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Regulation (EC) No 1071/2009 of the European Parliament and of the Council

of 21 October 2009

establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the European Data Protection Supervisor,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) The completion of an internal market in road transport with fair conditions of competition requires the uniform application of common rules on admission to the occupation of road haulage operator or road passenger transport operator (the occupation of road transport operator). Such common rules will contribute to the achievement of a higher level of professional qualification for road transport operators, the rationalisation of the market and an improved quality of service, in the interests of road transport operators, their customers and the economy as a whole, together with improvements in road safety. They will also facilitate the effective exercise of the right of establishment by road transport operators.
- (2) Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations lays down minimum conditions governing admission to the occupation of road transport operator and the mutual recognition of the documents required in this connection. However, experience, an impact assessment and various studies show that that Directive is being applied inconsistently by Member States. Such disparities have several adverse consequences, in particular a distortion of competition and a lack of market transparency and of uniform monitoring, as well as the risk that undertakings employing staff with a low level of professional qualification may be negligent in respect of, or less compliant with, the rules on road safety and social welfare, which may harm the image of the sector.
- (3) These consequences are all the more detrimental as they are liable to disturb the smooth functioning of the internal market in road transport, since the market in the transport of international goods and certain cabotage operations is accessible to undertakings throughout the Community. The only condition imposed on such undertakings is that they have a Community licence, which can be obtained provided they satisfy the conditions governing admission to the occupation of road transport operator laid down in Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market and Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services.
- (4) It is therefore appropriate to modernise the existing rules on admission to the occupation of road transport operator in order to ensure that those rules are applied more uniformly and effectively. Since compliance with those rules constitutes the main condition governing access to the Community market, and the applicable Community instruments in this field are Regulations, a Regulation would appear to be the most appropriate instrument to govern admission to the occupation of road transport operator.
- (5) Member States should be allowed to adapt the conditions with which to comply in order to pursue the occupation of road transport operator in the outermost regions referred to in Article 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. The adaptation of the conditions to pursue the occupation of road transport operator should not hinder undertakings which would have been admitted to the occupation of road transport operator and which comply with the general conditions laid down in this Regulation from carrying out transport operations in the outermost regions.
- (6) In the interests of fair competition, the common rules governing the exercise of the occupation of road transport operator should apply as widely as possible to all undertakings. However, it is unnecessary to include within the scope of this Regulation undertakings which only perform transport operations with a very small impact on the transport market.
- (7) It should be the responsibility of the Member State of establishment to verify that an undertaking satisfies at all times the conditions laid down in this Regulation so that the competent authorities of that Member State are able, if necessary, to decide to suspend or withdraw the authorisations which allow that undertaking to operate on the market. Proper compliance with, and reliable monitoring of, the conditions governing admission to the occupation of road transport operator presuppose that undertakings have an effective and stable establishment.
- (8) Natural persons with the requisite good repute and professional competence should be clearly identified and designated to the competent authorities. Such persons (transport managers), should be resident in a Member State and effectively and continuously manage the transport activities of road transport undertakings. It is therefore appropriate to specify the conditions under which a person is considered to effectively and continuously manage the transport activities of an undertaking.
- (9) The good repute of transport managers is conditional on their not having been convicted of a serious criminal offence or not having incurred a penalty, for a serious infringement, in particular, of

Community rules relating to road transport. A conviction or penalty incurred by a transport manager or a road transport undertaking in one or more Member States for the most serious infringements of Community rules should result in the loss of good repute provided that the competent authority has ascertained that a duly completed and documented investigation procedure granting essential procedural rights took place before its final decision and that appropriate rights of appeal were respected.

