

Athens 14/5/2008

From: LIBERAL ALLIANCE
Vasilissis Sofias 124A
115 26, Athens
Greece

To: The European Commission
Commissioner Charlie McCreevy ,
rue de la Loi 200
B-1049 Bruxelles
Belgique

Cc: The President of the European Commission Mr. José Manuel Barroso

Subject: Infingement of Articles 14(2), 28, 30 and 43 of EC Treaty in Greece.

Dear Commissioner ,

Liberal Alliance is a new political party fighting for free market, open society and respect of the rights of the individuals. As political party expressing the voice of our voters we consider that we have the legitimate interest and the obligation to inform you about the infringement of the Community Law resulted mainly by the administrative practices and decisions regulating the market of transportation of goods in Greece. Due to these infringements there is no competition in the road freight transport market, the transportation costs are high , there are barriers .

More particularly, in Greece, the national law distinguishes the road freight sector in two domains:

- Transport on one's own account (which is covered by Law 1959/91, in annex 1) and
- Transport of goods for another party in return for remuneration (which is covered by Law 383/76 in annex 2).

Prefectorial authorities issue permits to companies for trucks to provide transport for that company, if the company can prove need. The amount of turnover determines the number of trucks permitted. This is a binding constraint — there are companies that would like more permits. These permits are not transferable. However, under Directive 84/647 and Presidential Decree 91/89, a company may hire or hire out trucks, with gross weight up to six tonnes, for which the company has a permit to transport goods on its own account.

Permits for trucks to haul goods for third parties are, by contrast, subject to a numerical limit set by the Ministry of Transports and are transferable. The current law allows the number of permits to increase, if the need were pinpointed. However, the need can be pinpointed only after a study is conducted. Since no study has been conducted, the number of permits for third party trucking has not increased. These permits are bought and sold freely, if a transfer fee is paid to the Ministry.

The above mentioned framework is further complicated by administrative decisions as the following ones:

- The circular A2/12530/2274 of the Ministry of Transports dated 21 -4-94 suspending the provision of new permits for trucks owned by fuel trading companies (Transport on one's own account)
- The circular A8/11642/988 of the Ministry of Transports dated 14 -03-2002 permitting for old trucks having a permit and owned by fuel trading companies their replacement by new ones
- The circular A8/19348/1487 of the Ministry of Transports dated 29 -3-2006 cancelling the permission given by the previous decision of 14 -03-2002 for old trucks having a permit and owned by fuel trading companies to be replaced by new ones

The Greek Supreme Court, by its decision 2612/1989 concluded that the restrictions imposed are in contradiction with the principle of economic freedom protected by the Greek Constitution.

Liberal Alliance considers that the above mentioned measures are not only in contradiction with the Greek Constitution but also constitute infringements of the Community law. More particularly they introduce arbitrary discrimination prohibited by Article 30 of the EC Treaty, quantitative restrictions on imports prohibited by Article 28 of the EC Treaty and constraints that deter nationals of

any Member State to set-up agencies, branches or subsidiaries in Greece, that is prohibited by Article 43 of the EC Treaty.

According to the wording of Article 28 of the Treaty, all quantitative restrictions on imports and also measures having equivalent effect are prohibited between Member States. The Court of Justice held in *Dassonville* (- Case 8/74 *Procureur du Roi v Dassonville* [1974] ECR 837, paragraph 5) that all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions.

As the Court of Justice has held, a measure having equivalent effect to a quantitative restriction may consist in: national legislation which treats domestic products differently from imported products; (Case 229/83 *Leclerc v Au blé vert* [1985] ECR 1, paragraph 23) a provision which renders imports more difficult or burdensome than internal transactions; (Case 95/81 *Commission v Italy* [1982] ECR 2187, paragraph 25.) or even a measure whereby the State merely encourages the purchase of domestic products and which, while not binding, is capable of influencing the conduct of traders and consumers in a Member State and thus of frustrating the aims of the Treaty. (Case 249/81 *Commission v Ireland* [1982] ECR 4005) For the reasons stated, the above mentioned regulatory framework constitutes a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 28 of the Treaty.

The consequences of the lack of economic freedom and open competition are paid by the Greek consumers. Last year the Foundation for Economic and Industrial Research (IOBE) warned in a report that the legislation in force pertaining to road haulage is stunting growth in the sector, but also discouraging the modernization of tanker fleets, with grave consequences for road safety and the environment. The fact that the road haulage market has not been liberalized not only fuels the black market, but also raises the cost of haulage. According to the IOBE study, restrictive measures applied in the domestic market (the only such measures in an EU country) created more problems than they attempted to solve and fewer benefits than drawbacks. The measures undermined an entire sector that they were supposed to be protecting and placed a burden on the economy as a whole.

According to the IOBE study, the gradual and complete liberalization of the market will translate into a reduction of road haulage rates (by 1.5 -2.5 percent annually), a reduction in the Consumer Price Index by 0.2 -0.3 percent annually, a boost in employment (2-4 percent a year) and higher productivity (1.5-2.5 percent a year). This is the cost paid by the citizens of the European Union due to the infringements of the Community law reported in this letter.

In the light of the information provided , Liberal Alliance considers that Hellenic Republic fails to fulfil its obligations under:

- Article 14(2) of the EC Treaty, establishing an internal market without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty
- Article 28 of the EC Treaty, providing that quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States
- Article 30 of the EC Treaty, prohibiting means of arbitrary discrimination
- Article 43 of the EC Treaty, providing that restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

In the light of the information, provided by this letter, Liberal Alliance asks from the European Commission to take the necessary actions.

Sincerely yours

Fotis Perlikos

President of the Liberal Alliance

annexes: Law 1959/91 and Law 383/76