Portuguese road freight and passenger transport operators generally have small fleets (SMEs). This might be preventing Portuguese companies from expanding their business and raising costs since, at first, it is not clear which option (bank guarantee versus insurance) is the most economically advantageous. Finally, based on the "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 - Final Report, MOVE/D3/2014 - 254", (p. 29, and 105-107), the use of insurance is permitted in at least in 8 Member States (Austria, Germany, Bulgaria, Czech Republic, Denmark, Estonia, Sweden and Italy).	Amend this provision, in line with Art. 7 (2) of Reg. (CE) 1071/2009, also allowing that the financial capacity requirement to be demonstrated by other alternative ways such as by an insurance contract.
170	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 14 (1) (4)	Transport of freight - access to the activity	Vehicles used in the activity of road transport of goods for hire or reward are subject to a licence issued by the IMT, whether owned by the transporter, subject to a leasing contract or on a lease without a driver. These vehicle licences shall lapse in the event of the lapse of the licence or community licence, that is, within a period not exceeding five years [see Art. 3(2) of this Decree-Law 257/2007, as amended].		Limiting the issuance/renewal of vehicle licences for the performance of the activity of road freight transport for hire or reward, at national level, within the same time limit as renewal of the licences to operate up to five years, corresponds to an operational cost which may deter entrepreneurs, especially SMEs, from entering the market, or from an increase in prices. Operators have to pay EUR 30 every five years to the public institute, for the renewal of their vehicles licences (see Ordinance 1165/2010, Annex). Only the licensing regime for access to the activity is harmonised at EU level. Neither Regulation (CE) 1071/2009 nor Regulation (CE) 1072/2009 impose a licensing regime for the vehicles. Also, taking the standard for renewal of a community licence, Regulation (CE) 1072/2009, Art. 4(2), states that it can be issued for renewable periods of up to 10 years. EU operators wishing to enter the national market would face the national measures, with monitoring/inspections carried out at least every five years. If following this approach into the national regime, it would be possible to reduce costs, to reduce the administrative burden	No recommendation with regard to the period for renewal of the vehicles licence, that is, a period not exceeding five years.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
171	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 14 (2)	Transport of freight - access to the activity	To obtain a licence, the age of the vehicles, as determined by the date of first registration, must not exceed one year, until the sum of the company's gross vehicle weight exceeds 40 t (operating with trucks above 3.5 t - LGVs) or 10 t (operating solely with light trucks between 2.5 t and 3.5 t - LTVs).	No official recital. According to an association representing the sector, this relates to client protection, to ensure that the vehicles fulfil all the safety requirements.	and possibly extend the renewal of licences (and, in case of vehicle licences) up to 10 years, in line with other potential EU operators. However, from the market interviews carried out and stakeholders' opinions, the need to renew the vehicle licence, further to periodic vehicle inspection at vehicle inspections centres, and payment of an administrative fee, at least every five years, is considered not to be burdensome or costly, but rather proportional and needed, and seen as a positive way to motivate operators not to operate illegally, with prejudice to compliance with the vehicles licensing criteria. In mainland Portugal, for the lifespan of trucks, it is imposed that a predetermined minimum number of vehicles must be new, until a certain tonnage is reached, which represents an operational cost, especially for small and medium-size operators, in small markets, such as the Portuguese one [the Portuguese road freight sector in 2015 mainly consisted of SMEs with about, on average, around seven employees in each company (Statistics Office of Portugal (INE), available at www.ine.pt). Also, on average, 96% of companies in Portugal, covering all sectors of activity, have less than 10 employees (Statistics Office of Portugal (INE), available at www.ine.pt), where there might not be sufficient demand for companies with such dimensions, leading to less money available to face reasonable choice and/or replacement of vehicles. Indeed: i) the minimum tonnage of 40 t for vehicles above 3.5 t requires, on average, 12 new vehicles which, taking into account the average cost for a truck of 3.5 t (EUR 50 000, based on stakeholders' information), represents EUR 600 000 of initial investment; ii) the minimum tonnage of 10 t for vehicles between 2.5 t and 3.5 t requires, on average, four new vehicles which, taking into account the average cost for a light commercial vehicle of 2.5 t (EUR 20 000, based on stakeholder information), represents an initial investment of EUR 80 000. The harm to competition is twofold. First, there is a minimum number of new vehicles/tonnage required that seems not to be proportional to the policy objective, taking into account that Portugal can be considered a small market; second, there is also an unjustified difference between the minimum tonnage of new vehicles for LTVs (only four) versus LGVs (approximately 12). Moreover, it is should also be taken into account that all vehicles have passed their mandatory technical vehicle inspection, which means that they meet all the safety requirements for driving on public roads.	Revise the unjustified difference between the minimum tonnage of vehicles that operators using solely LTVs (between 2.5 and 3.5 t) need to acquire as new (four vehicles until they reach 10 t) versus the minimum tonnage of vehicles that operators using LGVs (above 3.5 t) need to acquire as new (approximately 12 until they reach 40 t) until they achieve the minimum tonnage foreseen in the law as these seem not to be proportional to the policy objective, taking into account that Portugal can be consider a small market.

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172	Decree-Law 257/2007 (modified lastly by Decree-Law 136/2009) "Legal regime for the access to the activity of road freight transport, for hire or reward, national or international, by means of vehicles weighing more than 2 500 kg"	Art. 14 (3) (5)	Transport of freight - access to the activity	To obtain the licence, the average age of the company's car fleet must not exceed 10 years, taking into account the date of the first registration of the vehicles, but able to take into account a reduction of five years per vehicle in case of installation of a duly approved particle filter.	No official recital. According to an association representing the sector, this relates to client protection, to ensure that the vehicles fulfill all the safety requirements.	In Mainland Portugal, the average lifespan of a company's truck fleet is fixed for 10 years, already taking into account that operators account for a reduction of five years per vehicle in case of installation of a duly approved particle filter. This is an entry barrier for operators, imposing the need to renew the fleets after a certain average age of their vehicles, even if all vehicles need to pass the mandatory technical vehicle inspection. This means that they meet all the safety requirements for driving on public roads. This increases not only the initial level of investment in new (or almost new) vehicles, but also the prices charged to consumers, which can deter particularly small and medium-size enterprises from starting and continuing operating. From information received from an association representing the sector, a 10-year average age for the fleet can be considered a reasonable period, taking into account the number of kilometres and international trips that these types of vehicles need to perform every year, as well as the need to guarantee that the vehicles are in the right condition to operate, dispensing regular repairs, which in turn can become more costly than buying a new vehicle. However, according to an operator, the age of the vehicle is usually matched with the route, arguing that it would be desirable to extend this period from 10 to 15 years where, in the first five years, vehicles would perform long international routes; in the following five years, vehicles would perform shorter but still international/Iberian routes; and finally, in the last five years, vehicles would perform national routes. As such, the operator suggests that vehicles of a certain age, but with a low mileage, having passed their mandatory technical inspection, could still serve their purpose if used within a fleet for a longer period of time, hence, saving unnecessary costs imposed on operators by forcing them to buy new vehicles to respect the limit of age of the fleet, imposed by law. It is also important to take into account the following lifespan discrepancies in the national framework: there is no age limit for taxi cars; there is no age limit for buses for the transport of passengers by road; there is a 10-year average age for truck fleets for the transport of freight by road for hire or reward (see Art. 14 (3) of Decree-Law 257/2007, as amended); for the rental of cars without a driver the age limit is five years extendable to seven years (see Art. 6(1)(c) of Decree-Law 181/2012, as amended); and for the rental of trucks without a driver the age limit is five years extendable up to eight years (see Art. 14 (1) (2) (3) of Decree-Law 15/88, as amended). Also, taking into consideration the age distribution of the vehicles in use in road freight transport among the EU27 hauliers, we can affirm that these are in line with the national provision, since "[o]n average, the heavy goods vehicles [above 3.5 t] in use by EU27 hauliers up to 10 years old, amount to 84%, in 2012", and that "vehicles that are more modern are used in international road haulage than in domestic haulage" [see, Commission Report on the State of the Union Road Transport Market (COM(2014) 222 final of 14.4.2014)", cit., page 23]. In conclusion, taking into consideration all arguments, we can advocate for competent authorities to consider studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, they should choose another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage).	Consider revising the provision, studying and reassessing the policy objectives related to the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that reflects better the usage and depreciation of the vehicles and fleets (e.g. mileage).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
173	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 3 (1)	Transport of freight - access to the activity	The activity of road freight transport for hire or reward, in Azores, is subject to mandatory licensing, by the General Directorate of Land Transport of Regional Government of the Azores, when using vehicles weighing more than 2 500 kg.	The official recital states that it aims to establish the legal regime of access to the activity for the Azores, aiming to improve general conditions for the provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, following the national regime established in Decree-Law 257/2007 (as amended).	<p>This provision implements, at regional level, the mainland Portugal regime, framed by Decree-Law 257/2007 (as amended). Within the national context regime it is a more stringent regime than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. As such, this provision corresponds to an entry barrier which can limit the number of operators in the market, preventing operators from other EU Member States from entering the national market, which may lead to higher operational costs and prices.</p> <p>Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts hauliers using solely vehicles that do not exceed 3.5 t from a mandatory licensing regime. Although these EU regulations allow Member States to lower this limit of 3.5 t for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level.</p> <p>Additionally, Recital 5 of Reg. (CE) 1071/2009, also allows Member States to adapt the regime to their outermost regions referred to in article 299(2) of the Treaty because of the special characteristics of, and constraints in those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the regional regime expressly states that it does not aim to attribute a community licence, still, we consider that, in the regional regime, as in the national regime, this provision corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices.</p> <p>Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regime, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, for good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.</p>	<p>Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1(4)(a) and Art. 3(2), which harmonises and imposes a mandatory licensing regime on operators using vehicles above 3.5 t.</p> <p>Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and to have an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity.</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
174	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 3 (2)	Transport of freight - access to the activity	The licence activity of road transport of goods in the Azores, by vehicles weighing more than 2500 kg, shall consist of a licence (alvará) that is non-transferable and issued for a term not exceeding five years, renewable for an equal period, proving that the requirements of access and exercise of activity are maintained.	The official recital states that it aims to establish the legal regime of access to the activity for the Azores, aiming to improve general conditions for the provision of services regarding road freight transport for hire or reward, and to improve the competitive capacity of companies operating in that market, following the national regime established in Decree-Law 257/2007 (as amended). The public authority in charge will aim to guarantee the quality standards of the service provided and the fulfilment of common rules for access to the activity, at regional level, with inspection powers with a frequency of at least every five years.	<p>The Azores licence regime should follow the issuance/renewal of licences for access to the activity of road freight transport for hire or reward, at national level, as established at national level [Art. 3 (2) of Decree-Law 257/2007 (as amended)], which limits the issuance/renewal of licences only up to five years. As such, this provision corresponds to an operational cost, which may deter entrepreneurs, especially SMEs, from entering the market, or from an increase in prices, at regional level. Regional operators have to pay EUR 270 every five years to the public regional authority for the renewal of their regional licences (see Ordinance 8/2007, from the Regional Government, Annex, Section II, Subsection C).</p> <p>The national licensing regime (to be followed, at regional level) is harmonised at EU level. Hence, the national provision although in line with Regulation (CE) 1072/2009, is more stringent: as far as regards the community licence, Regulation (CE) 1072/2009, Art. 4(2), states that it can be issued for renewable periods of up to 10 years. EU operators wishing to enter the national market would face the national measures, with monitoring/inspections carried out at least, every five years. If following this approach into the national regime, and, consequently, at regional level, it would be possible to reduce costs, to reduce the administrative burden, and possibly to extend the renewal of licences to up to 10 years, in line with other potential EU operators. Nonetheless, the adaptation of the rationale of the EU rules, at regional level, is not straightforward. In fact, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence.</p> <p>However, from the market interviews carried out and stakeholders' opinions, the need to renew the licences, having to demonstrate the fulfilment of the licensing requirements and pay an administrative fee at least every five years, is considered not to be burdensome or costly, but rather proportional and needed, and seen as a positive way to motivate operators not to operate illegally, in prejudice to compliance with the licensing criteria.</p>	No recommendation with regard to the period for renewal of the licence, that is, a period not exceeding five years.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
175	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 6 (1) (2)	Transport of freight - access to the activity	The professional capacity requirement for access to the activity of road freight transport, for hire or reward, by means of vehicles with more than 2 500 kg in the Azores must be filled by a person who, holding a certificate of professional capacity, has permanent and effective executive responsibilities/powers in the company. The person who fulfils this requirement must prove that they are registered in the social security system as the managerial board of the company.	There is no official recital. Based on stakeholders' opinions, our understanding is that this provision aims to ensure the quality of transport manager services, ensuring adequate management of transport operators. According to an association representing the sector, it should also be considered that if a transport manager works for several separate companies at the same time, they may not always be available to brief shareholders and drivers or to respond to clients' demands.	<p>This provision implements, at regional level, the mainland Portugal regime, framed by Decree-Law 257/2007, Art. 6 (1) (2) (3) (as amended). Within the national context regime, it is a more stringent regime than the one imposed at EU level. First, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, preventing operators from other EU Member States from entering the national market, which may lead to higher operational costs and prices.</p> <p>Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts hauliers using solely vehicles that do not exceed 3.5 t from a mandatory licensing regime. Although these EU regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level.</p> <p>Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. And, at regional level, this restriction was maintained. Even if, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the regional regime expressly states it does not aim to attribute a community licence, still, we consider that, the region regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices.</p> <p>In fact, this is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely these types of vehicles. It is also a disproportional entry requirement, for operators also using vehicles with higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport</p>	<p>Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1(4)(a) and Art. 3(2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t.</p> <p>Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and to have an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity. In particular, reassess the need for imposing the licensing requirement to have a transport manager. If it is considered that there is a need to keep a transport manager, amend this provision, in line with Art. 4 (1) and Art. 4 (2) of Reg. (CE) 1071/2009, where transport managers, if acting as an external consultant, can cover up to four companies and up to 50 vehicles.</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
176	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 6 (3)	Transport of freight - access to the activity	In the Azores, the same person cannot insure the professional capacity requirement to more than one company, unless 51% of equity of each company managed belongs to the same shareholder.	There is no official recital. Based on stakeholders' opinions, our understanding is that this provision aims to ensure the quality of transport manager services, ensuring adequate management of transport operators. According to an association representing the sector, it should also be considered that if a transport manager works for several separate companies at the same time, they may not always be available to brief shareholders and drivers or to respond to clients' demands.	<p>manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although the Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, and the regional regime, which are more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger transport operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than 1 operator, even if limited by a fleet of 50 vehicles. Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially for the small ones, which must bear the cost of hiring an independent transport manager, since the transport manager must belong to the management board of a company. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regime, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, of good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.</p> <p>This provision implements, at regional level, the mainland Portugal regime, framed by Decree-Law 257/2007, Art. 6 (1) (2) (3) (as amended). Within the national context regime, it is a more stringent regime than the one imposed at EU level. First, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, preventing operators from other EU Member States from entering the national market, which may lead to higher operational costs and prices.</p> <p>Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts hauliers using solely vehicles that do not exceed 3.5 t from a mandatory licensing regime. Although these EU regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level.</p> <p>Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. And, at</p>	<p>Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1 (4) (a) and Art. 3 (2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t.</p> <p>Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and to have an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity. In particular, reassess the need for imposing the licensing requirement to have a transport manager. If it is considered that there is a need to keep a transport manager, amend this provision, in line with Art. 4 (1) and Art. 4 (2) of Reg. (CE) 1071/2009, where transport managers, if acting as an external consultant, can cover up to four companies and up to 50</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
						<p>regional level, this restriction was maintained. Even if, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the regional regime expressly states it does not aim to attribute a community licence, still, we consider that, the region regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices. In fact, this is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely these types of vehicles. It is also a disproportional entry requirement, for operators also using vehicles with higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although the Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, and the regional regime, which are more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger transport operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than 1 operator, even if limited by a fleet of 50 vehicles. Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially for the small ones, which must bear the cost of hiring an independent transport manager, since the transport manager must belong to the management board of a company.</p> <p>Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regime, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, of good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.</p>	vehicles.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
177	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 8 (2)	Transport of freight - access to the activity	The financial capacity requirement for access to the activity of freight road transport, for hire or reward, by vehicles of more than 2 500 kg, consists in the company having an initial minimum capital of EUR 50 000 or EUR 25 000 (in case of the exercise of the activity exclusively with vehicles between 2.5 t and 3.5 t) for starting the business.	The official recital states that it aims to establish the legal regime of access to the activity, in the Azores, following the national regime established in Decree-Law 257/2007 (as amended), improving general conditions for the provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicle sector (LTVs: from 2.5 t up to 3.5 t). Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	This provision implements, at regional level, the mainland Portugal regime, framed by Decree-Law 257/2007, Art. 6 (1) (2) (3) (as amended). Within the national context regime, it is a more stringent regime than the one imposed at EU level. First, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, preventing operators from other EU Member States from entering the national market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts hauliers using solely vehicles that do not exceed 3.5 t from a mandatory licensing regime. Although these EU regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. And, at regional level, this restriction was maintained. Even if, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the regional regime expressly states it does not aim to attribute a community licence, still, we consider that, the region regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices. In fact, this is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely these types of vehicles. It is also a disproportional entry requirement, for operators also using vehicles with higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport	Recommendation 1 - Regarding operators using solely vehicles between 2.5 and 3.5 t: Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, Art. 1 (4) (a) and Art. 3 (2), which harmonises and imposes a mandatory licensing regime on operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 and 3.5 t have to fulfil, by reassessing each of the current licensing requirements. In particular, abolish the need for imposing a financial requirement to start the business, in line with Art. 7 of Reg. (CE) 1071/2009. Any other amount of required initial capital to start a business should be ruled under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code. Recommendation 2 - Regime regarding operators using vehicles above 3.5 t: Abolish any minimum capital amount required for operators to start a business, using vehicles above 3.5 t, in line with Art. 7 of Reg. (CE) 1071/2009. Any other amount of required initial capital to start a business should be ruled under the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
						<p>manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although the Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, and the regional regime, which are more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger transport operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than 1 operator, even if limited by a fleet of 50 vehicles. Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially for the small ones, which must bear the cost of hiring an independent transport manager, since the transport manager must belong to the management board of a company. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regime, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, of good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.</p>	
178	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 8 (3) (4)	Transport of freight - access to the activity	The financial capacity requirement for access to the activity of freight road transport, for hire or reward, by vehicles of more than 2 500 kg consists in, during the financial year: (3) the company having, for vehicles of more than 3.5 t, an amount of capital and reserves not less than EUR 9 000 for the first vehicle and EUR 5 000 or EUR 1 000 for each licensed vehicles, in case of LGVs or LTVs, respectively; (4) the company having exclusively vehicles of more than 2.5 t and less than 3.5 t (that is, the LTVs) an amount of capital and reserves not less than EUR 5 000 for the first vehicle and EUR 1 000 for each licensed vehicle.	The official recital states that it aims to establish the legal regime of access to the activity, in the Azores, following the national regime established in Decree-Law 257/2007 (as amended), improving general conditions for the provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicle sector (LTVs: from 2.5 t up to 3.5 t). Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks	This provision implements, at regional level, the mainland Portugal regime, framed by Decree-Law 257/2007, Art. 6 (1) (2) (3) (as amended). Within the national context regime, it is a more stringent regime than the one imposed at EU level. First, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, preventing operators from other EU Member States from entering the national market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts hauliers using solely vehicles that do not exceed 3.5 t from a mandatory licensing regime. Although these EU regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level.	<p>Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, arts. 1 (4) (a) and 3 (2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t.</p> <p>Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 and 3.5 t have to fulfil, by reassessing each of the current licensing requirements. In particular, reassess the need for imposing a financial requirement on the company, during the financial year, of capital and reserves. Consider reducing the current financial requirement to a more proportional one, taking as proxy the proposal to amend EU Regulation 1071/2009, Art. 7 (1), in consideration at EU level (see COM(2017) 281 final) which requires an equity capital totalling at least EUR 1 800 when only one vehicle is used</p>

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					above 3.5 t.	<p>Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. And, at regional level, this restriction was maintained. Even if, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the regional regime expressly states it does not aim to attribute a community licence, still, we consider that, the region regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices. In fact, this is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating solely these types of vehicles. It is also a disproportional entry requirement, for operators also using vehicles with higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although the Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport operators led by a transport manager, the Portuguese regime, and the regional regime, which are more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passenger transport operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than 1 operator, even if limited by a fleet of 50 vehicles. Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially for the small ones, which must bear the cost of hiring an independent transport manager, since the transport manager must belong to the management board of a company.</p> <p>Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regime, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, of good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.</p>	and EUR 900 for each additional vehicle used.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
179	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 8 (5)	Transport of freight - access to the activity	The proof of financial capacity shall be made by (i) a certificate of the commercial register containing the share capital and by a duplicate or certified copy of the last balance presented for corporate income tax (IRC) or (ii) a bank guarantee.	The official recital states that it aims to establish the legal regime of access to the activity, in the Azores, following the national regime established in Decree-Law 257/2007 (as amended), improving general conditions for the provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicle sector (LTVs: from 2.5 t up to 3.5 t). Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	The Azores regime regarding proof of financial capacity, in line with the national regime (Art. 9 (4) of Decree-Law 257/2007, as amended) is more stringent than Reg. (CE) 1071/2009. In fact, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the Azores regime expressly states it does not aim to attribute a community license, still, we consider that, the Azores regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices. According to Art. 7 (2), Regulation (CE). 1071/2009, the financial capacity requirement may be demonstrated, alternatively, by means of a certificate such as a bank guarantee or an insurance policy, including a professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the company. Thus, the regional regime is more restrictive than the Reg. (CE) 1071/2009. Although the Reg. (CE) 1071/2009 allows Member States (and Recital 5 allows them to have a different regime for outermost regions) to choose how a company may alternatively demonstrate its financial capacity, the regional regime, which is more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passengers operators generally have small fleets, so we consider that companies could have the option to choose between a bank guarantee or an insurance policy, in line with the Art. 7 (2) of Reg. (CE) 1071/2009. This might be preventing Portuguese companies from expanding their business and is raising costs since, at first, it is not clear which option (bank guarantee versus insurance) is the most economically advantageous one. Further, based on the "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 - Final Report, MOVE/D3/2014 - 254", (p. 29, and 105-107), the use of insurance is permitted in at least in 8 Member States (Austria, Germany, Bulgaria, Czech Republic, Denmark, Estonia, Sweden and Italy). Finally, also taking into account the case law of the CJEU, the financial capacity requirement may be demonstrated by an insurance policy (Case C-171/02, Commission v. Portugal [2004], para. 55).	Amend this provision, in line with Art. 7 (2) of Reg. (CE) 1071/2009, also allowing that the financial capacity requirement may be demonstrated by alternative ways other than by an insurance contract.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
180	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 13 (1) (5)	Transport of freight - access to the activity	Vehicles used in the activity of road transport of goods for hire or reward are subject to a regional licence issued by the General Directorate of Land Transport of Regional Government of the Azores, whether owned by the transporter, subject to a leasing contract or a lease without a driver. These vehicle licences shall lapse in the event of the lapse of the regional licence, that is, within a period not exceeding five years [see Arts. 3(2) and 14 (1) (4) of this Decree-Law 257/2007, as amended].	No official recital. Our understanding is that it aims to guarantee that the public authority has at its disposable information to monitor respect of the limits on age of vehicles for access to the activity by companies, as imposed by the regional regime, within the same time limits for the renewal of licences, that is, every five years.	<p>The Azores vehicle licensing regime should follow the issuance/renewal of the licences for access to the activity of road freight transport for hire or reward, at regional level, which is established in line with the national regime [see arts. 3 (2) and 14 (1) (4) of Decree-Law 257/2007 (as amended)], which limits the issuance/renewal of vehicle licences only up to five years. As such, this provision corresponds to an operational cost, which may deter entrepreneurs, especially SMEs, from entering the market, or from an increase in prices, at regional level. Regional operators have to pay EUR 25 every five years to the public regional authority for the renewal of their regional vehicle licences (see Ordinance 8/2007, from the Regional Government).</p> <p>The national vehicle licensing regime (to be followed, at regional level) is harmonised at EU level. Hence, the national provision although in line with Regulation (CE) 1072/2009, is more stringent: as regards the community licence, Regulation (CE) 1072/2009, Art. 4(2), states that it can be issued for renewable periods of up to 10 years. EU operators wishing to enter the national market would face the national measures, with monitoring/inspections carried out at least every five years. If following this approach into the national regime, and, consequently, at regional level, it would be possible to reduce costs, to reduce the administrative burden and possibly extend the renewal of licences up to 10 years, in line with other potential EU operators. Nonetheless, the adaptation of the rationale of the EU rules, at regional level, is not straightforward. In fact, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in article 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence.</p> <p>However, from the market interviews carried out and stakeholders' opinions, the need to renew vehicle licences, further to the periodic vehicle inspection at vehicle inspection centres and payment of an administrative fee at least every five years, is considered not to be burdensome or costly, but rather proportional and needed, and seen as a positive way to motivate operators not to operate illegally, in prejudice to compliance with the vehicles licensing criteria.</p>	No recommendation with regard to the period for renewal of the vehicles licence, that is, a period not exceeding five years.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
181	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 13 (2) (a); Art. 37	Transport of freight - access to the activity	In the Azores, to obtain a licence for vehicles used in the activity of road transport of goods, for hire or reward, the age of the vehicles, as determined by the date of first registration, must not exceed 18 years, but is able to take into account a reduction of five years per vehicle in case of installation of a duly approved particle filter. The provision benefits from a transitional period until 31 December 2018.	No official recital. According to stakeholders' opinions, it relates to client protection, such as to ensure that the vehicles fulfil all the safety requirements.	<p>At regional level, the average age of a company's truck fleet, is fixed at 15 years, and the limit of lifespan of the vehicles is 18 years, already taking into account that operators account for a reduction of five years per vehicle in case of installation of a duly approved particle filter (see Art. 13(2)(a)(b) and Art. 37 of this Act). These are entry barriers for operators, imposing the need to renew the fleets after a certain average age of their vehicles, even if all vehicles need to pass the mandatory vehicles technical inspection, means that they meet all the safety requirements for driving on public roads. This increases not only the initial level of investment in new (or almost new) vehicles, but also the prices charged to consumers, which can deter particularly small and medium-size enterprises from starting and continuing operating.</p> <p>In mainland Portugal, the average age of the fleet is fixed at 10 years (see Art. 14 (3)(5) of Decree-Law 257/2007, as amended). However, this provision allows operators to obtain a licence to operate solely within the region. These regional operators are not in competition with national or European-level operators.</p> <p>Influencing the analysis of the proportionality of this provision is the fact that the TFEU allows Member States to adapt provisions to their outermost regions (as is the case of the regions of Madeira and the Azores in Portugal), because of the special characteristics of, and constraints in, those regions [see, to that effect, Art. 349 TFEU (ex Art. 299(2), second, third and fourth subparagraphs, TEC)], namely regarding their remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products, without undermining the integrity and the coherence of the union legal order, including the internal market and common policies. As a consequence, in cases of companies established in those regions and complying with legal conditions to pursue the activity as the result of such adaptation, they are not able to obtain a community licence, but merely a regional licence (see, to that effect, Regulation (CE) 1071/2009, Recital 5).</p> <p>Assuming that the operators limit their action in the region, they do not face any positive discriminatory treatment when compared to the other region, mainland Portugal or EU level operators.</p> <p>Stakeholders reported that the proxy used as a standard for quality in the use of the vehicles, given by a certain number of years, either concerning the average lifespan of a fleet or the limit of age for a particular vehicle, cannot always be considered as a reasonable criterion, since vehicles of a considerable age, but with a low mileage, having passed their mandatory technical inspection, could still serve their purpose if used within a fleet for a longer period of time. This would save the unnecessary costs imposed on operators by forcing them to buy new vehicles to respect the limit of age of the vehicles/fleet, imposed by law.</p> <p>It is also important to take into account the following lifespan discrepancies in the national framework: there is no age limit for taxi cars; there is no age limit for buses for the transport of passengers by road; there is a 10-year average age for a trucks fleet for the transport of freight by road for hire or reward (see Art. 14 (3) of Decree-Law 257/2007, as amended); for the rental of cars without a driver the age limit is five years extendable to seven years (see Art. 6(1)(c) of Decree-Law 181/2012, as amended); and for the rental of trucks without a driver the age limit is five years extendable up to eight years (see Art. 14 (1) (2) (3) of Decree-Law</p>	Consider revising the provision, studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
						<p>15/88, as amended).</p> <p>Also, taking into consideration the age distribution of the vehicles in use in road freight transport among the EU27 hauliers, we can affirm that 4% of the EU27 hauliers still use trucks more than 15 years old competing in the internal market [see, to that effect, information available at Eurostat, DG Move, "Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market (COM(2014) 222 final of 14.4.2014)", p. 23, available at https://ec.europa.eu/transport/sites/transport/files/modes/road/news/com%282014%29-222_en.pdf].</p> <p>In conclusion, considering all arguments, we can advocate for competent authorities to consider studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads and choosing another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage).</p>	
182	Regional Legislative Decree 7/2010/A (last modified by Regional Legislative Decree 4/2013/A) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Azores, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 13 (2) (b); Art. 37	Transport of freight - access to the activity	In the Azores, to obtain a licence for vehicles used in the activity of road transport of goods, for hire or reward, the age of the vehicles, as determined by the date of first registration, must not exceed 18 years, but is able to take into account a reduction of five years per vehicle in case of installation of a duly approved particle filter. The provision benefits from a transitional period until 31 December 2018.	No official recital. According to stakeholders' opinions, it relates to client protection, such as to ensure that the vehicles fulfil all the safety requirements.	<p>At regional level, the average age of a company's truck fleet, is fixed at 15 years, and the limit of lifespan of the vehicles is 18 years, already taking into account that operators account for a reduction of five years per vehicle in case of installation of a duly approved particle filter (see Art. 13(2)(a)(b) and Art. 37 of this Act). These are entry barriers for operators, imposing the need to renew the fleets after a certain average age of their vehicles, even if all vehicles need to pass the mandatory vehicles technical inspection, which means that they meet all the safety requirements for driving on public roads. This increases not only the initial level of investment in new (or almost new) vehicles, but also the prices charged to consumers, which can deter particularly small and medium-size enterprises from starting and continuing operating.</p> <p>In mainland Portugal, the average age of the fleet is fixed at 10 years (see Art. 14 (3)(5) of Decree-Law 257/2007, as amended). However, this provision allows operators to obtain a licence to operate solely within the region. These regional operators are not in competition with national or European-level operators. Influencing the analysis of the proportionality of this provision is the fact that the TFEU allows Member States to adapt provisions to their outermost regions (as is the case of the regions of Madeira and the Azores in Portugal), because of the special characteristics of, and constraints in, those regions [see, to that effect, Art. 349 TFEU (ex Art. 299(2), second, third and fourth subparagraphs, TEC)], namely regarding their remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products, without undermining the integrity and the coherence of the union legal order, including the internal market and common policies. As a consequence, in cases of companies established in those regions and complying with legal conditions to pursue the activity as the result of such adaptation, they are not able to obtain a community licence, but merely a regional licence (see, to that effect, Regulation (CE) 1071/2009, Recital 5). Assuming that the operators limit their action in the region, they do not face any positive discriminatory treatment when compared to the other region, mainland</p>	Consider revising the provision, studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
						<p>Portugal or EU level operators.</p> <p>Stakeholders reported that the proxy used as a standard for quality in the use of the vehicles, given by a certain number of years, either concerning the average lifespan of a fleet or the limit of age for a particular vehicle, cannot always be considered as a reasonable criterion, since vehicles of a considerable age, but with a low mileage, having passed their mandatory technical inspection, could still serve their purpose if used within a fleet for a longer period of time. This would save the unnecessary costs imposed on operators by forcing them to buy new vehicles to respect the limit of age of the vehicles/fleet, imposed by law.</p> <p>It is also important to take into account the following lifespan discrepancies in the national framework: there is no age limit for taxi cars; there is no age limit for buses for the transport of passengers by road; there is a 10-year average age for a trucks fleet for the transport of freight by road for hire or reward (see Art. 14 (3) of Decree-Law 257/2007, as amended); for the rental of cars without a driver the age limit is five years extendable to seven years (see Art. 6(1)(c) of Decree-Law 181/2012, as amended); and for the rental of trucks without a driver the age limit is five years extendable up to eight years (see Art. 14 (1) (2) (3) of Decree-Law 15/88, as amended).</p> <p>Also, taking into consideration the age distribution of the vehicles in use in road freight transport among the EU27 hauliers, we can affirm that 4% of the EU27 hauliers still use trucks with more than 15 years old competing in the internal market [see, to that effect, information available at Eurostat, DG Move, "Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market (COM(2014) 222 final of 14.4.2014)", p. 23, available at https://ec.europa.eu/transport/sites/transport/files/modes/road/news/com%282014%29-222_en.pdf].</p> <p>In conclusion, considering all arguments, we can advocate for competent authorities to consider studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads and choosing another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage).</p>	

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
183	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 4 (1)	Transport of freight - access to the activity	In Madeira, the activity of road freight transport, for hire or reward, is subject to mandatory licensing by the General Directorate of Land Transport of the Regional Government of Madeira, when using vehicles weighing more than 2 500 kg.	The official recital states that it aims to establish the legal regime of access to the activity for Madeira, aiming to improve the general conditions for the provision of services regarding road freight transport for hire or reward, and to improve the competitive capacity of companies operating in that market, following the national regime established in Decree-Law 257/2007 (as amended).	This provision implements, at regional level, the mainland Portugal regime, framed by Decree-Law 257/2007 (as amended). Within the national context regime, it is a more stringent regime than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, preventing operators from other EU Member States from entering the national market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts hauliers using solely vehicles that do not exceed 3.5 t from a mandatory licensing regime. Although these EU Regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only four Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Additionally, Recital 5 of Reg. (CE) 1071/2009, also allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the regional regime expressly states that it does not aim to attribute a community licence, we consider that, in the regional regime, as in the national regime, this provision corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regimes, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, of good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would retain the possibility of applying them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States.	Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, arts. 1 (4) (a) and 3 (2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 t and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and having an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
184	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 4 (2)	Transport of freight - access to the activity	In Madeira, the licence for the activity of road transport of goods, for hire or reward, by vehicles of more than 2500 kg, shall consist of a licence (alvará) that is non-transferable, and issued for a term not exceeding five years, renewable for an equal period, proving that the requirements for access to and exercise of activity are maintained.	The official recital states that it aims to establish the legal regime of access to the activity for Madeira, aiming to improve general conditions for the provision of services regarding road freight transport for hire or reward, and to improve the competitive capacity of companies operating in that market, following the national regime established in Decree-Law 257/2007 (as amended). The public entity in charge will aim to guarantee the quality standards of the service provided and the fulfilment of common rules for access to the activity, at regional level, with inspection powers with a frequency of at least every five years.	<p>The Madeira licence regime should follow the issuance/renewal of the licences for access to the activity of road freight transport for hire or reward, at national level, as established at national level [Art. 3 (2) of Decree-Law 257/2007 (as amended)], which limits the issuance/renewal of the licences only up to five years. This provision corresponds to an operational cost, which may deter entrepreneurs, especially SMEs, from entering the market, or an increase in prices, at regional level. Regional operators have to pay EUR 115 every five years, to the public regional authority, for the renewal of their regional licences (see Ordinance 169/2011, from the Regional Government, Annex, Chapter II, Section III (1) (b).</p> <p>The national licensing regime (to be followed, at regional level) is harmonised at EU level. Hence, the national provision, although in line with Regulation (CE) 1072/2009, is more stringent: as far as regards the community licence, Regulation (CE) 1072/2009, Art. 4(2), states that it can be issued for renewable periods of up to 10 years. EU operators wishing to enter the national market would face national measures, with monitoring/inspections carried out at least, every five years. If following this approach into the national regime, and, consequently, at regional level, it would be possible to reduce costs, to reduce the administrative burden and possibly extend the renewal of licences up to 10 years, in line with other potential EU operators. Nonetheless, the adaptation of the rationale of the EU rules, at regional level, is not straightforward. In fact, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in article 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence.</p> <p>However, from the market interviews carried out and stakeholders' opinions, the need to renew the licences, having to demonstrate the fulfilment of the licensing requirements, and payment of an administrative fee at least every five years, is considered not to be burdensome or costly, but rather proportional and needed, and seen as a positive way to motivate operators not to operate illegally, in prejudice to compliance with the licensing criteria.</p>	No recommendation with regard to the period for renewal of the licence, that is, a period not exceeding five years.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
185	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 7 (1) (2) (3)	Transport of freight - access to the activity	The requirement of professional capacity for access to the activity of road freight transport, for hire or reward, by vehicles of more than 2 500 kg in Madeira must be filled by a person who, holding the certificate of professional capacity, has permanent and effective executive responsibilities/powers in the company. The person who fulfils this requirement must prove they are registered in the social security system as belonging to the human resources of the company.	There is no official recital. Based on stakeholders' opinion, our understanding is that this provision aims to ensure the quality of transport manager services, ensuring adequate management of transport operators. According to an association representing the sector it should also be taken into consideration that if a transport manager works for several separate companies at the same time, they may not always be available to brief shareholders and drivers or to respond to clients' demands.	This provision implements, at regional level, the Mainland Portugal regime, framed by Decree-Law 257/2007, Art. 6 (1) (2) (3) (as amended). And, within the national context regime, it is a more stringent regime than the one imposed at EU level. First, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: the professional capacity of a transport manager. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, impeding other EU Member-States operators from entering into the national market, which may lead to higher operational costs and prices. Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts from a mandatory licensing regime hauliers using solely vehicles that do not exceed 3.5 t. Although these EU Regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only few (four) Member-states (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes to undertakings, competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Hence, at national level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must have a transport manager. And, at regional level, this restriction was maintained. Even if, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the undertakings established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the regional regime expressly states it does not aim to attribute a community licence. Still, we consider that, the region regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices. In fact, this is a more stringent regime than Art. 4 (1) (2) of Reg. (CE) 1071/2009 imposes. Thus, it creates unnecessary entry requirements and costs for operators operating only these type of vehicles. It is also a disproportionate entry requirement, towards operators using also vehicles with higher tonnage. Indeed, according to Art. 4 (1) of Reg. (CE) 1071/2009, transport managers can either be direct employees or persons so closely linked to the business that they have a real, direct connection with the operator. There is no limitation regarding the number of companies where a transport manager can work. They can also be independent third parties, according to Art. 4 (2) of the same Reg. (CE) 1071/2009, such as transport consultants, in the case where the operator does not have a transport manager with a link to the company. In this case, a transport manager may serve up to four separate operators, as long as their combined fleet does not exceed 50 vehicles. Although the Reg. (CE) 1071/2009 allows Member States to determine a lower number of transport	Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 and 3.5 t. This will be in line with EU Regulation 1071/2009, arts. 1 (4) (a) and 3 (2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 t and 3.5 t have to fulfil, by reassessing each of the four current licensing requirements, i.e., good repute criterion, financial standing, professional competence and having an effective and stable establishment, in light of the principles of proportionality, adequacy and necessity. In particular, reassess the need for imposing the licensing requirement to have a transport manager. If it is considered that there is need to keep a transport manager, amend this provision, in line with Art. 4 (1) and Art. 4 (2) of Reg. (CE) 1071/2009, where transport managers, if acting as an external consultant, can cover up to four companies and up to 50 vehicles.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
186	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 9 (2) (3)	Transport of freight - access to the activity	The requirement for access to the activity of freight road transport by vehicles of more than 2 500 kg regarding financial capacity consists of, during the financial year: (2) the company having, for vehicles of more than 3 500 kg, an amount of capital and reserves not less than EUR 9 000 for the first vehicle and EUR 5 000 for each licensed vehicle; (3) the company having exclusively vehicles of more than 2 500 kg and less than 3 500kg (that is, light commercial vehicles, LTVs) an amount of capital and reserves not less than EUR 5 000 for the first vehicle and EUR 1 000 for each licensed vehicle.	The official recital states that it aims to establish the legal regime of access to the activity, in Madeira, following the national regime established in Decree-Law 257/2007 (as amended), improving general conditions for the provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicle sector (LTVs: from 2.5 t up to 3.5 t). Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	operators led by a transport manager, the Portuguese regime, and the regional regime, which are more restrictive, do not seem to be justified, notably due to the fact that Portuguese road freight and passengers operators generally have small fleets (SMEs), so that transport managers could carry out tasks for more than 1 operator, even if limited by a fleet of 50 vehicles. Such a restriction might be preventing Portuguese transport managers from expanding their business. This also raises costs for Portuguese companies, especially for the small ones, which must bear the cost of hiring an independent transport manager, since the transport manager must belong to the management board of a company. Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 7", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regime, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would keep the possibility to apply them as hitherto. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States. This provision implements, at regional level, the Mainland Portugal regime (Art. 9 (3) of Decree-Law 257/2007, as amended). And, in the context of the national level regime, it is more stringent than the one imposed at EU level, by imposing a mandatory licensing regime for hauliers using solely vehicles weighing between 2.5 t and 3.5 t, subjecting them to i) the same licensing regime and the fulfilment of ii) the same licensing requirements, as for hauliers using vehicles with a larger tonnage, that is, above 3.5 t. In particular, this provision imposes one licensing requirement: financial capacity. As such, this provision corresponds to an entry barrier, which can limit the number of operators in the market, impeding other EU Member States operators from entering the national market, which may lead to higher operational costs and prices. Indeed, Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c), exempts from a mandatory licensing regime hauliers using only vehicles that do not exceed 3.5 t. Although these EU Regulations allow Member States to lower this limit of 3.5 t, for all or some categories of road transport operations, evidence shows that, from 2009 to 2017, according to the "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) 1071/2009 - see COM(2017) 116 final", p. 5, only few (four) Member States (Portugal, France, Italy and Latvia) impose these more stringent licensing regimes on companies competing in the internal market. Due to the European framework regime, Portuguese hauliers face market distortions at EU level. Hence, at national level, as at regional level, this provision imposes that hauliers using solely vehicles weighing between 2.5 t and 3.5 t, must also pay capital and reserves to exercise the activity. However, according to Art. 7 (1) of Reg. (CE) 1071/2009, only operators with vehicles above 3.5 t must demonstrate, every year, that they have at their disposal "capital and reserves" totalling at least EUR	Option 1: Abolish the mandatory licensing regime for operators using solely vehicles between 2.5 t and 3.5 t. This will be in line with EU Regulation 1071/2009, arts. 1 (4) (a) and 3 (2), which harmonises and imposes a mandatory licensing regime for operators using vehicles above 3.5 t. Option 2: Alternatively, consider reducing the licensing requirements that operators using solely vehicles between 2.5 t and 3.5 t have to fulfil, by reassessing each of the current licensing requirements. In particular, reassess the need for imposing a financial requirement on the company, during the financial year, of capital and reserves. Consider reducing the current financial requirement to a more proportional one, taking as proxy the proposal to amend EU Regulation 1071/2009, Art. 7 (1), in consideration at EU level (see COM(2017) 281 final) which requires an equity capital totalling at least EUR 1 800 when only one vehicle is used and EUR 900 for each additional vehicle used.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
						<p>9 000 when only one vehicle is used and EUR 5000 for each additional vehicle used. As such, this national provision imposes a standard of financial capacity, which constitute a barrier to entry for entrepreneurs. This may constitutes a barrier to entry also at EU level, since it may prevent an European operator from entering the domestic market, in case it has a different level of financial standing (see Judgment in Case C-438/08 [2009], paras. 18, 28, 29, 53).</p> <p>In fact, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the region regime expressly states it does not aim to attribute a community licence, still, we consider that the regional regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices.</p> <p>Within the European context, it is also important to take into account a new "Proposal for amendment of Regulation (CE) 1071/2009, Art. 1 (4) (a), and Regulation (CE) 1072/2009, Art. 1 (5) (c) - see COM(2017)281 final, p. 17", proposing to subject i) hauliers operating solely with vehicles between 2.5 and 3.5 t to a mandatory licensing regime, but ii) excluding them from some, but not all of the licensing requirements. Requirements on the transport manager, good repute, professional competence and obligations related to those requirements are not proposed as mandatory, but Member States would keep the possibility of applying them. By contrast, the requirements regarding effective and stable establishment and appropriate financial standing are proposed to apply to such hauliers in all Member States. Specifically, the proposal to amend Art. 7 (1) of Reg. (CE) 1071/2009, consists of requiring that hauliers operating solely with vehicles between 2.5 and 3.5 t have at their disposal "equity capital totalling at least EUR 1 800 when only one vehicle is used and EUR 900 for each additional vehicle used".</p>	