- (10) It is necessary for road transport undertakings to have a minimum financial standing to ensure their proper launching and administration. A bank guarantee or a professional liability insurance may constitute a simple and cost-efficient method of demonstrating the financial standing of undertakings.
- (11) A high level of professional qualification should increase the socioeconomic efficiency of the road transport sector. It is therefore appropriate that applicants for the post of transport manager should possess high-quality professional knowledge. In order to ensure greater uniformity of examinations and to promote a high quality of training, it is appropriate to provide that Member States may authorise examination and training centres according to criteria to be defined by them. Transport managers should possess the requisite knowledge for managing both national and international transport operations. The list of subjects of which knowledge is required in order to obtain a certificate of professional competence and the procedures for the organisation of examinations are likely to evolve with technical progress, and provision should be made for updating them. It should be possible for Member States to exempt from the examinations persons who can provide proof of continuous experience in managing transport activities.
- (12) Fair competition and road transport that is fully compliant with the rules call for a uniform level of monitoring by Member States. The national authorities responsible for monitoring undertakings and the validity of their authorisations have a crucial role to play in this respect, and it is appropriate to ensure that they take suitable measures if necessary, in particular in the most serious cases by suspending or withdrawing authorisations or declaring as unsuitable transport managers who are repeatedly negligent or who act in bad faith. This must be preceded by due consideration of the measure with respect to the proportionality principle. An undertaking should, however, be warned in advance and should have a reasonable period of time within which to rectify the situation before incurring such penalties.
- (13) Better organised administrative cooperation between Member States would improve the effectiveness of the monitoring of undertakings operating in several Member States and would reduce administrative costs in the future. Electronic registers of undertakings interconnected throughout the Community, which comply with the Community rules on the protection of personal data, would facilitate such cooperation and reduce the costs involved in checks for both undertakings and administrations. National registers already exist in several Member States. Infrastructure has also been set up with a view to promoting interconnection between Member States. A more systematic use of electronic registers could therefore make a significant contribution to reducing the administrative costs of checks and to improving their effectiveness.
- (14) Some data contained in national electronic registers concerning infringements and penalties are personal. Member States should therefore take the measures necessary to ensure compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular with regard to the monitoring of the processing of personal data by public authorities, the right of data subjects to be provided with information, their right of access and their right to object. For the purposes of this Regulation, it would appear to be necessary to retain such data for at least 2 years to ensure that disqualified undertakings do not establish themselves in other Member States.
- (15) In order to improve transparency and to allow the client of a transport undertaking to verify whether that undertaking is in possession of the appropriate authorisation, certain data contained in the national electronic register should be made publicly accessible, in so far as the relevant provisions on data protection are complied with.
- (16) It is essential to gradually interconnect national electronic registers so as to enable information to be exchanged rapidly and efficiently between Member States and to guarantee that road transport operators are not tempted to commit, or to take the risk of committing, serious infringements in Member States other than their Member State of establishment. Interconnection of this kind entails the joint definition of the precise format of the data to be exchanged and the technical procedures for the exchange of that data.
- (17) In order to ensure the efficient exchange of information between Member States, national contact points should be designated and certain common procedures relating as a minimum to time limits and the nature of the information to be forwarded, should be specified.

- (18) In order to facilitate freedom of establishment, the production of appropriate documents issued by a competent authority in the Member State where the transport manager used to reside should be accepted as sufficient proof of good repute for admission to the occupation of road transport operator in the Member State of establishment, provided that the persons concerned have not been declared unfit to pursue that occupation in other Member States.
- (19) With regard to professional competence, in order to facilitate freedom of establishment, a single model certificate issued in accordance with this Regulation should be regarded as sufficient proof by the Member State of establishment.
- (20) Closer monitoring of the application of this Regulation at Community level is required. This presupposes the forwarding to the Commission of regular reports, drawn up on the basis of national registers, on the good repute, financial standing and professional competence of undertakings in the road transport sector.
- (21) Member States should provide for penalties applicable to infringements of this Regulation. Such penalties should be effective, proportionate and dissuasive.
- (22) Since the objective of this Regulation, namely the modernisation of the rules governing admission to the occupation of road transport operator in order to ensure that those rules are applied more uniformly and effectively in the Member States, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (23) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (24) In particular, the Commission should be empowered to draw up a list of categories, types and degrees of seriousness of infringements leading to the loss of good repute of road transport operators, to adapt to technical progress Annexes I, II and III to this Regulation concerning the knowledge to be taken into consideration for the recognition of professional competence by the Member States and the model certificate of professional competence, and to draw up a list of infringements which in addition to those set out in Appendix 27-A-1-1 to this Regulation may lead to the loss of good repute. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (25) Directive 96/26/EC should be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation governs admission to, and the pursuit of, the occupation of road transport operator.
2. This Regulation shall apply to all undertakings established in Gibraltar which are engaged in the occupation of road transport operator. It shall also apply to undertakings which intend to engage in the occupation of road transport operator. References to undertakings engaged in the occupation of road transport operator shall, as appropriate, be considered to include a reference to undertakings intending to engage in such occupation.
3. *Deleted*