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
187	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 9 (4) (5)	Transport of freight - access to the activity	Proof of financial capacity shall be made by (i) a certificate of the commercial register containing the share capital and by a duplicate or certified copy of the last balance presented for corporate income tax (IRC) or (ii) a bank guarantee.	The official recital states that it aims to establish the legal regime of access to the activity, in Madeira, following the national regime established in Decree-Law 257/2007 (as amended), improving general conditions for the provision of services regarding road freight transport, for hire or reward, and to improve the competitive capacity of companies operating in that market, promoting, therefore, the professionalisation of the light transport vehicle sector (LTVs: from 2.5 t up to 3.5 t). Furthermore, the official recital clearly states that there is a need to proportionally adapt the licensing regime for companies operating exclusively with LTVs to differentiate them from other operators working with trucks above 3.5 t.	The Madeira regime regarding proof of financial capacity, in line with the national regime (Art. 9 (4) of Decree-Law 257/2007, as amended) is more stringent than Reg. (CE) 1071/2009. In fact, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Ar. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. Even if the Madeira regime expressly states it does not aim to attribute a community licence, still, we consider that, the Madeira regime, as the national regime, corresponds to an entry barrier which can limit the number of operators in the market, leading to higher operational costs and prices. According to Art. 7 (2), Regulation (CE). 1071/2009, the financial capacity requirement may be demonstrated, alternatively, by means of a certificate such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the company. Thus, the regional regime is more restrictive than the Reg. (CE) 1071/2009. Although the Reg. (CE) 1071/2009 allows Member States (and Recital 5 allows them to have a different regime for outermost regions) to choose how a company may alternatively demonstrate its financial capacity, the regional regime, which is more restrictive, seems not to be justified, notably due to the fact that Portuguese road freight and passengers operators generally have small fleets, so we consider companies could have the option to choose between a bank guarantee or an insurance, in line with the Art. 7 (2) of Reg. (CE) 1071/2009. This might be preventing Portuguese companies from expanding their business and raising costs since, at first, it is not clear which option (bank guarantee versus insurance) is the most economically advantageous one. Further, based on the "Ex-post evaluation of Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 - Final Report, MOVE/D3/2014 - 254", (p. 29, and 105-107), the use of insurance is permitted in at least in 8 Member States (Austria, Germany, Bulgaria, Czech Republic, Denmark, Estonia, Sweden, and Italy). Finally, also taking into account the case law of the CJEU, the financial capacity requirement may be demonstrated by insurance (Case C-171/02, Commission v. Portugal [2004], para. 55).	Amend this provision, in line with Art. 7 (2) of Reg. (CE) 1071/2009, also allowing that the financial capacity requirement may be demonstrated by an insurance contract.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
188	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 14 (1) (4)	Transport of freight - access to the activity	Vehicles used in the activity of road transport of goods for hire or reward are subject to a regional licence issued by the General Directorate of Land Transport of Regional Government of Madeira, whether owned by the transporter, subject to a leasing contract or a lease without a driver. These vehicle licences shall lapse in the event of the lapse of the regional licence, that is, within a period not exceeding five years [see arts. 3(2) and 14 (1) (4) of this Decree-Law 257/2007, as amended].	No official recital. Our understanding is that it aims to guarantee that the public authority has at its disposable information for monitoring the respect of the limits on age of vehicles for access to the activity by the companies, as imposed by the regional regime, within the same time-limits for the renewal of the licences, that is, every five years.	The Madeira vehicles licence regime should follow the issuance/renewal of the licences for access to the activity of road freight transport for hire or reward, at regional level, which are established in line with the national regime [see Arts. 3 (2) and 14 (1) (4) of Decree-Law 257/2007 (as amended)], which limits the issuance/renewal of the vehicles licenced only up to five years. As such, this provision corresponds to an operational cost, which may deter entrepreneurs, especially SMEs, from entering the market, or lead to an increase in prices, at regional level. Regional operators have to pay EUR 30 every five years to the public regional authority for the renewal of their regional vehicle licences (see Ordinance 169/2011, from the regional government). The national vehicles licensing regime (to be followed, at regional level) is harmonised at EU level. Hence, the national provision although in line with Regulation (CE) 1072/2009, is more stringent: as far as regards the community licence, Regulation (CE) 1072/2009, Art. 4(2), states that it can be issued for renewable periods of up to 10 years. EU operators wishing to enter the national market would face the national measures, with monitoring/inspections carried out at least every five years. If following this approach into the national regime, and, consequently, at regional level, it would be possible to reduce costs, to reduce the administrative burden and possibly extend the renewal of licences up to 10 years, in line with other potential EU operators. Nonetheless, the adaptation of the rationale of the EU rules, at regional level, is not straightforward. In fact, Recital 5 of Reg. (CE) 1071/2009, allows Member States to adapt the regime to their outermost regions referred to in Art. 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the companies established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a community licence. However, from the market interviews carried out, under the stakeholders' opinion, the need to renew the vehicle licences, further to the periodic vehicle inspection at vehicle inspection centres, and payment of an administrative fee at least every five years, is considered not to be burdensome or costly, but rather proportional and needed, and seen as a positive way to motivate operators not to operate illegally, in prejudice to compliance with the vehicles licensing criteria.	No recommendation; the provision is considered proportional in line with the policy objectives.
189	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of	Art. 14 (2)	Transport of freight - access to the activity	In the Madeira region, activity of road transport of goods, by means of vehicles weighing more than 2 500 kg, the conditions for issuing and renewing the license (cf. Art. 13) require that: the age of the motor vehicle, as determined by the date of first registration, does not exceed 20 years. There are no dispositions regarding cases of potential	No official recital. According to an association representing the sector, this relates to client protection, such as to ensure that the vehicles fulfil all the safety requirements.	At regional level, the average age of a company's truck fleet is fixed at 20 years and the limit of age of the vehicles themselves is 20 years. These limits do not foresee that operators can account for a reduction of five years per vehicle in case of installation of a duly approved particle filter (see Art. 14(2)(3) of this Act). These are entry barriers for operators, imposing the need to renew the fleets after a certain average age of their vehicles, even if all vehicles need to pass the mandatory technical vehicle inspection, which means that they meet all the safety requirements for driving on public roads. This increases not only the initial level of investment in new (or almost new) vehicles, but also the prices charged to consumers, which can deter particularly small and medium-size enterprises from starting and continuing operating. In mainland Portugal, the average age of the fleet is fixed at 10 years (see Art. 14 (3)(5) of Decree-Law 257/2007, as	Recommendation 1: Consider revising the provision, studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that reflects better the usage and depreciation of the vehicles and fleets (e.g. mileage).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
	road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg* [The national regime is established in Decree-Law 257/2007 (as amended)]			installation of a particle filter duly approved and verified by the technical inspection centres of vehicles, as concerns the age of the vehicles.		amended). However, this provision allows operators to obtain a licence to operate solely within the region. These regional operators are not in competition either with national or with European-level operators. Influencing the analysis of the proportionality of this provision is the fact that the TFEU allows Member States to adapt provisions to their outermost regions (as is the case of the regions of Madeira and the Azores in Portugal), because of the special characteristics of, and constraints in, those regions [see, to that effect, Art. 349 TFEU (ex Art. 299(2), second, third and fourth subparagraphs, TEC)], namely regarding their remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products, as long as they do not undermine the integrity and the coherence of the Union legal order, including the internal market and common policies. As a consequence, in cases of companies established in those regions, complying with legal conditions to pursue the activity as a result of such adaptation, these are not able to obtain a community licence, but merely a regional licence (see, to that effect, Regulation (CE) 1071/2009, Recital 5). Assuming that the operators limit their action in the region, they do not face any positive discriminatory treatment when compared to the other regions, mainland Portugal or EU-level operators. Stakeholders reported that the proxy used as a standard for quality in the use of the vehicles, given by a certain number of years, either concerning the average lifespan of a fleet or the limit of age for a particular vehicle, cannot always be considered as a reasonable criterion, since vehicles of a certain age but with a low mileage, having passed their mandatory technical inspection, could still serve their purpose if used within a fleet for a longer period of time, hence, saving unnecessary costs imposed on operators by forcing them to buy new vehicles to respect the limit of age of the vehicles/fleet, imposed by law. Furthermore, it is important to take into account the following lifespan discrepancies in the national framework: there is no age limit for taxi cars; there is no age limit for buses for the transport of passengers by road; there is a 10-year average age for a trucks fleet for the transport of freight by road for hire or reward (see Art. 14 (3) of Decree-Law 257/2007, as amended); for the rental of cars without a driver the age limit is five years extendable to seven years (see Art. 6(1)(c) of Decree-Law 181/2012, as amended); and for the rental of trucks without a driver the age limit is five years extendable up to eight years (see Art. 14 (1) (2) (3) of Decree-Law 15/88, as amended). Also, taking into consideration the age distribution of the vehicles in use in road freight transport among the EU27 hauliers, we can affirm that 4% of the EU27 hauliers still use trucks that are more than 15 years of age competing in the Internal market [see, to that effect, information available at Eurostat, DG Move, "Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market (COM(2014) 222 final of 14.4.2014)", p. 23, https://ec.europa.eu/transport/sites/transport/files/modes/road/news/com%282014%29-222_en.pdf]. In conclusion, taking into consideration all arguments, we can advocate for competent authorities to consider studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage).	Recommendation 2: Amend the provision in order to include a reference in the law allowing for the possibility of taking into account a reduction of five years per vehicle in case of installation of a duly approved particle filter in the vehicles, which would allow a reduction on the age of the trucks.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
190	Regional Legislative Decree 10/2009/M (modified by Regional Legislative Decree 40/2012/M) "Regional legal regime for access to the activity of road freight transport, for hire or reward, in the Region of Madeira, by means of vehicles weighing more than 2 500 kg" [The national regime is established in Decree-Law 257/2007 (as amended)]	Art. 14 (3)	Transport of freight - access to the activity	In the Madeira region, activity of road transport of goods, by means of vehicles weighing more than 2500 kg, the conditions for issuing and renewing the licence (cf. Art. 13) require that: the average age of the company's motor vehicle fleet (at least 3 vehicles) determined by the date of first registration of each vehicle does not exceed 20 years. There are no dispositions regarding cases of potential installation of a particle filter duly approved and verified by the technical inspection centres of vehicles, as concerns the age of the vehicles.	No official recital. According to an association representing the sector, this relates to client protection, such as to ensure that the vehicles fulfil all the safety requirements.	At regional level, the average age of a company's truck fleet is fixed at 20 years and the limit of age of the vehicles themselves is 20 years. These limits do not foresee that operators can account for a reduction of five years per vehicle in case of installation of a duly approved particle filter (see Art. 14(2)(3) of this Act). These are entry barriers for operators, imposing the need to renew the fleets after a certain average age of their vehicles, even if all vehicles need to pass the mandatory technical vehicle inspection, which means that they meet all the safety requirements for driving on public roads. This increases not only the initial level of investment in new (or almost new) vehicles, but also the prices charged to consumers, which can deter particularly small and medium-size enterprises from starting and continuing operating. In mainland Portugal, the average age of the fleet is fixed at 10 years (see Art. 14 (3)(5) of Decree-Law 257/2007, as amended). However, this provision allows operators to obtain a licence to operate solely within the region. These regional operators are not in competition either with national or with European-level operators. Influencing the analysis of the proportionality of this provision, is the fact that the TFEU allows Member States to adapt provisions, to their outermost regions (as is the case of the regions of Madeira and the Azores in Portugal), because of the special characteristics of, and constraints in, those regions [see, to that effect, Art. 349 TFEU (ex Art. 299(2), second, third and fourth subparagraphs, TEC)], namely regarding their remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products, without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies. As a consequence, in cases of companies established in those regions, complying with legal conditions to pursue the activity as a result of such adaptation, these are not able to obtain a community licence, but merely a regional licence (see, to that effect, Regulation (CE) 1071/2009, Recital 5). Assuming that the operators limit their action in the region, they do not face any positive discriminatory treatment when compared to the other regions, mainland Portugal or EU-level operators. Stakeholders reported that the proxy used as a standard for quality in the use of the vehicles, given by a certain number of years, either concerning the average lifespan of a fleet or the limit of age for a particular vehicle, cannot always be considered as a reasonable criterion, since vehicles of a certain age but with a low mileage, having passed their mandatory technical inspection, could still serve their purpose if used within a fleet for a longer period of time, hence, saving unnecessary costs imposed on operators by forcing them to buy new vehicles to respect the limit of age of the vehicles/fleet, imposed by law. Furthermore, it is important to take into account the following lifespan discrepancies in the national framework: there is no age limit for taxi cars; there is no age limit for buses for the transport of passengers by road; there is a 10-year average age for a trucks fleet for the transport of freight by road for hire or reward (see Art. 14 (3) of Decree-Law 257/2007, as amended); for the rental of cars without a driver the age limit is five years extendable to seven years (see Art. 6(1)(c) of Decree-Law 181/2012, as amended); and for the rental of trucks without a driver the age limit is five years extendable up to eight years (see Art. 14 (1) (2)	Recommendation 1: Consider revising the provision, studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that reflects better the usage and depreciation of the vehicles and fleets (e.g. mileage). Recommendation 2: Amend the provision in order to include a reference in the law allowing for the possibility of taking into account a reduction of five years per vehicle in case of installation of a duly approved particle filter in the vehicles, which would allow a reduction on the age of the trucks.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
191	Ordinance 1099/99 "Regulates the professional competence examinations for road freight transport [Regulates Decree-Law 38/99 (as revoked by Decree-Law 257/2007 (last modified by Decree-Law 136/2009)]"	All	Transport of freight - access to the activity	Regulates the examination for the Certificate of Professional Capacity (CAP for transport managers) for transport of freight by road.	No official recital. Based on stakeholders' opinions, it aims to ensure high quality transport managers in companies operating in the freight transport market.	(3) of Decree-Law 15/88, as amended). Also, taking into consideration the age distribution of the vehicles in use in road freight transport among the EU27 hauliers, we can affirm that 4% of the EU27 hauliers still use trucks that are more than 15 years of age competing in the Internal market [see, to that effect, information available at Eurostat, DG Move, "Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market (COM(2014) 222 final of 14.4.2014)", p. 23, available at https://ec.europa.eu/transport/sites/transport/files/modes/road/news/com%282014%29-222_en.pdf]. In conclusion, taking into consideration all arguments, we can advocate for competent authorities to consider studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage). There is legal uncertainty on the subject matters regulated by the Ordinance 1099/99. The exams to obtain the Certificate of Professional Capacity for transport managers for freight road transporters are regulated in Annex II of Ordinance 1017/2009. Therefore, the provision seems to be obsolete or no longer in force. This may raise legal costs for operators.	Confirm if this provision is obsolete and proceed to its formal revocation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
192	Decree-Law 132/2017 "Regulation setting the maximum authorised weights and dimensions for certain road vehicles in circulation" (transposing Directive 2015/719/EU).	Art.11 (3) (4); Art. 13 (1) (2) (4); Art. 14(5)	Transport of freight - mega-trucks	<p>These provisions, allowing the use of mega-trucks at national level up to 60 t in weight limited to 18.75 m in length, treat the operators differently, according to the following type of restrictions:</p> <p>i) Only one possible technical combination of the vehicles is exempted from obtaining an annual special transit authorisation, from the IMT, that is, a motor-towing vehicle with five or more axles, which is a combination starting with a rigid truck with a trailer. Hence, a tractor is not allowed at the beginning of the combination of the vehicles nor a semi-trailer in the middle of the combination;</p> <p>ii) Only certain product/goods, belonging to specific economic sectors, can be transported through the use of a motor-towing vehicle with five or more axles, as identified above, benefiting from the exemption, from the IMT, as identified above:</p> <ul style="list-style-type: none"> - with origin in production farms/facilities: exclusively engaged in the transport of wine products, fruit and vegetables, livestock and cereals; - during agricultural campaigns seasons and provided that the destination is a unit of concentration or transformation: exclusively engaged in the carriage of wine products, fruit and vegetables, and cereals; 	<p>The official recital states that this Decree-Law transposes Directive 2015/719/EU (amending Directive 96/53/EC), without stating any further reasoning concerning the maximum gross weight of the vehicles.</p> <p>At the EU level, the maximum weight was harmonised up to 40 t (exception for up to 44 t for intermodal transport). The directive leaves to the discretion of the Member States the possibility of altering this limit, limited to circulation within the national territory or by bilateral agreements. Indeed, Art. 4 (3) (4) (5) of Directive 2015/719/EC states that it intends to balance the Member States' right under the principle of subsidiarity to decide on transport solutions suited to their specific circumstances, with the need to prevent such policies from distorting the internal market, such as: where the existing infrastructure and the road safety requirements allow it; and where the transport operations do not have a significant impact on international competition, such as operations linked to logging and the forestry industry, given the fact that road freight vehicles for wood products are very specialised and cannot be used for the transportation of other products.</p>	<p>These provisions, allowing the use of mega-trucks at national level of up to 60 t in weight and limited to 18.75 m in length, treat the operators differently regarding (i) the technical combination of the vehicles and (ii) the transportation of sector specific goods, without a duly justified rationale, as follows:</p> <p>i) The limited technical combination of the vehicles is not duly justified and may have an impact on: the difference in costs of buying or renting a rigid tractor with a trailer versus a truck and a semi-trailer; on the fuel used; on the versatility of possible different combinations for the operators; and it may also prevent EU operators from other jurisdictions without this restriction from entering the national market. This can lead to less innovation, higher prices, and ultimately, to lower consumer welfare.</p> <p>ii) The differentiation in the transport of certain products/goods belonging to specific economic sectors is not duly justified. This can reduce the incentives to compete amongst operators and limit the resulting economies of scope since the use of mega-trucks is restrictive to certain products/goods. For example, in the Netherlands, mega-trucks can be used in the floriculture industry whereas in Portugal it is forbidden.</p>	<p>Recommendation 1: Abolish the technical limitations on the possible multiple configurations of combinations of mega-trucks, as long as the combination is technically viable and respects the legal limits of weight and length. In particular, weight up to 60 t and limited to 16.5 metres (m) (tractor and semi-trailer) or 18.75 m (rigid truck with a trailer) in length.</p> <p>Recommendation 2: Abolish the differentiation in the transport of certain product/goods belonging to specific economic sectors, without a duly justified reasoning.</p>

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
193	Ordinance 1017/2009 "Conditions for the recognition of training institutes and for obtaining the certificate of professional competence of transport managers" [Regulates Decree-Law 257/2007, as amended lastly by Decree-Law 136/2009]	Art. 2 (1)	Transport of freight - training institutes and training courses for transport managers	<p>- with as a destination units of concentration or transformation: exclusively engaged in the transport of livestock;</p> <p>- with its origin or destination being a national port: exclusively engaged in transporting paper, paper pulp, ceramic products, steel products, mineral products, wine products, fruit and vegetables and livestock;</p> <p>- independently of their origin or destiny: exclusively engaged in the transport of chemicals, namely purified terephthalic acid.</p> <p>The training institutes need prior recognition by the IMT, which is granted for a period of five years, renewable by proving that the requirements are maintained.</p>	No official recital. Within the context of the official recital of Decree-Law 257/2009 (as amended), our understanding is that this provision aims to ensure that the training is provided by institutes duly licensed by a public institute, by complying with a set of specific requirements aimed at ensuring the provision of quality training according to the standards and the objectives pursued by the same decree-law. Furthermore, within the context of Directive 2003/59/CE, Recital 12, "[o]nly training centres which have been approved by the competent authorities of the Member States should be able to organise the training courses laid down for the initial qualification and the periodic training. To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism".	<p>Licences required for operation restrict entry and have the ability to restrict competition, possibly leading to higher prices and harming consumers.</p> <p>There are other alternative and less restrictive forms to pursue the same policy objective based on Decree-Law 92/2010, which transposes into national law the Directive of Services (Directive 2006/123/CE), such as a simple administrative communication to IMT through the electronic platform of IMT. Indeed, according to the official recitals and Arts. 5, 6 and 23 of Decree-Law 92/2010, there are limited cases in which it is possible to require a licence or authorisation for the provision of services in national territory. In this way, licences or authorisations corresponding to more complex and time-consuming administrative procedures are now required only in exceptional situations where compelling reasons of public interest so warrant. The streamlining of procedures is accompanied by the necessary strengthening of means and modes of supervision. The simplification introduced thus has, on the one hand, the accountability of economic agents and, on the other, the strengthening of supervision.</p> <p>Taking into consideration the regime for car rental (Art. 3 (1) of Decree-Law 181/2012, as amended) which does not require a licence, only a simple administrative communication to the IMT, it seems possible also to defend the application of a simple administrative communication to the IMT for the opening of new training institutes.</p> <p>Hence, according to Ordinance 1165/2010, Annex, Section III (B) (9) and (10), the savings cost would be EUR 350 per each licence/company.</p>	<p>Option 1: Abolish the need for a Portuguese licence.</p> <p>Option 2: Alternatively, consider if a simple administrative communication to the IMT would be reasonable, through the electronic platform of the IMT in line with the legal regime foreseen in other services which do not require a licensing regime, following Decree-Law 92/2010, Arts. 5, 6 and 23, which transposes, in Portugal, the Services Directive (Directive 2006/123/EC).</p>

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194	Ordinance 1017/2009 "Conditions for the recognition of training institutes and for obtaining the certificate of professional competence of transport managers" [Regulates Decree-Law 257/2007, as amended lastly by Decree-Law 136/2009]	Art. 5 (1)	Transport of freight - training institutes and training courses for transport managers	The technical-pedagogical co-ordinator must hold the Certificate of Professional Competence (CAP) and must have at least two years of experience as a teacher or trainer with technical-pedagogical co-ordinator functions.	No official recital. Within the context of the official recital of Decree-Law 257/2009 (as amended), our understanding is that this provision aims to ensure that the training is provided by institutes duly licensed by a public institute, by complying with a set of specific requirements aimed at ensuring the provision of quality training according to the standards and the objectives pursued by the same decree-law. Furthermore, within the context of Directive 2003/59/CE, Recital 12, "[o]nly training centres which have been approved by the competent authorities of the Member States should be able to organise the training courses laid down for the initial qualification and the periodic training. To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism".	This provision imposes a minimum requirement, as a proxy for quality standards, for qualified professionals, since it imposes two years of professional experience as a teacher or as a trainer with co-ordination functions, on top of holding a Certificate of Professional Competence (CAP). To perform a co-ordinator's functions the professional must have expertise as a co-ordinator. This corresponds to an entry barrier, which may lead to an increase in the operational costs of training institutes (through the increase of the wages of the professionals) which can be reflected in the prices charged to consumers. This ultimately has the ability to harm market dynamics.	The requirement of years of experience may not be sufficient as a proxy for professional knowledge and experience. We recommend that an exception be made available to professionals who do not have the two years of experience, but have a strong professional background, thus not excluding well-qualified professionals who have the knowledge and experience, but do not meet the requirement of years of experience. Competent authorities should define a procedure for granting this exception.
195	Ordinance 1017/2009 "Conditions for the recognition of training institutes and for obtaining the certificate of professional competence of transport managers" [Regulates Decree-Law 257/2007, as amended lastly by Decree-Law 136/2009]	Art. 8 (e)	Transport of freight - training institutes and training courses for transport managers	Training institutes must maintain the registration of the training courses carried out, as well as the individual file of the trainees for a period of five years.	No official recital. Within the context of the official recital of Decree-Law 257/2009 (as amended), our understanding is that this provision aims to ensure that the training is provided by institutes duly licensed by a public institute, by complying with a set of specific requirements aimed at ensuring the provision of quality training according to the standards and the objectives pursued by the same decree-law. Furthermore, within the context of Directive 2003/59/CE, Recital 12, "[o]nly training centres which have been approved by the competent	There is no harm on competition grounds. There might be an administrative burden because training institutes must keep, for five years, documentation that the IMT already holds. Indeed, the public institute charges for (a) approval of the training courses every five years (EUR 150) and (b) certificates of professional competences for the transport managers (EUR 115) - See Ordinance 1165/2010, Annex, Section III (B) 11). Even if the rationale is to protect trainees (if, for instance, they lost their certificates), they can always ask for copies at the IMT.	Option 1: Abolish the need to keep the registration of the training courses carried out for five years, as well as the individual file of the trainees. Option 2: Alternatively, reduce this period of five years, to another time limit, in light of the principles of adequacy, necessity and proportionality.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
					authorities of the Member States should be able to organise the training courses laid down for the initial qualification and the periodic training. To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism".		
196	Ordinance 1017/2009 "Conditions for the recognition of training institutes and for obtaining the certificate of professional competence of transport managers" [Regulates Decree-Law 257/2007, as amended lastly by Decree-Law 136/2009]	Art. 9 (1)	Transport of freight - training institutes and training courses for transport managers	The training courses are approved by the IMT for a period of five years, renewable by proving that the requirements that determine recognition are maintained.	No official recital. Within the context of the official recital of Decree-Law 257/2009 (as amended), our understanding is that this provision aims to ensure that the training is provided by institutes duly licensed by a public institute, by complying with a set of specific requirements aimed at ensuring the provision of quality training according to the standards and the objectives pursued by the same decree-law. Furthermore, within the context of Directive 2003/59/CE, Recital 12, "[o]nly training centres which have been approved by the competent authorities of the Member States should be able to organise the training courses laid down for the initial qualification and the periodic training. To ensure the quality of these approved centres, the competent authorities should set harmonised criteria for their approval including that of a well-established high level of professionalism".	This provision regulates Decree-Law 257/2009 (as amended), establishing the need for approval of the training courses for transport managers to obtain the respective CAM (for passengers and freight), which should follow the Annex I of Directive 2003/59/CE (as amended). The need for an approval implies an operational cost, namely by payment of a fee. According to Ordinance 1165/2010, Annex, Section I, Section III, B (11) - freight, the amount to be paid is EUR 150 for each manual. However, according to a stakeholder, the possibility of having national manuals (for passengers and freight CAMs) elaborated by the IMT to be followed by all training entities is not desirable. Instead, the stakeholder highlighted the advantages of the current solution, i.e., the possibility of having one's own manual to teach the mandatory subjects in Annex I of the Directive 2003/59/CE. Furthermore, according to the same stakeholder, the cost seems not to be disproportionate to the policy objective.	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
197	Ordinance 1017/2009 "Conditions for the recognition of training institutes and for obtaining the certificate of professional competence of transport managers" [Regulates Decree-Law 257/2007, as amended lastly by Decree-Law 136/2009]	Annex I, Section 2, paras. 2 and 3	Transport of freight - training institutes and training courses for transport managers	The classrooms must have an area of not less than 35 m2. Classes consist of a maximum of 20 trainees.	No official recital. Based on stakeholders' opinions, the rationale for the provision relates to the fact that a small group of students have a better opportunity to acquire the knowledge being taught. The room size relates to the need to have a maximum number of trainees per room.	This provision establish minimum requirements and, hence, is restrictive, limits entry and imposes operational costs, possibly leading to higher prices, and does not proportionally lead to better quality services. According to a stakeholder, this limits the adjustment between supply and demand. For instance, it imposes that a classroom needs to have minimum space of 35 m2. If an operator only has five students, it does not need a room with 35 m2. This increases the costs for small operators and even prevents entrepreneurs (SMEs) from starting a business. Also, the limitation of no more than 20 students per room imposes the need for two rooms in the case of 21 students. This limitation of the classes seems not to be adequate, necessary or proportional. Additionally, one should take into consideration the fact that the classes are composed of adults/professionals. Furthermore, if online distance courses were to be allowed, in line with the possibility of a long-distance learning degree, physical installations would not be required.	Recommendation 1: Eliminate the legal requirement that the training rooms must have an area of not less than 35 m2. Recommendation 2: Eliminate the requirement that imposes a maximum of 20 trainees/per room.
198	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 1 (1)	Rent-a-truck without a driver	The exercise of the rental industry of vehicles hired without drivers for the carriage of goods by road depends on an authorisation to be granted by the IMT (formerly, the DGTT), which will be entitled by a licence (alvará).	The official recital states that this decree-law aims to reduce the intervention of the administration, simplifying the process of granting a licence. A public institute agrees with the need to maintain the access to the activity through a licensing scheme (alvará), thus providing the possibility of controlling the quality and safety features of the services provided by the rent-a-truck companies and the vehicles used in that activity.	The request for a licence corresponds to an entry barrier, which can limit the number of operators in the market. Plus, according to Ordinance 165/2010, Annex, Section V, A1, the fee for a licence amounts to EUR 350 every five years. This corresponds to an operational cost which can prevent operators from entering the market, leading to an increase in prices charged to consumers. First, note that Directive 2006/1/EC (which regulates at the EU level the legal regime for truck rental) does not demand any licence to operate. This is clearly stated in the "Ex-post evaluation report of the Directive 2006/1/EC (MOVE/D3/2015-423)", where 22 Member States do not have any restriction to the hiring of vehicles (Netherlands, Ireland, Finland, Luxembourg, Slovakia, the United Kingdom, Slovenia, France, Estonia, Germany, Austria, Belgium, Sweden, the Czech Republic, Bulgaria, Lithuania, Romania, Croatia, Hungary, Malta, Latvia and Poland), and only 3 Member States require a licence (Cyprus, Spain and Portugal). Second, there are other alternative and less restrictive forms to pursue the same policy objective, as the regime for car rental (see Art. 3 (1) of Decree-Law 181/2012, as amended) which does not require a licence, only a prior administrative communication to the IMT through the electronic platform of IMT (based on Decree-Law 92/2010, which transposes into national law the Directive of Services (Directive 2006/123/CE)). The simplification suggested has, on the one hand, the accountability of economic agency and, on the other, the strengthening of supervision.	Option 1: Abolish the need for a Portuguese licence. Option 2: Alternatively, consider if a simple administrative communication to the IMT would be reasonable, through the electronic platform of the IMT in line with the legal regime foreseen in other services which do not require a licensing regime, following Decree-Law 92/2010, Arts. 5, 6 and 23, which transposes, in Portugal, the Services Directive (Directive 2006/123/EC).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
199	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 2 (1) (a)	Rent-a-truck without a driver	The licence (alvará) shall be granted to a commercial company or to a co-operative, provided that its business object covers the activity of the "use of vehicles hired without drivers for the carriage of goods by road" and, cumulatively: (A) have their headquarters in the national territory;	No official recital. Based on a stakeholder's opinion, the requirement of "headquarters" aims to allow Member States to monitor if the companies have an effective and stable establishment and not just a "letterbox company".	This provision, which demands that companies need to have their headquarters in Portugal, corresponds to an entry barrier which limits the ability to enter the market. This provision might increase not only the initial costs but also operational costs. Taking into consideration the licensing criteria at the EU level regarding the transport of freight by road, it is only required that operators have "an effective and stable establishment in a Member State" and not "headquarters" [see Regulation (CE) 1071/2009, Art. 3 (1) (a) and Art. 5 (amended lastly by Regulation (EU) 517/2013; and complemented by Regulation (EU) 2016/403]. Applying different standards in EU Member States for establishments may lead to social dumping (with the problem of wages and social standards) and competition. Such measures may cause problems for the proper functioning of the internal market.	Abolish the need to have headquarters in Portugal. This is in line with the licensing criteria at the EU level regarding the transport of freight by road which only requires that operators have "an effective and stable establishment in a Member State" and not "headquarters" (following Regulation (CE) 1071/2009, Art. 3 (1) (a) and Art. 5 (amended lastly by Regulation (EU) 517/2013; and complemented by Regulation (EU) 2016/403).
200	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 2 (1) (c)	Rent-a-truck without a driver	The licence (alvará) shall be granted to a commercial company or to a co-operative, provided that its business object covers the activity of the "use of vehicles hired without drivers for the carriage of goods by road," and, cumulatively: (C) if the company intends to explore the rental of vehicles of more than 6 000 kg (exempted for vehicles smaller than 6 000 kg), it must additionally hold a licence for the public transport of goods or be majority-owned by companies, jointly or individually, that fulfil this requirement.	The official recital states that the Decree-law aims to ensure that companies already holding a licence for the public transport of goods or companies who are majority-owned by companies that, jointly or individually, are license for the public transport of goods can be also licensed to exercise the activity of truck rental.	This provision requires a double licensing procedure, which represents an entry barrier, additional costs, which might lead to a lower number of operators in the market and higher prices for consumers. On the one hand, it requires that companies who wish to explore the activity of rent-a-truck with vehicles of a weight lower than 6 000 kg hold a licence regarding this activity of rent-a-truck with the fulfilment of the following requirements: suitability, financial standing (EUR 50 000 - see Art. 2 (1) (d) of this decree-law), and a minimum number of vehicles. On the other hand, companies aiming to explore the activity of rent-a-truck with vehicles above 6 000 kg must hold an additional licence to perform the activity of rent-a-truck, fulfilling another set of requirements: as suitability, professional capacity (transport manager), financial standing (EUR 125 000 or EUR 50 000, in case of the exercise of the activity exclusively with heavy or light vehicles, respectively - see Art. 9 (2) of Decree-Law 257/2007, as amended, and analysed above). Furthermore, according to the "Ex-post evaluation of the Directive 2006/1/EC (MOVE/D3/2015-423)" - https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf), 22 Member States do not require any restrictions and only 3 require a licence (Cyprus, Spain and Portugal). Hence, the Portuguese requirements seem disproportionate towards the completion of the internal market.	Option 1: Abolish the need for a Portuguese licence. Option 2: Alternatively, consider if a simple administrative communication to the IMT would be reasonable, through the electronic platform of the IMT in line with the legal regime foreseen in other services which do not require a licensing regime, following Decree-Law 92/2010, Arts. 5, 6 and 23, which transposes, in Portugal, the Services Directive (Directive 2006/123/EC).
201	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 2 (1) (d)	Rent-a-truck without a driver	The licence shall be granted to a commercial company or to a co-operative, provided that its business object covers the activity of the "use of vehicles hired without drivers for the carriage of goods by road" and, cumulatively: (D) they must have minimum capital, to start the business, of EUR 50 000 ("10 000 contos").	No official recital. Based on a stakeholder's opinion, usually this minimum capital requirement aims at guaranteeing the quality of services provided, namely to ensure the solvency of a company.	The Portuguese Companies Code and the Portuguese Commercial Registration Code allow the creation of a single shareholder limited liability company (with a minimum share capital of EUR 1.00), a private limited company or partnership (with a minimum share capital of EUR 1.00), a public limited company (with a minimum share capital of EUR 50 000), and co-operatives (with a minimum share capital of EUR 2 500) in one hour. This procedure can be done online through an electronic platform so-called "Create-a-firm-on-the-spot" (www.empresanahora.mj.pt/ENH/sections/PT_inicio.html). These values differ from the ones set in this Decree-Law. Hence, this provision imposes a standard of financial capacity, which constitutes a barrier to entry for entrepreneurs (SMEs). This may constitute a barrier to entry also at EU level, since it may prevent a European operator from entering the domestic market, in case it has a different level of financial standing (see judgment in Case C-438/08 [2009], paras. 18, 28, 29, 53; and C-171/02 Commission v Portugal [2004] ECR I 5645, para. 53	Abolish the financial criteria. Any amount required as initial capital to start a business should comply with the general rules for constituting a company, in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code.

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202	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 3 (1) (2) (3)	Rent-a-truck without a driver	<p>An operator aiming to explore the activity of rent-a-truck with vehicles smaller than 6 000 Kg must operate a predetermined minimum number of vehicles:</p> <ol style="list-style-type: none"> 1) 12 vehicles as a general rule; 2) 6 vehicles when the company is also engaged in car rental activity; <p>Second, an company aiming to explore the activity of rent-a-truck with vehicles larger than 6 000 kg must operate a predetermined minimum number of vehicles:</p> <ol style="list-style-type: none"> 3) 6 vehicles, which could be lower if the company has a minimum tonnage of 50,000 kg gross weight in total. 	No official recital. According to an association representing the sector, this should ensure that, in case of an accident or in case of failure of a vehicle, the operator has a replacement vehicle.	<p>and 54). Furthermore, the regime for rent-a-truck is harmonised at EU level. According to the "Ex-post evaluation of the Directive 2006/1/EC (MOVE/D3/2015-423)" - https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf, 22 Member States do not require any restrictions (NL, IE, FI, LU, SK, UK, SL, FR, EE, DE, AT, BE, SE, CZ, BG, LT, RO, HR, HU, MT, LV, PL). Out of the six remaining countries, we found out that only two countries (Portugal and Italy) have a fixed capital amount of at least EUR 50 000.</p> <p>The mandatory requirement of operating a predetermined minimum number of vehicles, either for the rental of vehicles below or above 6 000 t, corresponds to an entry barrier, which could particularly affect small and medium-size enterprises from entering the market. This could lead to higher prices and lower quality. Furthermore, based on a stakeholder's opinion, for small markets, such as the Portuguese, there might be insufficient demand for companies with such dimensions. Taking the average cost for a truck of six t (EUR 80 000 based on stakeholder information), it represents EUR 960 000 of initial investment (for 12 vehicles) and EUR 460 000 of initial investment (for six vehicles). Additionally, note that the Directive 2006/1/EC, applicable to rent-a-truck activities, does not establish any minimum number of vehicles. Even though an association representing the sector has raised the argument that the minimum number of vehicles would serve to protect consumers in case of an accident or in case of failure of a vehicle, guaranteeing that the operator would have a replacement vehicle, we do not see how this could be implemented in reality. Operators are not prohibited from renting out all their vehicles at the same time. Finally, imposing that the vehicles must be registered under a Portuguese licence plate might also limit the ability of companies to compete. In this line, note that a "Proposal for a Directive amending Directive 2006/1/EC (2017/0113 (COD))" - http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0282&from=EN proposes to allow the "use of a vehicle hired in another Member (...) for at least four months to enable undertakings to meet temporary or seasonal demand peaks and/or to replace defective or damaged vehicles". (p. 2).</p>	<p>Recommendation 1: Abolish the minimum number of vehicles (in line with Directive 2006/1/EC).</p> <p>Recommendation 2: Study the possibility of allowing the use of a vehicle hired in another EU Member State, for at least four months, to enable companies to meet temporary or seasonal demand peaks and/or to replace defective or damaged vehicles (in line with "Proposal to amend Directive 2006/1/EC").</p>
203	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 4	Rent-a-truck without a driver	Except for the hiring of vehicles with a gross weight of up to 6 000 kg, the rental of vehicles is only allowed for licensed public road transport of goods companies.	The official recital lays down the principle that these vehicles may only be rented to companies operating in the public freight transport industry, although allowing for the rental of these vehicles, of a reduced size up to 6 000 kg, for the transport of goods for private purposes. Our understanding, based on a stakeholder's opinion, is that this restriction relates to safety issues, limiting the use of vehicles over 6 t for own-account operations (e.g. by individuals, associations and others operators).	<p>This provision limits the demand for this type of service, which might lead to an increase in operation costs as well as the prices charged to consumers. On the one hand, Art. 3 (2) of Directive 2006/1/EC allows Member States to impose restrictions in relation to own-account operations by vehicles over 6 t. On the other hand, the "Ex-post evaluation of the Directive 2006/1/EC (MOVE/D3/2015-423)" (https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf) concludes that it is not in line with EU policy priorities regarding the promotion of the internal market. Hence, the "Proposal for amendment of Art. 3 (2) of Directive 2006/1/EC" recommends the following: "the existing option for Member States to restrict the use of hired vehicles for vehicles over 6 t used for own account operations under Article 3(2) should be removed", since it is not consistent with the broader policy objectives towards the development of a Single Transport Area and there is some evidence of a negative impact on the productivity of transport operations" (p. 9). Note that, according to the same "Ex-post evaluation", only four Member-States have this restriction (Italy, Greece, Spain and PT).</p>	Abolish the current customer's restriction (in line with the "Ex-post evaluation of the Directive 2006/1/EC" and "Proposal for amendment of Art. 3 (2) of Directive 2006/1/EC").

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						Indeed, according to a stakeholder, a company A, operating in the retail sector (e.g., food) – and not active in the freight transportation sector - needs to create its own freight transport company (and meet the respective licensing requirements foreseen in Decree-Law 257/2007, as amended) to be able to rent trucks above 6 000 kgs, from truck rental companies. In other Member States, all that is needed is a competent driver's licence. This represents an extra and substantial cost for non-freight transport companies. Moreover, this limits the possibility for growth of truck rental companies.	
204	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 5 (2)	Rent-a-truck without a driver	The licensing of trucks for rental is subject to quotas or to special access requirements. It will only be possible in case of replacement of the vehicles or if lessees have an unfilled load equal to or greater than the gross vehicle weight of the leased vehicles and meet those requirements.	There is no official recital. We could not find the rationale for this provision.	This provision corresponds to an entry barrier since it limits the number of trucks available for rental for the activity of public freight transportation (quotas). Therefore, this limits the flexibility of operators to adjust to: (a) seasonality; (b) constant increase in demand; (c) operational issues, such as managing problems associated with defective/damage vehicles. Finally, according to a stakeholder, this provision is not being applied and might be obsolete.	Confirm if this provision is obsolete and proceed to its formal revocation.
205	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 5 (3)	Rent-a-truck without a driver	The licensing of trucks for rental is subject to an order of the IMT (formerly, the DGTT).	There is no official recital. We could not find the rationale for this provision.	To the best of our knowledge, no further regulation has been adopted. Hence, this provision creates legal uncertainty and creates search costs for operators, since the announced regulation would set the conditions for the use of vehicles, stipulating minimum requirements, with the ability to set standards and competition conditions.	Regulate the provision and adopt the necessary secondary legislation.
206	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 8 (1) (2)	Rent-a-truck without a driver	Head offices, agencies or subsidiaries of companies operating in the rent-a-truck industry must have their own facilities/premises where they must only carry out this activity. The companies are forbidden from using the same facilities to carry out car rental or public transport of goods activities, even if the company is engaged in these other activities.	No official recital. Based on a stakeholder's opinion, this provision intends to separate the operational activity of rent-a-truck from other activities, specifically the car rental activity and the transport of freight, for hire or reward.	The requirement of having specific facilities that separate truck rental and other related activities corresponds not only to an entry barrier, but it also limits the possibility of a company to explore economies of scope, namely: (a) the parking lot for truck rental, car rental, and transport of freight; (b) all the human resources related to these activities. Therefore, this restriction seems neither adequate, necessary or proportional to the given policy objective.	Abolish this article which prohibits companies from using the same facilities to perform truck rental activities and other related activities.

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207	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Arts. 9; and 17 (1) (c)	Rent-a-truck without a driver	The licence (alvará) is non-transferable, except when the transmission covers the universality of the assets affected by the exploration of the entire activity. The licence (alvará) is cancelled in case of the transfer of ownership of the vehicles associated with the rent-a-truck activity.	No official recital. Our understanding is that there may be a social/labour policy behind this provision, forcing the new owner/company to acquire not only the licence to operate and for its vehicles, but also for the employees. Furthermore, this provision also forces the transfer of all signed contracts (e.g., lease of the premises and rent-a-truck vehicles).	All these requirements significantly raise the cost of exit since companies are required to find a buyer willing to acquire the entire company, including labour contracts, lease contracts, and the minimum required vehicles to operate. Indeed, there might be a buyer willing to buy just the licence, and another one just willing to buy the vehicles or the contracts. This can also prevent companies from entering into the market by anticipating the costs of exit. Hence, this decreases the number of operators and the level of competition within the market, and as such these seem not to be adequate, necessary or proportional.	Abolish this article.
208	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 10 (1) (a)	Rent-a-truck without a driver	The licence (alvará) shall be revoked if the holder does not start the exploitation of the industry within 9 months of the date of issuance of the licence.	There is no official recital. We could not find the rationale for this provision.	This provision corresponds to an entry barrier since it indirectly creates a "quota" regime for truck rental companies forcing operators to start the activity within a nine-month period after obtaining the licence. To obtain the licence, companies have to have already demonstrated the fulfilment of the access requirements (headquarters, minimum number of vehicles, financial standing). Therefore, it should be up to the companies to decide when to enter the market and start competing. Furthermore, the consequence is harmful because the candidate simply loses the right to the licence. Note that all the requirements are of permanent verification. Therefore, this restriction seems not to be adequate, necessary or proportional to the given policy objective.	Abolish this article.
209	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 14 (1) (2) (3)	Rent-a-truck without a driver	These provisions contain the age limit regime of vehicles for a rent-a-truck activity. Vehicles older than five years counted from the date of their registry cannot be used. This limit can be extended: for periods of one year, up to a maximum of three years (with authorisation from the transport department of the company headquarters area, after inspection of the vehicles), and, exceptionally (without indication of the maximum number of years), by order of the IMT (formerly, the DGT), provided that the characteristics of the vehicle and its state of preservation warrant it.	No official recital. According to an association representing the sector, this relates to client protection, such as to ensure that the vehicles fulfil all the safety requirements.	By imposing these provisions every five years, extendable up to eight years, the renewal of all vehicles to be rented, corresponds to an entry barrier since it limits the lifespan of vehicles that can be used in the truck rental activity, based only in the number of years they have, independently of their mileage, and even if all vehicles need to pass the mandatory technical vehicle inspection, which means that they meet all the safety requirements for driving on public roads. Furthermore, this increases not only the initial level of investment in new (or almost new) trucks, but also the prices charged to consumers, which can deter particularly small and medium-size enterprises from starting and continuing operating. This could lead to an increase in operational costs with the renewal of the fleet, implying an increase in prices charged to consumers and not necessarily an increase in the quality of the services provided. According to a stakeholder's opinion, the age of a vehicle should match the route, and therefore, it should take into account the number of kilometres and international trips that these types of trucks need to perform every year. For international services, it considers that a more recent vehicle is always the best choice in terms of quality services. It would be possible to expand this period to 10 or 15 years where, in the first five years, the vehicles would carry out long international routes, but in the following five years, vehicles would carry out shorter, European routes; and finally, in the last five years, vehicles would carry out national routes. Furthermore, it is important to take into account the following lifespan discrepancies	Consider revising the provision, studying and reassessing the policy objectives related with the setting of a given limit of age for the vehicles, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that better reflects the usage and depreciation of the vehicles (e.g. mileage).

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						<p>in the national framework: there is no age limit for taxi cars; there is no age limit for buses for the transport of passengers by road; there is a 10-year average age for a trucks fleet for the transport of freight by road for hire or reward (see Art. 14 (3) of Decree-Law 257/2007, as amended); for the rental of cars without a driver the age limit is five years extendable to seven years (see Art. 6(1)(c) of Decree-Law 181/2012, as amended); and for the rental of trucks without a driver the age limit is five years extendable up to eight years (see Art. 14 (1) (2) (3) of Decree-Law 15/88, as amended).</p> <p>Also, it is important to take into account the lifespan discrepancies at the EU level: (a) in the "Ex-post evaluation of the Directive 2006/1/EC" (MOVE/D3/2015-423)" - https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-evaluation-of-directive-2006-1-ec-final-report.pdf (p. 47), the average age of leased fleet stock is 3.8 to 6 years; however, (b) in the "Report from the Commission to the Parliament and the Council of the Union Road Transport Market (COM(2014) 222 final)", the age distribution of heavy goods vehicles used by EU27 hauliers in 2012 were, as follows: 26% more than eight years; 17% between six and eight years; and 57% up to six years. Hence, Portugal is placed amongst those Member States with the lowest average lifespan for trucks; at the same time it is one of the Member States with an underdeveloped market.</p> <p>In conclusion, taking into consideration all arguments, we can advocate for competent authorities to consider studying and reassessing the policy objectives related to the setting of a given limit of age for the vehicles and/or fleets, taking into consideration that all vehicles need to pass a mandatory technical inspection, which means that they meet all the safety requirements for driving on public roads, and choosing another criterion that better reflects the usage and depreciation of the vehicles and fleets (e.g. mileage).</p>	
210	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 16 (1) (2)	Rent-a-truck without a driver	The licensing of vehicles for the operation of the rent-a-truck industry may be temporarily suspended or limited by order of the IMT (formerly, the DGT), with a view to balancing the functioning of the national transport market. New licences will only be granted to replace those that have been cancelled due to failure in the vehicles' inspection, the transfer of ownership or cancellation of the licence plate of their vehicles, if required within a period of 9 months from the date of cancellation.	There is no official recital. Based on information provided by a stakeholder, it should be taken into account that, at the time of the adoption of this provision, there were no compulsory regular inspections of trucks (in the 1980s). Hence, this provision might be related to safety issues, to guarantee that all trucks fulfil all the safety requirements.	This corresponds to an entry barrier since it limits the number of trucks available in the market (quota). Therefore, this limits the flexibility of operators to adjust to: (a) seasonality; (b) constant increase in demand; (c) operational issues as to managing problems associated with defective/damage vehicles. Finally, according to the same stakeholder, this provision is not applicable, in practice, and might be considered obsolete.	Confirm if this provision is obsolete and proceed to its formal revocation.