4. By way of derogation from paragraph 2, this Regulation shall, unless otherwise provided for in national law, not apply to:

- (a) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3,5 tonnes engaged exclusively in domestic transport operations in Gibraltar;
 - (aa) undertakings engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles, the permissible laden mass of which does not exceed 2,5 tonnes;
- (b) undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator;
 - (bb) For the purposes of point (b) , any carriage by road, other than carriage for hire or reward or on own account, for which no direct or indirect remuneration is received and which does not directly or indirectly generate any income for the driver of the vehicle or for others, and which is not linked to professional activity, is to be considered as carriage exclusively for non-commercial purposes.
- (c) undertakings engaged in the occupation of road transport operator solely by means of motor vehicles with a maximum authorised speed not exceeding 40 km/h.

5. The Minister may by Order exempt from the application of all or some of the provisions of this Regulation only those road transport operators engaged exclusively in national transport operations having only a minor impact on the transport market because of:

- (a) the nature of the goods carried; or
- (b) the short distances involved.

Article 2

Definitions

For the purposes of this Regulation:

1. ‘the occupation of road haulage operator’ means the activity of any undertaking transporting goods for hire or reward by means either of motor vehicles or combinations of vehicles;
2. ‘the occupation of road passenger transport operator’ means the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users in return for payment by the person transported or by the transport organiser;
3. ‘the occupation of road transport operator’ means the occupation of road passenger transport operator or the occupation of road haulage operator;
4. ‘undertaking’ means any natural person, any legal person, whether profit-making or not, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality, engaged in the transport of passengers, or any natural or legal person engaged in the transport of freight with a commercial purpose;

5. ‘transport manager’ means a natural person employed by an undertaking or, if that undertaking is a natural person, that person or, where provided for, another natural person designated by that undertaking by means of a contract, who effectively and continuously manages the transport activities of that undertaking;

6. ‘authorisation to pursue the occupation of road transport operator’ means an administrative decision which authorises an undertaking which satisfies the conditions laid down in this Regulation to pursue the occupation of road transport operator;

7. ‘competent authority’ within Gibraltar means the Driver and Vehicle Licensing Department;

8. *Deleted*

9. ‘Community licence’ means a licence issued under Article 4 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market and includes a UK licence for the Community;

10. ‘relevant State’ means the United Kingdom, a member State of the European Union and includes an EEA State;

11. ‘Minister’ means the Minister with responsibility for transport.

Article 3

Requirements for engagement in the occupation of road transport operator

1. Undertakings engaged in the occupation of road transport operator shall:

- (a) have an effective and stable establishment in Gibraltar;
- (b) be of good repute;
- (c) have appropriate financial standing; and
- (d) have the requisite professional competence.

Article 4

Transport manager

1. An undertaking which engages in the occupation of road transport operator shall designate at least one natural person, the transport manager, who satisfies the requirements set out in Article 3(1)(b) and (d) and who:

- (a) effectively and continuously manages the transport activities of the undertaking;
- (b) has a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it, or, if the undertaking is a natural person, is that person; and
- (c) is resident in Gibraltar or in a relevant State.

2. If an undertaking does not satisfy the requirement of professional competence laid down in Article 3(1)(d), the competent authority may authorise it to engage in the occupation of road transport operator without a transport manager designated in accordance with paragraph 1 of this Article, provided that:

- (a) the undertaking designates a natural person residing in the Community who satisfies the requirements laid down in Article 3(1)(b) and (d), and who is entitled under contract to carry out duties as transport

manager on behalf of the undertaking;

- (b) the contract linking the undertaking with the person referred to in point (a) specifies the tasks to be performed on an effective and continuous basis by that person, and indicates his or her responsibilities as transport manager. The tasks to be specified shall comprise, in particular, those relating to vehicle maintenance management, verification of transport contracts and documents, basic accounting, the assignment of loads or services to drivers and vehicles, and the verification of safety procedures;
- (c) in his or her capacity as transport manager, the person referred to in point (a) may manage the transport activities of up to four different undertakings carried out with a combined maximum total fleet of 50 vehicles; and
- (d) the person referred to in point (a) performs the specified tasks solely in the interests of the undertaking and his or her responsibilities are exercised independently of any undertakings for which the undertaking carries out transport operations.