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211	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 18 (1); Art. 23 (1) (2)	Rent-a-truck without a driver	Minimum requirements are imposed in rental contracts: (a) they must be numbered, written, kept t in triplicate and the original must be archived for a minimum of two years from its closing date; and (b) they must be recorded in an annual register. The IMT (formerly, the DGT) can request for inspection purposes, copies of the contracts signed at least two years previously, to control the execution of the same.	No official recital. Based on a stakeholder's opinion, these contractual formalities aim to keep a complete record of the company's activities in order to facilitate fast and efficient access to these contracts by the competent authority, for auditing purposes.	These provisions impose an administrative burden and extra costs on companies to produce their commercial contracts in writing and to keep a record of these over a two-year period. First, by demanding that the contracts must be put it in writing, this limits the ability of companies to compete since, for example, a consumer could not rent a truck strictly via internet or an app, taking into account the new technologies easily available to companies. Second, the need to keep a record over a two-year period is an administrative burden and increases the operational costs of companies without a duly justified reason.	Abolish: (a) the need to put the contract in writing; (b) the need to physically keep a two-year record of all the information regarding contracts.
212	Decree-Law 15/88 (modified lastly by Decree-Law 203/99) "Legal regime on the use of vehicles hired without drivers for the carriage of goods by road, nationally or internationally"	Art. 22	Rent-a-truck without a driver	The price regime applicable to the rent-a-truck activity will be governed by the provisions of Decree-Law 415-A / 86 (repealed by Decree-Law 8/93, which was also revoked, although still conditionally in force until new regulation is adopted, by Decree-Law 52/2015 (Art. 16), which regulates public service of passenger transportation).	There is no official recital. According to a stakeholder, this provision is obsolete and is not applicable.	According to a stakeholder, currently this provision is not being applicable. Hence, it seems to be obsolete. According to the same stakeholder, prices are established freely by each operator.	Confirm if this provision is obsolete and proceed to its formal revocation.
Road infrastructure							
213	Decree-Law 170/71 "Central bus stations (terminal locations or stopping places of all non-urban road passenger transport routes serving urban agglomerations)"	Art. 1 (1) (3)	Central bus stations	The operators of non-urban passenger road transport routes serving urban conglomerates must compulsorily terminate or stop their routes in central bus stations. Exceptionally, the operators may be exempted, by the minister responsible or by the IMT (formerly, the DGT), from the obligation of using central bus stations in some routes. This exemption is re-evaluated every two years.	According to the official recital, the objective of this provision is to ensure that there is adequate infrastructure which can be used as technical and economic co-ordination points for inland, non-urban transport of passengers, in order to achieve a lower economic and social cost, more efficient distribution of traffic and complementarity between different means of transport of passengers, in order to provide an adequate service for the needs of users. There is also the objective to avoid traffic of these non-urban transport vehicles in urban	This provision limits transport operators of non-urban routes, such us long-distance bus operators, in freely choosing the termination or stop of their routes when entering urban agglomerations since they are bound to use these infrastructures unless they own their private stations duly authorised by the competent authorities. This restriction is a barrier to the entry and to the exercise of the activity which may also limit the competitive pressure between operators, by diminishing the possibility of offering a differentiated product, that is stopping places, with an impact on the quality of the services offered to consumers. However, in order to have better control of urban traffic, especially in densely populated areas, the policy objective must be taken into consideration and, as such, it may be considered proportional to limit the location of central bus stations and to allow for exceptions to this rule, which is already foreseen in this provision.	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
214	Decree-Law 170/71 "Central bus stations (terminal locations or stopping places of all non-urban road passenger transport routes serving urban agglomerations)"	Art. 1 (2)	Central bus stations	When more than one central bus station is needed for the same urban agglomeration, the minister responsible shall define, by Ordinance, the respective areas of influence for the location of the additional central bus station(s).	centres. There can be exceptions only with a governmental authorisation, according to the user's needs. According to the official recital, the objective of this provision is to ensure that there are adequate infrastructures which can be used as technical and economic coordination points for inland non-urban transport of passengers, in order to achieve a lower economic and social cost, a more efficient distribution of traffic and complementarity between different means of transport of passengers, in order to provide an adequate service to the justified needs of the users. There is also an objective of avoiding the circulation of these non-urban transport of passenger's vehicles in urban centres and only with a governmental authorisation can there be exceptions, according to the user's needs.	First, to the best of our knowledge, it seems that no ordinance has been adopted with respect to the definition of the criteria of influence areas for the location of central bus stations, which leads to legal uncertainty and search costs for potential entrants to build and to explore these infrastructures, under a concession contract by private operators, as foreseen in this decree-law. This limits the potential number of operators in this market, which could influence the prices charged to users. Second, there may exist legal uncertainty regarding the role attributed to the minister responsible since the adoption of Law 75/2013, which establishes the legal regime of local authorities and the legal regime for the transfer of powers of the state to local authorities in subject areas such as transport.	Regulate the provision and adopt the necessary secondary legislation. The role of the municipalities should be taken into consideration, within the context of Law 75/2013, which establishes the legal regime of local authorities and the legal regime for the transfer of powers of the state to local authorities in subject areas such as transport, taking into consideration that under this legislative act, the location of these infrastructures depends on approval at municipal level or from the minister responsible (see Art. 4 of this Decree-Law).
215	Decree-Law 170/71 "Central bus stations (terminal locations or stopping places of all non-urban road passenger transport routes serving urban agglomerations)"	Art. 4 (3) (4)	Central bus stations	The location of central bus stations depends on approval at the municipal level, being included in the municipal urban plans, or from the responsible minister (in its absence), in respect of the principles and criteria established in Art. 3 of this Decree-Law (location as close as possible or with direct interconnections to railway stations, river stations and near car parks). The location procedure is preceded by a hearing of local authorities and a binding opinion of the minister responsible.	There is no official recital. Based on stakeholders' opinion, it is our understanding that this provision determines which entities must intervene in the decision-making process to define a location of a new bus station infrastructure - a government decision after the municipality and the national public transport institute have been consulted - in order to obtain the best possible decision, taking into consideration that these entities have the main expertise on this matter.	This provision limits transport operators of non-urban routes, such as long-distance bus operators, in freely choosing the termination or stop of their routes when entering urban agglomerations since they are bound to use these infrastructures, unless they own their private stations duly authorised by the competent authorities. This restriction is a barrier to the entry and to the exercise of the activity which may also limit the competitive pressure between operators, by diminishing the possibility of offering a differentiated product, that is stopping places, with an impact on the quality of the services offered to consumers. However, in order to have better control of urban traffic, especially in densely populated areas, the policy objective must be taken into consideration and, as such, it may be considered proportional to limit the location of central bus stations and to allow for exceptions to this rule, which is already foreseen in this provision.	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
216	Decree-Law 170/71 "Central bus stations (terminal locations or stopping places of all non-urban road passenger transport routes serving urban agglomerations)"	Art. 11 (1)(2)	Central bus stations	The management of the central bus stations may be: i) a duty of the state, ii) a duty of a municipality, or iii) under a concession regime, conceded to private or mixed companies, in order to keep these facilities in the public domain, pursuing a public strategic interest. The state and municipalities reserve the possibility of supplementary action in cases of lack of interest of the transporters or the lack of feasibility of the concession regime. The minister responsible has the power to veto a request from private entities to manage a central bus station under a concession agreement without indicating any objective criteria to be followed.	According to the official recital, the implementation of co-ordination centres (central bus stations), as road infrastructure of general interest, pursues an objective of public transport policy that aims to contribute to the urban traffic ordering and fluidity, limiting or eliminating the impact of interurban transport, due to traffic and parking needs. It also mentions that the construction and exploration regime is based on the initiative and accountability of several entities: both the entities that carry out the transport activity, and those that have municipal or state powers. The state and municipalities reserve a supplementary action - resulting from the lack of interest of the transporters or the unfeasibility of the concession regime - of control and technical assistance of the stations that are granted.	This provision grants the minister responsible the power to veto a request from private entities to manage a central bus station under a concession agreement without indicating any objective criteria to be followed. The construction of the central bus stations may be: i) a duty of the state, ii) a duty of a municipality, or, iii) under a concession regime, conceded to private or mixed companies, in order to keep these facilities in the public domain, pursuing a public strategic interest. Under the policy objective, the state and municipalities reserve a supplementary action resulting from the lack of interest of the transporters or the unfeasibility of the concession regime. Therefore, the power to veto such a request from private entities without indicating any objective criteria to be followed creates legal uncertainty. Furthermore, this limits competition for the market, namely through the implementation of a public tender procedure to award a concession regime, which could influence the prices charged to users.	Option 1: Amend this provision enumerating objective criteria to be followed by the minister responsible with powers to veto a request from private entities to manage a central bus station under a concession agreement. Option 2: Alternatively, abolish the veto powers of the minister responsible.
217	Decree-Law 170/71 "Central bus stations (terminal locations or stopping places of all non-urban road passenger transport routes serving urban agglomerations)"	Art. 12 (1) (2)	Central bus stations	The concessionaire for the management of a central bus station may be a private or mixed (private and public) capital company. All actual or potential transporters, amongst those obligatorily users of this type of infrastructure, as the transporters of non-urban routes of passengers, but also, railways, inland waterways transporters and urban routes of passenger transporters, can participate in its shareholders capital.	According to the official recital, the implementation of co-ordination centres (central bus stations), as road infrastructure of general interest, pursues an objective of public transport policy that aims to contribute to the urban traffic ordering and fluidity, limiting or eliminating the impact of interurban transport, due to traffic and parking needs. It also mentions that the construction and exploration regime is based on the initiative and accountability of several entities: both the entities that carry out the transport activity, and those that have municipal or state powers. The state and municipalities reserve (i) a supplementary action - resulting	First, these provisions provide the possibility of having a non-urban route passenger road transport operator as the concessionaire of a central bus station, i.e., as a vertically integrated company, which gives it the capacity (the operator already having the incentive) to manage the central bus station on its behalf and possibly to the detriment of other direct and potential competitors, for example, in terms of making it difficult to access the infrastructure, namely by: a) preventing competitors from parking during peak hours on competing routes, b) not allowing ticket offices or selling machines for these competing operators, forcing them to sell tickets directly inside the buses, as a few examples. These provisions provide the possibility for a concessionaire to foreclosure the market, namely to force other competitors to search for other locations to park, or to pay for higher fees to use the infrastructure. Indeed, in several municipalities there might be only one of these infrastructures as it depends on location decisions, at the municipal or state level, for public policy purposes. Second, these provisions also provide the possibility of having actual or potential competitors among the shareholders of the concessionaire company, such as railways, inland waterways transporters and urban routes of passengers transporters, which gives them the capacity (the operators already having the incentive) to sharing sensitive information between competing companies. This	Abolish the possibility for i) allowing a vertical integrated entity to manage a central bus station, and also, for ii) allowing a concessionaire company to be composed of actual or potential competitors to manage a central bus station.

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					from the lack of interest of the transporters or the unfeasibility of the concession regime; and (i) an action of control and technical assistance of the stations that are granted.	may lead to a reduced quality levels of service in another means of transport, and higher prices for end-users.	
218	Decree-Law 170/71 "Central bus stations (terminal locations or stopping places of all non-urban road passenger transport routes serving urban agglomerations)"	Art. 17	Central bus stations	The minister responsible shall determine, by ordinance, the minimum and maximum levels for the fees which can be charged by the concessionaire companies for the use of the services at the central bus stations (this regime is further regulated in arts. 26 (Annex A), Art. 21 (Annex B) and Art. 14 (Annex C) of Ordinance 410/72).	There is no official recital. Based on stakeholders' opinions, it is our understanding that this provision intends to establish a mechanism of ministerial approval of the regulations of management and exploration of central bus stations, in order to safeguard the public interest inherent in these infrastructures.	This provision foresees that the minister responsible determines, by Ordinance, a minimum and maximum fee to be charged by the concessionaire for the services provided (this regime is further regulated in Art. 13 (1) of Decree 171/72; and arts. 26 (Annex A) and Art. 21 (Annex B) and Art. 14 (Annex C) of Ordinance 410/72, when a ministerial authorisation is needed). Competition is typically enhanced when each operator has maximum flexibility in defining its fees, discounts and exemptions, taking into account the underlying costs of service provision. As such, this provision, by imposing minimum and maximum fees, implies that these companies see their capacity and incentives for innovation and other aspects of quality reduced, as well as incentives for lowering prices, to the detriment of the users of these infrastructures. However, no Ordinance was adopted, and as such, legal uncertainty may create search cost for operators. Further, a minimum price seems not to be fully justified since it might prevent a more efficient cost structure. In large urban centres there are probably more than one of these infrastructures and, therefore, minimum prices may prevent them from competing within each other's geographical areas of influence, assuming that transporters may choose the location of their terminal of passing points on their routes. On the other hand, the existence of a maximum fee determined by the contracting entity also limits the freedom of Central Bus Stations to freely set the prices (according to market conditions), affecting competition in the market and, consequently, the quality and / or number of players providing services to users. However, a maximum price might be considered justified and proportional taking into account the need for protecting consumers from higher prices charged under a monopoly / concession regime.	Regulate the provision and adopt the necessary secondary legislation regarding the fees that can be charged by concessionaires of central bus stations. There should be no possibility to determine minimum prices.
219	Decree-Law 170/71 "Central bus stations (terminal locations or stopping places of all non-urban road passenger transport routes serving urban agglomerations)"	Art. 1 and Art. 2	Central bus stations	The location of each central bus station will result from the approval of the urbanisation plan or in its absence, of approval under the terms of Decree-Law 170/71. This Decree-Law determines that the location of each infrastructure depends on approval at the municipal level, which is included in the municipal urban plans, or from	According to the official recital, the objective of this provision is to ensure that there are adequate infrastructures which can be used as technical and economic co-ordination points for the inland, non-urban transport of passengers, in order to achieve a lower economic and social cost, a more efficient distribution of traffic and complementarity between different means of transport, in	This provision limits transport operators of non-urban routes from freely choosing the termination or stop of their routes when entering urban agglomerations since they are bound to use these infrastructures, unless they own their private stations duly authorised by the competent authorities. Nevertheless, in order to have better control of urban traffic, especially in densely populated areas, it appears to be adequate and proportional to limit the location of central bus stations and to allow for exceptions to this rule. As such, taking into account that it is a national network of central bus stations, the objective is having national co-ordination, so the government (ministerial level) comes up as the primary entity to take this decision, despite having to consult other entities. As such, the municipalities also have an active role in the determination of the location of these infrastructures in their respective municipal planning. This	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
				the ministry responsible (in its absence), in respect of the principles and criteria established in Art. 4 of this Decree-Law (location as close as possible or with direct interconnections to railway stations, river stations and near car parks). The location procedure is preceded by a hearing of local authorities and a binding opinion of the ministry responsible.	order to provide an adequate service to the users. There is also an objective of avoiding the circulation of these non-urban transport vehicles in urban centres and only there can only be exceptions with a governmental authorisation, according to the users' needs. As such, the municipality must intervene in the decision-making process to define a location for a new bus station, being consulted, as defined in the Art. 4 of the Decree-Law 170/71.	provision seems to be proportional and adequate to the policy objective pursued.	
220	Decree 171/72 "Central bus stations "	Art. 5 (1)	Central bus stations	A concessionaire applicant or a group of transporters who wish to participate in its shareholders structure, must submit for approval to the minister responsible, the attribution of the respective concession for construction and exploration of a specific central bus station. As such, the concessionaire applicant for the management of a central bus station may be a private or mixed (private and public) capital company. All actual or potential transporters, amongst those obligatorily users of this type of infrastructure, as the transporters of non-urban routes of passengers, but also, railways, inland waterways transporters and urban routes of passengers transporters, can participate in its shareholders capital (following Art. 12 of Decree-Law 170/71).	According to the official recital, the implementation of co-ordination centres (central bus stations), as road infrastructure of general interest, pursues an objective of public transport policy that aims to contribute to the urban traffic ordering and fluidity, limiting or eliminating the impact of interurban transport, due to traffic and parking needs. It is also mentioned that the construction and exploration regime is based on the initiative and accountability of several entities: both the entities that carry out the transport activity, and those that have municipal or state powers. The state and municipalities reserve a supplementary action - resulting from the lack of interest of the transporters or the unfeasibility of the concession regime - of control and technical assistance to the stations that are granted.	<p>First, these provisions provide the possibility of having a non-urban route passenger road transport operator as the concessionaire of a central bus station, i.e., as a vertically integrated company, which gives it the capacity (the operator already has the incentive) to manage the central bus station on its behalf and possibly in detriment of other direct and potential competitors, for example, in terms of making it difficult to access the infrastructure, namely by: a) preventing competitors to park in peak hours on competing routes, b) not allowing ticket offices or selling machines for these competing operators forcing them to sell the tickets directly inside the buses, as a few examples. These provisions grant the possibility for a concessionaire to foreclose the market, namely to force other competitors to search for other locations to park, or to pay higher fees to use the infrastructure. Indeed, in several municipalities there might be only one of these infrastructures as this depends on location decisions, at municipality or state level, for public policy purposes.</p> <p>Secondly, these provisions also allow for the possibility of having actual or potential competitors among the shareholders of capital of the concessionaire company, as railways, inland waterways transporters and urban routes of passengers transporters, which gives them the capacity (the operators already having the incentive) for sharing of sensitive information between competing companies, which may lead to reduced quality of service in another means of transport, and higher prices for end users.</p>	Abolish the possibility for i) allowing a vertical integrated entity to manage a central bus station, and also, for ii) allowing a concessionaire company to be composed of actual or potential competitors to manage a central bus station.

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221	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 6 (from annex A); Art. 2 (from Annex B)	Central bus stations	The legislator left opened an exact time period for the concession of the central bus station. Furthermore, the legislator also foreseen the possibility of extending the period of the concession, without limitation. The concession contract periods are considered tacitly and successively extended if one of the parties does not notify the other that it wishes to terminate the concession, within a certain number of months in advance of the deadline or the last extension of the initial concession period.	According to the official recital, the implementation of co-ordination centres (central bus stations), as road infrastructure of general interest, pursues an objective of public transport policy that aims to contribute to the urban traffic ordering and fluidity, limiting or eliminating the impact of interurban transport, due to traffic and parking needs. It is also mentioned that the construction and exploration regime is based on the initiative and accountability of several entities: both the entities that carry out the transport activity, and those that have municipal or state powers. The state and municipalities reserve a supplementary action - resulting from the lack of interest of the transporters or the unfeasibility of the concession regime - of control and technical assistance to the stations that are granted.	<p>In this provision, the legislator left open an exact time period for the central bus station's concession. Furthermore, the legislator foresaw the possibility for the extension of the period of the concession without limitation. This limits the potential number of operators in this market, which could influence the prices charged to users.</p> <p>On the one hand, the most effective way to regulate the length of the concession would be not to establish a cap beforehand. However, the duration of a concession should be limited in order to avoid market foreclosure and restriction of competition taking into account that a concession limits the competition for the market, and also, to promote competition upon renewal of a concession. The time limits of a concession also result from a public policy objective to prevent excessive duration of concessions and transparency of awarding processes. According to Recital 52 and Art. 18 of EU Directive 2014/23/UE and the general Portuguese Public Procurement Code (Art. 410 of Decree-Law n.º 111-B/2017), the duration of a concession shall be established as the minimum period required to recover and repay the capital invested under normal conditions of return. Moreover, the contracting entity should establish a specific time limit, considering the criteria mentioned above and the need to justify concessions with durations of over five years. Indeed, there could be many parameters to the concession, including specification of tariffs, of investment, of levels of service or of fees to be paid to the government/grantor, but also, of its time period, typically, from 5 to 30 years. The estimation should be valid at the moment of the award of the concession. It should be possible to include the initial and further investments deemed necessary for the operating of the concession, in particular expenditure on infrastructure, copyrights, patents, equipment, logistics, hiring, training of personnel and initial expenses. The maximum duration of the concession should be indicated in the concession documents unless duration is used as an award criterion of the contract. Contracting authorities and contracting entities should always be able to award a concession for a period shorter than the time necessary to recoup the investments, provided that the related compensation does not eliminate the operating risk.</p> <p>Finally, the law is not clear about whether the concession regime is subject to a public tender. It is desirable that the concession regime is subject to a public tender, hence, allowing for "competition for the market", as the concessionaire, acting as a sole operator, as in any concession, "takes it all". The state should consider distributing such exclusive rights through bidding, carefully designed to ensure that they are allocated in the most efficient fashion, which can often cost less than government provision of the same service.</p>	Amend the provision in order to implement the principle that the duration of a concession should be limited to the time period strictly necessary to recover the investment made, together with a remuneration adequate for its level of risk. The contracting entity would establish the specific time limit, but concessions with durations over five years should be justified. Whenever applicable, concessions should be made through a public tender procedure (in line with Recital 52 and Art. 18 of EU Directive 2014/23/UE and Art. 410 of Decree-Law n.º 111-B/2017).

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222	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 8 (from annex A); Art. 4 (from Annex B)	Central bus stations	The formula for the calculation of the annual concession rent to be paid by the concessionaire (see Art. 16 of Decree-Law 170/71) is developed in this ordinance according to which the annual rent is calculated from a certain percentage of the net income of the exploration of the business, depending on whether it is above or below a certain threshold, and its payment may be exempted, when it is below a certain threshold. Further, the net revenue is calculated by deducting the following expenses from the gross revenue: operating expenses, annual depreciation rate of construction expenses, a certain percentage given to a depreciation fund, and a certain percentage given for the formation of the legal reserve. The amounts and percentages may be revised every five years at the request of either party (concessionaire or grantor).	There is no official recital. Based on stakeholders' opinions, it is our understanding that this provision aims to define objective and non-discriminatory variables for the payment of the annual rent, due by the concessionaires, for these infrastructures, taking into consideration the criteria of a certain percentage of the net revenue (that takes into account the operating expenses, the annual amortisation rate of construction expenses, the percentage for the amortisation fund and the percentage of the legal reserve).	On the one hand, the fact that a concessionaire needs to pay an annual concessionary rent to the concession-granting authority is not harmful in itself. Indeed, it is quite common according to the economic literature for concessions. Governments enter into concession agreements for various reasons, amongst them to raise revenue and to achieve efficiencies by placing the operation of the assets in private hands. On the other hand, the formula for the rent due may pose competition issues. This provision opts for a percentage rent formula, based on a percentage of its annual net revenues calculated over gross revenues. The fact that this provision establishes a formula that grants the exemption of the payment due, depending on whether the net revenue of the concessionaire is above or below a certain threshold, may create perverse incentives to concession operators which ultimately may influence the quality and the prices for the services rendered to the users in the same chains of influence of geographical area. To audit this performance, the grantor authority should be able to verify the gross revenues, and that would: require monthly/annual accounting and financial/performance reports; require the concessionaire to obtain an annual independent audit and provide a management statement; and impose financial consequences for underpayments. The exemptions mechanism may have a duly justified policy objective. Finally, this provision foresees a revision of the amounts and percentages for the annual rent due every five years, at the request of either party (concessionaire or grantor). Given the fact that this system has perverse incentives over concessionaires, a formula based on an annual fee revision would remove this harm.	Amend these provisions to include i) an annual auditing mechanism for the grantor authority to be able to verify the gross revenues of the concessionaires; and ii) to introduce a formula based on the possibility of an annual revision.
223	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 10 (from annex A); Art. 6 (from Annex B)	Central bus stations	A concessionaire is obliged to insure the infrastructure and equipment against the risks of fire and theft.	There is no official recital. Based on a stakeholder's opinion, it is our understanding that this provision aims to protect the facilities and infrastructure from main risk events in the public interest.	On the one hand, the mandatory need to have insurance corresponds to an operational cost, which might decrease the number of operators and consequently increase prices. However, taking into account that this corresponds to public domain goods, with a frequency of passage of people, and that no minimum amount is determined, this provision seems proportional and adequate to the policy objective pursued.	No recommendation.

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224	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 23 (from annex A); Art. 18 (from Annex B)	Central bus stations	A concessionaire is obliged to deposit a guaranteed amount, in cash, through a bank guarantee or by an insurance policy to secure that guarantee amount, which aims to guarantee the effective payment of the concessionaire's obligations and eventual fines.	No official recital. Based on a stakeholder's opinion, it is our understanding that this provision, which demands a guarantee amount and provides for alternative ways to fulfil it, aims to give guarantees to the grantor that the concessionaire will fulfil its obligations in accordance with the concession contract and pay eventual fines.	On one hand, the mandatory need to have an guarantee amount corresponds to an operational cost, which might decrease the number of operators and consequently increase prices. However, taking into account that this corresponds to public domain goods, with frequent passage of people, that no minimum amount is determined and an alternative forms for its payment are foreseen, these provisions seems proportional and adequate to the policy objective pursued.	No recommendation.
225	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for Central Bus Stations, under a concession regime [Regulates Decree-Law 170/71 and Decree 171/72]"	Art. 26 (from Annex A); Art. 21 (from Annex B); and Art. 14 (from Annex C)	Central bus stations	The concessionaire must elaborate a Regulation of Exploration of the central bus station, in accordance with the model approved under this ordinance and submit it for ministerial approval. This Regulation of Management must follow the minimum and maximum levels for the fees which can be charged by the concessionaire companies for the use of services at central bus stations (following rt. 17 of Decree-Law 170/71).	There is no official recital. Based on a stakeholder's opinion, it is our understanding that this provision aims that the state should approve the Central Bus Station Regulation of Exploration or, in case of a concession, the concession contract with the concessionaire, in order to safeguard the public interest.	<p>These provisions foresee that the minister responsible approves the Regulation of Management and Exploration of Central Bus Stations. As stipulated in these provisions, and in Art. 17 of Decree 170/71, an ordinance is to be adopted, determining minimum and maximum fees that can be charged by the concessionaire for the services provided. Competition is typically enhanced when each operator has maximum flexibility in defining its fees, discounts and exemptions, taking into account the underlying costs of service provision. As such, this provision, by imposing minimum and maximum fees, implies that these companies see their capacity and incentives for innovation and other aspects of quality reduced, as well as incentives for lowering prices, to the detriment of the users of these infrastructures. However, no ordinance was adopted, and as such, legal uncertainty may create search costs for operators.</p> <p>On the one hand, a minimum price is not duly justified since it might prevent a more efficient cost structure. In large urban centres there are more than one of these infrastructures and, therefore, minimum prices may prevent them from competing within each other's geographical areas of influence, assuming that transporters may choose the location of the terminal of passing points on their routes.</p> <p>On the other hand, the existence of a maximum fee determined by the contracting entity limits the freedom of central bus stations to freely set the prices (according to market conditions), affecting competition in the market and, consequently, the quality and/or number of players providing services to users. Nevertheless, a maximum price might be considered justified and proportional taking into account the need for protecting consumers from higher prices charged under a monopoly/concession regime.</p>	Regulate the provision and adopt the necessary secondary legislation regarding the fees that can be charged by concessionaires of central bus stations. There should be no possibility to determine minimum prices.

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226	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 2 (1) (from Annex C)	Central bus stations	The opening and closing hours of the central bus station are controlled, as well as the reception and delivery services for luggage and goods.	There is no official recital. Based on a stakeholder's opinion, it is our understanding that it aims to control traffic as well as noise levels associated with the activity of a central bus station within the urban agglomeration.	It corresponds to an entry barrier since it limits the opening hours of central bus stations, potentially limiting the match between demand and supply. This might also limit the number of routes as well as the number of operators and the respective prices for the services rendered. Furthermore, a substantial part of non-urban routes could operate outside the stipulated opening/closing hours, benefiting consumers. In this case, the policy objective seems neither proportional nor adequate.	Abolish the possibility to limit the opening and closing hours of a central bus station and related services.
227	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 3 (from Annex C)	Central bus stations	Every transporter, in order to take or drop passengers or baggage at the central bus station, shall send to the director of the respective central bus station, no later than three days before the commencement of the service, a requirement to that effect, following a format available at the central bus station, with the following information: (a) the carrier's trade name or business name; (b) the registered office or social domicile; (c) the registration numbers and the capacity of each of the vehicles to be used on the routes using the central bus station as a terminal or stopover point; (d) the service to be provided by such vehicles; (e) the insurance company or companies, the risks covered by the insurance and the numbers of the respective policies.	There is no official recital. Based on a stakeholder's opinion, it is our understanding that it aims to manage and control the traffic of operators within the premises of a given central bus station. Prior to the beginning of operations, an authorisation of the director of such infrastructure is needed.	This provision does not indicate either the criteria or a time frame upon which a requirement addressed by an operator of non-urban routes to the director of a central bus station may be accepted or rejected. This lack of provisions creates uncertainty and costs for these transporters as they may be unsure of selling tickets for a given route with a given tour and schedules. On the one hand, if the concessionaire is vertically integrated, and is an actual competitor in the transport of passengers sector, the Regulation of Management of the Central Bus Station should guarantee that the incentives of this company are not used to distort the market, giving it an unfair advantage through the allocation of slots for the available capacity of the infrastructure, to the detriment of others. On the one hand, a rejection might be considered justified based on traffic organisation and a lack of capacity within the central bus station during certain hours of the day. On the other hand, it is also important to take into account that, if a private company acting as a concessionary is a competitor or potential competitor in the transport of passengers sector, it has the capacity and the incentive to block or deny the use of the central bus station for other companies.	Recommendation 1: Amend this provision and introduce criteria that guarantee that access to the infrastructure is made under transparent, non-discriminatory and proportional criteria. Recommendation 2: Amend this provision and stipulate a reasonable period for the director's reply, clearly indicating that after that period, the operators should consider that their request for authorisation has been tacitly granted and can start operating in that infrastructure. Moreover, introduce criteria that guarantee that any refusal should be duly justified (for instance, capacity constraints).

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy objectives	Harm to competition	Recommendation
228	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 4 (from Annex C)	Central bus stations	Only vehicles with an insurance policy containing the following clause shall be allowed to use a central bus station: "The validity of this contract extends to the risks that may arise from the manoeuvres or other operations to be carried out in the central bus station."	No official recital. Based on a stakeholder's opinion, it is our understanding that it aims to ensure that any accident within the premises of the central bus station, as well as in the parking areas, is covered by insurance, since this corresponds to a public interest infrastructure.	On the one hand, the obligation to have insurance covering specifically any accident within the premises of the central bus station corresponds to an increase in the operational costs, which might lead to a decrease in the number of operators and an increase in prices. However, taking into account that this corresponds to public domain goods, with the frequent passage of people, and that no minimum amount is determined, this provision seems proportional and adequate to the policy objective pursued.	No recommendation.
229	Ordinance 410/72 "Standard specifications: for the construction and operation and for operating regulations, for central bus stations, under a concession regime [regulates Decree-Law 170/71 and Decree 171/72]"	Art. 5 (1) (3); Art. 12 (1) and Art. 16 (2) (from Annex C)	Central bus stations	The direction of a central bus station has the competence to manage the capacity for the services to be provided between the users of the infrastructure aiming to avoid situations of competitive advantage between non-urban routes operators, namely in the attribution of slots for parking in peak hours or others of less heavy traffic. In principle, places shall be filled on a first-come, first-served basis, subject to the following conditions: (a) a haulier operating long-distance routes may require that such departures always take place from the same place; (b) where the daily number of departures of a particular carrier exceeds the average frequency in the same direction, a fixed place may be reserved for them; c) no more than a certain percentage of the places may be attributed to exclusive parking places.	No official recital. Based on a stakeholder's opinion, it is our understanding that this provision aims to give the direction of a central bus station the competence to manage the services to be provided between the users of the infrastructure, aiming to avoid situations of competitive advantage between non-urban routes operators.	On the one hand, the possibility of having a passenger road transport operator as the concessionaire of a central bus station (i.e., vertically integrated, see Art. 12 (1) (2) of Decree-Law 170/71) gives it the capacity and the incentive to manage the central bus station on its behalf to the detriment of other direct and potential competitors, for example, in terms of preventing them from parking in peak hours on competing routes. Furthermore, the possibility of having more than one operator may facilitate the sharing of information between competing companies. Both arguments are particularly relevant for new entrants since they may find it difficult to access the infrastructure which may lead to a small number of operators and reduce their ability to compete. On the other hand, the conditions foreseen in this provision attributing exclusive parking places to certain types of operators raise competition issues. Indeed, why should (a) a haulier operating long-distance routes have exclusive parking places?, or, (b) why should a particular carrier exceeding an average frequency on a same route have a fixed place? Even if, as indicated by a stakeholder, both restrictions may benefit consumer interest in the sense that it knows that a certain bus route departs/arrives from/to the same platform, it also has the ability to treat incumbents differently from new entrants, as there may be parking constraints. Finally, the condition that imposes (c) that no more than a certain percentage of the places may be attributed to exclusive parking places also poses an issue regarding how to recommend a specific ban/percentage for exclusive parking places without discriminating amongst incumbents and new entrants.	Amend the provision and clarify which entity is responsible for monitoring this requirement for access on non-discriminatory terms.

Railway Infrastructure and Transport

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
1	Decree-Law 217/2015 "Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 6 (2)	Railway infrastructure management and railway transport	Separate entities must be constituted for the provision of railway transport services and for the provision of railway infrastructure management services.	The policy objective of the provision seems to be to prevent vertical integration and to ensure structural separation between infrastructure management and transport services.	By preventing vertical integration, the provision raises the costs of a potential railway infrastructure manager. However, given that the railway infrastructure is a natural monopoly, the provision can be considered to facilitate liberalisation of the provision of railway transport services and, as such, can be considered to be pro-competitive.	No recommendation.
2	Decree-Law 217/2015 "Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 56 (12)	Railway infrastructure management and operation and railway transport	The Authority for Mobility and transport (AMT) shall take measures to resolve any complaint submitted to it by an entity interested in the use of the railway infrastructure concerning a situation where it considers to have been aggrieved by the infrastructure manager, a railway enterprise or the operator of a service facility, informing the interested parties of its decision, within 45 working days from the date of receipt of all relevant information.	The policy objective of the provision seems to be to prevent decisions by the AMT that are not prompt, duly weighed and based on all relevant information and that, consequently, unduly hinder railway enterprises from entering the market or operating in it.	The maximum period of time for the AMT to inform the interested parties of its decision defined in the provision exceeds the respective period of time foreseen in Directive 2012/34/EU (art. 56 (9) (first paragraph) (second sentence)) (six weeks, which represent around 30 working days, from the date of receipt of all relevant information). Additionally, the provision does not define the maximum period of time for the AMT to decide from the date of receipt of the complaint. Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision leaves the length of time during which it collects information to the discretion of the AMT. Consequently, it requires businesses to wait longer for a decision and, as such, limits their activities for longer.	The provision should be aligned with Directive 2012/34/EU, by lowering the maximum period of time for the AMT to inform the interested parties of its decision from 45 working days to 6 weeks from the date of receipt of all relevant information. Furthermore, the provision should define the maximum period of time for the AMT to decide from the date of receipt of the complaint.
3	Decree-Law 27/2011 (last modified by Decree-Law 216/2015) "Technical conditions contributing to increased safety of the railway system and uninterrupted movement of trains"	Art. 11 (4)	Interoperability constituents	The manufacturer of an interoperability constituent or an authorised representative established in Portugal are the entities firstly responsible for applying the requirements laid down by the relevant transport safety institutes (TSIs) and, if applicable, by other legislative instruments.	The policy objective of the provision seems to be to improve the interlinking and interoperability of the national railway networks in the European Union (EU).	The entities firstly responsible for meeting technical obligations defined in the provision differ from the respective entities foreseen in Decree-Law 27/2011 (Art. 11 (1)) and in Directive 2008/57/EC (Art. 13 (4) (first sentence)) (the manufacturer of the constituent or his authorised representative established in the EU). Therefore, the provision increases legal uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision prevents businesses from having an authorised representative established in a country other than Portugal.	The provision should be aligned with Art. 11 (1) of Decree-Law 27/2011 and Directive 2008/57/EC, by changing the entities firstly responsible for meeting technical obligations from the manufacturer of the constituent or an authorised representative established in Portugal to the manufacturer of the constituent or an authorised representative established in the European Union.

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4	Decree-Law 27/2011 (last modified by Decree-Law 216/2015) "Technical conditions contributing to increased safety of the railway system and uninterrupted movement of trains"	Art. 40 (2)	Subsystems	The authorisations for the placing in service of the subsystems concerning structural areas on the parts of the railway network that do not yet fall within the scope of the TSIs shall be granted in accordance with the authorisation procedure for the placing in service of the same subsystems on other parts of the railway network.	The policy objective of the provision seems to be to improve the interlinking and interoperability of the national railway networks in the EU while taking into account that the full achievement of that objective does not, and should not, occur all at once.	The authorisation procedure defined in the provision differs from the respective procedure foreseen in Directive 2008/57/EC (Art. 8 (3) (a)) (in accordance with the national safety rules or, if applicable, the technical rules for each subsystem in use for implementing the essential requirements). Consequently, the provision increases legal uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision prevents businesses from placing in service subsystems concerning structural areas on the parts of the railway network that do not yet fall within the scope of the TSIs, given that it requires the respective authorisation to follow a procedure which considers that the TSIs are applicable in the whole railway network.	The provision should be aligned with Directive 2008/57/EC, by changing the authorisation procedure from a procedure in accordance with the authorisation procedure for the placing in service of the subsystems on the parts of the railway network that fall within the scope of the TSIs (Art. 13 of Decree-Law 27/2011) to a procedure in accordance with the national safety rules (Art. 66-N of Decree-Law 270/2003) or, if applicable, the technical rules for each subsystem in use for implementing the essential requirements (Art. 15 (3) to Art. 15 (8) of Decree-Law 27/2011).
5	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 66-B (2)	Safety management systems	The Institute for Mobility and Transport (IMT) has to approve or to refuse the approval of a safety management system within 30 days from the date of receipt of all documentation.	The policy objective of the provision seems to be to prevent decisions by the IMT that are not prompt, duly weighed and based on all relevant information and that, consequently, unduly hinder railway infrastructure managers and railway enterprises from entering the market or operating in it.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the request. Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision leaves the length of time during which it collects information to the discretion of the IMT. Consequently, it requires businesses to wait longer for a decision and, as such, limits their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the request.
6	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 66-I (3)	Safety authorisations and safety certificates	The IMT shall decide on an application through which a holder of a licence for providing railway infrastructure management services or of a licence for providing railway transport services requests it, respectively, a safety authorisation or a safety certificate within four months from the date of receipt of all relevant information.	The policy objective of the provision seems to be to prevent decisions by the IMT that are not prompt, duly weighed and based on all relevant information and that, consequently, unduly hinder railway infrastructure managers and railway enterprises from entering the market or operating in it.	The maximum period of time for the IMT to decide defined in the provision exceeds the respective period of time foreseen in Regulation 442/2010 (Art. 8 (1)) and Regulation 443/2010 (Art. 8 (1)) (90 days, which represent around three months, from the date of receipt of all relevant information). Additionally, the provision does not define the maximum period of time for the IMT to decide from the date of receipt of the application. Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision leaves the length of time during which it collects information to the discretion of the IMT. Consequently, it requires businesses to wait longer for a decision and, as such, limits their activities for longer.	The provision should be aligned with Regulation 442/2010 and Regulation 443/2010, by lowering the maximum period of time for the IMT to decide from 4 months to 90 days from the date of receipt of all relevant information. Furthermore, the provision should define the maximum period of time for the IMT to decide from the date of receipt of the application.
7	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 66-M (2)	Training of staff performing relevant safety tasks	The IMT may, if necessary, require a railway infrastructure manager or a railway enterprise to make its own services for the training of staff performing relevant safety tasks available to all railway infrastructure managers and railway enterprises.	The policy objective of the provision seems to be to ensure effective access by railway infrastructure managers and railway enterprises to facilities for the training of staff performing relevant safety tasks which are necessary to obtain, respectively, safety authorisations or safety certificates.	The provision does not determine the cases in which the availability of training services is mandatory, contrary to what is foreseen in Directive 2004/49/EC (Art. 13 (2)) (cases in which training facilities are available only through the services of the infrastructure manager or one railway enterprise). Consequently, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision allows the IMT to not require that training services essential for the fulfilment of requirements underlying the grant of safety authorisations or safety certificates be made accessible to all infrastructure managers and railway enterprises and, as such, requires them to have their own training services.	The provision should be aligned with Directive 2004/49/EC, by determining that the availability of training services is mandatory when the respective training facilities are available, only through the services of the infrastructure manager or one railway enterprise.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
8	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 7 (a)	Works	Works costing more than EUR 4 987.98, not foreseen in plans already approved and not related to conservation or renovation of the railway lines and their dependencies need government approval.	The policy objective of the provision seems to be to ensure technical or economic necessity and suitability for the operation of the railways of unpredicted works with a high cost and, therefore, to ensure efficiency of the use of public funds.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
9	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 7 (b)	Fixed material and rolling stock	The use of new types of fixed material or rolling stock, the alteration of its classification or its scrapping need government approval.	The policy objective of the provision seems to be to ensure technical or economic necessity and suitability for the operation of the railways of changes in the material used or to be used in its scope.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
10	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 9 (1)	Fixed material and rolling stock	The railway enterprise needs to have all the fixed material and rolling stock necessary to ensure the regularity and efficiency of the operation of the railways.	The policy objective of the provision is to ensure regularity and efficiency of the operation of the railways.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
11	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 11	Fixed material, rolling stock and accessory material	The government may substitute the railway enterprise for the purpose of complying with the following obligations in the cases in which the enterprise in question does not do that: (i) have all the fixed material and rolling stock necessary to ensure the regularity and efficiency of the operation of the railways; (ii) adopt safety features concerning the rolling stock and the fixed facilities advised by the relevant technique and ensure that the carriages have the necessary conditions of comfort; and (iii) conserve the lines and their dependencies, with all their fixed material, rolling stock	The policy objective of the provision is to ensure regularity and efficiency of the operation of the railways.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
				and accessory material, in good working conditions. When doing so, the government may collect the enterprise's revenues until the value collected corresponds to the value of all the expenses incurred with the above-mentioned substitution, unless the enterprise proves that it cannot obtain the financial means necessary to fulfil the obligations in question.			
12	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 12 (1)	Railway infrastructure management and operation and railway transport	The railway enterprise may, upon a proposal approved by the government, establish special schemes to operate secondary railway lines of which the ordinary income does not compensate for normal operating expenses. If, in spite of the implementation of those schemes, the above-mentioned operation continues to be in deficit, the government may authorise its cessation, as long as the railway enterprise provides a road transport service that replaces the railway transport service in question or hires it from another enterprise.	The policy objective of the provision is to ensure economic sustainability of the operation of the railways while satisfying public needs and the development requirements of the area served.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
13	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 20 (1)	Railway infrastructure management and operation and railway transport	The railway enterprise's internal regulations necessary for the operation of the railways need government approval.	The policy objective of the provision seems to be to ensure technical, economic or social necessity and suitability for the operation of the railways of rules and procedures adopted by the railway enterprise.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
14	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 21	Staff performing tasks in the scope of the operation of the railways	The government will establish the system of working hours that is appropriate to the operation of the railways.	The policy objective of the provision seems to be to ensure regularity and efficiency of the operation of the railways.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
Railway Infrastructure							
15	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 13 (6)	Service facilities and services provided in them	The manager of or the entity that provides services in a service facility shall decide on an application through which a railway enterprise requests them, respectively, access to that facility or provision of services in it within 15 working days from the date of receipt of the request.	The policy objective of the provision seems to be to prevent decisions by service facilities managers and entities that provide services in them that are not prompt and that, consequently, unduly hinder railway enterprises from entering the market or operating in it.	The maximum period of time for the manager of a service facility or the entity that provides services in it to decide defined in the provision: (i) exceeds the maximum period of time for a railway infrastructure manager to decide on an application through which a railway enterprise requests an ad hoc individual train path foreseen in Directive 2012/34/EU (Art. 48 (1) (first sentence)) (five working days from the date of receipt of the request), although those (two) procedures are analogous to each other, namely as far as their underlying administrative work is concerned; and(ii) is considered by several stakeholders to be greater than necessary, since the requests in question are, usually, decided within five working days from the date of their receipt, according to the same stakeholders. Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, to be limited in their activities for longer.	The maximum period of time for the manager of a service facility or the entity that provides services in it to decide what is defined in the provision should be lowered from 15 working days to 5 working days from the date of receipt of the request.
16	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 32 (9)	Railway infrastructure management and operation	The infrastructure charges for the use of railway corridors specified in Decision 2009/561/EC on which trains equipped with the European Train Control System (ETCS) run shall not be differentiated to give incentives to equip trains with that system.	The policy objective of the provision is to ensure appropriate incentives for railway enterprises to equip trains with the ETCS and, consequently, to accelerate the installation of that system on trains.	The cases in which the infrastructure charges are not differentiated on the basis of the installed train protection and control system determined in the provision: (i) differ from the respective cases foreseen in Directive 2012/34/EU (Art. 32 (4) second paragraph) (use of railway corridors specified in Decision 2009/561/EC on which only trains equipped with the ETCS may run); and(ii) contradict the cases in which the infrastructure charges are differentiated on the basis of the train protection and control system specified in Decree-Law 217/2015 (Art. 32 (9)) (use of railway corridors specified in Decision 2009/561/EC), in accordance with Directive 2012/34/EU (Art. 32 (4) (first paragraph) (first sentence)).As a consequence of that situation, the provision allows the railway infrastructure manager to apply higher charges for the use of the Portuguese railway corridors specified in Decision 2009/561/EC on which trains equipped with the ETCS and those not equipped with that system both run. For that reason, the provision eliminates incentives for railway enterprises to equip trains with the ETCS in those railway corridors. The differentiation of the charges for the use of the railway infrastructure on the basis of the installed train protection and control system should not change the revenue of the infrastructure manager, in accordance with Directive 2012/34/EU (Art. 32 (4) (first paragraph) (second sentence)).Therefore, the provision increases legal uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision allows slower implementation of the ETCS by the railway enterprises and, consequently, requires businesses to wait longer for the financial and safety benefits arising from this.	The provision should be aligned with Directive 2012/34/EU, by changing the cases in which the infrastructure charges are not differentiated on the basis of the train protection and control system installed from the use of railway corridors specified in Decision 2009/561/EC on which trains equipped with the ETCS run to the use of railway corridors specified in Decision 2009/561/EC on which only trains equipped with the ETCS may run.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
17	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 38 (2)	Railway infrastructure management and operation	The transfer of railway infrastructure capacity allocated to an applicant for it shall lead to that entity's exclusion from the further allocation of railway infrastructure capacity.	The policy objective of the provision is to ensure suitability of the allocation of railway infrastructure capacity for the regularity and efficiency of the operation of the railways while satisfying the needs of the railway enterprises.	The provision defines the consequence of the transfer free of charge of railway infrastructure capacity allocated to an applicant for it, contrary to what is foreseen in Directive 2012/34/EU (not specified). Hence, the provision may make businesses incur unnecessary costs. In fact, the provision prevents railway enterprises from constantly guaranteeing appropriateness of the railway infrastructure capacity allocated to them to their needs and, consequently, prevents the efficient use of that capacity. However, the technical specifications underlying the allocation of railway infrastructure capacity make the infrastructure manager the most qualified entity to properly implement the procedures and rules applicable in the scope of that allocation. Additionally, the above-mentioned consequence concurs with the consequence of the trading of railway infrastructure capacity allocated to an applicant for it foreseen in Directive 2012/34/EU (Art. 38 (1) (second paragraph)). Those (two) acts are analogous to each other, namely as far as their underlying policy objective is concerned. Moreover, the only entity responsible for allocating the railway infrastructure capacity is that infrastructure's manager, in accordance with Directive 2012/34/EU (Art. 38 (1) (first paragraph) (first sentence)).	No recommendation.
18	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 46 (4)	Railway infrastructure management and operation	The railway infrastructure manager who is faced with a situation of conflict between requests for infrastructure capacity shall disclose the following information to each of the railway enterprises involved in that situation within 30 working days from the date of consultation carried out with the enterprise in question to resolve the above-mentioned conflict: (i) the train paths requested by all other railway enterprises on the relevant routes; (ii) the train paths allocated on a preliminary basis to all other railway enterprises on the relevant routes; (iii) if applicable, the alternative train paths proposed to all other railway enterprises on the relevant routes; and (iv) full details concerning the criteria used to allocate the requested capacity.	The policy objective of the provision seems to be to prevent decisions by the railway infrastructure manager that are not prompt, duly weighed and based on all relevant information and that, consequently, unduly hinder railway enterprises from entering the market or operating in it.	The moment when the railway infrastructure manager discloses information to a railway enterprise determined in the provision differs from the respective moment foreseen in Directive 2012/34/EU (Art. 46 (3) (first paragraph)) (before the consultation carried out by the railway infrastructure manager with the railway enterprise, as results from the fact that such consultation should be used as a tool for resolving conflicts and should be based on the information to be revealed). Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision prevents railway enterprises from having access to all relevant information within the scope of the consultations to resolve a situation of conflict between requests for infrastructure capacity and, consequently, allows the railway infrastructure manager to make a decision without all relevant information. This may lead to reduced frequency and efficiency of the operation of the railways. Moreover, the maximum period of time for the railway infrastructure manager to make the above-mentioned disclosure of information defined in the provision is considered by several stakeholders to be longer than necessary, since that disclosure merely requires the gathering of elements of information. Hence, the provision may make businesses incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, limits their activities for longer.	The provision should be aligned with Directive 2012/34/EU by changing the moment when the railway infrastructure manager discloses information to a railway enterprise from after to before the consultation with the enterprise in question. Furthermore, the maximum period of time for the railway infrastructure manager to make the above-mentioned disclosure of information defined in the provision should be lowered from 30 working days from the date of the consultation in question to a period of time suitable for the administrative work underlying that duty before the same date.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
19	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 66-H (5)	Safety authorisations	The holder of a safety authorisation shall inform the IMT of any substantial changes in the assumptions underlying the issue of that authorisation within 10 working days from the date of occurrence of the changes in question.	The policy objective of the provision seems to be to ensure constant fulfilment of the requirements necessary to hold safety authorisations.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the information. Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, limits their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the information.
20	Decree-Law 104/97 (last modified by Decree-Law 91/2015) "Creation of Rede Ferroviária Nacional, E.P., which has as its main object the provision of public service railway infrastructure management"	Art. 5 (2)	Works	The construction of railway lines and branch lines needs prior government approval, through its inclusion in the government's investment plans.	The policy objective of the provision seems to be to ensure technical or economic necessity and suitability for the operation of the railways of works with a high cost and, therefore, to ensure efficiency of the use of public funds.	The provision may make the railway infrastructure manager and, consequently, the railway enterprises incur unnecessary costs. In fact, the provision prevents the railway infrastructure manager from determining (without external intervention by the government) the long-term investments that need to be made in order to permanently update the railway infrastructure, taking into account, namely, the demand for transport services, technical progress and public needs and development requirements of the area served. However, the railway infrastructure manager shall be compensated by the government for all the costs it incurred in the construction of railway infrastructure, in accordance with Law 10/90 (Art. 11 (3)). Therefore, the government should be entitled to guarantee that the works underlying those costs are necessary and suitable for the regular and efficient operation of the railways.	No recommendation.
21	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 12 (2)	Railway infrastructure management and operation	The railway enterprise shall continue to keep in good condition all the facilities and equipment necessary for the operation of the lines whose operation ceased, unless the removal of those lines has been authorised by the government.	The policy objective of the provision seems to be to ensure technical suitability of the railways for its operation.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
22	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 54 (2) (a)	Railway infrastructure management and operation	Male haul masters, district chiefs, district deputy chiefs and guards will always be sworn in.	The policy objective of the provision is not clear.	The provision determines the gender necessary for becoming a haul master, a district chief, a district deputy chief and a guard, contrary to what is foreseen in the Constitution of the Portuguese Republic (approved by Decree of Approval of the Constitution of 10.04.1976) (Art. 13 (2) and Art. 58 (2) (b)) (individuals shall not be discriminated against on account of their gender and, in the scope of the individuals' right to work, the state shall promote equal opportunities in the individuals' choice of profession and conditions that preclude limited access of individuals to a position, or a work or a professional category in view of their gender). Consequently, the provision increases legal uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision prevents women from becoming haul masters, district chiefs, district deputy chiefs and guards and, consequently, reduces the supply of individuals that perform the tasks in question available to businesses.	The provision should be aligned with the Constitution of the Portuguese Republic, by not determining the gender necessary for becoming a haul master, a district chief, a district deputy chief or a guard.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
23	Regulation 442/2010"Procedur es for issuing safety authorisations"	Art. 4 (3)	Safety authorisations	The application through which a holder of a licence for providing railway infrastructure management services requests to the IMTT (called the IMT since the entry into force of Decree-Law 126-C/2011) a safety authorisation shall be submitted in Portuguese. Additionally, all official documentation of which the original language is not Portuguese submitted to the IMT for the examination of the above-mentioned application or of an application through which a holder of a safety authorisation requests of the IMT the renewal or amendment of that document must be accompanied by the respective certified translation.	The policy objective of the provision seems to be to prevent undue interpretations by the IMT of the application and of its accompanying documents.	The provision discriminates against holders of a licence who wish to have employees that do not speak Portuguese or that have obtained relevant documentation outside Portugal and, consequently, may make them incur unnecessary costs. In fact, the provision requires holders of a licence: (i) to recruit individuals that speak Portuguese or to contract the provision of translation services; and (ii) if they have relevant documentation which is written in a language other than Portuguese, to contract for the provision of certified translation services. However, the use of the Portuguese language and, if necessary, the existence of certified translations ensure that the information conveyed to the IMT is true to the original text and, therefore, that accuracy was not lost in any translation process.	No recommendation.
24	Regulation 442/2010"Procedur es for issuing safety authorisations"	Art. 8 (1)	Safety authorisations	The IMT shall decide on an application through which a holder of a licence for providing railway infrastructure management services requests a safety authorisation within 90 days from the date of receipt of all relevant information.	The policy objective of the provision seems to be to prevent decisions by the IMT that are not prompt, duly weighed and based on all relevant information and that, consequently, unduly hinder railway infrastructure managers from entering the market or operating in it.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the application. Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, to be limited in their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the application.
25	Regulation 442/2010"Procedur es for issuing safety authorisations"	Art. 11 (2)	Safety authorisations	The holder of a safety authorisation shall submit to the IMT an application through which it requests the renewal of that document no less than 60 days before the date of expiry of the authorisation in question.	The policy objective of the provision seems to be to ensure suitability of the period of time made available to the IMT for the proper analysis of the fulfilment of the requirements necessary to hold safety authorisations.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the application. Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, potentially entails the lapse of the respective safety authorisation.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the application and, in any case, that period of time should not allow the safety authorisation in question to lapse.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
26	Regulation 442/2010"Procedures for issuing safety authorisations"	Art. 12 (3)	Safety authorisations	The holder of a safety authorisation shall submit to the IMT an application through which it requests the amendment of that document no more than 10 working days from the date of any substantial changes in the assumptions underlying the issue of the authorisation in question.	The policy objective of the provision seems to be to ensure constant fulfilment of the requirements necessary to hold safety authorisations.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the information. Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, may limit their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the information.
Railway transport							
27	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 18 (1)	Railway transport	A licence for providing railway transport services shall not be granted in cases in which the enterprise applying for it is not insured against civil liability.	The policy objective of the provision is to ensure adequate ability of railway enterprises to protect customers and concerned third parties, in particular in the event of accidents.	The provision determines the type of civil liability coverage necessary for providing railway transport services, contrary to what is foreseen in Directive 2012/34/EU (Art. 18 (first paragraph)) (not specified). Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision prevents them from adjusting to their needs their decision concerning the type of coverage for civil liability necessary for providing railway transport services, given that it precludes them from choosing a type of civil liability coverage other than an insurance against that liability (namely, guarantees provided by banks or other railway enterprises for the cover of the same liability).	The provision should be aligned with Directive 2012/34/EU, by not determining the type of civil liability coverage necessary for providing railway services.
28	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 19 (2) (b)	Railway transport	A licence for providing railway transport services shall not be granted in cases in which the management of the enterprise applying for it is performed by individuals that were in charge of the management of enterprises whose bankruptcy has been suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means in the two years preceding the submission to the IMT of the application through which that enterprise requested the licence in question.	The policy objective of the provision is to ensure technical and personal suitability of the individuals in charge of the management of railway enterprises to perform the tasks assigned to them and, therefore, to ensure dependable and adequate railway transport services.	The characteristics of good repute concerning bankruptcy necessary for managing railway enterprises as defined in the provision are more demanding than the respective characteristics foreseen in Directive 2012/34/EU (Art. 19 (b)) (no bankruptcy declaration), with which the characteristics in question foreseen in Decree-Law 217/2015 (Art. 19 (2) (a)) concur. Hence, the provision may make businesses incur unnecessary costs. In fact, the provision prevents some of the individuals that comply with the characteristics of good repute concerning bankruptcy necessary for managing railway enterprises defined in Directive 2012/34/EU (due to not ever having been declared bankrupt) from practising that profession as holders of railway transport licences granted in Portugal. Consequently, this reduces the supply of managers available to those enterprises. However, the (slight) above-mentioned difference between the (two) groups of individuals in question is not expected to result in significantly different conclusions concerning the technical and personal suitability of the persons included in each of those groups for performing the tasks assigned to them. Such difference can indicate that the gravity of the problem which gave rise to the provision is (slightly) less severe in cases in which a bankruptcy was suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means. That differentiation is (as should be) reflected in the provision, through the time delimitation of its scope.	No recommendation.

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29	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 19 (2) (c)	Railway transport	A licence for providing railway transport services shall not be granted in cases in which the enterprise applying for it is an enterprise whose bankruptcy has been suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means in the five years preceding the submission to the IMT of the application through which it requested the licence in question.	The policy objective of the provision is to ensure technical and economic suitability of the railway enterprises for carrying out their activities and, therefore, to ensure dependable and adequate railway transport services.	The characteristics of good repute concerning bankruptcy necessary for providing railway transport services defined in the provision differ from the respective characteristics foreseen in Directive 2012/34/EU (Art. 19 (b)) (no bankruptcy declaration).Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision allows enterprises that do not have technical or economic characteristics suitable for performing their activities (due to having been, at a given moment, declared bankrupt) to have access to the provision of railway services and, consequently, prevents regularity and efficiency of the operation of the railways. Additionally, the provision prevents some of the enterprises that comply with the good repute characteristics necessary for providing railway transport services defined in Directive 2012/34/EU (due to not ever having been declared bankrupt) from being granted a railway transport licence in Portugal. However, that (slight) difference between the (two) groups of enterprises in question is not expected to result in significantly different conclusions concerning the technical and economic suitability of the enterprises included in each of those groups for carrying out their activities. Nevertheless, such a difference can indicate that the gravity of the problem which gave rise to the provision is (slightly) less severe in cases in which a bankruptcy was suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means. That differentiation should be reflected in the provision, through the time delimitation of its scope. Notwithstanding, that delimitation is more demanding than the time delimitation underlying the good repute characteristics concerning bankruptcy necessary for managing railway enterprises foreseen in Decree-Law 217/2015 (Art. 19 (2) (b)) (two years preceding the submission to the IMT of the application through which the railway enterprise in question requested a railway transport licence).Those (two) requirements are analogous to each other, namely as far as the consequences of their non-compliance are concerned (increased probability of the relevant railway enterprises being unsuccessful).Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision prevents enterprises that have technical or economic characteristics suitable for performing their activities (due to their bankruptcy having been suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means between the two years and the five years preceding the submission to the IMT of the application through which they requested the licence in question) from being granted a railway transport licence in Portugal.	The provision should be aligned with Directive 2012/34/EU, by requiring that a railway transport licence shall not be granted in cases in which the enterprise applying for it is an enterprise whose bankruptcy has been declared. Moreover, the time delimitation underlying the characteristics of good repute concerning bankruptcy that is necessary for providing railway services defined in the provision should be lowered from five years to two years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
30	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 19 (2) (d)	Railway transport	A licence for providing railway transport services shall not be granted in cases in which the management of the enterprise applying for it is performed by individuals who have been convicted of offences of breach of trust, fraud, qualified fraud, insurance fraud, adultery or grant of privileges to creditors.	The policy objective of the provision is to ensure technical and personal suitability of the individuals in charge of the management of railway enterprises to perform the tasks assigned to them and, therefore, to ensure dependable and adequate railway transport services.	The provision defines characteristics of good repute concerning breach of trust, fraud, qualified fraud, insurance fraud, adultery and grant of privileges to creditors necessary for managing railway enterprises, contrary to what is foreseen in Directive 2012/34/EU (not specified). Hence, the provision may make businesses incur unnecessary costs. In fact, the provision prevents some of the individuals (individuals who have been, at a given moment, convicted of offences of breach of trust, fraud, qualified fraud, insurance fraud, adultery or grant of privileges to creditors) who comply with the good repute characteristics necessary for managing railway enterprises defined in Directive 2012/34/EU from practising that profession as holders of railway transport licences granted in Portugal. Consequently, this reduces the supply of managers available to those enterprises. The characteristics of good repute concerning adultery, contrary to the other above-mentioned characteristics, defined in the provision are not expected to have a significant contribution to the full achievement of the policy objective underlying the provision, given the specificity of its nature, which is predominantly private and, in particular, mainly affects family and personal relationships.	The provision should be aligned with Directive 2012/34/EU, by not defining the characteristics concerning adultery necessary for managing railway enterprises.
31	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 19 (2) (e)	Railway transport	A licence for providing railway transport services shall not be granted in cases in which the enterprise applying for it is managed by individuals that have been or is an enterprise which has been convicted of serious offences in the scope of railway activities in the year preceding the submission to the IMT of the application through which that enterprise requested the licence in question.	The policy objective of the provision is to ensure technical and personal suitability of the individuals in charge of the management of railway enterprises for performing the tasks assigned to them and technical and economic suitability of the railway enterprises for carrying out their activities and, therefore, to ensure dependable and adequate railway transport services.	The characteristics of good repute concerning specific legislation applicable to the transport sector necessary for managing railway enterprises or for providing railway transport services defined in the provision are less demanding than the respective characteristics foreseen in Directive 2012/34/EU (Art. 19 (c)) (no conviction of serious offences set out in specific legislation applicable to the transport sector). Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision prevents regularity and efficiency of the operation of the railways, given that it allows: (i) individuals who do not have the technical or personal characteristics suitable for managing railway enterprises (due to, namely, having been convicted of serious offences foreseen in specific legislation applicable to the transport sector other than the legislation related to railway activities) to practise that profession as holders of railway transport licences granted in Portugal; and (ii) enterprises that do not have technical or economic characteristics suitable for performing their activities (due to, namely, having been convicted of serious offences foreseen in specific legislation applicable to the transport sector other than the legislation related to railway activities) to have access to the provision of railway services.	The characteristics of good repute concerning specific legislation applicable to the transport sector necessary for managing railway enterprises defined in the provision should be changed from no conviction of serious offences in the scope of railway activities in the year preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence to no conviction of serious offences set out in specific legislation applicable to the transport sector. Similarly, the characteristics of good repute concerning the same legislation necessary for providing railway transport services defined in the provision should be changed from no conviction of serious offences in the scope of railway activities in the year preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence to no conviction of serious offences set out in specific legislation applicable to the transport sector.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
32	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 19 (2) (f)	Railway transport	A licence for providing railway transport services shall not be granted in cases in which the enterprise applying for it is managed by individuals who have been, or an enterprise that has been, convicted of very serious offences in the scope of labour matters in the two years preceding the submission to the IMT of the application through which that enterprise requested the licence in question.	The policy objective of the provision is to ensure technical and personal suitability of the individuals in charge of the management of railway enterprises to perform the tasks assigned to them and technical and economic suitability of the railway companies for carrying out their activities and, therefore, to ensure dependable and adequate railway transport services.	The characteristics of good repute concerning labour matters necessary for managing railway enterprises or for providing railway transport services defined in the provision are less demanding than the respective characteristics foreseen in Directive 2012/34/EU (Art. 19 (d)) (no conviction of serious or repeated failure to fulfil labour law obligations). Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision prevents regularity and efficiency of the operation of the railways, given that it allows: (i) individuals who do not have the technical or personal characteristics suitable for managing railway enterprises (due to, namely, having been convicted of serious, but not very, or repeated offences in the scope of labour matters) to practise that profession in holders of railway transport licences granted in Portugal; and (ii) enterprises that do not have the technical or economic characteristics suitable for performing their activities (due to, namely, having been convicted of serious, but not very, or repeated offences within the scope of labour matters) to have access to the provision of railway services.	The characteristics of good repute concerning labour matters necessary for managing railway enterprises defined in the provision should be changed from no conviction of very serious offences in the scope of labour matters in the two years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence to no conviction of serious or repeated offences in the scope of labour matters. Moreover, the characteristics of good repute concerning the same matters necessary for providing railway transport services defined in the provision should be changed from no conviction of very serious offences in the scope of labour matters in the two years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence to no conviction of serious or repeated offences in labour matters.
33	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 19 (2) (g)	Railway transport	A licence for providing railway transport services shall not be granted in cases in which the enterprise applying for it wants to operate cross-border railway freight transport subject to customs procedures and is managed by individuals who have been, or an enterprise which has been, convicted of offences set out in customs law in the five years preceding the submission to the IMT of the application through which that enterprise requested the licence in question.	The policy objective of the provision is to ensure technical and personal suitability of the individuals in charge of the management of railway enterprises to perform the tasks assigned to them and technical and economic suitability of the railway enterprises for carrying out their activities and, therefore, to ensure dependable and adequate railway transport services.	The characteristics of good repute concerning the customs law necessary for managing railway enterprises or for providing railway transport services defined in the provision differ from the respective characteristics foreseen in Directive 2012/34/EU (Art. 19 (d)) (no conviction of serious or repeated failure to fulfil customs law obligations). Hence, the provision may make businesses incur unnecessary costs. In fact, the provision prevents regularity and efficiency of the operation of the railways, given that it allows: (i) individuals who do not have technical or personal characteristics suitable for managing railway enterprises (due to, namely, having been convicted of serious or repeated offences foreseen in customs law more than five years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence) to practise that profession as holders of railway transport licences granted in Portugal; and (ii) enterprises that do not have the technical or economic characteristics suitable for performing their activities (due to, namely, having been convicted of serious or repeated offences foreseen in customs law more than five years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence) to have access to the provision of railway services. Additionally, the provision: (i) prevents certain individuals who comply with the characteristics of good repute concerning customs law necessary for managing railway enterprises defined in Directive 2012/34/EU (due to having been convicted of non-serious or non-repeated offences foreseen in customs law in the five years preceding the submission to the IMT	The characteristics of good repute concerning customs law necessary for managing railway enterprises defined in the provision should be changed from no conviction of offences set out in customs law in the five years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence to no conviction of serious or repeated offences set out in customs law. Similarly, the characteristics of good repute concerning the same legislation necessary for providing railway transport services defined in the provision should be changed from no conviction of offences set out in customs law in the five years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence to no conviction of serious or repeated offences set out in customs law.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						of the application through which the enterprise in question requested a railway transport licence) from practising that profession as holders of railway transport licences granted in Portugal. Consequently, this reduces the supply of managers available to those enterprises; and (ii) prevents some of the enterprises that comply with the characteristics of good repute concerning the customs law necessary for providing railway transport services defined in Directive 2012/34/EU (due to having been convicted of non-serious or non-repeated offences foreseen in customs law in the five years preceding the submission to the IMT of the application through which the enterprise in question requested a railway transport licence) from being granted a railway transport licence in Portugal.	
34	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 22 (1)	Railway transport	Railway enterprises shall be insured against civil liability, in order to cover the risks arising from their activities, relating, in particular, to accidents causing damage to passengers, infrastructure, luggage, freight, mail and third parties.	The policy objective of the provision is to ensure adequate ability of the railway enterprises to protect customers and concerned third parties, in particular in the event of accidents.	The types of civil liability coverage necessary for providing railway transport services defined in the provision are less comprehensive than the respective types foreseen in Directive 2012/34/EU (Art. 22 (first sentence)) (insurance against civil liability or guarantees provided, under market conditions, by banks or other railway enterprises for the cover of the same liability). Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision prevents them from adjusting to their needs their decision concerning the type of coverage for civil liability necessary for providing railway transport services, given that it precludes them from choosing a type of civil liability coverage other than an insurance against that liability (namely, guarantees provided by banks or other railway enterprises for the cover of the same liability).	The provision should be aligned with Directive 2012/34/EU, by changing the types of civil liability coverage necessary for providing railway transport services from insurance against civil liability to insurance against civil liability or guarantees provided, under market conditions, by banks or other railway enterprises for the cover of the same liability.
35	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 22 (2)	Railway transport	The capital insured by railway enterprises against civil liability shall be, at least, EUR 10 million.	The policy objective of the provision is to ensure adequate ability of the railway enterprises to protect customers and concerned third parties, in particular in the event of accidents.	The provision defines the minimum capital insured by railway enterprises against civil liability, contrary to what is foreseen in Directive 2012/34/EU (not specified). The IMT and the stakeholders considered that the value in question is objectively high and, consequently, demands a significant financial effort from railway enterprises. In spite of that, the same entities considered that such value is reasonable, given that the provision of railway transport services, by nature, is likely, in case of accidents, to lead to substantial financial damages. Nevertheless, the above-mentioned stakeholders drew attention to the fact that the minimum capital insured by railway enterprises against civil liability defined in the provision: (i) is not clearly motivated; and (ii) at any moment, may not be suitable for the risks that it should cover and, in particular, may go beyond what is necessary for that purpose. Hence, the provision may make businesses incur unnecessary costs. In fact, the provision prevents railway enterprises that carry out activities which involve a lower than average risk involved in the provision of railway transport services from adjusting to their needs their decision concerning the minimum capital insured by them against civil liability.	The provision should determine the criteria that the minimum capital insured by railway enterprises against civil liability needs to fulfil (in particular, criteria related to suitability of the value in question for the risks that it should cover). Within that scope, the fulfilment of all those criteria by the minimum capital insured by railway enterprises against civil liability defined in the provision should be analysed. If, as a result of that analysis, such value is concluded to be higher than it should be, the value in question should be lowered from EUR 10 million to a value which fully complies with the above-mentioned criteria.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
36	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 23 (3)	Railway transport	Licences for providing railway transport services shall be valid for a period of time that may not exceed five years and that is renewable.	The policy objective of the provision seems to be to ensure regular analysis of the fulfilment of the requirements necessary to issue licences for providing railway transport services.	The provision defines the maximum period of time for licences to be valid, contrary to what is foreseen in Directive 2012/34/EU (Art. 23 (2) (first sentence)) (licences shall be valid for as long as their respective holders fulfil the requirements necessary for providing the services in question).The fulfilment of the requirements underlying the licences should be permanently verified, in accordance with Decree-Law 217/2015 (Art. 24 (1)). For that reason, at any moment, those licences can be suspended or revoked due to non-compliance with the respective requirements, in accordance with Directive 2012/34/EU (Art. 24 (1) (second paragraph)).As a result, Decree-Law 217/2015 (Art. 24 (1)) can be considered as the least harmful way to achieve the policy objective underlying the provision. Additionally, the provision does not determine the criteria that the IMT needs to fulfil when defining the exact period of time for a licence to be valid (in particular, criteria related to non-discrimination and uniformity).Therefore, the provision increases the administrative burden of businesses and the regulatory uncertainty for them and may make them incur unnecessary costs. In fact, the provision allows the IMT to grant licences which are analogous to each other, as far as their scope is concerned, but are valid for different periods of time, and, consequently, allows the IMT to apply dissimilar conditions to equivalent situations, potentially placing some railway enterprises at a competitive disadvantage. Moreover, the provision determines the need for renewal of the licences, contrary to what is foreseen in Directive 2012/34/EU (Art. 23 (2) (second sentence)) (possibility for regular review of the licences by the IMT).However, the provision does not define the period of time for the renewal of the licences to take effect and does not determine the principles and procedures applicable to the regular review of the licences foreseen in Directive 2012/34/EU should be carried out at least every five years, in accordance with Directive 2012/34/EU (Art. 23 (2) (third sentence)).Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision: (i) allows the IMT to grant licences which are analogous to each other, as far as their scope is concerned, but are valid for different periods of time after their respective renewal and, consequently, allows the IMT to apply dissimilar conditions to equivalent situations, potentially placing some railway enterprises at a competitive disadvantage; and (ii) requires businesses to wait longer for a decision and, as such, potentially entails the lapse of the respective licence.	The maximum period of time for licences to be valid defined in the provision should be abolished. Instead, the provision should determine that the licences shall be valid for as long as their respective holders fulfil the requirements necessary for providing the services in question, in accordance with Directive 2012/34/EU, and shall be reviewed every five years. As an alternative (a second-best option), the period of time for licences to be valid defined in the provision should be changed from a period of time that may not exceed five years to (exactly) five years. Moreover, the provision should determine that the licences shall be renewed consecutively for periods of time equal to the period of time during which they were (initially) valid. Furthermore, the provision should determine the principles and procedures applicable to the revision or renewal of the licences. Within that scope, the provision should, in particular, determine that: (i) the licences shall be valid throughout their revision or renewal process; and (ii) the consequence of non-compliance with the principles and procedures in question by railway enterprises shall be the (certain) revocation of their respective licences.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
37	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 24 (4) (b)	Railway transport	A licence for providing railway transport services held by an enterprise whose bankruptcy has been suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means without realistic prospect of financial restructuring within a period of time that may not exceed one year may be revoked.	The policy objective of the provision is to ensure technical and economic suitability of the railway enterprises to carry out their activities and, therefore, to ensure dependable and adequate railway transport services.	The financial evolution after situations concerning bankruptcy necessary for providing railway transport services determined in the provision differs from the respective evolution foreseen in Directive 2012/34/EU (Art. 24 (7)) (no realistic prospect of satisfactory financial restructuring within a reasonable period of time from the commencement of bankruptcy proceedings).Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision allows enterprises that do not have technical or economic characteristics suitable for performing their activities (due to having against them a pending bankruptcy proceeding without realistic prospects of satisfactory financial restructuring) to have access to the provision of railway services and, consequently, prevents regularity and efficiency of the operation of the railways. Additionally, the provision prevents some of the enterprises that comply with the financial evolution after situations concerning bankruptcy necessary for providing railway transport services defined in Directive 2012/34/EU (due to not having a pending bankruptcy proceeding against them) from holding a railway transport licence in Portugal. However, that (slight) difference between the (two) types of evolution in question is not expected to result in significantly different conclusions concerning the technical and economic suitability of the enterprises included in each of those types for carrying out their activities. In spite of that, such difference can indicate that the gravity of the problem which gave rise to the provision is (slightly) less severe in cases in which a bankruptcy was suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means. That differentiation should be reflected in the provision, through a distinction between the time delimitation of the scope of the provision applicable in the cases in which a bankruptcy is pending and the respective time delimitation applicable in the cases in which a bankruptcy was suspended or avoided by composition, corporate reconstitution, financial restructuring or equivalent means. The time delimitation of the scope of the provision defined in it can be considered lower than necessary, since the provision of railway transport services, by nature, tends to be extremely capital intensive. Moreover, the consequence of non-compliance with the financial evolution after situations concerning bankruptcy necessary for providing railway transport services determined in the provision differs from the respective consequence foreseen in Directive 2012/34/EU (Art. 24 (7)) (a certain revocation of the licence).Furthermore, the provision does not determine the criteria that the IMT needs to fulfil when deciding the consequence of the situation in question (in particular, criteria related to non-discrimination and uniformity).Nevertheless, those (two) requirements are analogous to each other, namely as far as the consequences of their non-compliance are concerned (increased probability of the relevant railway enterprises being unsuccessful).Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision allows the IMT to revoke some licences and not to revoke other licences in circumstances which are analogous to each other, as far as their seriousness is concerned, and, consequently, allows the IMT to apply dissimilar conditions to equivalent situations, potentially placing some railway enterprises at a competitive disadvantage.	The provision should be aligned with Directive 2012/34/EU, by requiring that a licence held by an enterprise having against it a pending bankruptcy proceeding without realistic prospects of financial restructuring within a reasonable period of time from the commencement of bankruptcy proceedings, shall be revoked. Moreover, the consequences of non-compliance with financial evolution following situations of bankruptcy necessary for providing railway transport services determined in the provision should be changed from a possible to a certain revocation of the licence. In that regard, the suitability of the time delimitation of the scope of the provision defined in it for the fulfilment of its underlying objective should be analysed. If, as a result of that analysis, such a period of time is concluded to be lower than it should be, the period of time in question should be increased from one year to a period of time which fully complies with its underlying objective, in accordance with Directive 2012/34/EU.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
38	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 24 (4) (l)	Railway transport	A licence for providing railway transport services held by an enterprise which has not started operations within six months from the date of issue of that licence and which has not submitted to the IMT an application through which it requested an extension of that period of time may be revoked.	The policy objective of the provision seems to be to ensure regularity and efficiency of the operation of the railways while ensuring suitability of the period of time made available to the railway enterprises for the proper start of their activities.	The provision determines that the maximum period of time for a railway enterprise to start operations without running the risk of revocation of its licence may be increased in the wake of the mere submission to the IMT of an application through which that enterprise requested such, and not in the wake of a decision on that application (namely, an affirmative answer to the request in question). Hence, the provision increases the administrative burden of businesses and legal uncertainty for them and may make them incur unnecessary costs. In fact, the provision requires businesses to make a request whose response will be inconsequential.	The circumstances that enable the extension of the maximum period of time for a railway enterprise to start operations without running the risk of revocation of its licence as defined in the provision should be changed from a submission to the IMT of an application through which that enterprise requested such to an affirmative answer to that request.
39	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 24 (4) (m)	Railway transport	A licence for providing railway transport services held by an enterprise which has not complied with the agreements applicable to the provision of international railway transport services that are binding on the Portuguese state or with the Portuguese legal provisions applicable to the provision of the same services may be revoked.	The policy objective of the provision seems to be to ensure technical and economic suitability of the railway enterprises to carry out their activities and, therefore, to ensure dependable and adequate railway transport services.	The provision defines the consequences of non-compliance with the agreements applicable to the provision of international railway transport services that are binding on the Portuguese state or with the Portuguese legal provisions applicable to the provision of the same services, contrary to what is foreseen in Directive 2012/34/EU (not specified). Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision prevents some of the enterprises that have technical and economic characteristics suitable for performing their activities (due to always having complied with the above-mentioned agreements and legal provisions) from holding a railway transport licence in Portugal. Nevertheless, non-compliance with international or national regulations applicable to the provision of international railway transport services can have substantial negative implications for the railway sector and, more importantly, for Portuguese diplomatic relations and, consequently, for the Portuguese economy.	No recommendation.
40	Decree-Law 217/2015"Rules, conditions, principles and procedures applicable in the scope of railway infrastructure management and of railway transport"	Art. 24 (5)	Railway transport	The IMT may decide to suspend a licence for providing railway transport services in cases that could lead to its revocation, but were considered not to be serious enough for that to be decided. Those cases may be, for illustration purposes: (i) the suspension or avoidance by composition, corporate reconstitution, financial restructuring or equivalent means of the bankruptcy of the railway enterprise in question without realistic prospect of financial restructuring within a period of time that may not exceed one year; (ii) the non-start of	The policy objective of the provision seems to be to ensure efficiency of the operation of the railways while ensuring suitability of the period of time made available to the railway enterprises for the proper start of their activities.	The cases underlying the provision can have significant negative implications for the railway sector or for Portuguese diplomatic relations and, consequently, for the Portuguese economy. Therefore, their dismissal as cases serious enough to lead to the revocation of licences should not allow the IMT not to consider them as serious situations and, therefore, as cases whose occurrence requires the adoption of severe measures and, in particular, measures that discourage their existence.	The consequences of the dismissal of a situation that could lead to the revocation of a licence as a situation serious enough for that to be decided as defined in the provision should be changed from a possible to a certain suspension of the licence.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
				operations by the railway enterprise in question within six months from the date of issue of the respective licence without the submission to the IMT of an application through which it requested an extension of that period of time; or (iii) the non-compliance by the railway enterprise in question with the agreements applicable to the provision of international railway transport services that are binding on the Portuguese state or with the Portuguese legal provisions applicable to the provision of the same services.			
41	Decree-Law 27/2011 (last modified by Decree-Law 216/2015) "Technical conditions contributing to increased safety of the railway system and uninterrupted movement of trains"	Art. 20 (5)	Vehicles	Authorisations for placing in service of vehicles conforming with the TSIs granted before 19.07.2008 shall remain valid in accordance with the conditions under which they were granted and, consequently, shall not be required to comply with the conditions currently in force concerning the additional authorisations for placing in service of the vehicles in question other than the ones concerning the criteria necessary for granting those authorisations.	The policy objective of the provision seems to be to improve the interlinking and interoperability of the national rail networks in the EU.	The provision determines the need for compliance with the conditions currently in force concerning the criteria necessary for granting the additional authorisations for placing in service of specific vehicles, contrary to what is foreseen in Directive 2008/57/EC (Art. 21 (12) (second sentence)). Consequently, the provision increases legal uncertainty for businesses.	The need for compliance with the conditions currently in force concerning the criteria necessary for granting the additional authorisations for placing in service of specific vehicles determined in the provision should be abolished.
42	Decree-Law 27/2011 (last modified by Decree-Law 216/2015) "Technical conditions contributing to increased safety of the railway system and uninterrupted"	Art. 21 (4)	Vehicles	The applicant for an authorisation for placing in service of a vehicle may submit to the IMT (called the IMT since the entry into force of Decree-Law 126-C/2011) a request for review of that entity's confirmed decision refusing such placing in service within a period that may not	The policy objective of the provision seems to be to prevent decisions by the IMT that are not prompt, duly weighed and based on all relevant information and that, consequently, unduly hinder railway enterprises from entering the market or operating in it.	The maximum period of time for an applicant requesting authorisation for placing in service of a vehicle to submit a request concerning an the IMT's confirmed decision defined in the provision: (i) is shorter than the maximum period of time for that applicant to submit to the IMT a request for the review of the (still not confirmed) decision in question foreseen in Directive 2008/57/EC (Art. 21 (7) (second sentence)) (one month, which represents around 30 days, from the date of receipt of the decision in question), as expected, given that the difference between those (two) procedures, namely as far as their underlying analytical work is concerned, is not expected to be significantly different; and(ii) is considered to be reasonable by the IMT. Additionally, the maximum period of time for the IMT to	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
	movement of trains"			exceed 10 days, from the date of receipt of the confirmation of the decision. The IMT shall decide on the above-mentioned application within a period that may not exceed 10 days, from the date of receipt of the request for review.		decide defined in the provision: (i) is shorter than the maximum period of time for the IMT to decide on the application through which the above-mentioned applicant requested it to review the (still not confirmed) decision in question foreseen in Directive 2008/57/EC (Art. 21 (7) (third sentence)) (two months, which represent around 60 days, from the date of receipt of the request in question), as expected, given that the difference between those (two) procedures, namely as far as their underlying analytical work is concerned, is not expected to be significantly different; and(ii) is considered to be reasonable by the IMT.	
43	Decree-Law 27/2011 (last modified by Decree-Law 216/2015) "Technical conditions contributing to increased safety of the railway system and uninterrupted movement of trains"	Art. 24 (5)	Vehicles	The railway infrastructure manager shall make every effort to ensure that any tests to be conducted on the respective network within the scope of an application for an authorisation for placing in service of a vehicle take place within a period that may not exceed 90 days, from the date of request of the tests.	The policy objective of the provision seems to be to improve the interlinking and interoperability of the national rail networks in the EU.	The provision does not determine the need for consultation by the railway infrastructure manager with the applicant to schedule the carrying out of the tests, contrary to what is foreseen in Directive 2008/57/EC (Art. 23 (6) (second sentence)).Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision prevents them from guaranteeing appropriateness of the schedule of the tests to their needs and, consequently, prevents their efficient operation of the railways.	The provision should be aligned with Directive 2008/57/EC, by determining that the schedule of any tests to be conducted on a network within the scope of an application for an authorisation for placing in service of a vehicle shall be made by the railway infrastructure manager in consultation with the applicant for the tests in question.
44	Decree-Law 27/2011 (last modified by Decree-Law 216/2015) "Technical conditions contributing to increased safety of the railway system and uninterrupted movement of trains"	Art. 40 (3)	Vehicles	The authorisation for the placing in service of vehicles to be used occasionally on the part of the network that does not yet fall within the scope of the TSIs, in respect of that part of the network, shall be granted in accordance with the authorisation procedure for the placing in service of vehicles or, if applicable, the authorisation procedure for the placing in service of structural subsystems constituting the rail system which are located or operated in national territory.	The policy objective of the provision seems to be to improve the interlinking and interoperability of the national rail networks in the EU, while taking into account that the full achievement of that objective does not, and should not, occur all at once.	The provision does not determine the maximum period of time during which the procedure for granting the authorisation defined in the provision should be adopted, contrary to what is foreseen in Directive 2008/57/EC (Art. 8 (3) (b)) (the period of time until the extension of the scope of the TSIs to the whole rail network takes effect).Moreover, that procedure differs from the respective procedure foreseen in Directive 2008/57/EC (Art. 8 (3) (b)) (in accordance with the authorisation procedure for the placing in service of vehicles and with the national safety rules or, if applicable, the technical rules for each subsystem in use by the IMT for implementing the essential requirements).Hence, the provision increases legal and regulatory uncertainty for businesses.	The provision should be aligned with Directive 2008/57/EC, by defining the maximum period of time during which the procedure for granting the authorisation defined in the provision should be adopted as the period of time until the extension of the scope of the TSIs to the whole rail network takes effect. Additionally, that procedure should be changed from a procedure in accordance with the authorisation procedure for the placing in service of vehicles (Art. 19 to Art. 28 of Decree-Law 27/2011) or, if applicable, the authorisation procedure for the placing in service of structural subsystems constituting the rail system which are located or operated in national territory (Art. 13 of Decree-Law 27/2011) to a procedure in accordance with the authorisation procedure for the placing in service of vehicles (Art. 19 to Art. 28 of Decree-Law 27/2011) and with the national safety rules (Art. 66-N of Decree-Law 270/2003) or, if applicable, the technical rules for each subsystem in use by the IMT for implementing the essential requirements (Art. 15 (3) to Art. 15 (8) of Decree-Law 27/2011), in accordance with Directive 2008/57/EC.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
45	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 4 (2)	Railway transport of passengers	The public passenger railway transport service in the Portuguese territory shall be a concessionary service, subject to concession or delegation.	The policy objective of the provision seems to be to ensure dependable and adequate railway services and, within that scope, to ensure regularity and efficiency of the operation of the railways while satisfying public needs and the development requirements of the area served.	The provision determines that providing public passenger railway transport service by a private entity shall only be possible through a concession of that service granted by the state. Such a concession consists of a contract by which the private entity in question assumes responsibility for managing, on its own behalf, the concessionary activity, for a period of time and for remuneration obtained through the carrying out of that activity or directly from the state, in accordance with Decree-Law 18/2008 (Art. 407 (2)). In that context, the concessionaire is entitled, namely, to operate, on an exclusive basis, the public service granted to it, in accordance with Decree-Law 18/2008 (Art. 415 (a)). As a result, the concession of the public service in question translates into the creation of a monopoly associated with the operation of that service. Therefore, the provision could have a significant negative impact on competition and, consequently, on consumers. In fact, studies carried out and the experience of EU Member States where competition in the public transport sector has been in place for a number of years show that, with appropriate safeguards, the introduction of regulated competition between operators leads to more attractive and innovative services at a lower cost, in accordance with Regulation (EC) 1370/2007 (recital 7 (first sentence)). Nevertheless, at the present time, many inland passenger transport services which are required in the general economic interest cannot be operated on a commercial basis and, therefore, the state must ensure that such services are provided, in accordance with Regulation (EC) 1370/2007 (recital 5 (first sentence) and recital 5 (second sentence)). Within that scope, it should be noted that: (i) many EU Member States have enacted legislation providing for the award of exclusive rights and public service contracts in, at least, part of their public transport market, on the basis of transparent and fair competitive award procedures, in accordance with Regulation (EC) 1370/2007 (recital 6 (first sentence)); (ii) various Portuguese rules (in particular, Decree-Law 18/2008) and EU rules (in particular, Regulation (EC) 1370/2007) lay down the conditions under which the state grants exclusive rights in return for the discharge of public service obligations or compensates public service enterprises for costs incurred by them in the scope of public passenger transport, to guarantee the provision of services of general interest which are among other things more numerous, safer, of higher quality or provided at lower cost than those that market forces alone would have allowed; (iii) the provision of the public passenger railway transport service has distinct characteristics, reflected, namely, in high entry costs and high (fixed and variable) operational costs, and also has a significant importance for the socio-economic development of Portugal; (iv) a concession of a public service must lead to a significant and effective transfer of the risk resulting from the concessionary activity from the state to the concessionaire, in accordance with Decree-Law 18/2008 (Art. 413); (v) in the operation of the concessionary activity, the concessionaire is subject to the principles of continuity and regularity, of equality and of adaptation to needs, in accordance with Decree-Law 18/2008 (Art. 429); and (vi) the contract underlying a concession of a public service shall establish indicators to periodically monitor and evaluate the performance of the concessionaire, from the perspectives of the user and of the public interest, in accordance with Decree-Law 18/2008 (Art. 418 (1)).	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
46	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 4 (3)	Railway transport of goods	Freight railway transport services may be subject to concession or delegation in cases in which it can be necessary to ensure effective operation of the railways, so as to bring supply into line with the existing demand and the needs of the community.	The policy objective of the provision seems to be to ensure dependable and adequate railway services and, in that scope, to ensure regularity and efficiency of the operation of the railways while satisfying the public needs and the development requirements of the area served.	The provision determines cases in which the provision of the freight railway transport service by a private entity may be possible through a concession of that service granted by the state. Such a concession consists of a contract by which the private entity in question assumes responsibility for managing, on its own behalf, the concessionary activity, for a period of time and for remuneration obtained through the carrying out of that activity or directly from the state, in accordance with Decree-Law 18/2008 (Art. 407 (2)). In that context, the concessionaire is entitled, namely, to operate, on an exclusive basis, the public service granted to it, in accordance with Decree-Law 18/2008 (Art. 415 (a)). As a result, the concession of the public service in question translates into the creation of a monopoly associated with the operation of that service. Therefore, the provision could have a significant negative impact on competition and, consequently, on consumers. In fact, studies carried out and the experience of EU Member States where competition in the public transport sector has been in place for a number of years show that, with appropriate safeguards, the introduction of regulated competition between operators leads to more attractive and innovative services at a lower cost, in accordance with Regulation (EC) 1370/2007 (recital 7 (first sentence)). Nevertheless, the provision is confined to cases in which the existent demand for freight railway transport services and the needs of the community would not be fully fulfilled if those services could only be provided in accordance with market rules. Consequently, the provision can be considered as necessary to fully achieve its underlying policy objective. However, at the present time, freight transport services subject to concessions are not bound by specific EU rules that lay down the conditions under which the state grants exclusive rights in return for the discharge of public service obligations or compensates public service enterprises for costs incurred by them. Indeed, Regulation (EC) 1370/2007 does not cover the award of public service contracts within the scope of freight transport services, contrary to what was foreseen in Regulation (EEC) 1191/69. Therefore, the organisation of those services is subject to compliance with the general principles of the Treaty establishing the European Community. Various Portuguese rules (in particular, Decree-Law 18/2008) and EU rules (in particular, Regulation (EC) 1370/2007) lay down the conditions under which the state grants exclusive rights in return for the discharge of public service obligations or compensates public service enterprises for costs incurred by them in the scope of public passenger transport, to guarantee the provision of services of general interest which are among other things more numerous, safer, of higher quality or provided at lower cost than those that market forces alone would have allowed.	The provision should define that the Portuguese rules (in particular, Decree-Law 18/2008) and EU rules (in particular, Regulation (EC) 1370/2007) which lay down the conditions under which the state grants exclusive rights in return for the discharge of public service obligations or compensates public service operators for costs incurred by them in the scope of public passenger transport are also applicable (with the necessary adjustments) in cases in which a freight railway transport service is subject to concession.

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47	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 66-E (5)	Safety certificates	The holder of a safety certificate shall inform the IMT of any significant changes in the conditions underlying the issue of that certificate within 10 working days from the date of occurrence of the changes in question.	The policy objective of the provision seems to be to ensure constant fulfilment of the requirements necessary to hold safety certificates.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the information. Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, limits their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the information.
48	Decree-Law 270/2003 (last modified by Decree-Law 217/2015) "Conditions applicable in the scope of railway infrastructure management and of railway transport"	Art. 66-E (10)	Railway transport	The IMT may decide to revoke a safety certificate in cases in which its holder has not used it as intended within a period of, at least, one year, from the date of issue of that certificate.	The policy objective of the provision seems to be to ensure dependable and adequate railway services and, in that scope, to ensure regularity and efficiency of the operation of the railways while ensuring suitability of the period of time made available to the railway enterprises for the proper start of their activities.	The consequence of the delayed appropriate start of operations by a railway enterprise defined in the provision differs from the respective consequence foreseen in Directive 2004/49/EC (Art. 10 (5) (fifth paragraph)) (certain revocation of the safety certificate). Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision prevents enterprises that have the technical and economic characteristics suitable for performing their activities from having access to the provision of railway services.	The consequences of the delayed appropriate start of operations by a railway enterprise defined in the provision should be changed from a possible suspension of the safety certificate to a certain suspension of the safety certificate.
49	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 13	Railway transport	The railway enterprise shall provide all the transport services requested by the state, local authorities or individuals, in accordance with the respective regulations, contracts, tariffs and conventions, approved by the government.	The policy objective of the provision seems to be to ensure universality of access to railway transport services while guaranteeing economic sustainability of the operation of the railways.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
50	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 14 (1)	Railway transport	The legislation that establishes the tariffs applicable to the services provided by the railway enterprise or that modify those tariffs shall, also, determine: (i) whether it can conclude contracts which foresee tariffs and conditions applicable to the provision of transport services that differ from the respective tariffs and conditions established in the legislation in question; and (ii) whether, regardless of any	The policy objective of the provision seems to be to ensure efficiency of the operation of the railways while guaranteeing universality of access to railway transport services.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the entry into force of the Legal Regime of the State Owned Enterprises (established in Decree-Law 133/2013), of the Code of Public Contracts (approved by Decree-Law 18/2008) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
				agreement, it can establish tariffs applicable to the transport of goods and passengers that are not higher than the respective tariffs established in the legislation in question.			
51	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 47 (1) (b)	Railway transport of goods	The railway enterprise may refuse to transport disgusting substances.	The policy objective of the provision is not clear.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the liberalisation of the transport of goods (established in Decree-Law 270/2003) and the entry into force of the Framework Law of Land Transport System (Law 10/90) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
52	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 49 (1)	Railway transport of goods	The railway enterprise shall transport the goods dispatched by high speed on the first train appropriated for that and shall only interrupt such transport due to having to change the train in question from one track to another track.	The policy objective of the provision seems to be to ensure suitability of railway transport services for the needs of consumers.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the liberalisation of the transport of goods (established in Decree-Law 270/2003) and the entry into force of the Framework Law of Land Transport System (Law 10/90) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
53	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 49 (2)	Railway transport of goods	The railway enterprise shall start the transport of the goods dispatched by low speed, at the latest, on the day following the day in which it received them or, in exceptional circumstances, within no more than two days from that day. In any case, each indivisible fraction of 150 km of the journey in question shall last no more than two days from its beginning.	The policy objective of the provision seems to be to ensure suitability of railway transport services for the needs of consumers.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the liberalisation of the transport of goods (established in Decree-Law 270/2003) and the entry into force of the Framework Law of Land Transport System (Law 10/90) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.
54	Decree-Law 39780 (last modified by Decree-Law 58/2008) "Regulation concerning the operation and policing of railways"	Art. 51 (2)	Railway transport of goods	The railway enterprise shall deliver the goods dispatched by low speed on the day following the day in which they arrived at the station of their destination or, in the cases in which those goods are liable to corruption or deterioration,	The policy objective of the provision seems to be to ensure suitability of railway transport services for the needs of consumers.	The IMT and the stakeholders considered that the provision ceased to be applicable, in particular, with the liberalisation of the transport of goods (established in Decree-Law 270/2003) and the entry into force of the Framework Law of Land Transport System (Law 10/90) or of the relevant concession contracts. Therefore, the provision increases legal uncertainty for businesses.	The provision should be expressly revoked.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
55	Regulation 443/2010"Procedures for issuing safety certificates"	Art. 4 (2)	Safety certificates	as soon as they are claimed, within the working hours of the station of their destination. The application through which a holder of a licence for providing railway transport services requests to the IMT (called the IMT since the entry into force of Decree-Law 126-C/2011) a safety certificate shall be submitted in Portuguese. Additionally, all official documentation of which the original language is not Portuguese submitted to the IMT for the examination of the above-mentioned application or of an application through which a holder of a safety certificate requests to the IMT the renewal or amendment of that document must be accompanied by the respective certified translation.	The policy objective of the provision seems to be to prevent undue interpretations by the IMT of the application and of its accompanying documents.	The provision discriminates against holders of a licence that do not have employees that speak Portuguese or that have obtained relevant documentation outside Portugal and, consequently, may make them incur unnecessary costs. In fact, the provision requires holders of a licence: (i) to recruit individuals that speak Portuguese or to contract the provision of translation services; and (ii) if they have relevant documentation which is written in a language other than Portuguese, to contract the provision of certified translation services. However, the use of the Portuguese language and, if necessary, the existence of certified translations ensures that the information conveyed to the IMT is true to the original text and, therefore, that accuracy was not lost in any translation process.	No recommendation.
56	Regulation 443/2010"Procedures for issuing safety certificates"	Art. 7	Safety certificates	The application through which a holder of a licence for providing railway transport services and of a safety certificate issued in a country other than Portugal requests to the IMT (called the IMT since the entry into force of Decree-Law 126-C/2011) a safety certificate shall be accompanied by the certified copy in Portuguese of part A of the safety certificate it already holds.	The policy objective of the provision seems to be to prevent undue interpretations by the IMT of the application and of its accompanying documents.	The provision discriminates against holders of a licence that have obtained relevant documentation outside Portugal and, consequently, may make them incur unnecessary costs. In fact, the provision requires holders of a licence that have relevant documentation which is written in a language other than Portuguese to contract the provision of certified translation services. However, the existence of certified translations ensures that the information conveyed to the IMT is true to the original text and, therefore, that accuracy was not lost in any translation process.	No recommendation.
57	Regulation 443/2010"Procedures for issuing safety certificates"	Art. 8 (1)	Safety certificates	The IMT shall decide on an application through which a holder of a licence for providing railway transport services requests to it a safety certificate within 90 days from the date of receipt of all relevant information.	The policy objective of the provision seems to be to prevent decisions by the IMT that are not prompt, duly weighed and based on all relevant information and that, consequently, unduly hinder railway enterprises from entering the market or operating in it.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the application. Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, limits their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the application.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
58	Regulation 443/2010"Procedures for issuing safety certificates"	Art. 11 (2)	Safety certificates	The holder of a safety certificate shall submit to the IMT an application through which it requests the renewal of that document no less than 60 days before the date of expiry of the certificate in question.	The policy objective of the provision seems to be to ensure suitability of the period of time made available to the IMT for the proper analysis of the fulfilment of the requirements necessary to hold safety certificates.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the application. Therefore, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, potentially entails the lapse of the respective safety certificate.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the application and, in any case, that period of time should not allow the safety certificate in question to lapse.
59	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 6 (1) (a) and art. 6 (2)	Train drivers	Applicants for train driving licences shall be, at least, 20 years of age or, if they practise the respective profession exclusively on the Portuguese railway network, 18 years of age.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure medical and technical suitability of the train drivers for performing the tasks assigned to them.	The exceptional cases concerning the minimum age necessary for driving trains defined in the provision differ from the respective cases foreseen in Directive 2007/59/EC (Art. 10 (second sentence)) (the validity of the licences is limited to the Portuguese territory). Hence, the provision may make individuals and, therefore, businesses incur unnecessary costs. In fact, the provision prevents individuals that are between 18 and 20 years of age and that practise or want to practise the profession on railway networks other than the Portuguese railway network from becoming train drivers in Portugal and, consequently, reduces the supply of train drivers available to businesses.	The provision should be aligned with Directive 2007/59/EC, by changing the exceptional cases concerning the minimum age necessary for driving trains from cases in which the profession is practised exclusively on the Portuguese railway network to cases in which the validity of the licences is limited to the Portuguese territory.
60	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 6 (1) (b)	Train drivers	Applicants for train driving licences shall have successfully completed compulsory education or hold adequate professional qualification.	The policy objective of the provision is to ensure high level of safety of the railway system and, in that scope, to ensure technical suitability of the train drivers for performing the tasks assigned to them.	The minimum vocational educational and training qualifications necessary for driving trains defined in the provision are less demanding than the respective qualifications foreseen in Directive 2007/59/EC (Art. 11 (1)) (nine years of education (primary and secondary) and either compulsory education or vocational and additional technical training or technical educational training or other secondary-level training). Holders of licences that do not fulfil the above-mentioned requirements foreseen in Directive 2007/59/EC may be temporarily prohibited by a competent authority in a EU Member State other than Portugal from operating in its area of jurisdiction, in accordance with Directive 2007/59/EC (Art. 29 (3) and Art. 29 (4) (b)). Therefore, the provision increases legal uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision temporarily prevents holders of licences that do not comply with the minimum vocational educational and training qualifications necessary for driving trains defined in Directive 2007/59/EC from practising the profession in a country other than Portugal and, as a result, prevents railway enterprises from using only them in the case of provision of international railway transport services. Additionally, the provision does not determine the cases in which an applicant for a licence is considered to hold adequate professional qualifications. Hence, the provision increases regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision prevents individuals that have qualifications suitable for carrying out their duties from becoming train drivers and, as a result, reduces the supply of train drivers available to businesses.	The provision should be aligned with Directive 2007/59/EC, by changing the minimum vocational educational and training qualifications necessary for driving trains from compulsory education or adequate professional qualification to nine years of education (primary and secondary) and either compulsory education or vocational and additional technical training or technical educational training or other secondary-level training.