3. The competent authority may decide that a transport manager designated in accordance with paragraph 1 may not in addition be designated in accordance with paragraph 2, or may only be so designated in respect of a limited number of undertakings or a fleet of vehicles that is smaller than that referred to in paragraph 2(c).

4. The undertaking shall notify the competent authority of the transport manager or managers designated.

CHAPTER II

CONDITIONS TO BE MET TO SATISFY THE REQUIREMENTS LAID DOWN IN ARTICLE 3

Article 5

Conditions relating to the requirement of establishment

In order to fulfil the requirement of effective and stable establishment in the Party of establishment, a natural or legal person shall:

- (a) have premises at which it is able to access the originals of its core business documents, whether in electronic or any other form, in particular its transport contracts, documents relating to the vehicles at the disposal of the natural or legal person, accounting documents, personnel management documents, labour contracts, social security documents, documents containing data relating to journeys, driving time and rest periods, and any other document to which the competent authority must have access in order to verify the undertaking's compliance with the conditions laid down in Part A of Annex 27 (Requirements for road haulage operators: admission to, and the pursuit of, the occupation of road haulage operator);
- (b) be registered on the register of commercial companies of that Party or in a similar register whenever required under national law;
- (c) be subject to tax on revenues and, whenever required under national law, have assigned a Value Added Tax identification number;
- (d) once an authorisation has been granted, have at its disposal one or more vehicles which are registered or put into circulation and authorised to be used in conformity with the legislation of that Party, regardless of whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or under a hire or leasing contract;
- (e) effectively and continuously conduct its administrative and commercial activities with the appropriate equipment and facilities at premises as referred to in point (a) situated in that Party and manage its transport operations effectively and continuously using the vehicles referred to in point (f) with the appropriate technical equipment situated in that Party;
- (f) on an ongoing basis, have at its regular disposal a number of vehicles that comply with the conditions laid down in point (d) and drivers normally based at an operational centre in that Party, proportionate to the volume of transport operations carried out by the undertaking.

Article 6

Conditions relating to the requirement of good repute

1. Subject to paragraph 2, the Parties shall determine the conditions to be met by natural or legal persons and transport managers in order to fulfil the requirement of good repute.

In determining whether a natural or legal person has fulfilled that requirement, the Parties shall consider the conduct of the natural or legal person, its transport managers, executive directors and any other relevant person as may be determined by the Party. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties incurred by or infringements of the natural or legal person, its transport managers, executive directors and any other relevant person as may be determined by the Party.

The conditions referred to in the first subparagraph shall include at least the following:

- (a) that there be no compelling grounds for doubting the good repute of the transport manager or the transport undertaking, such as convictions or penalties for any serious infringement of national rules in force in the fields of:
 - (i) commercial law;
 - (ii) insolvency law;
 - (iii) pay and employment conditions in the profession;
 - (iv) road traffic;
 - (v) professional liability;
 - (vi) trafficking in human beings or drugs;
 - (vii) tax law; and
- (b) that the transport manager or the transport undertaking have not been convicted of a serious criminal offence or incurred a penalty for a serious infringement of the rules of Articles 278 to 282 of the TGEU or of national rules relating in particular to:
 - (i) the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
 - (ii) the maximum weights and dimensions of commercial vehicles used in international traffic;
 - (iii) the initial qualification and continuous training of drivers;
 - (iv) the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
 - (v) access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
 - (vi) safety in the carriage of dangerous goods by road;
 - (vii) the installation and use of speed-limiting devices in certain categories of vehicle;
 - (viii) driving licences;
 - (ix) admission to the occupation;
 - (x) animal transport;
 - (xi) the posting of workers in road transport;
 - (xii) the law applicable to contractual obligations; and
 - (xiii) journeys whose points of loading and unloading are situated in the other Party.

2. For the purposes of point (b) of the third subparagraph of paragraph 1, where the transport manager or road transport operator has been convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements as set out in Appendix 27-A-1-1, in one or both Parties, the competent authority in the Party of establishment shall carry out and complete in an appropriate and timely manner an administrative procedure, which shall include, if appropriate, an on-site inspection at the premises of the

natural or legal person concerned.