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61	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 7 (2) and art. 7 (3)	Train drivers	The IMT may, at any moment, suspend a train driving licence if it verifies that the requirements necessary for maintaining its validity have not been fulfilled, which is considered to occur when the railway enterprise that employs the individual in question has not promoted the execution of: (i) medical examinations and psychological evaluations at the required minimum frequency; or(ii) continuous training programmes within the scope of the safety management system of the above-mentioned enterprise.	The policy objective of the provision is to ensure a high level of safety of the railway system and, in that scope, to ensure medical and technical suitability of the train drivers for performing the tasks assigned to them.	The consequence of non-compliance with the requirements necessary for maintaining a train driving licence defined in the provision differs from the respective consequence foreseen in Directive 2007/59/EC (Art. 29 (4) (first paragraph) (a)) (certain suspension of the licence). Additionally, the cases in which those requirements are considered not to have been fulfilled as defined in the provision differ from the respective cases foreseen in Directive 2007/59/EC (Art. 29 (4) (first paragraph) (a)) (the individual in question no longer satisfies all the above-mentioned requirements). Hence, the provision increases regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision prevents holders of licences from knowing under which conditions the IMT will act in the scope of non-compliance with the requirements necessary for maintaining their licences and allow holders of licences to maintain them in the cases in which the same requirements are not fulfilled solely for their personal reasons.	The provision should be aligned with Directive 2007/59/EC, by changing the consequence of non-compliance with the requirements necessary for maintaining a train driving licence from a possible to a certain suspension of the licence. Additionally, cases in which the above-mentioned requirements are considered not to have been fulfilled defined in the provision should be changed from cases in which the railway enterprises have not promoted the execution of medical examinations and psychological evaluations at the required minimum frequency or the execution of continuous training programmes within the scope of the respective enterprise's safety management system to cases in which medical examinations or psychological evaluations are not carried out at the required minimum frequency or the continuous training programmes within the scope of the respective enterprise's safety management system are not performed, in accordance with Directive 2007/59/EC.
62	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 7 (6)	Train drivers	Train driving licences shall be invalid, for the purpose of practising the profession on the Portuguese rail network, from the moment when their respective holder is 65 years of age.	The policy objective of the provision is to ensure a high level of safety of the railway system and, in that scope, to ensure medical and technical suitability of the train drivers for performing the tasks assigned to them.	The provision determines the maximum age for driving trains on the Portuguese rail network, contrary to what is foreseen in Directive 2007/59/EC (not specified). However, the age of train drivers, from a certain age, is expected to have a direct, significant and growing negative impact on the level of safety of the railway system, even if the individuals in question fulfil the minimum medical and knowledge requirements necessary for driving trains.	No recommendation.
63	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 8 (3)	Train drivers	All official documentation of which the original language is not Portuguese submitted to the IMT for the examination of an application through which an entity requests to the IMT a train driving licence or the renewal or amendment of that document must be accompanied by the respective translation.	The policy objective of the provision seems to be to prevent undue interpretations by the IMT of the documents accompanying an application.	The provision discriminates against applicants for issue, renewal or amendment of licences who do not have a Portuguese origin or employees who do not speak Portuguese or who have obtained relevant qualifications or experience outside Portugal and, consequently, may make them incur unnecessary costs. In fact, the provision requires applicants for issue, renewal or amendment of licences: (i) to have Portuguese origin, to recruit individuals who speak Portuguese or to contract for the provision of translation services; and (ii) if they have relevant documentation which is written in a language other than Portuguese, to contract for the provision of certified translation services. However, the existence, if necessary, of translations ensures that the information conveyed to the IMT is true to the original text and, therefore, that accuracy was not lost in any translation process.	No recommendation.

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64	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 8 (4)	Train drivers	The applicant for a train driving licence shall submit to the IMT an application through which he requests his enrolment in the examination concerning the general professional competence necessary for driving trains no less than 30 days before the desired date of taking of the examination in question.	The policy objective of the provision seems to be to ensure suitability of the period of time made available to the IMT for the proper analysis of the fulfilment of the requirements necessary to take the examination concerning the general professional competence necessary for driving trains.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the application. Therefore, the provision increases regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, potentially leads them to exceed the desired date of the taking of the respective examination and prevents the individuals in question from making the necessary arrangements to take that examination.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the application and, in any case, that period of time should not allow the desired date of the taking of the examination in question to be exceeded while allowing the individuals in question to make the necessary arrangements to take that examination.
65	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 9 (2)	Train drivers	The railway enterprise employing a train driver shall submit to the IMT an application through which it requests the renewal of his train driving licence no less than 60 days before the date of expiry of that licence.	The policy objective of the provision seems to be to ensure suitability of the period of time made available to the IMT for the proper analysis of the fulfilment of the requirements necessary to hold train driving licences.	The entity responsible for requesting the renewal of a licence from the IMT as defined in the provision differs from the respective entities foreseen in Directive 2007/59/EC (Art. 14 (2)) (the respective train driver or any entity on their behalf). Hence, the provision may make individuals and, consequently, businesses incur unnecessary costs. In fact, the provision prevents holders of train driving licences that are not employed as such from applying for the renewal of their respective licence and, as a result, reduces the supply of train drivers available to businesses. Moreover, the minimum period of time for an entity to submit its request to the IMT as defined in the provision (60 days before the date of expiry of the licence) exceeds the maximum period of time for the IMT to decide on an application by which an entity requests a licence foreseen in Directive 2007/59/EC (Art. 14 (4)) (one month, which represents around 30 days, from the date of receipt of all relevant information), although those (two) procedures are analogous to each other, namely as far as their underlying administrative work by the IMT is concerned. Additionally, the provision does not define the maximum period of time for the IMT to decide from the date of receipt of the application. Hence, the provision increases regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, potentially entails the lapse of the respective licence.	The provision should be aligned with Directive 2007/59/EC by changing the entity responsible for requesting to the IMT the renewal of a licence from the railway enterprise employing the respective train driver to the respective train driver or any entity on his behalf. Also, the minimum period of time for an entity to submit its request to the IMT defined in the provision should be lowered from 60 to 30 days before the date of expiry of the respective licence. Furthermore, the provision should define the maximum period of time for the IMT to decide from the date of receipt of the application and, in any case, that period of time should not allow the licence in question to lapse.
66	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 11 (4)	Train drivers	The frequency of examinations concerning linguistic knowledge and specific professional knowledge and competence (relating to rolling stock and infrastructures) necessary for driving specific trains on specific infrastructures shall be determined by the railway enterprise employing the respective train driver, in accordance with its safety management system and complying with the respective minimum frequency required.	The policy objective of the provision seems to be to ensure a high level of safety of the railway system and regularity and efficiency of the operation of the railways.	The entity responsible for determining the frequency of the examinations defined in the provision differs from the respective entity foreseen in Directive 2007/59/EC (Art. 14 (2) (second sentence)) (the railway enterprise or the railway infrastructure manager employing the respective train driver). Hence, the provision increases legal uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision prevents train drivers who are employed by a railway infrastructure manager from fulfilling the requirements that allow them to apply for the renewal of their respective licence and, as a result, reduces the supply of train drivers available to businesses.	The provision should be aligned with Directive 2007/59/EC, by changing the entity responsible for determining the frequency of the examinations from the railway enterprise employing the respective train driver to the railway enterprise or the railway infrastructure manager employing the respective train driver.

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67	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 22 (4)	Train drivers	Training tasks concerning general professional knowledge, linguistic knowledge, professional knowledge relating to rolling stock and professional knowledge relating to infrastructures shall be performed by individuals or bodies recognised by the competent entities (namely, in the scope of the certification system for training providers and of the certification system for trainers and teachers), jointly with the IMT.	The policy objective of the provision seems to be to ensure technical suitability of the entities responsible for training train drivers for performing the tasks assigned to them.	The entities responsible for performing training tasks defined in the provision differ from the respective entities foreseen in Law 16/2011 (Art. 25 (1)) (individuals or bodies recognised by the IMT, jointly with the competent entities), which are analogous to the entities responsible for performing medical examinations and psychological evaluations determined in Law 16/2011 (Art. 26 (1)) (providers of, respectively, medical and psychological services recognised by the IMT). Hence, the provision increases legal uncertainty for individuals and, consequently, for businesses.	The provision should be aligned with Art. 25 (1) of Law 16/2011, by changing the entities responsible for performing training tasks from individuals or bodies recognised by the competent entities, jointly with the IMT, to individuals or bodies recognised by the IMT, jointly with the competent entities.
68	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 25 (1)	Train drivers	Training tasks concerning general professional knowledge shall only be performed by individuals or bodies recognised by the IMT, jointly with the competent entities (namely, in the scope of the certification system for training providers and of the certification system for trainers and teachers).	The policy objective of the provision seems to be to ensure technical suitability of the entities responsible for training train drivers for performing the tasks assigned to them.	The provision does not define the entities responsible for performing training tasks concerning linguistic knowledge, professional knowledge relating to rolling stock and professional knowledge relating to infrastructures, contrary to what is foreseen in Directive 2007/59/EC (Art. 23 (5) and art. 23 (6)) (individuals or bodies accredited or recognised). Those entities are analogous to the entities responsible for performing training tasks concerning general professional knowledge as defined in the provision (individuals or bodies recognised by the IMT, jointly with the competent entities) and, also, to the entities responsible for performing medical examinations and psychological evaluations determined in Law 16/2011 (Art. 26 (1)) (providers of, respectively, medical and psychological services recognised by the IMT). Hence, the provision increases regulatory uncertainty for individuals and, consequently, for businesses.	The entities responsible for performing training tasks concerning linguistic knowledge, professional knowledge relating to rolling stock and professional knowledge relating to infrastructure should be defined as individuals or bodies recognised by the IMT, jointly with the competent entities (namely, in the scope of the certification system for training providers and of the certification system for trainers and teachers).
69	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 25 (3) (e)	Train drivers	Entities recognised to perform training tasks shall keep, for at least five years, a register of the training courses and evaluation exercises carried out, as well as of the personal files of the participants.	The policy objective of the provision seems to be to ensure access by competent entities to information which is relevant for the assessment of the procedures for the acquisition and evaluation of professional knowledge and competences.	The provision may increase costs for entities that provide training services. However, the registers foreseen in the provision allow for verification that: (i) the underlying activities fulfil the respective minimum requirements; and (ii) the information concerning the underlying activities stored in the registers that the IMT and the railway enterprises and railway infrastructure managers keep is accurate. Additionally, the provision is considered to be reasonable by the stakeholders, who stated that the registers in question are, usually, kept (in particular, electronically) for a period of time significantly longer than the respective minimum period of time defined in the provision.	No recommendation.
70	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 26 (1)	Train drivers	Medical examinations shall only be performed by providers of medical and psychological services recognised by the IMT.	The policy objective of the provision seems to be to ensure technical suitability of the providers of medical and psychological services responsible for medically and psychologically evaluating train drivers for performing the tasks assigned to them.	The provision does not define the entities responsible for performing psychological evaluations, contrary to what is foreseen in Directive 2007/59/EC (Art. 11 (3) and Art. 20 (2) (first sentence)) (providers of psychological services recognised by the IMT). Those entities are analogous to the entities responsible for performing medical examinations defined in the provision (providers of medical and psychological services recognised by the IMT). Hence, the provision increases regulatory uncertainty for individuals and, consequently, for businesses.	The entities responsible for performing psychological evaluations should be defined in the same manner as the entities responsible for performing medical examinations, by defining them as providers of psychological services recognised by the IMT.

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71	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 28 (1)	Train drivers	The examinations necessary for obtaining certificates shall be carried out by entities duly recognised by the IMT, that recognition being valid for a period of five years and renewable, against verification that the requirements necessary for maintaining its validity have been fulfilled.	The policy objective of the provision seems to be to ensure technical suitability of the entities responsible for evaluating the professional knowledge and competences of train drivers for performing the tasks assigned to them.	The period of time during which recognition is valid defined in the provision differs from the period of time during which the recognition of entities responsible for performing training tasks concerning general professional knowledge and, also, of entities responsible for performing medical examinations and psychological evaluations is determined in Law 16/2011 (Art. 25 (1) and Art. 26 (1), respectively) (not specified). However, all those (three) recognitions are analogous to each other, namely as far as their underlying policy objective is concerned (ensuring technical suitability of a certain entity for performing the specific tasks assigned to it). Therefore, the provision increases the administrative burden of the entities that carry out the examinations necessary for obtaining certificates and it also may make them and, consequently, businesses incur unnecessary costs. Moreover, the provision does not determine the need for recognition by the IMT of the entities responsible for carrying out the examinations. This need is analogous to the respective need foreseen in the provision. Hence, the provision increases legal and regulatory uncertainty for applicants for and holders of train driving licences and, consequently, for businesses.	The period of time during which a recognition is valid as defined in the provision should be abolished. Also, the provision should determine that the examinations necessary for obtaining train driving licences shall be carried out by individuals or bodies duly recognised by the IMT.
72	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 28 (2)	Train drivers	Individuals or bodies recognised to perform training tasks cannot be recognised to carry out examinations.	The policy objective of the provision seems to be to prevent conflicts of interest between the entities responsible for evaluating the professional knowledge and competences of train drivers and those responsible for training them.	The provision, in fact, prevents conflicts of interest inherent in situations in which entities that perform training tasks also carry out examinations. However, that objective can also be achieved by merely precluding an entity responsible for training an applicant for or holder of a train driving licence to, also, carry out examinations on professional knowledge and competences that were the object of the training in question, which is foreseen in Law 16/2011 (Art. 30 (2)). Consequently, the provision may decrease to an unreasonable extent the revenues of entities recognised to perform training tasks and the revenues of entities recognised to carry out examinations. In any case, the provision prevents them from carrying out examinations or performing training tasks, respectively. Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision increases the prices charged by the entities in question, through the reduction of their potential to recover costs and through the reduction of the supply of training centres and examination centres available to businesses.	The provision should be abolished.
73	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 30 (1) (a)	Train drivers	Bodies recognised to carry out examinations necessary for obtaining train driving licences or certificates shall have a technical manager who is in charge of and co-ordinates the activities concerning those examinations and validates the procedures concerning the same examinations and the necessary documents.	The policy objective of the provision seems to be to ensure the technical suitability of the entities responsible for evaluating the professional knowledge and competences of train drivers for performing the tasks assigned to them.	The provision determines the need for technical managers in the organisational structure of the bodies recognised to carry out examinations, contrary to what is foreseen in Directive 2007/59/EC (not specified), and, thus, it may increase costs for potential entrants and for businesses. However, Law 16/2011 (in accordance with Directive 2007/59/EC) lays down the conditions under which the IMT recognises individuals and bodies to carry out examinations and the policy objective underlying the provision can be considered to be fully achieved by the existence of those conditions. Additionally, it should be noted that Law 16/2011 (in accordance with Directive 2007/59/EC) does not foresee a similar requirement for bodies recognised to perform training tasks, although those (two) recognitions are analogous to each other, namely as far as their underlying policy objective is concerned (ensuring technical suitability of a certain entity for performing the specific tasks assigned to it). Consequently, the provision can be considered as unnecessary to achieving that objective.	The provision should be abolished.

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74	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 30 (1) (b)	Train drivers	Individuals or bodies recognised to carry out examinations necessary for obtaining train driving licences or certificates shall keep, for at least five years, a register of the tests performed for each examinee, the respective registration forms and a copy of the documents issued.	The policy objective of the provision seems to be to ensure access by competent entities to information which is relevant for the assessment of the procedures for the evaluation of professional knowledge and competences.	The provision may increase costs for entities that provide examination services. However, the registries foreseen in the provision allow them to verify that: (i) the underlying activities fulfil the respective minimum requirements; and (ii) the information concerning the underlying activities stored in the registries that the IMT and the railway enterprises and railway infrastructure managers keep is accurate. Additionally, the provision is considered to be reasonable by the stakeholders, who stated that that registries in question are, usually, kept (particularly, in electronic versions) for significantly longer than the minimum period defined in the provision.	No recommendation.
75	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 30 (2)	Train drivers	Examiners and supervisors may not carry out examinations in cases in which they performed training tasks.	The policy objective of the provision seems to be to prevent conflicts of interest between the entities responsible for evaluating the professional knowledge and competences of train drivers and those responsible for training them.	The provision may decrease the revenues of entities recognised to perform training tasks and the revenues of entities recognised to carry out examinations. In fact, in specific cases, the provision prevents them from carrying out examinations or performing training tasks. Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision increases the prices charged by the entities in question, through the reduction of their potential to recover costs and through the reduction of the supply of training centres and examination centres available to businesses. Nevertheless, the provision prevents conflicts of interest inherent in situations where entities that perform training tasks also carry out examinations and it can be considered as the least harmful way to achieve that objective.	No recommendation.
76	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Art. 44 (3) (b)	Train drivers	The rules laid down in Law 16/2011 shall apply to all train drivers performing cross-border services within two years of the setting-up of the register concerning train driving licences kept by the IMT and of the registers concerning certificates kept by the railway enterprises and the railway infrastructure managers.	The policy objective of the provision seems to be to ensure suitability of the period of time made available to the entities affected by Law 16/2011 for the proper implementation of the rules laid down in it while ensuring effectiveness of the operation of the railways.	The maximum period of time for train drivers performing cross-border services to comply with the rules laid down in Law 16/2011 defined in the provision exceeds the respective period of time foreseen in Directive 2007/59/EC (Art. 37 (2) (a)) (date of the setting-up of the registers concerning train driving licences and certificates). At the European level, there has been no mutual recognition of entitlements for driving trains obtained before the application of Directive 2007/59/EC, without prejudice to the general mutual recognition scheme set up under Directive 2005/36/EC. Therefore, the provision increases legal and regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision temporarily prevents holders of entitlements obtained before the application of Directive 2007/59/EC from practising the profession in a country other than Portugal and, as a result, prevents railway enterprises from using only them in the case of provision of international railway transport services.	The provision should be aligned with Directive 2007/59/EC by changing the maximum period of time for train drivers performing cross-border services to comply with the rules laid down in Law 16/2011 from two years from the date of the setting-up of the registries concerning train driving licences and certificates to (exactly) that date.
77	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Annex I - Art. A (2) (1) (first indent)	Train drivers	Psychological evaluations shall be taken, at least: (i) every three years in cases in which the individuals are 55 years of age or younger; and (ii) every year in cases in which the individuals are over 55 years of age.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the medical suitability of the train drivers for performing the tasks assigned to them.	The provision may increase costs for holders of licences and, consequently, for businesses. However, the minimum frequency of psychological evaluation defined in the provision concurs with the minimum frequency for medical examinations to be taken, foreseen in Directive 2007/59/EC (Annex II - Art. 3 (1) (first paragraph)). All those (two) examinations are analogous to each other, namely as far as their underlying policy objective is concerned (ensure medical suitability of a certain train driver for performing the specific tasks assigned to him).	No recommendation.

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78	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Annex I - Art. A (2) (1) (fourth indent)	Train drivers	The providers of occupational health or psychological services can decide to carry out additional psychological evaluations of an individual, namely, after they have interrupted work for a period of at least 30 days due to sickness.	The policy objective of the provision is to ensure a high level of safety of the railway system and, in that scope, to ensure the medical suitability of the train drivers for performing the tasks assigned to them.	The provision may increase costs for holders of licences and, consequently, for businesses. However, the cases in which a provider of medical services can decide to carry out additional psychological evaluations of an individual defined in the provision concurs with the cases in which a provider of medical services can decide to carry out additional medical examinations of an individual foreseen in Directive 2007/59/EC (Annex II - Art. 3 (1) (fourth paragraph) (second sentence)). Those (two) examinations are analogous to each other, namely as far as their underlying policy objective is concerned (ensuring medical suitability of a train driver for performing the specific tasks assigned to him).	No recommendation.
79	Law 16/2011 (last modified by Decree-Law 138/2015) "Certification regime for train drivers operating locomotives and trains"	Annex I - Art. A (4) (2) (i) (first indent)	Train drivers	Train drivers shall have a distance visual acuity (aided or unaided) of at least: (i) 0.8; and (ii) 0.3 for the eye with worse acuity.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the medical suitability of the train drivers for performing the tasks assigned to them.	The minimum distance visual acuity necessary for driving trains defined in the provision is less demanding than the respective acuity foreseen in Directive 2007/59/EC (Annex II - Art. 1 (2) (first indent)) (1.0 and, for the eye with worse acuity, 0.5). Holders of licences who do not fulfil the above-mentioned requirements foreseen in Directive 2007/59/EC may be temporarily prohibited by a competent authority in a Member State other than Portugal from operating in its area of jurisdiction, in accordance with Directive 2007/59/EC (Art. 29 (3) and Art. 29 (4) (b)). Therefore, the provision increases legal and regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision temporarily prevents holders of licences who do not comply with the minimum distance visual acuity necessary for driving trains defined in Directive 2007/59/EC from practising the profession in a country other than Portugal and, as a result, prevents railway enterprises from using only them in the case of provision of international railway transport services.	The provision should be aligned with Directive 2007/59/EC, by changing the minimum distance visual acuity necessary for driving trains from: (i) 0.8 to 1.0; and (ii) 0.3 to 0.5 for the eye with worse acuity.
80	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 5 (1)	Train drivers	Train driving tasks shall only be performed by holders of a train driving licence, issued by the IMT which shall: (i) demonstrate that the driver in question satisfies minimum conditions regarding age, medical condition, vocational education, general professional knowledge, linguistic knowledge, professional knowledge relating to rolling stock and professional knowledge relating to infrastructure; and (ii) be valid for six years.	The policy objective of the provision seems to be to ensure a high level of safety of the railway system and, within that scope, to ensure the medical and technical suitability of train drivers for performing the tasks assigned to them and to ensure the regularity of the analysis of the fulfilment of the requirements necessary to hold train driving licences.	The entitlement for driving trains defined in the provision differs from the respective entitlements foreseen in Directive 2007/59/EC (Art. 4 (1), Art. 14 (4) and Art. 15 (first paragraph)) (licence, issued by the IMT, demonstrating that the driver in question satisfies minimum conditions regarding age, vocational educational and training qualifications, medical condition and general professional knowledge, and certificates, issued by railway enterprises and railway infrastructure managers, demonstrating that the driver in question satisfies minimum conditions regarding linguistic knowledge, professional knowledge relating to rolling stock and professional knowledge relating to infrastructure). At the European level, no mutual recognition rights have been conferred relating to entitlements for driving trains obtained without the fulfilment of the respective minimum requirements foreseen in Directive 2007/59/EC (Art. 10 and Art. 11) (regarding age, knowledge and competences developed or acquired and medical condition). Hence, the provision increases legal uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision: (i) prevents railway enterprises from issuing certificates and, consequently, precludes them from, without external intervention, in particular, by the IMT, adjusting their train drivers' professional knowledge relating to rolling stock and professional knowledge relating to infrastructure to their needs, requiring railway enterprises	The provision should be aligned with Directive 2007/59/EC by changing the entitlement for driving trains from train driving licence issued by the IMT to train driving licence issued by the IMT and certificates issued by railway enterprises and railway infrastructure managers. Such a change will allow disaggregation of the current train driving licence into two types of documents, which will demonstrate that the driver in question: (i) in the case of the licence, satisfies minimum conditions regarding age, medical condition, vocational educational and training qualifications and general professional knowledge; and (ii) in the case of the certificates, satisfies minimum conditions regarding linguistic knowledge, professional knowledge relating to rolling stock and professional knowledge relating to infrastructure. Additionally, the validity of

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						to wait longer for that (and, as such, to be limited for longer in their activities) and spend more financial resources in accomplishing that; and (ii) temporarily prevents holders of licences issued by the IMT obtained without the fulfilment of the respective minimum requirements foreseen in Directive 2007/59/EC from practising the profession in a country other than Portugal and, as a result, preventing railway enterprises from using only them in the case of provision of international railway transport services).Moreover, the validity of licences defined in the provision is shorter than the respective validity foreseen in Directive 2007/59/EC (Art. 14 (5)) (10 years).Therefore, the provision increases the administrative burden of individuals and, also, may make them, and consequently businesses, incur unnecessary costs.	licences defined in the provision should be increased from 6 to 10 years, in accordance with Directive 2007/59/EC.
81	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 6 (1)	Staff accompanying trains	Train-accompanying tasks shall only be performed by holders of a train-accompanying licence, which shall be valid for six years.	The policy objective of the provision seems to be to ensure a high level of safety of the railway system and, within that scope, to ensure the medical and technical suitability of the staff accompanying trains for performing the tasks assigned to them and to ensure the regularity of the analysis of the fulfilment of the requirements necessary to hold train-accompanying licences.	The provision determines the need for licensing of the staff accompanying trains, contrary to what is foreseen in Decision 2012/757/EU (not specified).The staff accompanying trains are analogous to train drivers (which are also required to hold a licence, in accordance with Directive 2007/59/EC (Art. 4 (1) (a) (first sentence)), given that those (two) individuals are part of the staff performing relevant safety tasks and their tasks complement each other. Additionally, the underlying policy objective of those (two) licences is similar (ensuring medical and technical suitability of the individuals in question for carrying out the specific tasks assigned to them).However, the validity of licences defined in the provision is shorter than the validity of train driving licences foreseen in Directive 2007/59/EC (Art. 14 (5)) (10 years).Therefore, the provision increases the administrative burden of individuals and it also may make them, and consequently businesses, incur unnecessary costs.	The validity of licences defined in the provision should be increased from 6 to 10 years.
82	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 7 (a)	Train drivers	Applicants for train driving licences shall be at least 20 years of age.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the medical and technical suitability of the train drivers for performing the tasks assigned to them.	The provision does not define exceptional cases concerning the minimum age necessary for driving trains, contrary to what is foreseen in Directive 2007/59/EC (Art. 10 (second sentence)) (applicants for licences shall be, at least, 18 years of age, if the validity of the licences is limited to the Portuguese territory).Hence, the provision increases legal uncertainty for individuals and, therefore, for businesses and may make them incur unnecessary costs. In fact, the provision prevents individuals aged between 18 and 20 from becoming train drivers in Portugal and, consequently, reduces the supply of train drivers available to businesses.	The provision should be aligned with Directive 2007/59/EC by defining the exceptional cases concerning the minimum age necessary for driving trains as the cases in which applicants for train driving licences shall be, at least, 18 years of age, if the validity of the licences is limited to the Portuguese territory.
83	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 7 (c)	Train drivers	Applicants for train driving licences shall have successfully completed at least nine years of compulsory education.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the technical suitability of the train drivers for performing the tasks assigned to them.	The minimum vocational educational and training qualifications necessary for driving trains defined in the provision are less demanding than the respective qualifications foreseen in Directive 2007/59/EC (Art. 11 (1)) (nine years of education (primary and secondary) and either compulsory education or vocational and additional technical training or technical educational training or other secondary-level training).Holders of licences that do not fulfil the above-mentioned requirements foreseen in Directive 2007/59/EC may be temporarily prohibited by a competent authority in a Member State other than Portugal from operating in its area of jurisdiction, in accordance with Directive 2007/59/EC (Art. 29 (3) and Art. 29 (4) (b)).Therefore, the provision increases legal uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision temporarily prevents	The provision should be aligned with Directive 2007/59/EC by changing the minimum vocational educational and training qualifications necessary for driving trains from nine years of compulsory education to nine years of education (primary and secondary) and either compulsory education or vocational and additional technical training or technical educational training or other secondary-level training.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						holders of licences issued by the IMT that do not comply with the minimum vocational educational and training qualifications necessary as defined in Directive 2007/59/EC from practising the profession in a country other than Portugal. As a result, this prevents railway enterprises from using only them in the case of provision of international railway transport services.	
84	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 7 (f)	Train drivers	Applicants for train driving licences shall have successfully completed a professional traineeship.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure adequate ability of the train drivers to apply knowledge in order to perform the tasks assigned to them.	The provision determines the need for train drivers to carry out a professional traineeship, contrary to what is foreseen in Directive 2007/59/EC (not specified), and, thus, it may increase costs for individuals and, consequently, for businesses. However, the work-based practical experience gained by applicants for licences throughout a professional traineeship is expected to have a direct and significant positive impact on the level of safety of the railway system. In fact, one of the main variables that influence the level of safety of the railway system is the fulfilment by the train drivers of the minimum medical and knowledge requirements necessary for driving trains and, intrinsically, their ability to apply this knowledge.	No recommendation.
85	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 8 (a)	Staff accompanying trains	Applicants for train accompanying licences shall be at least 18 years of age.	The policy objective of the provision seems to be to ensure a high level of safety of the railway system and, within that scope, to ensure the medical and technical suitability of the staff accompanying trains for performing the tasks assigned to them.	The provision defines the minimum age for performing train-accompanying tasks, contrary to what is foreseen in Decision 2012/757/EU (not specified). The staff accompanying trains are analogous to train drivers (which shall be, at least, 20 years of age or, if the validity of the licences is limited to the Portuguese territory, 18 years of age, in accordance with Directive 2007/59/EC (Art. 10)), given that those (two) individuals are part of the staff performing relevant safety tasks and the tasks performed by them complement each other. Additionally, the underlying policy objective of the (two) above-mentioned requirements is similar (ensuring medical and technical suitability of the individuals in question for carrying out the specific tasks assigned to them). Nevertheless, the difference between those requirements is considered to be reasonable by the stakeholders, who regard the responsibility underlying the performance of train accompanying tasks as (slightly) less demanding than the responsibility underlying the train driving.	No recommendation.
86	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 8 (c)	Staff accompanying trains	Applicants for train-accompanying licences shall have successfully completed, at least, nine years of compulsory education.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the technical suitability of the staff accompanying trains for performing the tasks assigned to them.	The provision defines the minimum vocational educational and training qualifications necessary for performing train-accompanying tasks, contrary to what is foreseen in Decision 2012/757/EU (not specified). The staff accompanying trains are analogous to train drivers (which shall have successfully completed, at least, nine years of education (primary and secondary) and either compulsory education or vocational and additional technical training or technical educational training or other secondary-level training, in accordance with Directive 2007/59/EC (Art. 11 (1)), given that those (two) individuals are part of the staff performing relevant safety tasks and the tasks performed by them complement each other. Additionally, the underlying policy objective of the (two) above-mentioned requirements is similar (ensuring technical suitability of the individuals in question for carrying out the specific tasks assigned to them). Consequently, the difference between those requirements can be considered to indicate that the policy objective underlying the provision is not fully achieved. Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision allows individuals	The minimum vocational educational and training qualifications necessary for performing train-accompanying tasks defined in the provision should be changed from nine years of compulsory education to nine years of education (primary and secondary) and either compulsory education or vocational and additional technical training or technical educational training or other secondary-level training.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						who do not have qualifications suitable for carrying out their duties to have access to the performance of train accompanying tasks and, as a result, prevents regularity and efficiency of the operation of the railways. Those costs are likely to exceed the reduction in costs for applicants for licences and, consequently, for businesses inherent in the above-mentioned difference, given that the cost savings in question do not lead to full achievement of the policy objective underlying the provision.	
87	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 8 (f)	Staff accompanying trains	Applicants for train-accompanying licences shall have successfully completed a professional traineeship.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the adequate ability of the staff accompanying trains to apply knowledge in order to perform the tasks assigned to them.	The provision determines the need for professional traineeship of the staff accompanying (not specified), and, thus, it may increase costs for individuals and, consequently, for businesses. However, the work-based practical experience gained by applicants for licences throughout a professional traineeship is expected to have a direct and significant positive impact on the level of safety of the railway system. In fact, one of the main variables that influence the level of safety of the railway system is the fulfilment by the staff accompanying trains of the minimum medical and knowledge requirements necessary for performing train-accompanying tasks and, intrinsically, their ability to apply the knowledge in question.	No recommendation.
88	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 9 (3)	Train drivers and staff accompanying trains	Medical examinations shall include an electrocardiogram (ECG) at rest in cases in which the individuals are over 40 years of age.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the medical suitability of the train drivers and staff accompanying trains for performing the tasks assigned to them.	The provision defines the minimum age of holders of train-accompanying licences for medical examinations to include an ECG at rest, contrary to what is foreseen in Decision 2012/757/EU (not specified). The staff accompanying trains are analogous to train drivers (whose medical examinations shall include an ECG at rest if they are over 40 years of age, in accordance with Directive 2007/59/EC (Annex II - Art. 3 (2) (second paragraph)), given that those (two) individuals are part of the staff performing relevant safety tasks and the tasks performed by them complement each other. Additionally, the underlying policy objective of the (two) above-mentioned requirements is similar (ensuring medical suitability of the individuals in question for carrying out the specific tasks assigned to them). Therefore, the similarity between those requirements can be considered to indicate that the policy objective underlying the provision is fully achieved. Nevertheless, the provision may make businesses incur unnecessary costs. In fact, the provision requires them to support expenses related to the carrying out of the ECG in question. However, those costs are not likely to exceed the additional benefits for businesses inherent to the provision, given that the fulfilment by the staff accompanying trains of the minimum medical requirements necessary for performing train accompanying tasks is expected to be negatively correlated with their age.	No recommendation.
89	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 11 (1)	Train drivers and staff accompanying trains	The maintenance of the validity of train driving licences and train-accompanying licences shall require that their respective holders undergo periodic medical examinations.	The policy objective of the provision is to ensure a high level of safety of the railway system and, within that scope, to ensure the medical suitability of the train drivers and staff accompanying trains for performing the tasks assigned to them.	The provision does not determine the need for periodic psychological evaluations of the train drivers, contrary to what is foreseen in Directive 2007/59/EC (Art. 16 (1) (first paragraph) (first sentence)). Holders of licences that do not fulfil the minimum conditions regarding the medical condition necessary for driving trains foreseen in Directive 2007/59/EC may be temporarily prohibited by a competent authority in a Member State other than Portugal from operating in its area of jurisdiction, in accordance with Directive 2007/59/EC (Art. 29 (3) and Art. 29 (4) (b)). Hence, the provision increases legal uncertainty for individuals and, consequently, for businesses and may make	The provision should determine that the maintenance of the validity of train driving licences and train-accompanying licences shall require that their respective holders undergo periodic psychological evaluations.

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						<p>them incur unnecessary costs. In fact, the provision temporarily prevents holders of licences issued by the IMT that do not comply with the minimum conditions regarding medical status necessary for driving trains defined in Directive 2007/59/EC from practising the profession in a country other than Portugal and, as a result, prevents railway enterprises from using only them in the case of provision of international railway transport services. Additionally, the provision does not determine the need for periodic psychological evaluations of the staff accompanying trains. Psychological evaluations are analogous to medical examinations (which shall be periodic in the case of staff accompanying trains, in accordance with Decision 2012/757/EU (Annex I - Art. 4 (7) (2) (2) (1)), namely as far as their underlying policy objective is concerned (ensuring medical suitability of a certain train driver for performing the specific assigned tasks). Also, the staff accompanying trains are analogous to train drivers (which shall take periodic psychological evaluations, in accordance with Directive 2007/59/EC (Art. 16 (1) (first paragraph) (first sentence)), given that those (two) individuals are part of the staff performing relevant safety tasks and the tasks performed by them complement each other. Additionally, the underlying policy objective of the (two) above-mentioned requirements is similar (ensuring medical suitability of the individuals in question for carrying out the specific tasks assigned to them). Consequently, the difference between those (two) needs can be considered to indicate that the policy objective underlying the provision is not fully achieved. Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision allows individuals who do not have the medical status suitable for carrying out their duties to have access to the performance of train-accompanying tasks and, as a result, prevents regularity and efficiency of the operation of the railways. Those costs are likely to exceed the reduction in costs for applicants for licences and, consequently, for businesses inherent in the above-mentioned difference, given that the cost savings in question do not lead to full achievement of the policy objective underlying the provision.</p>	
90	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 11 (2)	Train drivers and staff accompanying trains	Periodic medical examinations shall be taken, at least: (i) every three years in cases in which the individuals are 60 years of age or younger; and (ii) every year in cases in which the individuals are over 60 years of age.	The policy objective of the provision is to ensure high level of safety of the railway system and, within that scope, to ensure medical suitability of the train drivers and staff accompanying trains for performing the tasks assigned to them.	The minimum age of holders of train driving licences for medical examinations to be taken more frequently defined in the provision exceeds the respective age foreseen in Directive 2007/59/EC (Annex II - Art. 3 (1) (first paragraph)) (55 years of age). Additionally, the minimum frequency for medical examinations to be taken by staff accompanying trains defined in the provision exceeds, on average, the respective minimum frequency foreseen in Decision 2012/757/EU (Annex I - Art. 4 (7) (2) (2) (1)) (every five years up to the age of 40 years, every three years between the age of 41 years and 62 years and thereafter every year). Hence, the provision increases legal uncertainty for businesses and may make them incur unnecessary costs (requiring them to support expenses related to the carrying out of the examinations in question). Furthermore, the provision does not define the minimum frequency for psychological evaluations to be taken by train drivers and staff accompanying trains. Psychological evaluations are analogous to medical examinations, namely as far as their underlying policy objective is concerned (ensuring medical suitability of a certain train driver or staff accompanying trains for performing the specific	The provision should be aligned with Directive 2007/59/EC by lowering the minimum age of holders of train driving licences for medical examinations to be taken more frequently from 60 to 55 years of age. Moreover, the provision should be aligned with Decision 2012/757/EU by changing the minimum frequency for medical examinations to be taken by staff accompanying trains from every three years up to the age of 60 years and thereafter every year to every five years up to the age of 40 years, every three years between the age of 41 years and 62 years and thereafter every year. Also, the provision should determine that the minimum frequency for psychological evaluations for train drivers and staff

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						assigned tasks).Therefore, the provision increases legal uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision allows them to define a frequency that exceeds the respective frequency necessary to achieve the policy objective underlying the provision.	accompanying trains shall concur with the minimum frequency for medical examinations to be taken by those individuals.
91	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 12	Train drivers and staff accompanying trains	Training tasks shall only be performed by entities accepted by the IMT which shall base its decision, essentially, on criteria for assessing their respective curriculum.	The policy objective of the provision seems to be to ensure technical suitability of the entities responsible for training train drivers or staff accompanying trains for performing the tasks assigned to them.	The provision does not determine the criteria needed to fulfil to perform training tasks in the scope of train driving licences, contrary to what is foreseen in Directive 2007/59/EC (Art. 20 (2) (first paragraph) (second sentence)) (independence, competence and impartiality).Therefore, the provision increases legal uncertainty for applicants for acceptance for performing training tasks and, consequently, for businesses and may make them incur unnecessary costs. Additionally, the provision does not make a distinction between the entities responsible for training tasks in the scope of train driving licences and those responsible for training tasks in the scope of train accompanying licences. Those (two) entities are analogous to each other, namely as far as their underlying policy objective is concerned (ensuring technical suitability of a certain train driver or staff accompanying trains for performing the specific assigned tasks).	The provision should be aligned with Decision 2012/757/EU by determining the criteria needed to perform training tasks within the scope of train driving licences or train accompanying licences need to practise the profession (namely, criteria related to independence, competence and impartiality of the entities in question).
92	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 13 (3)	Train drivers and staff accompanying trains	The IMT shall approve or refuse to approve the manuals used in the scope of the training of train drivers or of staff accompanying trains.	The policy objective of the provision seems to be to ensure technical suitability of the training available to train drivers and staff accompanying trains for appropriately qualifying those individuals to perform the tasks assigned to them.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the request for approval. Hence, the provision increases regulatory uncertainty for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, to be limited in their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the request for approval.
93	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 14 (7)	Train drivers and staff accompanying trains	Applicants for train driving licences or train-accompanying licences who have failed the test required for obtaining those licences may take it once more without having to attend the respective training again, within a period that may not exceed one year, from the date of taking of the initial test.	The policy objective of the provision is to ensure high level of safety of the railway system and, in that scope, to ensure technical suitability of the train drivers and staff accompanying trains for performing the tasks assigned to them.	The provision may increase costs for applicants for train driving licences and applicants for train accompanying licences and, consequently, for businesses. In fact, the provision requires individuals who have failed a test twice, but are still interested in becoming train drivers or performing train accompanying tasks, to attend the respective training again. However, the above-mentioned double failure can be considered to indicate that the individuals in question have not attained the appropriate professional competence throughout the training to carry out their duties.	No recommendation.
94	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 14 (9)	Train drivers and staff accompanying trains	The IMT must approve or refuse to approve the conditions under which the practical examination necessary for being granted a train driving licence or a train-accompanying licence must be taken and agreed between the railway enterprise	The policy objective of the provision seems to be to ensure regularity and efficiency of the operation of the railways while ensuring a level playing field among all entities indispensable for the carrying out of the practical test necessary to issue train driving licences and train	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the request for approval. Hence, the provision increases regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, to be limited in their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the request for approval.

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				providing the applicable rolling stock and the railway infrastructure manager providing the applicable infrastructure.	accompanying licences.		
95	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 15 (3)	Staff accompanying trains	The IMT shall approve or refuse to approve the programme of the professional traineeship necessary for being granted a train accompanying licence in the cases in which that traineeship is carried out in the cabin of the railway enterprise's trains.	The policy objective of the provision seems to be to ensure regularity and efficiency of the operation of the railways while ensuring technical suitability of the professional traineeship available to staff accompanying trains for appropriately qualifying those individuals to perform the tasks assigned to them.	The provision does not define the maximum period of time for the IMT to decide from the date of receipt of the request for approval. Hence, the provision increases regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, to be limited in their activities for longer.	The provision should define the maximum period of time for the IMT to decide from the date of receipt of the request for approval.
96	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 17 (1) (a)	Train drivers and staff accompanying trains	The entity that employs a train driver or an individual accompanying the trains shall send to the IMT a file which includes the following information concerning the training necessary for extending the scope of a train driving licence or a train-accompanying licence: (i) the syllabus contents; (ii) the duration; (iii) the identification of the trainers; (iv) the dates of the taking of the examinations; and (v) the identification of the examiners. This file must include additional routes or rolling stock and must be submitted no less than 30 days before the date of taking of the examinations in question.	The policy objective of the provision seems to be to ensure suitability of the period of time made available to the IMT for the proper analysis of the fulfilment of the requirements necessary to take the examinations concerning the extension of the scope of train driving licences and train-accompanying licences.	The provision does not define the maximum period of time for the IMT to comment on the information from the date of its receipt. Therefore, the provision increases regulatory uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision requires them to wait longer for a decision and, as such, potentially leads to the exceed of the desired date of the taking of the examinations and prevents the individuals from making the necessary arrangements to take those examinations.	The provision should define the maximum period of time for the IMT to comment on information from the date of its receipt. That period of time should not allow the desired date of the taking of the examinations to be exceeded while allowing the individuals in question to make the necessary arrangements for the taking of those examinations.
97	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 17 (2)	Train drivers and staff accompanying trains	Individuals that are employed by the entities performing the training tasks or by the entities employing the trainees and that have proven experience in train driving or train-accompanying knowledge relating to the routes may	The policy objective of the provision seems to be to ensure technical suitability of the entities responsible for training train drivers or staff accompanying trains and of the entities responsible for evaluating the professional knowledge and	The need for acceptance by the IMT of the performance of training tasks by individuals with specific characteristics determined in the provision is merely a case of the (generic) need for acceptance by the IMT of the entities responsible for performing training tasks foreseen in the Provisional Regulation (Art. 12). Hence, the provision increases legal uncertainty for entities responsible for performing training tasks and, consequently, for businesses. In contrast, the need for acceptance by the IMT of the carrying out of examination tasks by individuals with specific characteristics determined in the provision is not	The provision should be abolished. Moreover, the Provisional Regulation should foresee a provision determining: (i) that the examinations necessary for obtaining train driving licences or train-accompanying licences should be carried out by individuals or bodies accepted by the IMT; (ii) the criteria that the entities responsible for performing examination tasks

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
				perform training and examination tasks after being subject to the prior acceptance of the IMT.	competences of those individuals for performing the tasks assigned to them.	accompanied in the Provisional Regulation by an analogous (generic) need for acceptance by the IMT of the entities responsible for carrying out examination tasks. However, all those (four: two generic and two specific) recognitions are analogous to each other, namely as far as their underlying policy objective is concerned (ensuring technical suitability of a certain entity for performing the specific tasks assigned to it). Consequently, the difference between those needs can be considered to indicate that the policy objective underlying the provision is not fully achieved. Therefore, the provision may make businesses incur unnecessary costs. In fact, the provision allows individuals who do not have the suitable qualifications to carry out their duties to access the performance of examination tasks and, as a result, prevents regular and efficient assessment of the suitability of the trainees for this profession and, for that reason, operation of the railways. Those costs are likely to exceed the reduction in costs for applicants for examination tasks and, consequently, for businesses inherent in the above-mentioned difference, given that the cost savings in question do not lead to full achievement of the policy objective underlying the provision. The criteria that the entities responsible for performing examination tasks within the scope of train driving licences need to fulfil for practising the profession is foreseen in Directive 2007/59/EC (Art. 20 (2) (first paragraph) (second sentence)) (independence, competence and impartiality). Those entities are analogous to the entities responsible for performing examination tasks in the scope of train accompanying licences, namely as far as their underlying policy objective is concerned (ensuring technical suitability of a certain train driver or staff accompanying trains for performing the specific assigned tasks).	within the scope of train driving licences or train accompanying licences need to fulfil to practise the profession (namely, criteria related to independence, competence and impartiality of the entities in question), in accordance with Decision 2012/757/EU; and (iii) that examiners and supervisors may not carry out examinations in cases in which they performed training tasks (the adoption of this provision would justify the abolishment of Art. 17 (3) of the Provisional Regulation, since it would become merely a case of the new provision).
98	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 17 (4)	Train drivers and staff accompanying trains	Entities accepted to perform training tasks shall keep a register of the training courses and evaluation exercises carried out, as well as of the personal files of the participants in those activities for at least five years.	The policy objective of the provision seems to be to ensure access by competent entities to information which is relevant for the assessment of the procedures for the acquisition and evaluation of professional knowledge and competences.	The provision may increase costs for entities that provide training services. However, the registries foreseen in the provision allow verification that: (i) the underlying activities fulfil the respective minimum requirements; and (ii) the information concerning the underlying activities stored in the registries that the IMT and the railway enterprises and railway infrastructure managers keep is accurate. Additionally, the provision is considered to be reasonable by the stakeholders, who stated that the registries in question (particularly in electronic versions) are usually kept for a period of time significantly longer than the respective minimum period of time defined in the provision.	No recommendation.
99	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 20 (1)	Train drivers and staff accompanying trains	Holders of entitlements for driving trains or accompanying trains obtained before the application of the Provisional Regulation are exempt from requiring the issuance of (new) train driving licences or train-accompanying licences, respectively.	The policy objective of the provision seems to be to ensure the suitability of the period of time made available to the entities affected by Provisional Regulation for the proper implementation of the rules laid down in it while ensuring effectiveness of the operation of the railways.	The provision does not define the maximum period of time for holders of entitlements for driving trains or accompanying trains obtained before the application of the Provisional Regulation to comply with the rules laid down in it. At the European level, there are no mutual recognition rights related to entitlements for driving trains obtained before the application of Directive 2007/59/EC, without prejudice to the general mutual recognition scheme set up under Directive 2005/36/EC. Hence, the provision increases legal uncertainty for individuals and, consequently, for businesses and may make them incur unnecessary costs. In fact, the provision temporarily prevents holders of entitlements for driving trains or accompanying trains issued by Portuguese entities before the application of Directive 2007/59/EC from practising the	The provision should define the maximum period of time for holders of entitlements for driving trains or accompanying trains obtained before the application of the Provisional Regulation to comply with the rules laid down in it.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
						profession in a country other than Portugal and, as a result, prevents railway enterprises from using only them in the case of provision of international railway transport services. Additionally, the provision may create unreasonable differences between the costs incurred by a potential entrant and the costs incurred by a market player. In fact, the provision discriminates indefinitely between them, given that only applicants for licences are required to support expenses related to the fulfilment of the requirements foreseen in the above-mentioned Provisional Regulation. As a result, the provision may make businesses incur unnecessary costs by reducing the supply of train drivers and staff accompanying trains available to businesses.	
100	No number applicable "Provisional Regulation on the certification of train drivers and staff accompanying trains"	Art. 20 (second 2)	Train drivers and staff accompanying trains	Entities accepted or recognised by the IMT before the application of the Provisional Regulation to perform training tasks related to the carrying out of safety-critical tasks shall be accepted by the IMT to perform the training tasks foreseen in the Provisional Regulation.	The policy objective of the provision seems to be to ensure the suitability of the period of time made available to the entities affected by Provisional Regulation for the proper implementation of the rules laid down in it while ensuring effectiveness of the operation of the railways.	The provision does not define the maximum period of time for entities accepted or recognised by the IMT before the application of the Provisional Regulation to perform training tasks related to the carrying out of safety-critical tasks to comply with the rules laid down in the Provisional Regulation. Hence, the provision increases legal uncertainty for applicants for acceptance by the IMT to perform the training tasks foreseen in the Provisional Regulation and, consequently, for businesses and may create unreasonable differences between the costs incurred by a potential entrant and the costs incurred by a market player. In fact, the provision discriminates indefinitely between them, given that only applicants for the acceptance in question are required to support expenses related to the fulfilment of the requirements foreseen in the Provisional Regulation. As a result, the provision may make businesses incur unnecessary costs, by reducing the supply of training centres available to businesses.	The provision should define the maximum period of time for entities accepted or recognised by the IMT before the application of the Provisional Regulation to perform training tasks related to the carrying out of safety-critical tasks to comply with the rules laid down in the Provisional Regulation.

Ports

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
1	Law 88-A/97 (last modification by Law 35/2013) "Access by private economic initiatives to certain economic activities"	Art. 1 (1) (d)	Port infrastructures	Private companies and other entities of the same type are denied access to the economic activity of exploring seaports, except when this activity is granted through a concession.	There is no official recital regarding the objective of this provision. The legislator regulates the powers that the private sector may have over ports infrastructure, taking into consideration the legal principles that, on the one hand, ports are state property (Art. 4 of Decree-Law 477/80) and that entrustment of public property to a private entity must be regulated by the law.	This provision limits the legal form of private exploitation of seaports, excluding alternative models for concessions such as an authorisation or a licensing regime. The provision has no impact on the choice of the port management model, as it enables the implementation of any of the four basic port management models: (1) public service port, (2) tool port, (3) landlord port and (4) fully privatised port. In Portugal, main ports follow a landlord port model and are managed by state-owned enterprises. The landlord port model is generally considered less restrictive to competition than alternative models based on full public control (such as the service port and the tool port). In fact, the landlord port model introduces competition in some levels of the vertical chain, such as in the operation of port facilities and, when this is not possible, it replaces "competition in the market" with "competition for the market" by awarding concessions for the exploration of certain port services that are attributed through a public tender. It should be highlighted that this provision also enables the implementation of a fully privatised port, as long as the latter is implemented through a private concession for the use of the port land. However, the fully privatised model has not been observed so far in Portugal and is only seen in a few countries, such as the United Kingdom and New Zealand.	No recommendation.
2	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	All provisions	National port tariffs system	Decree-Law 273/2000 regulates port tariffs by defining the types of fees that can be charged for port services and by determining criteria for setting fees, exemptions and discounts. These principles are applicable to services provided directly by the port administration and provided by private operators. In the latter case, the port authority will determine and approve the fees for the services provided by the providers. The regulation establishes, for instance, criteria and exemptions applicable to the "port use" fee, pilotage fee, towing fees, etc.	According to the legal recital, the policy objective is to set a port tariffs structure, discounts and criteria that will support Portuguese ports by: (1) promoting a significant market share in the international market; (2) improving staff and infrastructure performance; (3) reducing fixed and variable costs; and (4) maximising income in order to cover operational and investment costs.	While the nature of seaports as a natural monopoly may justify the regulation of port tariffs, determining the rules for setting tariffs in the general law may reduce the incentives of ports to compete with other national ports by setting alternative more efficient pricing schemes (inter-port competition). In addition, in the case of services provided by multiple suppliers in the same port, tariff regulations reduce the incentives of port operators to compete on prices (intra-port competition). Finally, the fee-setting criteria, discounts and exemptions foreseen for port operators are not always based on transparent, cost-oriented and non-discriminatory principles. This can further restrict entry of new firms and result in an inefficient allocation of resources. For instance the use of "loyalty" discounts in pilotage fees (see Art. 2 (x) (iii) and Art. 25 (1) (c)) may raise switching costs to maritime companies reducing competition between ports. Finally it is not clear how the policy objectives mentioned in the law recital can be met by the current provisions.	Review the decree-law in order to establish only framework provisions and abolish from the law any criteria, discounts or exemptions that do not have a clear public goal (such as environment, protection of consumers, etc.), taking into account the rules on transparency of port fees established by Regulation EU 2017/352.

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3	Ordinance 204/89 "Regulations of Operation of Ports of Setubal and Sesimbra"	Art. 59	Port operations - vertical handling	Whenever it is available and suitable, it is mandatory to use the administration's vertical handling equipment for handling goods.	According to the stakeholder, the compulsory use of vertical handling equipment belonging to the port administration was intended as a safety measure.	The provision obliges the operator to use the port authority's equipment whenever possible and to pay the established fee. This raises the costs for service suppliers that have (or can hire) more cost-efficient equipment. The provision therefore also restricts the incentives of terminal operators to invest in innovative cargo-handling equipment and activities.	Abolish.
4	Regulation of Tariffs of the Port of Sines 2017	All provisions	Port tariff - Sines	These provisions regulate tariffs for services provided in the Port of Sines by transposing the general tariff rules in Decree-Law 273/2000 and creating certain other port-specific discounts. For instance, Art.10 (1) (b) creates specific quantitative discounts for "the use of port fee", that goes beyond the reductions foreseen in Art. 18 of the general regulation.	The policy objective is to set the tariffs for services provided in the Port of Sines for the year 2017, ensuring that the fees established cover the cost of providing such services.	By implementing the general tariff rules foreseen in Decree-Law 273/2000, these provisions reinforce the harm to competition posed by the general regulation, including a loss in inter-port and intra-port competition (see analysis above of Decree-Law 273/2000). There is also a risk that fees set by the port authority in this regulation are not based on actual costs, due to the particular market structure of the port sector. Indeed, Art. 10 of Decree-Law 273/2000 states that fees charged by port authorities should take into account the total costs of operational and human resources. The scrutiny of administrative fees by an independent regulator (AMT) on a regular basis contributes to the adoption of more transparent and cost-based criteria. In the absence of effective control, the players tend to increase the fees to levels above costs.	Implement the recommendation to review Decree-Law 273/2000, by removing unnecessary tariff regulations (see above analysis of Decree-Law 273/2000).
5	Regulation of Tariffs of the Administration Area of the Port of Setúbal and Sesimbra (2017)	All provisions	Port tariff - Setúbal and Sesimbra	These provisions regulate tariffs for services provided in the Port of Setúbal by transposing the general tariff rules in Decree-Law 273/2000 and creating certain other port-specific discounts.	The policy objective is to set the tariffs for services provided in the Port of Setúbal and Sesimbra, ensuring that the fees established cover the cost of providing such services.	By implementing the general tariff rules foreseen in Decree-Law 273/2000, these provisions reinforce the harm to competition posed by the general regulation, including a loss in inter-port and intra-port competition (see analysis above of Decree-Law 273/2000). There is also a risk that fees set by the port authority in this regulation are not based on actual costs, due to the particular market structure of the port sector. Indeed, Art. 10 of Decree-Law 273/2000 states that fees charged by port authorities should take into account the total costs of operational and human resources. The scrutiny of administrative fees by an independent regulator (AMT) on a regular basis contributes to the adoption of more transparent and cost-based criteria. In the absence of effective control, the players tend to increase the fees to levels above costs.	Implement the recommendation to review Decree-Law 273/2000, by removing unnecessary tariff regulations (see above analysis of Decree-Law 273/2000).
6	Regulation of the Port of Viana do Castelo (2016) on tariffs for the use of public goods	All provisions	Port tariffs - land and buildings	The provision regulates the fees charged for the private use of land and space from the public domain within the port jurisdiction (not including those related to port operation) for the year 2016. (For instance, for the issuance of a warehouse licence one must pay EUR 432.)	To set port fees, ensuring that the fees established cover the cost of providing such services and investment costs.	By implementing the general tariff rules foreseen in Decree-Law 273/2000, these provisions reinforce the harm to competition posed by the general regulation, including a loss in inter-port and intra-port competition (see analysis above of Decree-Law 273/2000). There is also a risk that fees set by the port authority in this regulation are not based on actual costs, due to the particular market structure of the port sector. Indeed, Art. 10 of Decree-Law 273/2000 states that fees charged by port authorities should take into account the total costs of operational and human resources. The scrutiny of administrative fees by an independent regulator (AMT) on a regular basis contributes to the adoption of more transparent and cost-based criteria. In the absence of effective control, the players tend to increase the fees to levels above costs.	Implement the recommendation to review Decree-Law 273/2000, by removing unnecessary tariff regulations (see above analysis of Decree-Law 273/2000).
7	Tariff regulation of Port of Figueira da Foz (specific) for licences and other services	Annex - all provisions	Port tariffs - Figueira da Foz (licensing)	Sets the minimum rates to be charged by the Figueira da Foz Port Authority for the provision of administrative services. (For	To set port fees for specific licences awarded by the port administration, ensuring that the fees established cover the cost of providing such services.	By implementing the general tariff rules foreseen in Decree-Law 273/2000, these provisions reinforce the harm to competition posed by the general regulation, including a loss in inter-port and intra-port competition (see analysis above of Decree-Law 273/2000).	Implement the recommendation to review Decree-Law 273/2000, by removing unnecessary tariff regulations (see above analysis of Decree-Law 273/2000).

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				instance, for the issuance of a warehouse licence one must pay EUR 369.)		There is also a risk that fees set by the port authority in this regulation are not based on actual costs, due to the particular market structure of the port sector. Indeed, Art. 10 of Decree-Law 273/2000 states that fees charged by port authorities should take into account the total costs of operational and human resources. The scrutiny of administrative fees by an independent regulator (AMT) on a regular basis contributes to the adoption of more transparent and cost-based criteria. In the absence of effective control, the players tend to increase the fees to levels above costs.	
8	Decree-Law 75/2001 "Activity of towing ships in Portuguese ports"	Art. 4 (2)	Port towing service	The port authority decides the legal framework applicable for the provision of towing services: direct service provided by the port authority, concession or licensing.	The provision enables the port authority to choose among different ways of providing the service, according to the different nature of each port including security hazards.	The provision allows the port administration, without indicating applicable criteria or a need to justify, to establish exclusive rights for the provision of a service that is not in itself a natural monopoly, creating an incentive to collect a monopoly rent. The regime thus potentially limits the number of providers of towing services, and may result in less choice and higher prices for port users. As mentioned in EU regulation 2017/352, the number of providers of port services can, in certain cases, be subject to limitations relating to the scarcity of land or waterside space, the characteristics of the port infrastructure or the nature of the port traffic, or the need to ensure safe, secure or environmentally sustainable port operations. However, any limitation on the number of providers of port services should be justified by clear and objective reasons. In principle, competition, either for or in the market, will be better served by a concession or a licensing regime. The direct provision of towing services by the port administration should be an exceptional regime.	Amend the provision stating that the port authority decision to provide the service is allowed only when there is no market interest by private operators. Furthermore, any port authority decision that limits the number of towing providers (e.g. concession or direct provision of services) should be justified by clear and objective reasons and should not introduce disproportionate market barriers in line with EU Regulation 2017/352.
9	Decree-Law 75/2001 "Activity of towing ships in Portuguese ports"	Art. 6 (1) (b)	Port towing service	In order to obtain a licence for the provision of towing services, the towing company must have a technical director with adequate experience.	The requirement regarding the professional qualification of towing company personnel aims to guarantee a minimum standard of safety and technical expertise in the provision of towing services.	The provision in its present form, as well as the port regulations, do not define "adequate experience". There is no guarantee that the simple fact of having a technical director, without further details on the job function or professional qualification, ensures safety for towing services. In other words, the existing provision does not meet the policy objective. In addition, it is likely to result in potential discrimination (different interpretation) from port authorities. The existence of such a requirement raises costs for companies to obtain a towing licence, increases legal uncertainty and may limit the number of companies competing, thus raising prices of towing services for port users. According to Art. 4 (paragraph 4) of EU regulation 2017/352, the minimum requirement for towing services is that they should be transparent, objective, non-discriminatory, proportionate, and relevant to the category and nature of the port service concerned.	Option 1: Abolish; Option 2: Adopt transparent, objective, non-discriminatory, proportionate and relevant criteria to define "adequate experience".
10	Decree-Law 75/2001 "Activity of towing ships in Portuguese ports"	Art. 11	Port towing service	As a requirement to obtain a licence for the provision of towing services, the applicant must provide a financial guarantee amounting to 1/12 of the annual turnover in the previous year (or 1/12 of the estimated turnover in the case of the	To guarantee that the licensed operator fulfils its legal obligations.	The provision creates a substantial financial burden and increases entry costs for towing companies, possibly reducing competition in the market and for the market. In addition, these entry costs are likely to affect mostly small entrants with few financial means. According to EU regulation 2017/352 (Art. 4) the port authority may only establish minimum requirements related to the towing companies' financial capacity, if they are proportionate and relevant to the nature of the port	Option 1: Abolish. Option 2: Amend the provision and give the operator the alternative choice of subscribing to an insurance policy.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
				first year of activity).		service provided. This means that the financial requirements should not serve as a way for the port authority to protect its financial interests but rather to ensure the company's financial capacity. This objective (to ensure a company's financial capacity) can be achieved through less costly alternatives, such as an insurance policy. Furthermore, the financial guarantee is also redundant with the obligation (imposed by most ports) for towing companies to subscribe to a policy insurance that covers both professional liability and contractual obligations. (In some cases the minimum capital for the policy insurance is EUR 500 000).	
11	Decree-Law 75/2001 "Activity of towing ships in Portuguese ports"	Art. 17	Port towing service	The concession period for towing services cannot be longer than 10 years and will be established according to investments made.	To limit the duration of the exclusive rights to be given to the concessionaire.	The prevalence of towing concessions with a long duration may substantially harm the competitive process by reducing the frequency with which private operators compete for the market. The risk of harm is higher when the awarding process is not designed to promote competition, a case in which a long concession could result in a single operator providing port towing services at high prices for an extensive time period. However, even if the awarding process is carefully designed, a long concession may still prevent new operators from innovating and contesting incumbents with more competitive offers. The national legislator assumed that 10 years is the maximum period required for towing operators to recover and repay the capital invested under normal conditions of return for exploitation of the concession. Maximum ceilings may reduce the ability of port authorities to attract private initiative in certain projects involving very high levels of investment. We do not have specific data to corroborate the adequacy or not of this specific time limit for towing services. However, the concession's time limit also results from a public policy objective to prevent excessive duration of concessions and transparency of awarding processes.	The three following recommendations should be cumulatively implemented: (1) The port authorities should determine the duration of the towing concession in terms of Art. 410 of the Portuguese Code of Public Procurement and Art. 18 of EU Directive 2014/23/UE, according to which any concession longer than five years should be well justified as the minimum period of time required to recover and repay the capital invested under normal conditions of return of the exploitation of the concession; (2) The towing concessions should not be renewed without the opening of a new public tender; (3) The legislator should establish clear, objective and transparent criteria to determine the length of any towing concession, based on the level of investment required, prior to any consideration to revise current ceilings in concession contract lengths.
12	Regulation on towing activity of vessels and ships in the Port of Setúbal	Art. 2 (1) (b)	Port towing activity - Setubal & Sesimbra	In order to obtain a licence for the provision of towing services, the applicant must have a technical director with adequate experience.	The requirement regarding the professional qualification of towing company personnel aims to guarantee a minimum standard of technical expertise and safety in the provision of towing services.	The provision in its present form, as well as the port regulations, do not define "adequate experience". There is no guarantee that the simple fact of having a technical director, without further details on the job function or professional qualification, ensures safety for towing services. In other words, the existing provision does not meet the policy objective. In addition, it is likely to result in potential discrimination (different interpretation) from port authorities. The existence of such a requirement raises costs for companies to obtain a towing licence, increases legal uncertainty and may limit the number of companies competing, thus raising prices of towing services for port users. According to Art. 4 (paragraph 4) of EU regulation 2017/352, the minimum requirement for towing services is that they should be transparent, objective, non-discriminatory, proportionate, and relevant to the category and nature of the port service concerned.	Option 1: Abolish; Option 2: Adopt transparent, objective, non-discriminatory, proportionate and relevant criteria to define "adequate experience".
13	Regulation on towing activity of vessels and ships in the Port of Setúbal	Art. 2 (1) (c)	Port towing activity - Setubal & Sesimbra	As a requirement to obtain a licence for the provision of towing services, a candidate must provide a financial guarantee amounting to 1/12 of the annual turnover of the previous	To guarantee that the licensed operator fulfils its legal obligations.	The provision creates a substantial financial burden and increases entry costs for towing companies, possibly decreasing competition in the market and for the market. In addition, these entry costs are likely to affect mostly small entrants with few financial means. According to EU regulation 2017/352 (Art. 4) the port authority may only establish minimum requirements related to the	Option 1: Abolish. Option 2: Amend the provision and give the operator the alternative choice of subscribing to an insurance policy.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
				towing operator (or 1/12 of the estimated turnover in the case of the first year of activity).		towing companies' financial capacity, if they are proportionate and relevant to the nature of the port service provided. This means that the financial guarantee should not serve as a way for the port authority to protect its financial interests but rather to ensure the company's financial capacity. This objective (to ensure a company's financial capacity) can be achieved through less costly alternatives, such as an insurance policy. Furthermore, the financial guarantee is also redundant with the obligation (imposed by most ports) for towing companies to subscribe to a policy that covers both professional liability and contractual obligations.	
14	Regulation on towing activity of vessels and ships in the Port of Setúbal	Art. 2 (1) (d)	Port towing activity - Setubal & Sesimbra	In order to obtain a licence for the provision of towing services in the areas of Setubal and Sesimbra port jurisdiction one must have adequate material and human means to provide the service.	To promote the safety of towing services.	The existence of minimum material or human requirements to obtain a towing licence raises entry costs and may limit the number of companies competing, thus raising prices of towing services for port users. However, minimum requirements can be needed in order to guarantee a minimum standard of quality. Art. 4 of EU Regulation 2017/352 defines the type of minimum requirements that can be imposed for the performance of port services, that includes equipment relevant to provide the towing service. The applicable national legislation (DL 75/2001) does not impose such a requirement, and we may question the legality of the port regulation. Furthermore, neither this provision nor any other specific port regulation defines "adequate material and human means". This results in legal uncertainty and possible arbitrary decisions from the port authorities, that set the required equipment on a case-by-case basis and can change the minimum requirements when suitable. Considering that the investment in tugboats is of considerable importance for towing operators, the legal uncertainty can deter operators from the (licensing) market. This provision can also give place to discriminatory treatment, for instance if the port authority sets a minimum number of tugboats to towing operators increasing fixed operational costs and artificially setting the number of tugboats to unnecessary levels.	Option 1: Abolish the provision and establish minimum objective quality standards (e.g. waiting time) for towing services. Option 2: Amend the provision and instead identify transparent, objective, non-discriminatory, proportionate and relevant criteria to determine "adequate material" for the towing provision (see Art. 4 of EU regulation 2017/352).
15	Regulation on towing activity of vessels and ships in the Port of Setúbal	Art.2 (3) I	Port towing activity - Setubal & Sesimbra	The application for licensing of towing services requires an insurance policy covering a minimum capital of EUR 500 000, which should cover the risk of damages from theft, fire, lightning and explosion, as well as civil liability for damages caused to third parties.	The provision is meant to protect consumers and the port administration from possible hazards.	Compulsory civil liability insurance policies can harm competition when they affect different types of suppliers in a different way. In this case, the minimum fixed amount of capital insured may be excessive, depending on the particular financial capacity and size of the candidate for a licence. As a result, the provision may significantly restrict entry and lead to higher prices, as well as to a lack of innovation and variety. The minimum capital of such insurance policies must be flexible and determined by objective criteria. The competitive harm can be particularly severe due to the fact that the minimum insurance is defined in the law, reducing contractual freedom to determine the adequate insurance policy. This insurance policy should take into account our recommendation on replacing the financial guarantee given to port authorities for a more generic insurance policy (see Art. 11 of Decree-Law 75/2001).	Amend the provision in order to enable the port authority to determine the appropriate level of capital insured based on relevant criteria related to the risks involved in operations (e.g., turnover of the company), and taking into consideration our recommendation above on the replacement of a financial guarantee by an insurance policy.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
16	Regulation on towing activity of vessels and ships in the Port of Setúbal	Art. 2 (3) (J)	Port towing activity - Setubal & Sesimbra	As a requirement to obtain a licence for the provision of towing services, a candidate must provide a financial guarantee amounting to 1/12 of the annual turnover of the previous towing operator (or 1/12 of the estimated turnover in the case of the first year of activity).	Legally the provision is to guarantee that the licensed operator fulfils its operating obligations. The port administration also mentioned the need to guarantee the responsibility for any damages to the port authority.	The provision creates a substantial financial burden and increases entry costs to towing companies, possibly decreasing competition in the market and for the market. In addition, these entry costs are likely to affect mostly small entrants with few financial means. According to EU regulation 2017/352 (Art. 4) the port authority may only establish minimum requirements related to the towing companies' financial capacity, if they are proportionate and relevant to the nature of the port service provided. This means that the financial guarantee should not serve as a way for a port authority to protect its financial interests but rather to ensure the company's financial capacity. This objective (to ensure a company's financial capacity) can be achieved through less costly alternatives, such as an insurance policy. Furthermore, the financial guarantee is also redundant with the obligation (imposed by most ports) for towing companies to subscribe to a policy that covers both professional liability and contractual obligations. (In some cases the minimum capital for the policy insurance is EUR 500 000).	Option 1: Abolish. Option 2: Amend the provision and give the operator the alternative choice of subscribing to an insurance policy.
17	Regulation on towing activity of vessels and ships in the Port of Setúbal	Art.6	Port towing activity - Setubal & Sesimbra	Once the licence for the provision of towing services is revoked, the holder cannot request a new licence during the following 12 months.	We did not receive information regarding the objective of the provision, but it appears to be a punitive clause.	The provision temporarily restricts the entry of some towing companies into the market. This barrier can be particularly harmful to competition given the nature of towing service markets, where there are usually a very limited number of players. The absence of competition will lead to potentially monopoly prices being charged for towing services. In addition, the punitive character of the provision might not be justified, since the licensee may have already lost its licence. He should have the possibility of reapplying for a new licence without further delay.	Abolish.
18	Regulation on towing activity of vessels and ships in the Port of Setúbal (Order of Service OS 01/2017, 12/01/2017)	(paragraph 3)	Port towing activity - Setubal & Sesimbra	The towing company which predominantly provides services to Lisnave's shipyards may be authorized by the Administration of Setubal and Sines Ports to park its vessels at that yard, benefiting from a 10% discount on parking fees.	The intention of this provision is to promote parking of the tugboats in a certain area (outside the mandatory area).	This provision allows Lisnave (a private shipyard) to have a tugboat moored inside its area instead of working in the designated common mooring area for tugboats (which is more than one hour's distance from Lisnave shipyard). According to the port authority, Lisnave appoints the towing company that will be allowed to do that, and in exchange the towing company pays lower mooring fees to the port administration. There is clear discrimination to Lisnave and no other company can appoint a towing company that will park in its area. On the other hand, the towing company that is allowed to moor inside Lisnave's area will have a privileged position to provide services to this company with lower costs due to the location of its tugboats. Norms that give discriminatory powers to market agents reduce competition in the market, which may give place to higher prices. This discount, and the power given to Lisnave, should be open to all operators (both shipyards and tugboats companies) interested in such conditions.	Amend the provision to offer the same conditions to all terminal operators and tugboats companies that require such treatment.
19	Regulation of Operation of the Ports of Douro and Leixões (2017)	Art. 34 (2)	Port towing activity - Douro e Leixões	The Port Administration possesses tugboats to provide towing services to ships within or outside the port jurisdiction. It is forbidden for any entity to perform towing services within the area of jurisdiction of the	To reserve the provision of towing services to the Lisbon Port Administration.	The provision eliminates any competition in the market, granting the Port of Leixões monopoly powers. This may result in the port authority not having any incentive to offer attractive prices and to over-charge for services. There seems to be no economic justification for the port authority to reserve exclusive rights to the provision of towing services, given that those services do not have, a priori, the characteristics of a natural	Review Art. 4 (2) of Decree-Law 75/2001 (referred above) and abolish this norm.

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				port authority, except when authorised by the port administration.		monopoly. In fact, except in the Portuguese Autonomous Regions, all towing services in major ports are provided by private companies. Thus, in order to protect the competition process, the towing services should, when possible, be provided through concessions or, alternatively, multiple licences or authorisations for their provision should be granted. Only when the private sector is not able or interested in providing the service, should such services be provided by the port administration.	
20	Instruction from Administration of Porto de Sines regarding licence requirements for exploitation of towing services	Art. 4 (a)	Port towing activity - Port of Sines	The applicant for a towing service licence must submit the CV of the individual who will be the technical director responsible for the operations.	To prove that the technical director has "adequate experience" to manage the company's operations.	The provision in its present form, as well as the port regulations, do not define "adequate experience". There is no guarantee that the simple fact of having a technical director, without further details on the job function or professional qualification, ensures safety for towing services. In other words, the existing provision does not meet the policy objective. In addition, it is likely to result in potential discrimination (different interpretation) from port authorities. The existence of such a requirement raises costs for companies to obtain a towing licence, increases legal uncertainty and may limit the number of companies competing, thus raising prices of towing services for port users. According to Art. 4 (paragraph 4) of EU Regulation 2017/352, the minimum requirement for towing services is that they should be transparent, objective, non-discriminatory, proportionate, and relevant to the category and nature of the port service concerned.	Option 1: Abolish; Option 2: Adopt transparent, objective, non-discriminatory, proportionate and relevant criteria to define "adequate experience".
21	Instruction from Administration of Porto de Sines regarding licence requirements for exploitation of towing services	Art. 4 (b)	Port towing activity - Port of Sines	The applicant must present the proposed maximum rates to be applied for the provision of that service with the request for licence.	To establish a maximum fee applicable to the towing service.	The existence of a maximum fee determined by the port authority limits the freedom of towing providers to set the prices (according to market conditions), affecting competition in the market and, consequently, the quality and/or number of players providing services to port users. Nevertheless, this might be justified by the fact that there is a reduced number of companies providing the services in question, towing services are considered a public service (only exceptionally does the towing company refuse to provide service) and the fact that they are mandatory in various circumstances. This decision of the port authority on maximum fees should be checked by an independent regulator (such as AMT). One of the stakeholders also mentioned that the port authority should establish a single maximum fee for services applicable to all (licensed) companies. It is arguable that the existence of different maximum fees (instead of a single maximum fee) in the same port might be considered discriminatory treatment in light of Art. 7 (3) of EU Regulation 2017/352.	Amend the provision so that the port authority must consult AMT before deciding on a maximum fee.
22	Instruction from Administration of Porto de Sines regarding licence requirements for exploitation of towing services	Art. 5 (d)	Port towing activity - Port of Sines	As a requirement to obtain a licence for the provision of towing services, a candidate must provide a financial guarantee amounting to 1/12 of the annual turnover of the previous towing operator (or 1/12 of the estimated turnover in the case of the first year of activity).	To guarantee that the licensed operator fulfils its legal obligations.	The provision creates a substantial financial burden and increases entry costs for towing companies, possibly decreasing competition in the market and for the market. In addition, these entry costs are likely to affect mostly small entrants with few financial means. According to EU Regulation 2017/352 (Art. 4) the port authority may only establish minimum requirements related to the towing companies' financial capacity, if they are proportionate and relevant to the nature of the port service provided. This means that the financial guarantee should not serve	Option 1: Abolish. Option 2: Amend the provision and give the operator the alternative choice of subscribing to an insurance policy.

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						as a way for the port authority to protect its financial interests but rather to ensure the company's financial capacity. This objective (to ensure a company's financial capacity) can be achieved through less costly alternatives, such as an insurance policy. Furthermore, the financial guarantee is also redundant with the obligation (imposed by most ports) for towing companies to subscribe to a policy that covers both professional liability and contractual obligations.	
23	Regulation from Administration of Porto de Lisboa regarding towing services (OS 25/2003)	Art. 4 (1) (b)	Port towing activity - Port of Lisbon	In order to obtain a licence for the provision of towing services, the requester must have a technical director with adequate experience.	The requirement regarding the professional qualification of towing company personnel aims to guarantee a minimum standard of safety and technical expertise in the provision of towing services.	The provision in its present form, as well as the port regulations, do not define "adequate experience". There is no guarantee that the simple fact of having a technical director, without further details on the job function or professional qualification, ensures safety for towing services. In other words, the existing provision does not meet the policy objective. In addition, it is likely to result in potential discrimination (different interpretation) from port authorities. The existence of such a requirement raises costs for companies to obtain a towing licence, increases legal uncertainty and may limit the number of companies competing, thus raising prices of towing services for port users. According to Art. 4 (paragraph 4) of EU Regulation 2017/352, the minimum requirement for towing services is that they should be transparent, objective, non-discriminatory, proportionate, and relevant to the category and nature of the port service concerned.	Option 1: Abolish; Option 2: Adopt transparent, objective, non-discriminatory, proportionate and relevant criteria to define "adequate experience".
24	Regulation from Administration of Porto de Lisboa regarding towing services (OS 25/2003)	Art. 4 (1) (k)	Port towing activity - Port of Lisbon	The applicant for a towing services licence must have an insurance policy covering a minimum capital of EUR 500 000, in case of theft, fire, lightning and explosion, as well as civil liability for damages caused to third parties.	The provision is meant to protect consumers and the port administration from possible hazards.	Compulsory civil liability insurance policies can harm competition when they affect different types of suppliers in a different way. In this case, the minimum amount of capital insured may be excessive, depending on the particular financial capacity and size of the candidate for a licence. As a result, the provision may significantly restrict entry and lead to higher prices, as well as to a lack of innovation and variety. The minimum capital of such insurance policies must be flexible and determined by objective criteria. The competitive harm can be particularly severe due to the fact that the minimum insurance is defined in the law, reducing contractual freedom to determine the adequate insurance policy. This insurance policy should take into account our recommendation on replacing the financial guarantee for a more generic insurance policy (see Art. 11 of Decree-Law 75/2001).	Amend the provision in order to enable the port authority to determine the appropriate level of capital insured based on relevant criteria related to the risks involved in operations (e.g., turnover of the company), and taking into consideration our recommendation above on the replacement of a financial guarantee by an insurance policy.
25	Regulation from Administration of Porto de Lisboa regarding towing services (OS 25/2003)	Art. 4 (1) (l)	Port towing activity - Port of Lisbon	As a requirement to obtain a licence for the provision of towing services, the applicant must provide a financial guarantee amounting to 1/12 of the annual turnover in the previous year (or 1/12 of the estimated turnover in the case of the first year of activity).	Legally it is to guarantee that the licensed operator fulfils its obligations (such as payment of fees to the port authority). The port administration is also mentioned in the need to guarantee the responsibility for damages.	The provision creates a substantial financial burden and increases entry costs for towing companies, possibly decreasing competition in the market and for the market. In addition, these entry costs are likely to affect mostly small entrants with few financial means. According to EU Regulation 2017/352 (Art. 4), the port authority may only establish minimum requirements related to the financial capacity of towing companies if they are proportionate and relevant to the nature of the port service provided. This means that the financial guarantee should not serve as a way for the port authority to protect its financial interests but rather to ensure the company's financial capacity. This objective (to ensure the	Option 1: Abolish. Option 2: Amend the provision and give the operator the alternative choice of subscribing to an insurance policy.

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						company's financial capacity) can be achieved through less costly alternatives, such as an insurance policy. Furthermore, the financial guarantee is also redundant with the obligation (imposed by most ports) for towing companies to subscribe to a policy that covers both professional liability and contractual obligations.	
26	Regulation from Administration of Porto de Lisboa regarding towing services (OS 25/2003)	Art. 14 (1) (A)	Port towing activity - Port of Lisbon	The applicant must present the proposed maximum rates to be applied for the provision of that service with the request for licence.	To establish a maximum fee applicable to the towing service.	The existence of a maximum fee determined by the port Authority limits the freedom of towing providers to freely set the prices according to market conditions, affecting competition in the market and, consequently, the quality and/or number of players providing services to port users. Nevertheless, that might be justified by the fact that there is a reduced number of companies providing the services in question, by the fact that towing services are considered public service (only exceptionally the towing company may refuse to provide service) and the fact that they are mandatory in several circumstances. This decision on maximum fees should be checked by an independent regulator (such as AMT). One of the stakeholders also mentioned that the port authority should establish a single maximum fee for service applicable to all (licensed) companies. It is disputable if the existence of different maximum fees (instead of a single maximum fee) in the same port might be considered discriminatory treatment in light of Art. 7 (3) of EU Regulation 2017/352.	Amend the provision so that the port authority consults AMT before deciding.
27	Agreement protocol between the Administration of the Port of Lisbon and licensed towing entities (2004)	Art. 4 (2)	Port towing activity - Port of Lisbon	No tugboat may be moved to another port without authorisation from the Administration of the Port of Lisbon.	According to the stakeholder, this provision intends to guarantee that the licensed entity always has the required available tugboats in the port.	According to the stakeholder, the obligation to keep the tugboats in the Port of Lisbon is related to the need for guaranteeing a minimum quality of service. However, the provision imposes this obligation on all tugboats and all operators, going beyond the restriction that could be justifiable and applicable to the minimum tugboats necessary (at that specific moment in time). Even in such cases, it is questionable that the tugboat operator could not use the tugboats in other areas and still guarantee quality for the port service. As such, this provision limits the ability of the provider to operate outside the port area (maximising the use of its tugboats) and creates a geographic barrier to the provision of towing services (that also influences their ability to provide cheaper services for customers and maximise economies of scale). According to stakeholders, the acceptance of this regime is a condition for licensed companies to operate in the Port of Lisbon.	Option 1: Abolish and instead establish minimum quality standards (e.g., waiting time) for towing services. Option 2: Establish the minimum number of tugboats that need to be permanently in the port area.
28	Agreement protocol between the Administration of the Port of Lisbon and licensed towing entities (2004)	Art. 5 (2)	Port towing activity - Port of Lisbon	The operator must have an adequate fleet to provide the towing service. Considered adequate as a minimum fleet is one corresponding to the number of tugboats necessary to tow the ship with the highest tonnage and complexity that normally anchors at the Port of Lisbon.	According to the stakeholder, the provision ensures the quality of towing service for all regular requests.	According to the port authorities, there is no legal provision establishing a fixed minimum number of tugboats required for each type of vessel entering the Port of Lisbon (unlike other ports). Stakeholders stated that the number of tugboats used in the Port of Lisbon is based on common practice. In that sense, the number of tugboats necessary to be licensed is "identified" by the port administration on a case-by-case basis. This situation creates legal uncertainty for the towing operators wishing to enter the market since the number of tugboats may change over time and depends on the port administration's interpretation. Furthermore, imposing a minimum number of tugboats increases costs for operators that will be transmitted to end users. According to operators, tugboats are their main	Option 1: Abolish the provision and instead establish minimum quality standards (e.g., waiting time) for towing services. Option 2: Amend the provision identifying transparent, objective, non-discriminatory, proportionate and relevant criteria to determine "adequate material" for the towing provision (see Art. 4 of EU regulation 2017/352).

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29	Decree-Law 280/93 (last modification by Law 3/2013) "Legal regime for port work"	Art. 8 (1)	Port labour companies	The activity of supplying port workers to third parties can only be exercised by companies licensed for that activity.	According to the recital, the legislator intends to establish a system that contributes, in a sustained way, to the stability of stevedoring employment, ensures adequate professional qualification of workers and results in better employment of workers.	capital investment to be able to operate. Finally, considering the investment necessary, this requirement prevents operators who wish to operate only with smaller boats (where fewer tugboats are necessary) from entering the market. The licensing of temporary labour companies or port labour companies is common in the majority of EU Members States. In most cases, the licensing obligation is explained by the need to control the exceptional legal regime of the companies' temporary workers. In our case, considering the analysis hereafter about the restrictive effect of the exclusive corporate objective of port labour companies, this provision in practice excludes (existing or new) temporary work companies from operating as port labour companies, segmenting the temporary labour market and reducing competition. There is no reason why temporary work companies should be a priori excluded from the activity of providing port labour, especially because the legal regime imposes specific training for those workers independently of the company structure. Furthermore, according to the law, temporary work companies can provide port labour (if foreseen in the collective labour agreement), but need to go through a port labour company. The legislator should open access to the activity of supplying port workers to temporary work companies, allowing them to compete with port labour companies.	The legislator should open access to the activity of supplying port workers to temporary work companies. This could be done in two alternative ways: (1) by recognising that licensed temporary work companies may also provide port labour directly to port operators; (2) by amending the following provision regarding the exclusive corporate object of port labour companies (see below). In that case the temporary work company could obtain, if they wish, a licence as a port labour company.
30	Decree-Law 280/93 (last modification by Law 3/2013) "Legal regime for port work"	Art. 9 (1)	Port labour companies	Port labour companies must have the exclusive objective of temporarily providing port workers to perform port operations.	According to some stakeholders, the objective could be to separate port labour companies from any other companies (port operators that use temporary labour, temporary work companies, etc.) and ensures respect of specific legislation.	Limiting the legal capacity of port labour companies to a single activity has three direct consequences: (1) it minimises the possibility of port labour companies diversifying their sources of revenues, making the company entirely dependent on their unique type of clients (namely the few cargo-handling operators present in the port); (2) it increases operational costs for port labour companies that are obliged to outsource all other activities, some of them necessary for the normal business of port labour companies; (3) it obliges existing companies wishing to enter the market to establish a single and separated legal entity (port labour company), and go through all the licensing requirements foreseen in the law. This will reduce economies of scope and scale for companies that have other corporate but related activities, and segment the market of temporary work. Those restrictions, together with the fact that each port has, by nature, a reduced number of port operators, will drastically decrease the number of entrants (new port labour companies) into the market. In addition, and since the (regular) temporary work companies cannot provide manpower directly to port operators, in the absence of entrants the port operators will establish their own temporary port work companies in order to maximise the use of temporary manpower and minimise risks related to port labour management. This will ultimately lead to market distortion and vertical integration between port labour companies and port operators.	The OECD recommends that the single exclusive activity of port labour companies be lifted, and that port labour companies may have any of the corporate objectives foreseen in the general legal regime applicable to temporary labour companies: carrying out recruitment, orientation and professional training, consultancy and human resource management activities. (Decree-Law no. 260/2009).

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31	Ordinance (portaria) 178/94 "licensing of temporary port work companies"	Art 4 (1)	Port labour companies	Port labour company premises must be physically separated from any other premises.	It follows from discussions with some of the operators that the policy objective could be to guarantee that port labour companies respect employees' rights and conditions of labour and do not depend on the client's premises to operate.	The provision raises entry and operational costs, hindering competition in the market, and ultimately increasing prices for port users. The harm to competition is particularly relevant in the context of ports, where land space is typically very limited. In addition, the provision does not seem adequate for the policy objective identified, since the separation of premises does not guarantee the respect of port dockers' rights by port work companies.	Abolish.
32	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art 4 (1) (a)	Port labour companies	Port labour companies must have premises exclusively used for the exercise of their activity.	It follows from discussions with some of the operators that the policy objective could be to guarantee port labour companies respect employees' rights and conditions of labour and do not depend on the client companies' premises to operate.	This provision raises entry costs of port labour companies, by preventing them from sharing facilities with other companies or from allocating their own facilities for alternative uses. The harm to competition from the provision may be particularly severe in ports where land space is typically very limited. In addition, the provision may prevent the company from identifying efficiencies related to the management and use of facilities, which could be passed on to consumers in the form of lower prices. It should be mentioned that other temporary work companies do not have this specific limitation. In addition, the provision does not seem adequate for the policy objective identified, since the exclusive use of premises does not guarantee the respect of port dockers' rights by port work companies.	Abolish.
33	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 3 (1st part)	Port labour companies	The activity of supplying port workers to third parties can only be exercised by companies licensed for that activity.	According to the recital, the legislator intends to establish a system that contributes, in a sustained way, to the stability of stevedoring employment, ensures the adequate professional qualification of workers and results in better employment of workers.	The licensing of temporary labour companies or port labour companies is common in the majority of EU Members States. In most cases, the licensing obligation is explained by the need to control the exceptional legal regime of the companies' temporary workers. In our case, considering the analysis hereafter about the restrictive effect of the exclusive corporate objective of port labour companies, this provision in practice excludes (existing or new) temporary work companies from operating as port labour companies, segmenting the temporary labour market and reducing competition. There is no reason why temporary work companies should be a priori excluded from the activity of providing port labour, especially because the legal regime imposes specific training for those workers independently of the company structure. Furthermore, according to the law, temporary work companies can provide port labour (if foreseen in the collective labour agreement), but need to go through a port labour company. The legislator should open access to the activity of supplying port workers to temporary work companies, allowing them to compete with port labour companies.	The legislator should open access to the activity of supplying port workers to temporary work companies. This could be done in two alternative ways: (1) by recognising that licensed temporary work companies may also provide port labour directly to port operators; (2) by amending the following provision regarding the exclusive corporate object of port labour companies (see below). In that case the temporary work company could obtain, if they wish, a licence as a port labour company.
34	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 3 (2nd part)	Port labour companies	The supply of port workers to third parties can only be exercised by companies that only carry out that business activity.	There is no information or official recital about the policy objective. However, according to some stakeholders, the objective could be to separate port labour companies from any other companies (port operators that use temporary labour, temporary work companies, etc.)	Limiting the legal capacity of port labour companies to a single activity has three direct consequences: (1) it minimises the possibility of port labour companies diversifying their sources of revenues, making the company entirely dependent on their unique type of clients (namely the few cargo handling operators present in the port); (2) it increases operational costs for port labour companies that are obliged to outsource all other activities, some of them necessary for the normal business of port labour companies; (3) it obliges existing companies wishing to enter the market to establish a single and separated legal entity (port labour company), and go through all the licensing requirements foreseen in the law. This will reduce economies	The single exclusive activity of port labour companies should be lifted, and port labour companies should have any of the corporate objectives foreseen in the general legal regime applicable to temporary labour companies: carrying out recruitment, orientation and professional training, consultancy and human resource management activities (see Decree-Law no. 260/2009).

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						of scope and scale for companies that have other corporate but related activities, and segment the market of temporary work. Those restrictions, together with the fact that each port has, by nature, a reduced number of port operators, will drastically decrease the number of entrants (new port labour companies) into the market. In addition, and since the (regular) temporary work companies cannot provide manpower directly to port operators, in the absence of entrants the port operators will establish their own temporary port work companies in order to maximise the use of temporary manpower and minimise risks related to port labour management. This will ultimately lead to market distortion, and vertical integration between port labour companies and port operators.	
35	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 4 (1) (c)	Port labour companies	The applicant for a licence to supply temporary port labour must provide a financial guarantee (bank deposit, bank guarantee or insurance) to guarantee the payment of temporary port workers' salaries and other entitlements by port labour companies.	According to Ordinance 178/94, the objective of the provision is to guarantee protection of workers' rights.	This requirement raises entry and operational costs for port labour companies, hindering competition in and for the market, and ultimately increasing prices for port users. Although temporary work companies can be most affected by their clients' delay on payments with direct implications for workers' salaries, the argument made that this financial guarantee provides "safety" for workers that otherwise would decline to work for temporary employment companies needs further development.	Abolish.
36	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 5 (1)	Port labour companies	Port labour company premises must be physically separated from any other premises.	It follows from discussions with some of the operators that the policy objective could be to guarantee port labour companies' respect of employees' rights and conditions of labour (and not depending on the client companies' premises to operate).	The provision raises entry and operational costs, hindering competition in the market, and ultimately increasing prices for port users. The harm to competition is particularly relevant in the context of ports, where land space is typically a very limited resource. In addition, the provision does not seem adequate for the policy objective identified, since the separation of premises does not guarantee the respect of port dockers' rights by port work companies.	Abolish.
37	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 5 (2)	Port labour companies	The licensing entity (IMT) may, at any time, restrict the opening and operation of port labour companies to execution of works in their premises, in order to ensure the company's quality of service.	According to the provision, the policy objective is to guarantee the quality of the services provided by the company.	This provision potentially raises operating costs and may result in arbitrary decisions that could reduce competition in the market, ultimately leading to service interruptions and higher prices for port users. Instead, the power to suspend port labour activities should be limited to situations of non compliance with requirements already foreseen in the law.	Amend the provision limiting IMT power to suspend or prevent the use of premises only when these do not respect the conditions determined in the law.
38	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 6	Port labour companies	The applicant for a temporary port labour licence must pay a financial guarantee of one minimum salary for each dock worker it hires. The number of employees and amount is updated every month.	According to Ordinance 178/94, the objective of the provision is to guarantee protection of workers' rights.	This requirement raises entry and operational costs for port labour companies, hindering competition in and for the market, and ultimately increasing prices for port users. Although temporary work companies can be most affected by their clients' delay on payments with direct implications on workers' salaries, the argument made that this financial guarantee provides "safety" for workers that otherwise would decline to work for temporary employment companies needs further development. Furthermore, the same objective can be achieved through less costly alternatives, such as an insurance policy.	Abolish.