During the administrative procedure, the competent authority shall assess whether, due to specific circumstances, the loss of good reputation would constitute a disproportionate response in the individual case. In that assessment, the competent authority shall take into account the number of serious infringements of the rules as referred to in the third subparagraph of paragraph 1 of this Article, as well as the number of most serious infringements as set out in Appendix 27-A-1-1 for which the transport manager or the road transport operator has been convicted or has had penalties imposed on them. Any such finding shall be duly reasoned and justified.

Where the competent authority finds that the loss of good reputation would be disproportionate, it shall decide that the natural or legal person concerned continues to be of good reputation. Where the competent authority does not find that the loss of good reputation would be disproportionate, the conviction or penalty shall lead to the loss of good reputation.

2A. In addition to the list of most serious infringements set out in Appendix 27-A-1-1, serious infringements set out in Appendix 27A11bis may lead to the loss of good reputation.

2B. The requirement of good reputation shall not be fulfilled until a rehabilitation measure or any other measure having an equivalent effect has been taken pursuant to the relevant provisions of national law of the Parties.

3. The requirement laid down in Article 3(1)(b) shall not be satisfied until a rehabilitation measure or any other measure having an equivalent effect has been taken pursuant to the relevant provisions of national law.

Article 7

Conditions relating to the requirement of financial standing

1. In order to fulfil the requirement of financial standing, a natural or legal person shall, on a permanent basis, be able to meet its financial obligations in the course of the annual accounting year. The natural or legal person shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal capital and reserves:

- (a) totalling at least EUR 9 000 / GBP 8 000 when only one motor vehicle is used, EUR 5 000 / GBP 4 500 for each additional motor vehicle or combination of vehicles used that has a permissible laden mass exceeding 3.5 tonnes and EUR 900 / GBP 800 for each additional motor vehicle or combination of vehicles that has a permissible laden mass, exceeding 2.5 tonnes but not 3.5 tonnes;
- (b) natural or legal persons engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles that have a permissible laden mass exceeding 2.5 tonnes but not 3.5 tonnes shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, they have at their disposal capital and reserves totalling at least EUR 1 800 / GBP 1 600 when only one vehicle is used and EUR 900 / GBP 800 for each additional vehicle used.

2. By way of derogation from paragraph 1, the competent authority may agree or require that an undertaking demonstrate its financial standing by means of a certificate determined by the competent authority, 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 or by another binding document providing a joint and several guarantee for the undertaking in respect of the amounts specified in paragraph 1.

2A. By way of derogation from paragraph 1, in the absence of certified annual accounts for the year of an undertaking's registration, the competent authority shall agree that an undertaking is to demonstrate its financial standing by means of a certificate, such as a bank guarantee, a document issued by a financial institution establishing access to credit in the name of the undertaking, or another binding document as determined by the competent authority proving that the undertaking has at its disposal the amounts specified in point (a) of paragraph 1.

3. The annual accounts referred to in paragraph 1, and the guarantee referred to in paragraph 2, which are to be verified, are those of the economic entity established in Gibraltar and not those of any entity established in

any other country.

Article 8

Conditions relating to the requirement of professional competence

1. In order to satisfy the requirement of professional competence, the person or persons concerned shall possess knowledge corresponding to the level provided for in Part I of Appendix 27-A-1-2 in the subjects listed therein. That knowledge shall be demonstrated by means of a compulsory written examination which, if a Party so decides, may be supplemented by an oral examination. Those examinations shall be organised in accordance with Part II of Appendix 27-A-1-2. To this end, a Party may decide to impose training prior to the examination.
2. The persons concerned shall sit the examination in the Party in which they have their normal residence.
3. Only the authorities or bodies duly authorised for this purpose by a Party, in accordance with criteria defined by it, may organise and certify the written and oral examinations referred to in paragraph 1 of this Article. The Parties shall regularly verify that the conditions under which those authorities or bodies organise the examinations are in accordance with Appendix 27-A-1-2.
4. A Party may exempt the holders of certain higher education qualifications or technical education qualifications issued in that Party, specifically designated to this end and entailing knowledge of all the subjects listed in Appendix 27-A-1-2 from the examination in the subjects covered by those qualifications. The exemption shall only apply to those Sections of Part I of Appendix 27-A-1-2 for which the qualification covers all subjects listed under the heading of each Section.
5. A Party may exempt from specified parts of the examinations holders of certificates of professional competence valid for national transport operations in that Party.