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39	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 7 (1st part)	Port labour companies	When requesting a licence to provide temporary port labour, applicants must have a full-time technical director with appropriate professional qualifications and proven experience in port management.	From consultations with the stakeholders it resulted that the provision intends to prevent the establishment of temporary port work companies without minimum conditions to succeed or "fictitious companies" created with only the intention of providing less expensive manpower for stevedoring (port operators) companies.	The requirement for a technical director constitutes an entry barrier for port labour companies and raises operational costs. Because of the lack of a definition of "appropriate qualification and experience", the provision can also create legal uncertainty and result in arbitrary decisions from the licensor that might affect competition. According to the stakeholders, it is questionable whether it is necessary to have qualifications and experience in port management in order to perform the duties of technical director. The licensor (IMT) confirmed that the experience and qualification requirements are not legally defined, therefore these requirements are decided by IMT on a case-by-case basis. The IMT does not consider the default legal framework for interim work companies that defines clearly "appropriate qualifications and experience" for a technical director in temporary work companies to be applicable.	Option 1: Abolish. Option 2: Amend the provision adding "Existence of a technical director hired by the company, with appropriate responsibilities in the area of port human resources, who performs his duties daily in the company or establishment".
40	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 7 (2nd part)	Port labour companies	Port labour companies must prove to IMT their technical capacity to operate by having the administrative, informatics and organisational support necessary for the efficient management of requests for labour.	From consultations with the stakeholders it resulted that the provision intends to prevent the establishment of temporary port work companies without minimum conditions to succeed or created with the only the intention of providing less expensive manpower to stevedoring (port operators) companies.	These operational requirements are an administrative burden that raises entry costs for port labour companies. The provision is vague and may create legal uncertainty, possibly resulting in arbitrary decisions that can reduce competition. When consulted, the authority (IMT) confirmed that the requirements regarding the "administrative, material and informatics support" is decided by IMT on a case-by-case basis. Finally, in order to promote an efficient operation and business success, the company should be allowed to manage its own business and to determine the most efficient way to respond to client needs, giving place to innovative practices.	Abolish.
41	Regulatory Decree (Decreto Regulamentar) 2/94 "Licensing of port labour companies"	Art. 13 (1)	Port labour companies	Licences of port labour companies must be renewed every three years.	There is no official recital. However, the provision "obliges" the licensor to verify (at least every three years) whether companies that provide temporary port labour comply with legal requirements.	The provision raises costs for both the applicant and the licensor. However, the requirement to renew the licence is a non-discriminatory barrier that most likely will not distort competition between operators. Also, according to stakeholders, the process does not involve significant costs and time. Still, it should be noted that there are more effective ways of ensuring that interim port work companies comply with rules (for instance please see Art. 11 of Decree-Law 260/2009 applicable to interim work companies).	Consider the possibility of increasing the licence period to five years.
42	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 3 (3) (b)	Cargo-handling operators (stevedoring)	The activity of cargo handling might be provided to the public through a licence (instead of a concession) if a resolution of the Council of Ministers declares it to be of strategic interest for the national economy in the maintenance of (an existing) licensing regime.	The objective of this policy is to authorise an existing operator to exceptionally maintain a licensing regime (instead of launching a concession).	The legislator has made the choice to implement a landlord port management model, fostering the awarding of concessions for cargo handling to private operators. By allowing an exception based on an abstract notion of "national strategic interest", the provision provides the government with exclusive and discretionary power to choose between a concession and a licensing regime for port operators. This prevents port authorities from choosing, eventually under the control of the market regulator (AMT), the most adequate regime to promote an efficient provision of port services, which may depend on the specific market structure and the level of investment required. One the other hand, the "strategic interest" principle grants unguided discretion to the authorities, which may lead to discriminatory treatment of operators or ports.	Abolish.

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43	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 3 (4)	Cargo-handling operators (stevedoring)	The port authority may only directly carry out port operation activities in two circumstances. One is the case of a guarantee of "free competition", in which case the Directorate-General for Competition and Prices must give its opinion.	The policy objective of the provision is to enable the port authority to replace private operators in the provision of cargo-handling services whenever a market failure justifies it.	Although in some cases the direct provision of cargo-handling services from the port authority might be needed, in other cases it might prevent private companies from competing for the market and from participating in the market. In turn, this might reduce possible gains from private management, investment and innovation. This provision allowing the port authority from directly providing cargo-handling services to promote "free competition" is unclear and unlikely to achieve its policy objective. In addition, it may create legal uncertainty, as well as by the fact that the Directorate-General for Competition and Prices no longer exists and no longer allows for discretionary decisions that could further harm the competitive process.	Option 1: Eliminate the clause that enables the port authority to directly provide cargo-handling services in order to promote free competition. Option 2: Amend the provision, requiring that such a decision should be reviewed by the responsible regulator.
44	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 9 (2) (a)	Cargo-handling operators (stevedoring)	To be licensed, port operators must prove their adequate economic and financial capacity on the basis of an elementary but reasoned economic and financial feasibility study, in which case the port authority may request clarification from the company.	According to the stakeholders, the objective of the provision is to guarantee that the company (cargo-handling operator) is economically and financially sustainable, with the policy objective of strengthening and consolidate the Portuguese port operator structure.	This is a non-discriminatory administrative burden that implies extra costs for operators. Considering that the ports authorities are responsible for the awarding process of concessions or licenses to cargo-handling companies, this requirement is unnecessary in the presence of effective public awarding processes.	Abolish.
45	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 9 (2) (c)	Cargo-handling operators (stevedoring)	One of the general requirements for a licence as a cargo-handling (stevedoring) company is to pay a financial guarantee to the port authority.	According to port authorities, the objective of the provision is to guarantee that the stevedoring company (port operator) has the financial means to pay the port fees to the port administration. However the legal provision states that the financial guarantee will apply to all legal obligations of the licensee.	Although this is a non-discriminatory financial burden, the provision significantly raises costs of entry and operation. These entry costs are likely to affect mostly small entrants with few financial means. Furthermore, the rule discriminates against entrants, considering that companies that have already provided a financial guarantee to the port administration (for a different licence or concession procedure) do not need to provide a new one. Finally, the guarantee is redundant when considering that cargo-handling companies also have to subscribe to an insurance policy (Art. 11) and invest a minimum of social capital. This same objective (to ensure a company's financial capacity to honour its obligations) can be achieved through less costly alternatives, such as the insurance policy imposed in Art. 22 and Art. 23 of the same Decree-Law.	Option 1: Abolish Option 2: Amend the provision enabling the operator to choose between a financial guarantee and an insurance policy.
46	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 14	Cargo-handling operators (stevedoring)	The financial guarantee to be paid by the stevedoring activity to the port authority shall consist of a bank deposit to the order of the port authority or any other guarantee equivalent, and its annual amount should correspond to 1/12 of the total value of the port fee paid by the company in the previous calendar year or, in its first year of activity, to 20% of its share capital.	Legally it is to guarantee that the licensed operator fulfils its obligations (such as payment of fees to the port authority). The port administration also mentioned the need to guarantee the responsibility for damages.	Although this is a non-discriminatory financial burden, the provision significantly raises costs of entry and operation. These entry costs are likely to affect mostly small entrants with few financial means. Furthermore, the rule discriminates against entrants, considering that companies that have already provided a financial guarantee to the port administration (for a different licence or concession procedure) do not need to provide a new one. Finally, the guarantee is redundant when considering that cargo-handling companies also have to subscribe to an insurance policy (Art. 11) and invest a minimum of social capital. This same objective (to ensure a company's financial capacity to honour its obligations) can be achieved through less costly alternatives, such as the insurance policy imposed in Art. 22 and Art. 23 of the same Decree-Law.	Option 1: Abolish Option 2: Amend the provision enabling the operator to choose between a financial guarantee and an insurance policy.

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47	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 29 (2)	Cargo-handling operators (stevedoring)	In the last five years of the concession, the financial guarantee referred to in Art. 14 (1) shall be doubled.	According to port authorities, the objective of the provision is to guarantee that the stevedoring company (port operator) has the financial means to pay the port fees related to its operation.	Although this is a non-discriminatory burden, the provision further raises the operation costs of port operators by requiring them to provide additional guarantees. In addition, the policy objective of requiring an additional guarantee in the last years is not necessary for the general purpose of guaranteeing the financial capacity of the operator (that probably increases in the last period of the concessions /licences). Considering that the port administration also acts as the administrative authority, it has other legal means available to protect its interests which will be less burdensome to operators.	Abolish (and maintain the compulsory insurance policy - Art 23).
48	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 9 (3) (b)	Cargo-handling operators (stevedoring)	As a general licensing requirement, port operators must have their own (exclusive) group of workers suitable for carrying out the port operations that the company intends to carry out.	According to the stakeholders, the policy objective is to guarantee that the company has operational capacity to perform, given the importance and nature of port operations as a public service.	When applied, this provision increases both entry costs and operational costs for port operators. Because the requirement of adequate human resources is not clearly defined in the law, it may also increase legal uncertainty and result in discriminatory decisions by the port authorities. Altogether, the provision has the effect of restricting entry and distorting competition, with a general loss for port users. In addition, the provision seems outdated. The requirement of operational human resources does not consider the fact that nowadays the law foresees the existence of port labour companies that provide temporary manpower to port operators. Companies should manage operations and structure the labour force freely, in the most efficient way.	Abolish.
49	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 9 (3) (c)	Cargo-handling operators (stevedoring)	As a general licensing requirement, port operators must own the equipment, vehicles or machinery required to carry out the operations.	According to the stakeholders, the policy objective is to guarantee that the stevedoring companies (port operators) have operational capacity to perform, given the importance and nature of port operations as a public service.	The provision requires port operators to own cargo-handling equipment, therefore excluding other modern legal uses of equipment such as leasing and long-term renting. As a result, the provision increases operators' entry and operational costs, potentially reducing the number of port operators and raising prices for port users. All stakeholders mentioned that the provision should refer to the company's ability to use equipment instead of ownership.	Option 1: Abolish; Option 2: Amend the provision to require port operators to have equipment at their disposal.
50	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 9 (3) (d) and Art. 11(1)	Cargo-handling operators (stevedoring)	Port operators must have a minimum amount of share capital, which varies across ports.	According to the stakeholders, the policy objective is to guarantee that the stevedoring companies (port operators) have operational capacity to perform, given the importance and nature of port operations as a public service.	This financial requirement restricts access to the licence (market), and might have significant effect for smaller companies that will have more difficulties and costs to constitute the fixed minimum social capital. In addition, the different minimum social capital established by the port authorities, without objective criteria or reason, might create an artificial barrier (differentiation) between ports and fragment access to the market. Moreover, the World Bank has concluded (in Doing Business 2014 - "why are minimum capital requirements a concern for entrepreneurs?") that minimum capital requirements do not protect consumers or investors, and are associated with less access to finance for SMEs and with a lower number of new formal businesses. Considering that the port authority organises the public awarding of licences (or concessions), it is in a position to guarantee the financial sustainability of the licensees in more effective ways (for instance through financial insurance schemes). Moreover, the law also imposes a compulsory policy insurance and a financial guarantee obligation, with cumulative negative effects and redundant objectives.	Option 1: Abolish (in that case the general rules regarding minimum social capital will apply: the highest threshold is EUR 50 000) ; Option 2: Amend the provision to allow the operator to comply with the minimum capital or as an alternative subscribe to an insurance policy.

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51	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 11 (1)	Cargo-handling operators (stevedoring)	A company which wants to have a licence for the exercise of a cargo-handling (stevedoring) activity needs to have the following minimum share capital in each port where it wants to operate: A) Aveiro: EUR 250 000 B) Douro and Leixões: EUR 100 000 C) Lisbon: EUR 1 000 000 D) Setúbal and Sesimbra: EUR 375 000 E) Sines: EUR 750 000 F) Other ports: EUR 125 000	According to the stakeholders, the policy objective is to guarantee that the stevedoring companies (port operators) have operational capacity to perform, given the importance and nature of port operations as a public service.	This financial requirement restricts access to the licence (market), and might have significant effect for smaller companies that will have more difficulties and costs to constitute the fixed minimum social capital. In addition, the different minimum social capital established by the port authorities, without objective criteria or reason, might create an artificial barrier (differentiation) between ports and fragment access to the market. Moreover, the World Bank has concluded (in Doing Business 2014 - "why are minimum capital requirements a concern for entrepreneurs?") that minimum capital requirements do not protect consumers or investors, and are associated with less access to finance for SMEs and with a lower number of new formal businesses. Considering that the port authority organises the public awarding of licences (or concessions), it is in a position to guarantee the financial sustainability of the licensees in more effective ways (for instance through financial insurance schemes). Moreover, the law also imposes a compulsory policy insurance and a financial guarantee obligation, with cumulative negative effects and redundant objectives.	Option 1: abolish (in that case the general rules regarding minimum social capital will apply: the highest threshold is EUR 50 000) ; Option 2: amend the provision to allow the operator to comply with the minimum capital or subscribe to an insurance policy.
52	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 11 (2)	Cargo-handling operators (stevedoring)	In case the port operators provide services in more than one port, the minimum invested capital required to obtain a licence corresponds to the sum of the capital requirements for each of the ports, up to a maximum cap of EUR 2 500 000.	According to the stakeholders, the objective of the provision is to guarantee that the stevedoring company (port operator) has the financial means to buy the equipment and perform effectively, while accounting for possible economies of scale derived from operating in several ports.	By setting an upper limit on the capital requirements for port operators participating in several ports, the provision poses relatively lower entry costs for incumbent operators who are already established in one or more ports. As a consequence, the provision favours incumbents and discriminates against new entrants, reinforcing market concentration and preventing new entrants from contesting the market with more innovative services or lower prices. With the present threshold, such a barrier would only be effective if an operator were to be present in all six major ports. However, the World Bank concluded that minimum capital requirements do not protect consumers nor investors, and are associated with less access to finance for SMEs and with lower number of new formal businesses.	Abolish.
53	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 20 (2)	Cargo-handling operators (stevedoring)	The fee paid to renew the licence may contain rebates related to the length of the licence, the amount of investments made in works and equipment in the port area, or the increase in the volume of cargo handled in relation to the previous year. The fees and rebates will be established by ministerial ordinance.	The purpose of this provision is to consider the amount of investment made in works and equipment, or the increase in the volume of cargo handled in relation to the previous year, when establishing the fees to renew a port operator's licence.	According to our information, the ministerial ordinance that would establish such a rebate has not been adopted. In any case, the award of a loyalty rebate would prevent or hinder the entry of other operators into the market, reducing competition for and in the market, and protecting incumbents.	Abolish.
54	Decree-Law 298/93 "Establishes the regime of access and exercise of cargo-handling operators (stevedoring)"	Art. 29 (1)	Cargo-handling operators (stevedoring)	The maximum period for the concessions of the public service of cargo handling cannot exceed 30 years and must be established according to the respective investments in fixed equipment or in port works.	To limit the duration of the exclusive rights for the concessionaire.	The prevalence of concessions with long durations may substantially harm the competitive process by reducing the frequency with which private operators compete for the market. The risk of harm is higher when the awarding process is not designed to promote competition, a case in which a long concession could result in a single port operator providing services at high prices for an extensive period of time. However, even if the awarding process is carefully designed, a long concession may still prevent new operators from innovating and contesting incumbents with	The three following recommendations should be cumulatively implemented: 1. Port authorities should, under the supervision of the AMT, determine the duration of the concession as the minimum number of years required to repay the capital invested. Whenever possible, the contract should explicitly determine a minimum level of

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						<p>more competitive offers.</p> <p>According to Art. 18 of EU Directive 2014/23/UE and the general Portuguese Public Procurement Code (Art. 410 of Decree-Law n.º 111-B/2017), the duration of a concession shall be established as the minimum time period required to recover and repay the capital invested under normal conditions of return of the exploitation of the concession. The legislator considered that the time period in question for concessions of the cargo-handling companies could not be of more than 30 years. Despite the fact that some port concessions in Portugal appear to be excessively long, the maximum ceilings imposed by Portuguese regulations also pose their own risks. Maximum ceilings may reduce the ability of port authorities to attract private initiative in certain projects involving very high levels of investment, particularly given that concessions with longer durations are commonly awarded in other European countries.</p>	<p>investment to be incurred by the operator.</p> <p>2. National law should be amended so that concessions cannot be renewed without the opening of a new public tender.</p> <p>3. Policymakers should establish clear, objective and transparent criteria to determine the length of any concession, based on the level of investment required, prior to any consideration to revise current ceilings in lengths of concession contracts.</p>
55	Decree-Law 324/94 "(Republished) the basis for the concessions of public service port operations (stevedoring)"	Bases XI (1)	Cargo-handling operators (stevedoring)	Concessionaire port operators must employ workers using individual labour contracts or, alternatively, recruit them from port labour companies that provide temporary labour.	According to stakeholders, it is to promote working conditions in ports and reduce precarious employment conditions.	The provision prevents port operators from using non-labour contracts (such as service contracts) to fulfil their staff needs. This raises operational costs of port operators, which will be passed through to consumers in the form of higher prices of cargo-handling services. The policy objective of promoting fixed employment in ports should be carefully traded off against potential cost savings from enabling companies to freely manage their labour force. This provision also excludes, in practice, the possibility of interim work companies to provide workers directly to port operators, without passing by temporary port labour companies (see above).	Amend the provision to allow port operators to hire (directly) temporary staff and conclude service contracts for individuals.
56	Decree-Law 324/94 "(Republished) the basis for the concessions of public service port operations (stevedoring)"	Bases XIII	Cargo-handling operators (stevedoring)	The concession contract is granted for a fixed term, not exceeding 30 years, and must be established based on investments in fixed equipment or in port works.	The deadline limits the duration of the exclusive rights (and access to revenues) for the concessionaire.	<p>The prevalence of concessions with long durations may substantially harm the competitive process by reducing the frequency with which private operators compete for the market. The risk of harm is higher when the awarding process is not designed to promote competition, a case in which a long concession could result in a single port operator providing services at high prices for an extensive period of time. However, even if the awarding process is carefully designed, a long concession may still prevent new operators from innovating and contesting incumbents with more competitive offers.</p> <p>According to Art. 18 of EU Directive 2014/23/UE and the general Portuguese Public Procurement Code (Art. 410 of Decree-Law n.º 111-B/2017), the duration of a concession shall be established as the minimum time period required to recover and repay the capital invested under normal conditions of return of the exploitation of the concession. The legislator considered that the time period in question for concessions of the cargo-handling companies could not be of more than 30 years. Despite the fact that some port concessions in Portugal appear to be excessively long, the maximum ceilings imposed by Portuguese regulations also pose their own risks. Maximum ceilings may reduce the ability of port authorities to attract private initiative in certain projects involving very high levels of investment, particularly given that concessions with longer durations are commonly awarded in other European countries.</p>	<p>The three following recommendations should be cumulatively implemented:</p> <p>1. Port authorities should, under the supervision of the AMT, determine the duration of the concession as the minimum number of years required to repay the capital invested. Whenever possible, the contract should explicitly determine a minimum level of investment to be incurred by the operator.</p> <p>2. National law should be amended so that concessions cannot be renewed without the opening of a new public tender.</p> <p>3. Policymakers should establish clear, objective and transparent criteria to determine the length of any concession, based on the level of investment required, prior to any consideration to revise current ceilings in lengths of concession contracts.</p>

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57	Decree-Law 324/94 "(Republished) the basis for the concessions of public service port operations (stevedoring)"	Bases XXI	Cargo-handling operators (stevedoring)	The concessionaire's decisions regarding the change of its corporate purpose, the transformation, merger or dissolution of the company, or the reduction of the share capital shall be subject to the approval of the concession's grantor.	To control whether the concessionaire company respects the legal requirements (corporate purpose, minimum social capital and market structure) imposed by law.	This is a barrier for concessionaire companies that want to adapt to the market, and/or exit the market, that may lead to increased operational or exit costs. Although there is a legitimate need to verify compliance with the requirements established for concessionaire cargo-handling companies, it seems excessive that the port administration (grantor) can accept or not any of these corporate changes, preventing the concessionaire company from making its own choices and eventually dealing with the legal consequences of such choices. The legislator should consider that private operators will normally act in their own interest, which includes the maintaining of the concession. Only exceptionally will the operator jeopardise the concession regime assumptions. If that happens the legal regime will apply to possible legal responsibility.	Amend and oblige concessionaires to inform port authorities of such corporate decisions (instead of services validation).
58	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 2 (1)	Port pilotage	The piloting public service must be provided directly by the respective competent authorities or under a concession regime.	To guarantee the quality of piloting services. According to stakeholders such services should not be provided by private entities as they could jeopardise the safety aspects of the service to achieve more profits.	The provision is a barrier that artificially restricts entry and harms competition for the piloting services market, resulting not only in monopoly pricing but also potentially in a lack of innovation, choice and quality. The evidence collected suggests that no concession has been awarded in Portugal, meaning that piloting services have always been exclusively provided by the port authority as a public monopoly. This prevents any competition for the market from taking place, increasing the risk of excessive pricing as the port authority also decides on pilotage fees applicable under its jurisdiction. Port authorities should, at the very least, analyse the costs and benefits of the current direct provision model in regard to a public tender to select a company that would provide the services for a limited time period, thus bringing the benefits of competition for the market to an otherwise monopolistic setting. In any case, the legal regime should foresee an effective means of control of (or separation between) the public provision of pilotage service by port authorities and the ability to set pilotage fees. According to a "Study on Pilotage Exemption Certificates - PwC 2010 " across the 22 coastal EU Member States, pilotage services are carried out in 11 countries (50% of the countries) by private providers : in 7 countries by private pilotage organisations and in 4 countries by a mixture of public and private organisations. Given that piloting does not always have the characteristics of a natural monopoly, when possible it should be provided through concessions or, alternatively, multiple licences when safety conditions allow it. The market regulator (AMT) should foster the awarding of concessions or licences in piloting services.	Amend the provision, enabling the port authority to also license the provision of such services, and only provide directly the pilotage services in case of insufficient provision by the concessionaire or licensee, or when there is no market interest by private operators.
59	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 3	Pilotage - pilot requirements	As general requirements to become port pilots, individuals must be (1) properly qualified, (2) certified, (3) have experience in handling and manoeuvring vessels in restricted waters, (4) have knowledge of the local port's physical characteristics and (5) have knowledge of the legal regime governing piloting services.	To guarantee that maritime pilots have all the necessary skills and knowledge to provide a high-quality/safe piloting service.	The existence of minimum requirements to access the profession of maritime pilot restricts the number of professionals, potentially keeping their wages artificially high and increasing costs for the port administration and port users. On the other hand, minimum requirements can be justified when there is a policy objective of preserving the quality and safety of the piloting services. The general criteria established in the provision appear to be proportional for that objective and are in accordance with Resolution A.960 of the International Maritime Organization. However, the concrete implementation of this provision (see hereafter) may in some cases give places to unjustified criteria, and for that reason must be analysed on a case-by-case basis.	No recommendation.

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60	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 8 (1) (c)	Pilotage - pilot requirements	Local vessels and tugboats are exempted from the obligation of using piloting services.	The policy objective is to promote an efficient allocation of resources, by exempting from the use of piloting services vessels that are commanded by people with local knowledge required to navigate safely inside the port area.	In the case of local vessels, the provision discriminates against port users by exempting from the use of piloting services. Although discrimination of different suppliers can distort competition, local vessels do not appear to directly compete with non-local vessels due to their size (they are necessarily smaller) and limitations regarding areas where they can operate. As a general rule, local vessels can only operate within the port area jurisdiction where they are registered and licensed. In addition, this discrimination has the actual effect of improving the allocation of limited (piloting) resources, by exempting local vessels from using redundant services and incurring unnecessary costs. Indeed, piloting services are not necessary (and should not be compulsory) to support commanders of vessels with knowledge and expertise about the local conditions of the port, which is the case for commanders who frequently navigate inside the port. Smaller boats also represent less risk to safety.	No recommendation.
61	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 9	Pilotage - pilot requirements	Maritime pilots must be qualified naval officers of the merchant navy.	The policy objective is to guarantee that maritime pilots have all the necessary technical knowledge to provide a high-quality/safe piloting service.	This provision limits access to the profession of pilot for all other seafarers ranks (not officers). This can exert upward pressure on pilot wages, increasing the costs of piloting services that are passed on to port users in the form of higher prices. Representatives of maritime pilots and shipowners claim that the knowledge and experience acquired at a naval school is an essential condition for becoming a good port pilot. However, such knowledge and experience can be obtained in alternative ways: for instance through professional seafarers' schools, as some stakeholders suggested. Considering that the legal regime foresees other specific requirements for becoming a pilot (such as obtaining certification, traineeship or knowledge of the local area) the legal regime should focus on assessing (and guaranteeing) that the pilots have the needed expertise and knowledge to provide pilotage on a local basis, instead of demanding formal (naval school) degree requirements. The legislator might consider the possibility of opening the career to other seafarers (non officers).	Abolish.
62	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 11	Pilotage - pilot requirements	The certificate for port pilot is valid for 5 years and renewable for equal periods of time.	We could not identify the policy objective.	The provision imposes a non-discriminatory administrative burden of renewing the pilot certificate every five years. According to IMO Resolution A960, the continued proficiency of pilots and updating of their knowledge should be provided at regular intervals, not exceeding five years. In that sense the five-year period is aligned with IMO regulations. It results from Ordinance 184/2013 that the certificate renewal involves the payment of a fee of EUR 216. This amount should be checked and correspond to the minimum value that is strictly necessary to cover the administrative costs related to the renewal process.	No recommendation.
63	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 12 (a)	Pilotage - pilot requirements	Maritime pilots must have Portuguese nationality, or the nationality of a Member State of the European Union or the European Economic Area, or the nationality of a country that provides equal treatment of Portuguese nationals in the exercise of piloting services.	Incentivize reciprocity between states.	This provision limits access to the profession of pilot and reduces the number of potential professionals available, reducing competition for the job and creates less desirable terms for the hiring entity. However, equal treatment provisions regarding third-country nationals are considered a common international standard for accessing the career of seafarer (including pilot). They also create an incentive for other countries to implement the same policy and not to deviate from it, a case in which the international mobility of labour would reach its maximum level.	No recommendation.

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64	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 12 (b)	Pilotage - pilot requirements	As a minimum requirement, port pilots must have knowledge of the Portuguese language, spoken and written.	According to some stakeholders, knowledge of the Portuguese language is essential to communicate with local vessels and other port users without jeopardising safety.	The provision restricts access to the career of maritime pilot by: (1) preventing the entry of non-Portuguese speakers; and (2) increasing the entry costs of Portuguese-speaking foreigners. Both conditions may restrict the number of pilots, increase the costs of piloting services and result in higher prices for port users. Regarding the knowledge of Portuguese (local language), some stakeholders state that the use of a local language can be useful considering the low knowledge of more technical languages (i.e. English) among port actors, such as local authorities, local shipmasters, fishermen, etc. This being said, IMO Regulation A960 (6.2) states that "Communications on board between the pilot and bridge watch-keeping personnel should be conducted in the English language or in a language other than English that is common to all those involved in the operation". Moreover, the official recital of Ordinance 434/2002, applicable to Pilot Exemption Certificates (PEC), states that "the language commonly used for maritime communications is English and (...) it makes no sense to require only the knowledge of the Portuguese language for issuing a Pilotage Exemption Certificate". This means that a commanding officer with a PEC can enter a Portuguese port speaking only English. In light of the legislative option, it makes no sense to demand only knowledge of Portuguese of pilot candidates. They should be required to have knowledge of Portuguese and English. This is even more evident when supposedly almost all commanding officers using Portuguese ports are English-speaking seafarers.	Make the following amendments: (1) Recognise English and Portuguese as compulsory languages for maritime pilot candidates. (2) Enable non-native speakers to prove their knowledges of Portuguese or English with a certificate issued by a recognised authority.
65	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 12 (d)	Pilotage - pilot requirements	To become a port pilot, the seafarer must be at least a "first class pilot" (of the national merchant navy) or equivalent.	The policy objective is to guarantee that maritime pilots have the seafaring experience needed to provide a high-quality/safe piloting service.	(The requirement of being a "naval official" is analysed above in Art. 9 of this same Decree-Law; here we refer only to the "1st class pilot" requirement.) This provision restricts the number of potential pilots and is likely (1) to exert upward pressure on pilot wages, increasing thus the costs of piloting services that are passed on to port users in the form of higher prices; and (2) to limit the supply of piloting services, possibly increasing the waiting time to get inside the port, or even reducing the total capacity of the port. To obtain the "1st pilot" category the seafarer officer needs to have a minimum experience of three years on the sea: one year as trainee-pilot, and two years as a 2nd class pilot after the completion of a Master's degree. Although representatives of maritime pilots and shipowners claimed that the knowledge and experience on board are essential conditions for becoming a pilot, it should be noted that a seafarer can have three years of experience (or more) on the sea without necessarily obtaining the "1st class" rank (in case he is not an official or did not obtain the STCW certificates necessary to reach that category). Furthermore, considering that the legal regime foresees additional specific requirements for becoming a pilot (such as obtaining certification, traineeship and knowledge of the local area) the legal regime should focus on assessing (and guaranteeing) that the pilots have the needed expertise and knowledge to provide pilotage on a local basis, instead of demanding a specific seafarer rank to be pilot candidates.	Option 1: Eliminate the reference to "first-pilot category". Option 2 : Replace the text by the requirement of having "the minimum of 3 years serving on board merchant ships."

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66	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 13 (1) and (2)	Pilotage - pilot requirements	Candidates to become maritime pilots must do a traineeship for a period of six to nine months.	The policy objective is to guarantee that maritime pilots have all the necessary skills and knowledge to provide a high-quality/safe piloting service.	The pilot traineeship is internationally used for pilot candidates to obtain supervised experience in local ports (see IMO Resolution A960). Still, the content and number of hours of the traineeship should be clearly specified by the responsible authorities, in order to enable an objective evaluation at the end of the period, creating transparency on access to the profession and preventing any abuse of authority from the authorities responsible for the traineeship. Though it does not constitute harm to competition, the provision creates legal uncertainty regarding the duration (and the content that will be used as a basis for evaluation) of the traineeship leading to uncertainty for candidate pilots willing to enter the market.	Amend the provision, requesting competent authorities to additionally publicise and specify the content (number of hours, theory and practice) of the traineeship.
67	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 13 (3)	Pilotage - pilot requirements	Trainee pilots shall receive adequate training by existing pilots on board piloted vessels.	The policy objective is to guarantee that maritime pilots have all the necessary skills and knowledge to provide a high-quality/safe piloting service.	Although IMO Resolution A.960 foresees that the initial piloting training should include practical experience gained on vessels under close supervision of experienced pilots, the national provision attributes exclusively to active pilots the responsibility of training new candidates. This creates an incentive for current pilots to "choose" colleagues with whom they feel more comfortable, which can reduce job productivity. Moreover, IMO Resolution A.960 also mentions other means of capacity building that could be used to train new pilots. In the same vein, former pilots or experienced shipmasters could also provide high-quality training. The artificial reduction of the number or quality of port pilots is likely (1) to exert upward pressure on pilot wages, increasing thus costs of piloting services that are passed on to port users in the form of higher prices; and (2) to limit the supply of piloting services, possibly increasing the waiting time to get inside the port, or even reducing the total capacity of the port.	Amend the provision giving the port authority the power to determine other entities or means for providing training to pilots (such as former pilots or experienced commandants who are exempt from piloting services).
68	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 13 (4)	Pilotage - pilot requirements	Pilot traineeship must be subject to continuous evaluation administered by the training pilots and their respective supervisors.	The policy objective is to guarantee that maritime pilot candidates are properly evaluated.	By exclusively giving acting pilots the responsibility of evaluating new candidates, this provision creates a perverse incentive for existing pilots to foreclose the market and restrict new entry, thus reducing the number of port pilots available (and increasing their individual revenue base). At the same time, considering that the incumbent pilots are also responsible for the training of the new pilots, there is no guarantee regarding the quality and objectiveness of such evaluation. This creates an incentive for current pilots to "choose" colleagues with whom they feel more comfortable, which can reduce job productivity. The artificial reduction of maritime pilots is likely to (1) exert upward pressure on pilot wages, increasing thus costs of piloting services that are passed through to port users in the form of higher prices; and (2) to limit the supply of piloting services, possibly increasing the waiting time to get inside the port, or even reducing the total capacity of the port.	Amend the provision in order to require the final evaluation to be conducted by an independent authority, or individuals not responsible for the training of candidate pilots.
69	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 17 (2)	Pilotage- Pilot Exemption Certificate (PEC)	Foreign applicants for a Pilot Exemption Certificate (PEC) must demonstrate knowledge of the Portuguese language, either through an examination before a jury appointed by the port authority, or by presenting a certificate issued by an entity recognised by the port	According to stakeholders, knowledge of the Portuguese language is essential to communicate with local vessels and other port users without jeopardising safety.	The original provision (here analysed) restricts the number and type of individuals that can obtain a PEC to those that speak Portuguese. This restricts the number of professionals that can access ports without paying piloting services and results in higher costs for shipping companies. Among the 22 coastal EU member-states, only in five countries there is a requirement recognising only knowledge of the national language. The analysed provision is inconsistent with more recent Ordinance 434/2002 (modified by Ordinance 288/2012) applicable to PEC procedure, according	Option 1: Amend the provision and recognise English as an alternative language. Option 2: Clarify the previous amendment made to this provision enabling PEC applicants to speak English (as mentioned in Ordinance 288/2012).

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				authority.		to which "the language commonly used for maritime communications is English and (...) it makes no sense to require only the knowledge of the Portuguese language for issuing a pilotage exemption certificate". This Ordinance considers that the PEC holder can speak either Portuguese or English. According to stakeholders only some port authorities have implemented this last provision. Considering that decree-laws have legal force over administrative acts (such as Portaria), the legislator should explicitly modify the original provision for reasons of legal certainty.	
70	Regional Ordinance (Portaria Regional) 43/2011 modified by Regional Ordinance 24/2013 on Pilot Exemption Certificates	Art. 2 (d)	Pilotage- Pilot Exemption Certificate (PEC)	Foreign applicants to a Pilot Exemption Certificate (PEC) must demonstrate knowledge of the English or Portuguese language through an examination before a jury appointed by the port authority.	According to stakeholders, the knowledge of Portuguese language is essential to communicate with local vessels and other port users without jeopardising safety.	This regional provision is consistent with Ordinance 434/2002 (modified by Ordinance 288/2012) applicable to the PEC procedure, according to which "the language commonly used for maritime communications is English and (...) it makes no sense to require only the knowledge of the Portuguese language for issuing a pilotage exemption certificate". In this regard, the legislator should explicitly amend Decree-Law 48/2002 recognising English as an alternative language for pilots. (see our recommendation above). However, this disposition does not allow - contrary to the primary legislation - foreign applicants to prove their knowledge of Portuguese through a certificate issued by entities recognised by the port authority. This implies that all applicants must travel, be available and pass an oral exam before a jury appointed by the Azorean Port Authority, which implies unnecessary extra costs. This will restrict the number of foreign individuals who can obtain a PEC to operate in Azores ports, restricting the number of professionals who can access these ports without paying piloting services and resulting in higher costs for port users.	Amend the provision to recognise that foreign applicants may also present a certificate issued by an entity recognised by the port authority, in line with the policy objective mentioned in Ordinance 288/2012.
71	Decree-Law 48/2002 "Establishes the legal regime for the public service of Piloting and approves the General Regulation of the Pilot Service"	Art. 19	Pilotage- Pilot Exemption Certificate (PEC)	The Pilot Exemption Certificate (PEC) is valid for one year.	To guarantee and verify that the PEC requirements are met.	Although this is unlikely to distort competition, the provision may pose an unnecessary burden on shipping companies, increasing prices for final consumers. Therefore, the duration of the PEC should be reassessed. The requirement to obtain a PEC (such as the number of manoeuvres in a given year) can be different from the duration of the PEC. The short validity of the PEC will increase their costs (and financial viability) when compared with the price of using piloting services. This will result in less efficient allocation of public resources. According to an EU 2012 study, "Fact-Finding Study on the use Pilotage Exemption Certificates (PECs) in European Ports", and consultations with port authorities, Portugal has one of the lowest number of active PECs in Europe. Furthermore, the duration of a PEC usually ranges from one to five years in the EU. The provision imposes a non-discriminatory administrative burden of renewing the PEC every year.	Revise the duration of the PEC in order to reduce costs and bureaucracy for both market operators and regulators.
72	Regional Ordinance (Portaria Regional) 43/2001 modified by Regional Ordinance 24/2013 on Pilot Exemption Certificates	Art. 3	Pilotage- Pilot Exemption Certificate (PEC)	The Pilot Exemption Certificate (PEC) is valid for four months.	To guarantee and verify that the Pilot Exemption Certificate (PEC) requirements are met.	This provision imposes a non-discriminatory administrative burden of renewing the PEC every four months. This may be in contradiction with the general law that establishes a one-year validity period for a PEC. Although this is unlikely to distort competition, the provision poses an unnecessary burden on shipping companies operating in the Azores region, increasing prices for final consumers. The short validity of the PEC will increase their costs (and financial viability) when compared with the price of using piloting services and result in less efficient allocation of public resources.	Revise the duration of the PEC in the Azores region in order to reduce costs and bureaucracy for both market operators and regulators.

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						According to the EU's 2012 "Fact-Finding Study on the use of Pilotage Exemption Certificates (PECs) in European ports", and consultations with port authorities, Portugal has one of the lowest number of active PEC holders in Europe. Furthermore, the duration of a PEC usually ranges from one to five years in the EU.	
73	Regulation of the Port Authority of the Port of Lisbon (Service Order 19/2014)	Art. 4.2	Port pilotage	The piloting services are carried out exclusively by pilots integrated in the Piloting Department of the Port of Lisbon.	This provision reserves piloting services for individuals belonging to the port technical body, and regulates the exclusive provision of those services by the port.	This internal port regulation prevents the use of individuals (pilots) who are not employees of the Port of Lisbon in that area. Currently this only applies to the port administration as they have the exclusive right to provide such services, limiting the choice of the port administration. Regardless of the juridical regime chosen for the public provision of piloting services, there is no economic justification for attributing exclusive rights to serve as a pilot to a specific type of port employee, excluding other forms of labour contract (interim) or service contracts hiring. Considering that the legal regime foresees other specific requirements to become a pilot (such as obtaining certification, traineeship and knowledge of the local area) the legal regime should focus on assessing (and guaranteeing) that pilots have the needed expertise and knowledge to provide pilotage on a local basis, instead of demanding formal labour contracts requirements. The legislator should think about the possibility of establishing pools of pilots that would enable port administrations to use and/or hire pilots in more flexible ways.	Abolish.
74	Ordinance 434/2002 "Establishes the legal regime for the issuance of Piloting Exemption Certificates"	Art.2 (1)	Pilotage- Pilot Exemption Certificate (PEC)	An applicant for a Pilot Exemption Certificate (PEC) must submit a document stating that, in the previous 12 months, the applicant has called in the port at least six times as the commander of a vessel.	The policy objective is to guarantee that the holder of a PEC has the necessary skills and knowledge to operate safely within the port.	According to the EU's 2012 "Fact-Finding Study on the use of Pilotage Exemption Certificates (PECs) in European ports" and consultations with port authorities, Portugal has one of the lowest number of active PEC holders in Europe. This being said, the requirement is non-discriminatory and proportional to the policy objective. In fact, the number of manoeuvres within a port is usually considered a suitable criterion for evaluating the knowledge of local port conditions. While the minimum number of manoeuvres required varies considerably across Europe, 12 manoeuvres (entering and exiting) is among the lowest requirement at the European level..	No recommendation.
75	Ordinance 434/2002 "Establishes the legal regime for the issuance of Piloting Exemption Certificates"	Art.4	Pilotage- Pilot Exemption Certificate (PEC)	The Pilot Exemption Certificate (PEC) is only valid for vessels with a gross tonnage equal to or less than the gross tonnage of the vessels that the PEC holder has commanded and in the respective port areas.	The policy objective is to guarantee that the holder of a PEC has the necessary skills and knowledge to operate safely within the port.	The requirement is non-discriminatory and proportional to the policy objective. The criterion based on the maximum length or tonnage of the vessel is aligned with best practices in Europe.	No recommendation.
76	Ordinance 434/2002 "Establishes the legal regime for the issuance of Piloting Exemption Certificates"	Art. 5	Pilotage- Pilot Exemption Certificate (PEC)	In order to renew a Pilot Exemption Certificate (PEC), the holder must submit a document stating (a) that in the last 12 months the holder docked in the port at least four times as commander; (b) the areas frequented; and (c) the gross tonnage of the vessels.	The policy objective is to guarantee that the holder of a PEC has the necessary skills and knowledge to operate safely within the port.	The requirement is non-discriminatory and proportional to the policy objective. In fact, the number of manoeuvres within a port is usually considered a suitable criterion for evaluating the knowledge of local port conditions. While the minimum number of manoeuvres required to renew a PEC varies considerably across Europe, a minimum of 8 manoeuvres (in and out of the port) is among the lowest requirements at the European level.	No recommendation.

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
77	Ordinance 434/2002 "Establishes the legal regime for the issuance of Piloting Exemption Certificates"	Art. 7	Pilotage- Pilot Exemption Certificate (PEC)	The applicant for a Pilot Exemption certificate (PEC) shall pay an issuing fee of EUR 1 246.99 and, in the following years, a renewal fee of EUR 997.59.	To compensate for costs incurred by the port authority.	The provision poses a financial cost to obtain and renew a PEC and may discourage applicants from demanding a PEC when comparing it with the costs of using piloting services, thus increasing inefficiency in ports. Moreover, the fee does not appear to be related to the administrative cost of issuing or renewing the certificate. The value set by the port authority should be checked by an independent regulator.	No recommendation.
78	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	Art. 23	Piloting fees - national	Requires that every port in mainland Portugal charges pilotage fees according to a certain pre-established formula (each port is free to set two of the three variables that are used in the formula).	To cover costs incurred by port authorities providing pilotage services.	In Portugal, all port authorities define pilotage fees on the basis of a common formula, imposed by law, where the ship's gross tonnage is a key driver; in addition, the particular pilotage service provided as well as a port-specific pilotage unit are also key elements in the fee calculation (variables determined by the ports). The existence of a common formula might have a co-ordinating impact on fees, reducing competition between ports due to the unit of cost set by each port. However, our empirical simulation of pilotage fees for representative ships shows that there is significant variability across Portuguese ports. We also note that the calculation formula is not closely connected with typical cost drivers in the provision of pilotage services, such as service duration. This appears to be intentional and meant to prevent perverse incentives (for instance if the time spent by pilots was considered one of the variables to determine the fee). According to our study on pilotage fees and benchmarking exercise, competition between ports would be enhanced if port authorities were not constrained by a stringent pilotage fee-setting formula such as the one stipulated in Decree-Law no. 273/2000 and were able to set pilotage fees that are more closely related to the service cost drivers in their respective ports. The data collected suggest that Portuguese ports are cost-inefficient in providing piloting services, due to a combined effect of low technical and allocative efficiency.	Revise the provision and allow the port authorities to establish pilotage fees that are more closely related to the service cost of the respective ports.
79	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	Art. 25 (general comment - all provisions)	Piloting fees - national	Stipulates the possible pilotage service discounts and rebates that port authorities may apply.	To attract more port clients and ultimately cover the costs incurred by port authorities providing pilotage services.	Allowing ports to apply discounts and rebates facilitates competition between ports but it may harm competition in the transportation market. In fact, the benchmark international ports (CENIT 2016) offer very few discounts or rebates on pilotage services when compared to Portuguese ports.	Revise the provision in light of the analyses of the effect of specific port discounts and rebates on the transportation market.
80	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	Art. 25 (1) (B)	Piloting fees - national	Tankers carrying crude or refined petroleum and holding the certificate of the Rotterdam Green Bureau Award and complying with their requirements are eligible for fee reductions (discounts or rebates) in pilotage rates.	To promote the adoption of high safety and environmental standards in the shipping of crude and refined petroleum by tankers that call at Portuguese ports.	For instance, all Portuguese port authorities implement several discounts based on 'quantity', that is, fee discounts when a ship is a 'regular port customer'. Broadly, these can be grouped in pure 'quantity discounts' and in 'fidelity discounts' (that have loyalty-inducing effects which create exclusive relationships). In the benchmark international ports, such fidelity discounts are not given. By contrast, we find in the benchmark international ports examples of quantity discounting, namely Rotterdam and the French ports of Le Havre and Marseille-Fos; some Spanish ports also implement similar quantity discounts.	Amend the provision and open the discount to other internationally recognised recipients of "green" award certification.
81	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	Art. 25 (1) (C)	Piloting fees - national	Ships that fulfil the conditions of the regular shipping line service for 365 calendar days prior to the date of the stopover, or in the previous calendar year are eligible for reductions (rebates) in pilotage rates.	To attract "regular line service" vessels.	Market players use fidelity rebates to offer better prices to those buyers that demonstrate loyalty in the purchases they make. These schemes are often introduced as discounts on an existing price, and so may stimulate demand as well as helping to achieve efficiencies. However, in some circumstances they can prevent rivals from competing effectively (for that exclusivity) or force the exit of rivals.	Amend the definition of "regular-line services" striking out condition (iii) or Art. 2 (x) of Decree-Law 273/2000.

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82	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	Art. 25 (1) (D)	Piloting fees - national	Ocean or bulk cargo ships, containers, refrigerators, roll-on/roll-off, passenger ships and general cargo, including those on regular routes, that on the 365 calendar days immediately preceding the stopover in question or in the previous calendar year have made 6 to 11, 12 to 17 or more than 17 stopovers are eligible for reductions (rebate) in pilotage rates.	To attract regular line service.	Granting "quantity discounts" is, in itself, a normal feature of competition. Furthermore, paragraph 2 of the article extends the discount retroactively to all companies who have attained the threshold in question in their first year, favouring competition between new entrants and incumbents.	No recommendation.
83	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	Art. 25 (1) (E)	Piloting fees - national	Ships operating on short-sea service, including those operating regular line services, from the sixth stopover in the immediately preceding 365 days or in the preceding calendar year are eligible for reductions (rebates) in pilotage rates.	To attract regular line service.	This provision allows pilotage fee rebates to ships below 6 000 gross tonnes that operate in Europe and its neighbouring regions only, if they stop in the port a minimum number of times a year. Restricting fee rebates to ships that operate in a certain area may distort competition in maritime transportation between international players, by favouring ships that meet these conditions over those that do not, and distorts shipowners' incentives to optimally define the routes to cover. This being said, short-shipping companies are regulated through a specific EU regime that actively reduces the risks of environmental hazard and maritime safety. In that sense, they represent less risk, which may be reflected in lower costs for providing piloting services.	Abolish
84	Decree-Law 273/2000 "Regulation of the mainland port tariffs system"	Art. 25 (1) (F)	Piloting fees - national	Ships operating in national cabotage service are eligible for reductions (discounts or rebates) in pilotage rates.	To attract national cabotage vessels.	This provision allows pilotage fee reductions to ships that operate only between national ports (cabotage). Restricting fee reductions to ships that operate in a certain area distorts competition in maritime transportation by favouring ships that meet these conditions over those that do not and distorts shipowners' incentives to optimally define the routes to cover. Moreover the national cabotage regime discriminates against ship operators whose nationality or vessels are from non-EU Member States.	Abolish.

Maritime transport

No	No and title of regulation	Article	Thematic category	Brief description of the potential obstacle	Policy maker's objective	Harm to competition	Recommendation
1	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 3	National cabotage	Ship operators whose nationality or vessels belong to non-EU countries cannot provide mainland cabotage services.	To preserve the existence of domestic and EU shipping fleets	This provision restricts the entry of suppliers from outside the European Union or operating with non-EU vessels, reducing competitive pressure in the national market and potentially resulting in higher prices for consumers. Restricting the type of operators (or vessels) that operate in a certain area distorts competition in transportation markets and reduces shipowners' incentives to optimally define the routes to cover or the vessels to use. The national (or EU) reserve for cabotage services is common international practice. However some countries apply an "open coast" policy that allows vessels registered in and flying the flag of a third country to provide maritime cabotage between the ports located in their territory. Other Member States foresee individual authorisations for such vessels.	Amend the provision in order to enable the entry of ship operators from countries that give equal treatment to Portuguese operators.
2	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 4	National cabotage	Ship operators whose nationality or vessels belong to non-EU countries cannot provide island cabotage services.	To preserve the existence of domestic and EU shipping fleets	This provision restricts the entry of suppliers from outside the EU or operating with non-EU vessels, reducing competitive pressure in the national market and potentially resulting in higher prices for consumers. Restricting the type of operators (or vessels) that operate in a certain area distorts competition in transportation markets and reduces shipowners' incentives to optimally define the routes to cover or the vessels to use. The national (or EU) reserve for cabotage services is common international practice. However some countries apply an "open coast" policy that allows vessels registered in and flying the flag of a third country to provide maritime cabotage between the ports located in their territory. Other Member States foresee individual authorisations for such vessels.	Amend the provision in order to enable the entry of ship operators from countries that give equal treatment to Portuguese operators.
3	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (a)	Island cabotage - regular transport of containerised cargo	Shipowners who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must provide weekly connections between the mainland and the autonomous regions where they operate, and vice versa.	According to the Ministry of the Sea, the public objective is to ensure that the inhabitants of the Autonomous Regions have regular access to the mainland and international markets (which are a source of certain essential goods, such as fuels and medicines).	By imposing a minimum number of weekly connections between the Autonomous Regions and the mainland, the provision increases fixed operational costs for operators, reducing their incentive to enter the market. This may in turn limit the number and type of operators in the market, potentially resulting in a lack of innovation, higher prices and a fall in the overall number of connections (while the minimum quota increases connections per operator, if some operators leave the market the total number of connections may fall). Finally, there is also a risk that, due to the lack of potential competitors, incumbent ship operators may only fulfil the minimum quotas while fixing high prices, which could result in inefficient outcomes, such as ships being dispatched with low levels of cargo (this possibility was confirmed by a stakeholder). According to EU Regulation 3577/92 the EU Member States may impose minimum frequency public service obligations on operators if a public service need is identified. Once the public service need is identified (e.g. number of connections required for each Autonomous Region), the requirements relating to the regularity of the public service can be met collectively – and not individually – by all shipowners serving the same route. This is in line with the most recent communication of the European Commission (COM(2014) 232 final) on how to interpret the Council Regulation (EEC) No 3577/92 on maritime cabotage. However, the individual obligation of	Study alternative models to regulate the market for transportation of merchandise to the islands, possibly unbundling some of the maritime routes currently included within the public service obligations. At the same time, provide means to relevant authorities to monitor the frequency and itineraries set for each operator as foreseen in art. 7 (1) (b).

						each operator in the market should be regulated by the competent authority (AMT), and not be the result of co-ordination between the market players. This direct co-ordination may jeopardise the normal functioning of the market, by providing an opportunity for competitors to align their positions.	
4	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (c)	Island cabotage - regular transport of containerised cargo	Shipowners who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must establish itineraries that guarantee a stopover in all islands every two weeks.	According to the Ministry of the Sea, the public objective is to ensure that the inhabitants of the Autonomous Regions have regular access to the mainland and international markets (which are a the source of certain essential goods, such as fuels and medicines).	By enforcing a minimum of one stopover in all islands every two weeks, the provision increases fixed operational costs for operators, reducing their incentive to enter the market. It will also deter local transport players from entering the market due to the minimum scale of operations required. This may in turn limit the number and type of operators in the market, potentially resulting in a lack of innovation, higher prices and a fall in the overall number of connections (while the minimum quota increases connections per operator, if some operators leave the market the total number of connections may fall). Finally, there is also a risk that, due to the lack of potential competitors, incumbent ship operators may only fulfil the minimum quotas while fixing high prices, which could result in inefficient outcomes, such as ships being dispatched with low levels of cargo (this possibility was confirmed by a stakeholder). According to EU Regulation 3577/92 the EU Member States may impose minimum frequency public service obligations on operators if a public service need is identified. Once the public service need is identified (e.g. number of connections required for each autonomous region) the requirements relating to the regularity of the public service can be met collectively – and not individually – by all the shipowners serving the same route. This is in line with the most recent communication of the European Commission (COM(2014) 232 final) on how to interpret the Council Regulation (EEC) No 3577/92 on maritime cabotage. However, the individual obligation of each operator in the market should be regulated by the competent authority (AMT), and not be the result of co-ordination between the market players. This direct co-ordination may jeopardise the normal functioning of the market by providing an opportunity for competitors to align their positions.	Study alternative models to regulate the market for transportation of merchandise to the islands, possibly unbundling some of the maritime routes currently included within the public service obligations. At the same time, provide means to relevant authorities to monitor the stopovers set for each operator as foreseen in art. 7 (1) (b).
5	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (d)	Island cabotage - regular transport of containerised cargo	Shipowners who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must ensure that the expedition of cargo between origin and destination does not exceed seven working days, except in cases of force majeure.	According to the Ministry of the Sea, the public objective is to set a minimum quality or standard for cargo transport services from and to the islands, which provides inhabitants with exporting revenues and in some cases essential goods.	This provision does not discriminate between competitors. According to the operators, the maximum time period determined by the law is feasible (while a shorter period could be difficult to guarantee). Other stakeholders mentioned that in some cases - for instance when exporting fresh goods - these delays should be reduced. Establishing more specific delays for maritime connections in each Autonomous Region could increase the quality of the service provided. All stakeholders agreed that this requirement is not binding from an economical point of view since in most cases the time limit is respected.	No recommendation.

6	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (f)	Island cabotage - regular transport of containerised cargo	Shipowners who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must ensure continuity of service for at least two years.	According to the Ministry of the Sea, the objective of the provision is to guarantee minimum services during the low season.	The provision increases exit costs, reducing the incentives of ship operators to enter the market. The provision also restricts the entry of some types of ship operators that could provide transport services only in specific periods of the year (depending on weather conditions, ship availability or cargo transport demand). In addition, the provision prevents the number of suppliers from adjusting to demand, potentially leading to inefficient outcomes such as a lack or excessive number of transport operators. This is likely to reduce competition in the market and increase prices for the final consumers. According to stakeholders there are two peaks of transport demand during the year. Both the Autonomous Regions stated that they would like to reduce this minimum operating time for a shorter period. This would increase the number of operators, sustainability of the public service and transparency. The competent authorities should consider the possibility of collecting and analysing data in order to determine the minimum period needed to operate in this market.	Study alternative models to regulate the market for transportation of merchandise to the islands, possibly unbundling some of the maritime routes currently included within the public service obligations. Following such study, consider the possibility of reducing the continuity period to one year after a careful market data analysis.
7	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (g)	Island cabotage - regular transport of containerised cargo	Shipowners who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must set the same freight price for the same type of merchandise, regardless of the island to which it is expedited.	According to the Ministry of the Sea, the public objective is to ensure that the inhabitants of all islands have equivalent access to the mainland and international markets (which are a source of essential goods, such as fuels and medicines).	The provision limits the ability of ship operators to differentiate prices of transport services based on actual transportation costs for each route. Imposing a single price on all routes distorts competition by artificially increasing the price level for all routes, in order for transporter to cover the costs for the more expensive routes. This may induce reluctance by customers to ask for transport services and thereby put a damper on demand. This restriction also prevents cabotage operators from increasing freight prices on routes to small islands where vessels are shipped almost empty, as that would require the operators to also increase prices on profitable routes where vessels are used at full capacity and therefore competitive. As such, the inability to set prices that reflect costs gives a wrong incentive to either oversupply or undersupply the transport services. Moreover, the provision does not guarantee that the policy objective of promoting same price for all islands is met. For instance, on the same trip the operator may serve only some islands given that the regulation allows the operator a fifteen-day period to cover them all. In this case, according to stakeholders, the rule imposing the same freight price will be applied only to those islands served by the operator on that same trip. Under the existing regime, the routes to small islands should be fully financed by operators through cross-subsidisation between profitable and unprofitable routes. However, in reality the state has been granting annual subsidies to cabotage operators, ostentatiously to modernise their fleets. However, the subsidy has instead been used by the operators to indirectly subsidise transportation costs of essential goods to the islands. In addition, a direct subsidy is paid to the public service contractor for the connection between Corvo island and Flores island (in Azores). It involves payment by the regional government of EUR 1 100 000 every three years to the local concessionaire. It transpires from several meetings with institutional stakeholders that the relevant authorities have limited information about the price structure practised by the cabotage operators. In fact, the "observatory on cabotage" described in Art. 8 has never been active. The lack of data and clarity on the division of regulatory powers between the AMT and the regional authorities prevents the competent authorities from successfully enforcing the public service obligations, including the one on a single price. Despite the public interest mentioned by the stakeholders of guaranteeing that all islands inhabitants pay the same price for the same merchandise, the single transport price appears clearly not to meet its policy objective as it was intended to and is clearly competition distorting.	The transport regulator authority, the AMT, should study alternative models to regulate the market for transportation of merchandises to the islands. At a minimum, impose an obligation to share the operators' prices per type of merchandise with the regulator and relevant authorities in order to increase transparency in the prices currently being practiced. In an interim period, until the conclusion of the technical study above mentioned, or in case the current regime is still kept, replace the current price regulation with a regulated maximum price of cabotage services that should be common to all islands. Transporters would be allowed to charge lower prices in order to stimulate incentives to compete on the more attractive routes.

8	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (h)	Island cabotage - regular transport of containerised cargo	Ship operators who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must use vessels of which they are owners, renters or bareboat charterers.	According to a stakeholder, the policy objective is to promote national employment, by preventing operators from renting ships with a crew composed of non-national seafarers.	This provision limits the ability of some types of ship operators (those who rent vessels with crew) to compete, restricting the number of operators in the market and potentially resulting in higher prices for consumers. Moreover, the policy is not proportional to the supposed policy objective as rented vessels with crew may still have national crews. This provision might also be considered contrary to EC regulation 3577/92, that indicates the possible requirements that can be used by member states to impose public obligations (Art. 4).	Abolish.
9	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (l)	Island cabotage - regular transport of containerised cargo	Ship operators who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must employ only national or community seafarers to complete non-essential (security) crew.	According to the Ministry of the Sea, the policy objective is to promote national employment.	This provision limits the ability of cabotage operators to employ seafarers from outside the European Union in their non-essential crew. In the same way, it limits the ability of operators that have in their non-essential crew non-EU seafarers to compete, restricting competition in the market and potentially resulting in higher prices for consumers.	Amend the provision to include other nationalities under a reciprocity condition.
10	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 5 (1) (l)	Island cabotage - regular transport of containerised cargo	Shipowners who carry out regular transport of general or containerised cargo between the mainland and the Autonomous Regions must use ships whose captain and first officer are national or community seafarers.	According to the Ministry of the Sea, the policy objective is to promote national employment.	This provision limits the ability of cabotage operators to employ captains or first officers from outside the European Union. In the same way, it limits operators that have a non-EU captain or first officer seafarer from competing, restricting competition in the market and potentially resulting in higher prices for consumers. According to international studies available about cabotage, most states require that the ship's master be of the nationality of that state, with some extending the requirement to certain other officers.	Amend the provision to include other nationalities under a reciprocity condition.
11	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 6 (2) (e)	Island cabotage - regular transport of containerised cargo	Ship operators from outside the EU or that own a non-EU vessel must request a special authorisation from IMT in order to provide cabotage services (not including containerised transport to the islands). The operator must provide evidence that EU vessels (with access to national cabotage) are not available to provide that service.	The objective is to preserve the existence of domestic and EU shipping fleets.	This authorisation constitutes a barrier to providing cabotage services to ship operators from outside the EU or those who want to use a non-EU vessel, reducing competition in the market and potentially increasing prices. Furthermore, it requires them to contact the national cabotage operators and confirm whether there are vessels available, increasing the incentive of operators to co-ordinate and use the information provided by the proposed entrant, particularly given the limited number of maritime operators.	Amend the provision, attributing to IMT the responsibility of ascertaining, in a given time, the availability of national or EU vessels willing to carry out the transport service.
12	Decree-Law 7/2006 "Regulates the carriage of passengers and goods by sea in national cabotage"	Art. 6 (2) (f)	Island cabotage - regular transport of containerised cargo	The operator that wishes to provide containerised island cabotage services (without complying with the Art. 5 regime) must provide evidence of consultations with authorised island cabotage operators.	The objective is to preserve the existence of domestic (regular) cabotage operators. The competent authority considers that the requester must also prove that such transport cannot be operated by incumbent operators.	The wording of the provision does not demand proof of the unavailability of a regular operator. However this is the interpretation of the responsible entity (IMT). In such a case, this provision protects established operators in the island cabotage market from entrants, reducing competition in the market and potentially increasing prices. It also constitutes an administrative burden for new operators, that have the burden of proof. Furthermore, the commercial contacts between operators also provide an opportunity for operators to potentially align positions in the market, especially when we consider the limited number of cabotage operators.	Cumulatively: (1) amend the provision and give to IMT the responsibility of ascertaining, in a given time, the availability of established cabotage operators, following the request presented by a non-authorised operator; (2) publicise and clarify the interpretation of the provision made by the responsible authority.

13	Ordinance (Portaria) 210/2007 (lastly amended by Portaria 553-A/2008) "Regulatory framework for services provided by agencies and services under the National Maritime Authority in ports"	Annex I	Fees - Maritime authority	Sets fees to be paid to the maritime authorities (harbourmaster) for various services provided to ship operators concerning crew lists, cargo bills, ship control, etc. In some cases, the established fees discriminate against non-EU vessels, imposing higher fees when compared to national vessels (e.g. to grant permission for ship departure costs 74 units for EU vessels and 103 units for non-EU vessels).	The objective is to charge for the cost of services provided to maritime operators.	The fee table increases transparency on administrative costs and predictability for market operators. However, in some cases, the established fees discriminate against foreign vessels, imposing higher fees for the same service provided for a lower fee by national vessels. Unjustified or unreasonable administrative fees can be barriers to entry and/or to operating in the market, depending on the market structure and capacity of operators to absorb or transfer such cost. There is a constitutional principle of proportionality (Art. 266 (2) CRP) applicable to administrative fees, imposing a correlation between the cost (the means used by the administration) and fees charged. These fees should not exceed the cost, nor should they be a means for the administration to collect revenues (amount exceeding the costs plus reasonable profits). This provision also uses as a baseline the fees previously in force (established in 2004) that most likely are not updated. Fees should be reviewed by the authority responsible in order to reduce costs for both market operators and the administration. Control of those fees by an independent (external) body on a regular basis will contribute to the implementation of a more objective methodology to calculate them.	The administrative fees identified should be reviewed taking into consideration the principles of proportionality, transparency and non-discrimination. Accordingly, the fees should be based on the costs of the underlying services and the method for their calculation should be made publicly available. The fees should also be regularly reviewed according to a pre-established frequency.
14	Ordinance (Portaria) 342/2015 (lastly amended by Despacho 10617/2016) "Fees to be charged by the Directorate-General for Natural Resources, Safety and Maritime Services (DGRM - Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos) for the provision of public services"	Annex 1	Fees- Maritime administration	Sets fees paid to DGRM the Directorate-General for Natural Resources, Safety and Maritime Services (Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos - DGRM) for the provision of public services such as issuance of vessel certificates, licences to operate, declarations and similar titles within the scope of regulation, certification, supervision and inspection of the maritime and port sector.	The objective is to charge for the cost of services provided to maritime operators.	The fee table increases transparency on administrative costs and predictability to market operators. However, on several (seven) occasions the table indicates that the fees are "variable" without setting the specific amount, range or criteria applicable to find the fee. For instance to issue a technical study necessary for the purpose of safety certification. Unpredictable, unjustified or unreasonable fees can be administrative barriers to entry and/or to operate in the market, depending on the market structure and capacity of operators to absorb or transfer such cost. In any case, these fees should not exceed the administrative cost, nor should be a means for the administration to collect revenues (amount exceeding the cost plus interest). When objective criteria are not set by law, the law gives place to arbitrary decisions from administrations that can negatively affect companies. Fees should be reviewed by the competent authority in order to reduce costs for both market operators and administration. The control of those fees by independent (external) body on a regular basis will contribute to the implementation of a more objective methodology to calculate them.	Complement the "variable" fees by the indication in the provision of the objective criteria (number of pages, hour per staff, etc.) that can be used to determine the fee.
15	Decree-Law 197/98 "Legal regime for the activity of transport with local traffic vessel"	Art. 2 and Art. 3	Local transport (operator)	To become a local operator (someone entitled to transport cargo and passengers with local vessels) the operator must have their place of residence in the country or, in case of commercial corporation, their main office and headquarters in the country.	According to the relevant ministry, this provision is designed to preserve local shipping fleet-related industries, and ensures safety in congested local waters.	This provision is a barrier to maritime operators who are based in other countries, since they cannot register (and as such operate) as local operators due to the location of their residence or main offices. To do so, they would be obliged to change their main office and headquarters or to establish a new commercial entity under Portuguese law. According to common international practice, local (and cabotage) maritime transports can be reserved for national registered operators. However some countries apply an "open coast" policy that allows vessels registered in and flying the flag of a third country to navigate as a local operator. Other Member States foresee individual authorisations for such vessels.	Option 1: abolish ; Option 2: establish a reciprocity clause.

16	Decree-Law 197/98 "Legal regime for the activity of transport with local traffic vessel"	Art. 4 (1)	Local transport (operator)	Operators can only carry out their activity of local transportation with vessels registered (in the country) for local traffic.	According to relevant ministry, this provision is designed to preserve local shipping fleet-related industries, and ensures safety in congested local waters.	It prevents local operators from using vessels not registered in the local registry (excluding in practice local foreign vessels and non-local national vessels). The obligation to register is useful as a mean of ensuring compliance with local requirements and national safety measures. According to common international practice, local (and cabotage) maritime transports can be reserved for national registered vessels which excludes vessels registered in other countries. However some countries apply an "open coast" policy that allows vessels registered in and flying the flag of a third country to navigate as local operator. Other Member States foresee individual authorisations for such vessels.	No recommendation.
17	Decree-Law 197/98 "Legal regime for the activity of transport with local traffic vessel"	Art. 4 (3) (a) and Art. 4 (3)(b)	Local transport (operator)	Under an authorisation from the DGRM, local or national operators can use vessels not registered for local traffic if they provide elements that allow authorities to conclude that: (1) no local operator is interested or has an available vessel for the service; (2) there are no disturbing changes to the normal functioning of the market as a result of the type of vessel to be used.	According to the relevant ministry, this provision is designed to protect domestic shipping operators from foreign competition, preserve the local shipping infrastructure and ensure safety in congested local waters, since authorities will verify suitability of foreign vessels (or national vessels) for local conditions.	This is the exceptional case when an operator may use a "non-local" vessel in local traffic. According to the Ministry of the Sea, this provision intends to guarantee compliance with maritime safety rules in congested local waters by giving preference to vessels that are already considered suitable for local conditions. The first condition amounts to a preference right for established operators that use a local vessel, as only if they refuse or cannot operate can the requester enter the market. The second item relates to the need to protect the normal functioning of the market. While the obligation for local operators to use registered vessels could be justified for safety reasons, the conditions for obtaining a special authorisation for the use of non-registered vessels appear to be excessively restrictive. In particular, the condition that the vessel used should not disturb the "normal functioning of the market" is unclear and can result in discriminatory treatment. Moreover, it is striking that the operator has the burden of proving that no other competitors are willing to provide the service. As a general administrative rule, the requester should only have the burden of proof when faced with a contrary decision by the authorities and if it decides to challenge such a decision. This provision lacks a clear definition of the relevant concept and as such may be used in discriminatory ways by the authorities to prevent operators from using "non-local" vessels. It is understandable that vessels must be checked and authorised to operate in local areas. However this should be based on objective safety requirements. Finally, the provision gives the burden of proof to the requesting operator who may not be in position to know the market and provide the information requested. This also implies extra costs for requesting operators. As a general rule, the requester should only have the burden of proof when faced with a decision that is contrary to that of the authorities (based on those grounds) and if he decides to challenge it. This barrier protects incumbent operators from operators who want to use non-local vessels, which might be more efficient, generate economies of scale and achieve better services and lower prices for users. As such this provision limits competition in the market and ultimately pushes up prices and reduces the quality of services. Authorisation processes should also be simple, swift and transparent, not preventing operators from acting immediately or when the opportunity exists. If there is a public need to check if the vessel in question will affect the normal functioning of the local market and respect safety conditions, that burden should be on the maritime authority and not on the operator.	The legislator should eliminate the clause requiring the vessel not to disturb "the normal functioning of the market" and reverse the burden of proof to DGRM, which should be the entity responsible for verifying whether there are operators capable and willing to provide the service.

18	Decree-Law 219/85 "Special regime for piloting in the Douro river waterway"	Art. 3 (1)	Local transport - Douro piloting	To navigate in the Douro waterway a special certificate is required that is issued by the Directorate General of the Navy in the name of the captain or master of the vessel.	The objective is to ensure pilot-specific capacity to navigate the Douro waterway.	The authority responsible (Administration of Port of Douro and Leixões) considers that this provision is not in force. Though it does not constitute harm to competition, legal provisions that are not enforced by the authorities can create legal uncertainty leading to extra costs for operators willing to enter the market.	Abolish (expressly revoke the provision).
19	Decree-Law 219/85 "Special regime for piloting in the Douro river waterway"	Art. 3 (2) and Art. 3 (3)	Local transport - Douro piloting	The certificate issued for using the Douro waterway is valid for one year, renewable for the same period.	The individual certificate was necessary to ensure pilot-specific capacity to navigate the Douro waterway.	The authority responsible (Administration of Port of Douro and Leixões) considers that this provision is not in force. Though it does not constitute harm to competition, legal provisions that are not enforced by the authorities can create legal uncertainty leading to extra costs for operators willing to enter the market.	Abolish (expressly revoke the provision)
20	Decree-Law 219/85 "Special regime for piloting in the Douro river waterway"	Art. 3 (3)	Local transport - Douro piloting	The renewal of the certificate issued for using the Douro waterway requires that its holder has used the waterway in the previous year.	The individual certificate was necessary to ensure pilot-specific capacity to navigate the Douro waterway.	The authority responsible (Administration of Port of Douro and Leixões) considers that this provision is not in force. Though it does not constitute harm to competition, legal provisions that are not enforced by the authorities can create legal uncertainty leading to extra costs for operators willing to enter the market.	Abolish (expressly revoke the provision)
21	Decree-Law 344-A/98 "Regulation regarding rules to be met by users of the Douro waterway"	Art. 13 and Art. 5 e)	Local transport - Douro waterway	Every vessel (except for pushing barges and small boats - vessels of a maximum 20 gross tonnage) must have a hard copy of the Douro waterway regulation on board.	The objective is to ensure that all drivers know and apply the Douro waterway regulations.	The authority responsible (Administration of Port of Douro and Leixões) considers that this provision is not in force. Though it does not constitute harm to competition, legal provisions that are not enforced by the authorities can create legal uncertainty leading to extra costs for operators willing to enter the market.	Abolish (expressly revoke the provision)
22	Decree-Law 264/2012 "Legal regime of access to the activity of shipping agent - conditions of inscription and registration for its exercise"	Art. 3 (2) (last clause)	Shipping agent	Shipowners or sea carriers need to hire a shipping agent to represent them outside the port where their headquarters are located.	There is no official recital on the objective of this provision. Port administrations mentioned that they see advantages in dealing with someone who they know and, therefore, will be more likely to honour their legal obligations.	This provision prevents shipowners and sea carriers from representing themselves in ports other than those where they are registered. Therefore, it creates a limitation to their activity, and an artificial demand for shipping agents. Carriers are forced to constitute themselves as shipping agents (going through all the respective administrative procedures) or to use a shipping agent to access port services. This limitation ultimately increases costs for shipping companies. Nowadays, in a context where shipowners and carriers have the possibility to act effectively at a distance with other port players (through internet platforms) or quickly visit a port, and (if needed) to provide financial guarantees to the ports, the obligation to use a shipping agent seems unjustified. Shipowners should be able to choose if they want to represent themselves or use a shipping agent. According to stakeholders, most (regular) sea carriers constitute themselves as shipping agent in ports where they are not based in order to internalise the costs.	Abolish the last clause (limiting the shipowners capacity to the port where they are registered).
23	Decree-Law 264/2012 "Legal regime of access to the activity of shipping agent - conditions of inscription and registration for its exercise"	Art. 5 (1) first part	Shipping agent	To be registered in a port, the shipping agent must have the human resources necessary for its activity, namely permanent staff with appropriate qualifications as defined in port regulations.	According to stakeholders, the objective is to guarantee that shipping agents have the human resources necessary for their activity.	The provision obliges shipping agents to contract permanent staff, eliminating the possibility of having only temporary staff or other forms of contracts (such as services). It creates a barrier to entry preventing shipping agents with fewer clients from reducing their entry and operational costs, hindering competition in the market and, ultimately, increasing costs to port users. Second, it also prevents harmonisation of requirements to become a shipping agent between ports, jeopardising economies of scale and creating barriers to shipping agents for providing services across ports. The shipping agents should choose the means they want to use to operate in a more flexible and effective way. Currently most shipping agents operate only in one port.	Abolish.

24	Decree-Law 264/2012 " Legal regime of access to the activity of shipping agent - conditions of inscription and registration for its exercise"	Art. 5 (1) second part	Shipping agent	To operate in a specific port, the shipping agent must have the necessary means for the activity including office and IT equipment as determined by the port regulation.	According to the relevant authorities, the objective is to guarantee that shipping agents have the means necessary to carry out their activity, namely an office and computers.	The provision requires shipping agents to comply with requirements concerning office premises and information and communication technology (ICT) equipment, as determined individually by each port . This condition creates a potential barrier to entry, increasing shipping agents' entry and operational costs, hindering competition in the market and, ultimately, increasing costs for port users. It also prevents harmonisation of requirements to become a shipping agent operating in several ports, jeopardising economies of scale and creating barriers to shipping agents for providing services across ports. The legal requirements to become a shipping agent should be reviewed and shipping agents should be free to choose the means they want to use to operate in a more flexible and effective way. As an example, it should be noted that shipping agents do not need to have office facilities inside or near the port area in order to operate effectively. However, due to this legal provision, in some cases the port authorities demand that shipping agent have office facilities in specific areas as it is considered more convenient for the port authorities.	Abolish.
25	Decree-Law 264/2012 " Legal regime of access to the activity of shipping agent - conditions of inscription and registration for its exercise"	Art. 5 (2) and Art. 5(3)	Shipping agent	To be able to operate in a specific port, the shipping agent must provide a financial guarantee in favour of the port authority. That guarantee may be constituted by a bank guarantee, by a deposit guarantee or by escrow insurance.	According to Art. 5 (2) of Decree-Law 264/2010, this financial guarantee has a twofold objective: (1) to ensure payment for the services rendered by the port administration; and (2) to cover for possible damages caused to customers and third parties in the course of the activity of the shipping agent.	This provision imposes a financial burden on shipping agents, and as such, it constitutes a barrier to entry into the market. It increases shipping agents' entry and operational costs, hindering competition in the market and, ultimately, increasing costs to port users (carriers). It is questionable if the port administration should be providing a third-party guarantee for shipping agents' liability (replacing the traditional role of insurance companies). Also, the guarantee is redundant as shipping agents (in most cases) have a professional insurance scheme. According to shipping agents' representatives, policy insurance is less costly and less restrictive for shipping agents, at the same time giving protection to ports and other shipping agents' clients. Finally, according to our information, some Portuguese ports do not demand such guarantees (for instance in Port of Aveiro), which supports the fact that they are not needed for the normal functioning of the market.	Amend the provision allowing the shipping agent a choice between the financial guarantee or equivalent professional insurance.
26	Decree-Law 264/2012 " Legal regime of access to the activity of shipping agent - conditions of inscription and registration for its exercise"	Art. 6 (a) (B) and Art. 10 (1)	Shipping agent	Access to and exercise of the activity of shipping agent shall depend cumulatively on registration in IMT and in each port in which the activity will be carried out.	The objective is to ensure that shipping agents comply with both general and individual port requirements to operate.	The fact that each port authority can regulate access for the activity of shipping agents adds requirements to the general regime, preventing free mobility of agents between ports and economies of scale. It also increases shipping agents' entry and operational costs, hindering competition in the market and, ultimately, increasing costs to port users (carriers). A single inscription system, with requirements common to all ports that, if fulfilled, would give access to all of them, would constitute a more flexible regime for shipping agents to exercise their profession. In that case, a pool of shipping agents would be available, independent of the port, and the client would be free to choose one of them. There should be a review and a simplification of the legal requirements to become a shipping agent, cancelling the specific port requirements that tend to establish the means of giving shipping agents the freedom to decide freely how to operate in the most effective way. The use of electronic means of communication and mobility of professionals should be considered when revising the regime.	Review the regime - including articles 6 to article 11 - in order to create a single registration requirement for shipping agents and avoid specific port requirements/registration.

27	Decree-Law 264/2012 "Legal regime of access to the activity of shipping agent - conditions of inscription and registration for its exercise"	Art. 11 (1)	Shipping agent	The inscription of a shipping agent in a port will be cancelled if it did not have at least one client in the previous year.	Ports want to guarantee that the registry of shipping agents is up to date and accurately reflects active market players.	This requirement constitutes an administrative burden generating extra costs. Shipping agents are forced to regularly provide information on the number of their clients or, alternatively, to have their inscription cancelled. In this latter case, they must repeat the procedure for port inscription and pay the fees again. In our view there is no valid justification for cancelling the inscription based on their inactivity after 12 months since there is no limitation on the number of shipping agents in a port or harm to the port or market if they remain inactive. A one-year period seems excessively short, when compared with the inscription (with the IMT), which is valid indefinitely.	Abolish.
28	Regulation of operation of the Douro and Leixões Ports (2017)	Art. 2 (a) and Art.17 (1)	Shipping agent - ports of Douro & Leixões	Only trading companies holding a licence granted by the administration, under the terms of the legislation in force, may exercise the activity of shipping agent in the ports of Douro and Leixões.	It was not possible to identify the policy objective. The purpose of this requirement might be related to the assumption that commercial companies guarantee greater compliance with financial obligations.	The provision is an entry barrier for natural persons (individuals) to become a shipping agent as it imposes the compulsory constitution of a corporation. It increases the entry and operational costs for shipping agents, hindering competition in the market and ultimately increases costs to port users. Moreover, this provision is contrary to the general regime foreseen in Art. 3 of Decree Law 264/2012 that transposed into national law Directive 2006/123 EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, eliminating the demands of corporate form for providers and clarifying the content of freedom to provide services.	Abolish "only trading companies"
29	Regulation of the exploration of the Port of Aveiro	Art. 0201-2 (1) and Art. 0201-2 (3)	Shipping agent - port of Aveiro	In the Port of Aveiro, only trading companies holding a licence granted by the administration, under the terms of the legislation in force, may exercise the activity of shipping agent.	It was not possible to identify the policy objective. The purpose of this requirement might be related to the assumption that commercial companies guarantee greater compliance with financial obligations.	The provision is an entry barrier for natural persons (individuals) to become a shipping agent as it imposes the compulsory constitution of a corporation. It increases the entry and operational costs for shipping agents, hindering competition in the market and ultimately increases costs to port users. Moreover, this provision is contrary to the general regime foreseen in Art. 3 of Decree Law 264/2012 that transposed into national law Directive 2006/123 EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, eliminating the demands of corporate form for providers and clarifying the content of freedom to provide services.	Abolish "only trading companies"
30	Regulation of operation of the Port of Figueira da Foz	Art. 0201 - 2 (1) and Art. 0201 - 2 (3)	Shipping agent - port of Figueira da Foz	Only commercial companies licensed by the administration may exercise the activity of shipping agent.	It was not possible to identify the policy objective. The purpose of this requirement might be related to the assumption that commercial companies guarantee greater compliance with financial obligations.	The provision is an entry barrier for natural persons (individuals) to become a shipping agent as it imposes the compulsory constitution of a corporation. It increases the entry and operational costs for shipping agents, hindering competition in the market and ultimately increases costs to port users. Moreover, this provision is contrary to the general regime foreseen in Art. 3 of Decree Law 264/2012 that transposed into national law Directive 2006/123 EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, eliminating the demands of corporate form for providers and clarifying the content of freedom to provide services.	Abolish "only trading companies"
31	Regulation of operation of the Port of Viana do Castelo	Art. 18 (1) and Art. 18(3)	Shipping agent - port of Viana do Castelo	Only commercial companies licensed by the administration may exercise the activity of shipping agent.	It was not possible to identify the policy objective. The purpose of this requirement might be related to the assumption that commercial companies guarantee greater compliance with financial obligations.	The provision is an entry barrier for natural persons (individuals) to become a shipping agent as it imposes the compulsory constitution of a corporation. It increases the entry and operational costs for shipping agents, hindering competition in the market and ultimately increases costs to port users. Moreover, this provision is contrary to the general regime foreseen in Art. 3 of Decree Law 264/2012 that transposed into national law Directive 2006/123 EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, eliminating the demands of corporate form for providers and clarifying the content of freedom to provide services.	Abolish "only trading companies"

32	Instruction from (Port of Sines Administration) on registry for exercise of shipping agent activity	Art. 2 (b)	Shipping Agent - Port of Sines (2016)	The shipping agent's premises must be located in the municipality of Sines or in a place less than 25 km from the Port of Sines.	According to the relevant authorities, the objective is to guarantee that shipping agents (when needed) will be physically present in the Port of Sines. It was also considered to be a measure to promote local employment.	This provision imposes an operational and financial burden on shipping agents who want to operate in the Port of Sines, and at the same time excludes shipping agents who do not have premises in the pre-designated area from operating in that port. As such, it constitutes a barrier to entry into the local market. It hinders competition in the market and, ultimately, increases costs to port users (carriers). If such rules are replicated by other ports, a shipping agent would need to have premises in all ports or regions where it wanted to act, which excludes economies of scale between shipping agents that operate in several ports. Ministerial authorities have recognised that such a measure is a barrier as nowadays shipping agents move more easily and use online resources to deal with port administrations. In that sense, this provision may reduce mobility of shipping agents between ports and have a negative effect on productivity.	Abolish.
33	Instruction from (Port of Sines Administration) on registry for exercise of shipping agent activity	Art. 2 (e)	Shipping Agent - Port of Sines (2016)	The shipping agent shall provide a financial, bank or insurance guarantee of EUR 7 482.	According to Art. 5 (2) of Decree-Law 264/2012, this financial guarantee has a twofold objective: (1) to ensure payment for the services rendered by the port administration; and (2) to cover for possible damages caused to customers and third parties in the course of the activity of the shipping agent.	This provision imposes a financial burden on shipping agents, and, as such, it constitutes a barrier to entry into the market. It increases shipping agents' entry and operational costs, hindering competition in the market and, ultimately, increasing costs to port users (carriers). It is questionable that the port administration should be providing a third-party guarantee for shipping agents' liability (replacing the traditional role of insurance companies). Moreover, the fact that each port administration establishes its own financial guarantee seems contrary to Art. 5 (3) of Decree-Law 264/2012, that foresees an ordinance from the minister responsible to determine the financial guarantee in question. However, according to our information, such ordinance was never issued. We gathered information that some Portuguese ports do not demand such guarantees, which proves that they are not needed for the provisional functioning of the market. Finally, the guarantee is redundant as shipping agents (in most cases) have a professional insurance scheme. In any case, according to shipping agents' representatives, policy insurance is less costly and less restrictive for shipping agents, providing protection to ports and other shipping agents' clients at the same time.	Amend the provision allowing the shipping agent a choice between providing the financial guarantee or equivalent professional insurance. The amount of the guarantee must set based on objective and identified criteria such as those set in mentioned Art. 5 (3).
34	Decree-Law 196/98 "Legal regime for the activity of maritime transport"	Art. 4 (2) (b)	Ship operator (national)	The registration as maritime operator requires the indication of the routes to be carried out or the services to be provided by the operator.	According to authorities, this provision is explained by the need to inform operators of the obligations and procedures applicable to the services or routes to be provided by the operator (e.g. different rules apply to local operators and to specific cabotage services).	The indication of intended routes is an administrative burden generating extra costs. However, it might jeopardise the interests of entrant companies that have to share information about their business plans before entering the market. There might be a risk that the information is shared with other competing parties potentially giving incumbents a competitive advantage in the choice of routes. The law already foresees that operators must provide regular updates on their activities. In that sense, the state should eliminate the obligation to inform the authorities in advance. They should only provide information on which type of transport they intend to provide.	Abolish.
35	Decree-Law 265/72 (lastly amended by Decree-Law 23/2007) "General regulations of Captaincies (Capitanias)"	Art. 73 (4) and Art. 86	Vessels - commercial registration	The sale or registration of vessels in a port or region different from the one where they were built or bought requires an authorisation from the current registry responsible.	According to stakeholders, this provision requires the ministry responsible to authorise the transfer of registration to a different region or port for all types of vessels, so that the government can have control over the existing vessels and their registration location.	According to the Ministry of the Sea, this legislation is no longer applicable since the entity that performs the functions of registration and transfer of ownership of ships is the National Institute of Registry and Notary. Though it does not constitute a harm to competition, legal provisions that are not enforced by the authorities can create legal uncertainty leading to extra cost for operators willing to enter the market.	Abolish (expressly revoke the provision).

36	Decree-Law 150/88 (amended by Decree-Law 119/95) "Regime for acquisition and sale of commercial vessels"	Art.5	Vessels - construction	Projects for the construction or modification of commercial vessels, tugboats and auxiliary vessels shall be submitted to the General Inspection of Ships for approval.	According to the DGRM (stakeholder), this provision allows for the verification ex ante of compliance of projects with the technical requirements for constructing or modifying vessels.	The project approval is an administrative burden that implies extra costs for maritime operators and ship builders, with possibly no discriminatory effect on competition in the market. Although it is important for reasons of public and navigation safety that new ships, or their modification, comply with technical requirements, there is already an ex post verification/certification system imposed by law (Art. 7 number 2 of the Decree-Law 150/88). In this sense, double verification is redundant and implies more time and more costs to the operator and administration. In our view, shipyards should ensure (at their own risk) that the construction or modification of ships is in accordance with the technical rules imposed for their operation, and authorities should verify their compliance ex post (before giving permission to operate them). This would not deter shipyards from having technical certification when they want it, before building or modifying the ship.	Abolish.
37	Decree-Law 150/88 (amended by Decree-Law 119/95) "Regime for acquisition and sale of commercial vessels"	Art. 3	Vessels - acquisition and sale	Contracts concerning the sale and purchase of commercial vessels, tugboats or auxiliary vessels, namely the respective bills, are subject to written form and require the seller's signature in the presence of a public official (such as notary or lawyer).	There is no official recital, but we might conclude the need to have legal certainty regarding the seller's identity.	This requirement regarding the contract form is an administrative burden, generating extra costs. The fact that the sellers must be present before the responsible authority to recognise the act implies an extra administrative burden and cost (both for the physical presence and the fees that have to be paid for this service of signature recognition). When selling vessels registered in the Portuguese second registry, this requirement does not exist, which makes us believe that it is an outdated requirement that is no longer justified. Digital sharing of documentation between institutions (captaincies, maritime administration and registry) would increase the speed of procedures and reduce the number of documents to be presented by operators.	Abolish.
38	Decree-Law 265/72 (lastly amended by Decree-Law 23/2007) "General regulations of Captaincies (Capitanias)"	Art. 72 (3)	Vessels - commercial registration	Merchant vessels are subject to commercial registration and property registration, in accordance with the respective law.	According to an official recital regarding the commercial registration regime (Decree-Law 403/86), the provision intends to guarantee publicity and legal certainty regarding the identity of the owner and the relation between the vessel and commercial companies.	This requirement constitutes an administrative burden, generating extra costs for shipowners. According to Decree-Law 403/86, the commercial register should be reserved for advertising facts relating to persons connected with commercial life, and should not include registration of ships. However, Art. 5 of Decree-Law 403/86 states that, transitorily, the provisions applicable to ship registry - Decree-Law 42644 and Decree-Law 42645 both of 14 of November 1959 - remain in force until new legislation is adopted. According to our information, since 1986 the legislator has not adopted the new regime, and the reform of the legal regime has been pending for the last 30 years. The legislator should review the legal regime considering the circumstances of the present and the advantages of using digital technology.	Abolish.
39	Decree-Law 265/72 (lastly amended by Decree-Law 23/2007) "General regulations of Captaincies (Capitanias)"	Art. 51	Vessels - construction	Authorisation for the construction or modification of merchant vessels (granted by the DGRM shall expire: a) if, within a period of six months from the date of the notification of the authorisation order, a contract concerning the work in question, including the date of delivery of the vessel accompanied by a copy for archiving and the penal	According to DGRM (stakeholder), this provision defines deadlines to execute projects already approved for the construction or modification of vessels.	This is an administrative burden, since it imposes deadlines on operators to be supervised by the captaincies or responsible ministry. However, according to the ministry responsible (DGRM), this provision is considered obsolete and not being enforced. Though it does not constitute a harm to competition, legal provisions that are not enforced by the authorities can create legal uncertainty leading to extra cost for operators willing to enter the market.	Abolish (expressly revoke the provision)

				<p>clause for the respective violation, is not submitted for registration in the responsible maritime division; b) if, within 12 months of the date of registration of the contract concerning the work in question, the keel is not laid or the identical stage of the construction or start of the modification is not done; c) if the contracting parties, without prior authorisation from the maritime division where the contract was registered, agree on the postponement of the delivery date of the constructed or modified vessel; d) if the delivery of the vessel does not take place within six months from the date established in the contract, or resulting from an extension authorised by the maritime division where it was registered.</p>			
40	Decree-Law 265/72 (lastly amended by Decree-Law 23/2007) "General regulations of Captaincies (Capitanias)"	Art. 121	Vessels - documents	<p>Description and regulation of the 23 documents and copies of 6 pieces of legislation that, in general, each vessel must have on board. (Exceptions are foreseen for local traffic and coastal ships of less than 20 tonnes).</p>	<p>There is no official recital on the objective of this provision. However we can assume that it is to facilitate knowledge of and compliance with national rules.</p>	<p>This requirement constitutes an administrative burden, generating extra costs. The legislator should consider reviewing the legal regime that applies to ship documentation, ensuring that requirements are simplified and that the use of digital documentation or databases (accessible to the maritime authorities) is foreseen. Provisions that seem outdated but are still in force can give place to legal uncertainty and discriminatory behaviour from competent authorities.</p>	<p>Review the regime in order to abolish unnecessary documentation.</p>
41	Decree-Law 287/83 (amended by Decree-Law 199/84) "Temporary registration and use of the national flag in foreign commercial vessels, rented with option to purchase by registered national operators"	Art. 1 (1)	Vessels - temporary registration	<p>The temporary registration of foreign (commercial) vessels, rented with an option to purchase (bareboat charter) can be requested by registered national operators, but must be authorised by ministerial decision (Despacho).</p>	<p>There is no official information on the objective of the provision. However we can assume that it is to facilitate the control of ship (foreign) documentation and to avoid registry of a vessel in several countries without the knowledge of all authorities concerned.</p>	<p>On the one hand, the provision only accepts "commercial vessels" to be temporarily registered, excluding tugboats (as per definition of Art. 19 of general Captaincies Law they are not commercial vessels). As such, national tugboat operators cannot use foreign tugboats under a leasing agreement. This increases market entry and operational costs for towing operators that will not be allowed to use tugboats on a bareboat charter regime. On the other hand, for accepted inscriptions, this requirement constitutes an administrative burden generating extra costs. In this specific case, the authorisation granted by the owners and by the responsible authorities of the country where the vessel is permanently registered could be enough for the Portuguese administration to register the vessel. These requirements do not preclude the provisional validation and verification powers of the national registry authority. The involvement of the minister seems unnecessary.</p>	<p>Amend as follows: (1) extend the possibility of temporary registration to tugboats and (2) eliminate the requirements for a ministerial decision.</p>

42	Decree-Law 287/83 (amended by Decree-Law 199/84) "Temporary registration and use of the national flag in foreign commercial vessels, rented with option to purchase by registered national operators"	Art. 1 (1) and Art. 2 (b)	Vessels - temporary registration	One of the documents to be produced by the applicant is a note explaining the advantages for the Portuguese economy and for the operator of such temporary registration.	There is no official information on the objective of the provision, but it seems to be to facilitate the decision of the minister.	This requirement constitutes an administrative burden, generating extra costs. In this specific case, the fact that the requester presents the registration demand to prove the interest should be enough for the Portuguese administration. Moreover, it should not be up to the requester to justify interest to the Portuguese economy of proceeding with such registry.	Abolish.
43	Decree-Law 287/83 (amended by Decree-Law 199/84) "Temporary registration and use of the national flag in foreign commercial vessels, rented with option to purchase by registered national operators"	Art. 1 (2)	Vessels - temporary registration	The temporary registration of commercial vessels chartered on bareboat conditions (with option to purchase) cannot be authorised for more than five years, although this period of time might be renewed for another five (5) years if agreed by the parties.	There is no official information on the specific objective of the provision. However we can assume that it is to prevent operators from using a temporary registration regime without limitation, voiding the permanent registration regime.	This requirement constitutes an administrative burden, generating extra costs. In the absence of complaints from operators on this time limit, this measure seems proportionate to the policy objective identified.	No recommendation.
44	Decree-Law 287/83 (amended by Decree-Law 199/84) "Temporary registration and use of the national flag in foreign commercial vessels, rented with option to purchase by registered national operators"	Art. 4 (2)	Vessels - temporary registration	The temporary registration of commercial vessels chartered on bareboat conditions (with option to purchase) requires several (12) documents, including a document proving the respective authorisation from the Portuguese Central Bank.	There is no official information on the specific objective of the provision. However we can assume that it is to facilitate the control of ship documentation and prevent registry of a vessel in several countries without it being acknowledged between authorities.	The production of all these documents constitutes an administrative burden. Some documents seem no longer applicable, and in that sense, though it does not constitute a harm to competition, the provision creates legal uncertainty for operators willing to register the vessels. For instance, among the documents is a request for authorisation granted by the Portuguese Central Bank. The use of digital communications and documents might facilitate the proceedings for both the operators and the administration.	Review the regime in order to abolish unnecessary documentation, including obsolete requirements.
45	Decree-Law 287/83 (amended by Decree-Law 199/84) "Temporary registration and use of the national flag in foreign commercial vessels, rented with option to purchase by registered national operators"	Art. 7(2) and Art. 8	Vessels - temporary registration	Commercial vessels (bareboat charter) are exempted from commercial registration, but the respective chartering contract must be entered in the commercial registry with reference to the registration number of the charterer. Any changes to the chartering contract must be previously communicated by the national charterer to the General Inspection of Ships.	According to stakeholders, the purpose of this provision is to safeguard the state's information regarding chartered vessels using the Portuguese flag, and any change on the contract length.	This is an administrative burden for operators who want to operate with a charter vessel under the Portuguese flag, generating extra costs. It is understandable that the state should have the information about who sails under a national flag. However, the fact that the General Ship Inspection must be previously notified of any change in the chartering contract is an unnecessary administrative burden, as this could be done by the public registry services once they are notified (and not carried out by the operator). It is our understanding that the use of digital communications and documents might facilitate proceedings for both the operators and the administration.	Abolish the sentence "Moreover, any changes to the chartering contract, must be previously communicated by the national charterer to the General Inspection of Ships."

46	Decree-Law 287/83 (amended by Decree-Law 199/84) "Temporary registration and use of the national flag in foreign commercial vessels, rented with option to purchase by registered national operators"	Art. 9	Vessels - temporary registration	The ship operator cannot sublease a ship subject to a temporary registration.	Despite our consultations, it was not possible to ascertain the provision's objective.	It increases exit costs for maritime operators with temporarily registered vessels that cannot freely sublease them. It can also be a barrier to entry for new operators in the market, especially those who intend a limited use of the vessels, who could operate if there was no legal obstacle to subleasing them when not in use. These limitations reduce the number of operators competing in the market, which can be translated into higher prices.	Abolish.
47	Decree-Law 280/2001 (amended by the Decree-Law 206/2005) "Rules governing the professional activity of seafarers"	All provisions	Seafarers	The Decree-Law regulates seafarers' access to the profession, certification and training, transposing the Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), (establishes 3 ranks of seafarers, divided into a total of 37 different job categories).	The objective is to transpose the STCW convention (Manila version) regime concerning seafarers. (The Portuguese Ministry of the Sea informed us that they are working on a revised legal regime for seafarers).	The current legal regime constitutes a non-discriminatory administrative burden (regulation) to shipowners in what concerns, for instance, the use (mandatory certification), origin and category of seafarers on their ships, often based on international conventions. National shipowners can freely (and often do) use seafarers from other EU countries or the Community of Portuguese-speaking countries (CLCP) or in exceptional cases from third countries. As such, the regime and potential barriers for seafarers' careers (access to the profession and progression) are of no great relevance to Portuguese shipowners exercising maritime transport. This being said, there seems to be a need to update Portuguese legislation in regard to seafarers. The new regime should focus on guaranteeing that seafarers obtain the relevant STCW certification, and that less importance is given to their academic attainments.	No recommendation.

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Portugal

VOLUME I - INLAND AND MARITIME TRANSPORTS AND PORTS

Portugal's services markets remain among the most heavily regulated in the OECD. Inland and maritime transports in Portugal are a vital part of the business environment, ensuring the movement of goods and passengers and inputs for the business sector. Regulatory restrictions limit the ability of firms to effectively compete in the markets, whether as providers or customers, while hampering innovation, efficiency and productivity. Against this backdrop, this report analyses Portuguese regulations for road, railway and maritime transport, and many ancillary services (such as vehicle inspection centres), as well as Portugal's ports. The report examines 1 064 pieces of legislation and makes 417 individual recommendations for amending or removing restrictive provisions to improve competition, and makes a detailed inventory of the analysis underlying the work. Analysis of Portuguese legislation was complemented by research into international experiences and wide consultations with public and private sector stakeholders. The OECD recommendations aim to remove or modify the provisions to benefit businesses and consumers alike. This report identifies the sources of those benefits and gives estimates of their impact. Provided all recommendations are fully implemented, the benefit to the economy from lifting the barriers in the land and maritime transport sectors is estimated to be around EUR 250 million a year.

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