Article 8A

Exemption from examination

For the purpose of granting a licence to a road transport operator which only operates motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3.5 tonnes, a Party may decide to exempt from the examinations referred to in Article 8(1) persons who provide evidence that they have continuously managed, for the period of 10 years before 20 August 2020, a natural or legal person of the same type.

Article 9

Deleted

CHAPTER III

AUTHORISATION AND MONITORING

Article 10

Competent authorities

1. The competent authority may:

- (a) examine applications made by undertakings;
- (b) grant authorisations to engage in the occupation of road transport operator, and suspend or withdraw such authorisations;
- (c) declare a natural person to be unfit to manage the transport activities of an undertaking in the capacity of transport manager;
- (d) carry out the requisite checks to verify whether an undertaking satisfies the requirements laid down in Article 3.

2. The competent authority shall publish all the conditions laid down pursuant to this Regulation, any other national provisions, the procedures to be followed by interested applicants and the corresponding explanations.

Article 11

Examination and registration of applications

1. The competent authorities in each Party shall record in the national electronic registers referred to in Article 16(1) the data relating to undertakings which they authorise.

2. When assessing the good repute of an undertaking, the competent authorities shall verify, whether at the time of the application the designated transport manager or managers are declared, in one of the Parties, unfit to manage the transport activities of an undertaking pursuant to Article 14.

3. The competent authorities shall regularly monitor whether undertakings which they have authorised to engage in the occupation of road haulage operators continue to fulfil the requirements referred to in Article 3. To that end, the competent authorities shall carry out checks, including, where appropriate, on-site inspections at the premises of the undertaking concerned, targeting those undertakings which are classed as posing an increased risk.

Article 12

Checks

1. The competent authority must monitor whether undertakings which it has authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3. To that end, the competent authority must carry out checks targeting those undertakings which are classed as posing an increased risk.

2. *Deleted*

3. The competent authority shall carry out individual checks to verify whether an undertaking meets the conditions governing admission to the occupation of road transport operator whenever the Minister so requests in duly motivated cases. It shall inform the Minister of the results of such checks and of the measures taken if it is established that the undertaking no longer fulfils the requirements laid down in this Regulation.

Article 13

Procedure for the suspension and withdrawal of authorisations

1. Where a competent authority establishes that a natural or legal person runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the natural or legal person thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the natural or legal person to rectify the situation:

- (a) a time limit not exceeding six months, which may be extended by three months in the event of the death or physical incapacity of the transport manager, for the recruitment of a replacement transport manager where the transport manager no longer satisfies the requirement as to good repute or professional competence;
- (b) a time limit not exceeding six months where the natural or legal person has to rectify the situation by demonstrating that the natural or legal person has an effective and stable establishment; or
- (c) a time limit not exceeding six months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement is again satisfied on a permanent basis.

2. The competent authority may require a natural or legal person whose authorisation has been suspended or withdrawn to ensure that its transport managers have passed the examinations referred to in Article 8(1) prior to any rehabilitation measure being taken.

3. If the competent authority establishes that the natural or legal person no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road haulage operator within the time limits referred to in paragraph 1 of this Article.

Article 14

Declaration of unfitness of the transport manager

1. Where a transport manager loses good repute in accordance with Article 6, the competent authority shall declare that transport manager unfit to manage the transport activities of a road transport operator.

2. The competent authority shall not permit the transport manager to manage the transport activities of a road transport operator earlier than one year from the date of the loss of good repute and before the transport manager has demonstrated to have followed appropriate training for a period of at least three months or an exam on the subjects listed in Part I of Appendix 27-A-1-2.

3. Where a transport manager loses good repute in accordance with Article 6, an application for re-establishment may be made after not less than one year from the date of the loss of good repute.

Article 15

Decisions of the competent authorities and appeals

1. Negative decisions taken by the competent authority pursuant to this Regulation, including the rejection of an application, the suspension or withdrawal of an existing authorisation and a declaration of unfitness of a transport manager, shall state the reasons on which they are based.

Such decisions shall take account of available information concerning infringements committed by the undertaking or the transport manager which are such as to detract from the good repute of the undertaking and of any other information at the disposal of the competent authority. They shall specify the rehabilitation measures applicable in the event of the suspension of an authorisation or a declaration of unfitness.

2. Undertakings and persons concerned have the possibility of appealing the decisions referred to in paragraph 1 as provided for in domestic legislation.

CHAPTER IV

SIMPLIFICATION AND ADMINISTRATIVE COOPERATION

Article 16

National electronic register

1. The competent authorities shall keep a national electronic register of road transport undertakings which have been authorised to engage in the occupation of road haulage operator.
2. The data contained in the national register of road transport undertakings and the conditions of access to this data are set out in Appendix 27-A-1-5.

Article 16A

Administrative cooperation between the competent authorities

1. The competent authorities in each Party shall designate a national contact point responsible for the exchange of information with the competent authorities of the other Party with regard to the application of this Article.
2. The competent authorities in each Party shall cooperate closely and shall swiftly provide one another with mutual assistance and with any other relevant information in order to facilitate the implementation and enforcement of this Article.
3. The competent authorities in each Party shall carry out individual checks to verify whether an undertaking meets the conditions governing admission to the occupation of road haulage operator whenever a competent authority in the other Party so requests in duly justified cases, and it shall inform the competent authority in the other Party of the results of such checks and of the measures taken if it is established that the undertaking no longer fulfils the requirements laid down in this Article.
4. The competent authorities in each Party shall exchange information on convictions and penalties for any serious infringements referred to in Article 6(2).
5. The detailed rules on the modalities of the exchange of information referred to in paragraphs 3 and 4 are set out in Appendix 27-A-1-5.

Article 17

Protection of personal data

With regard to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the competent authority shall ensure in particular that:

- (a) all persons are informed when data relating to them is recorded or is planned to be forwarded to third parties. The information provided shall specify the identity of the authority responsible for processing

- the data, the type of data processed and the reasons for such action;
- (b) all persons have a right of access to data relating to them held by the authority responsible for processing those data. That right shall be exercisable without constraint, at reasonable intervals and without excessive delay or cost for the applicant;
 - (c) all persons whose data are incomplete or inaccurate have the right to have those data rectified, erased or blocked;
 - (d) all persons have the right to oppose, on compelling legitimate grounds, the processing of data relating to them. Where there is justified opposition, the processing may no longer involve those data;
 - (e) undertakings comply, where applicable, with the relevant provisions on the protection of personal data.

Article 18

Deleted

CHAPTER V

MUTUAL RECOGNITION OF CERTIFICATES AND OTHER DOCUMENTS

Article 19

Certificates of good repute and equivalent documents

1. The competent authority shall accept as sufficient proof of good repute for admission to the occupation of road transport operator the production of an extract from a judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority in a relevant State where the transport manager or any other relevant person used to reside.
2. Where the Minister imposes on Gibraltar nationals certain conditions relating to good repute, and proof that these conditions are met cannot be provided by means of the document referred to in paragraph 1, the competent authority must accept as sufficient proof for nationals of relevant States a certificate issued by a competent judicial or administrative authority in the relevant State(s) where the transport manager or any other relevant person used to reside stating that these conditions have been met. Such certificate must relate to the specific information taken into consideration in Gibraltar.
3. If the document referred to in paragraph 1 or the certificate referred to in paragraph 2 has not been issued by the relevant State(s) where the transport manager or any other relevant person used to reside, that document or certificate may be replaced by a declaration on oath or by a solemn declaration made by the transport manager or any other relevant person before a competent judicial or administrative authority or, where appropriate, before a notary in the relevant State where the transport manager or any other relevant person used to reside. Such authority or notary shall issue a certificate authenticating the declaration on oath or the solemn declaration.
4. A document referred to in paragraph 1 and a certificate referred to in paragraph 2 shall not be accepted if produced more than 3 months after their date of issue. This condition shall also apply to a declaration made in accordance with paragraph 3.
5. In this Article and in Article 20, 'competent administrative authority' means a national, regional or local authority in a relevant State which, for the purpose of authorising the pursuit of the occupation of road transport operator, verifies whether an undertaking satisfies the conditions laid down in Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time, and which is empowered to grant, suspend or withdraw an authorisation to pursue the occupation of road transport operator.

Article 20

Certificates relating to financial standing

Where the Minister imposes on Gibraltar nationals certain conditions relating to financial standing in addition to those set out in Article 7, the competent authority must accept as sufficient proof for nationals of relevant States a certificate issued by a competent administrative authority in the relevant State(s) where the transport manager or any other relevant person used to reside stating that these conditions have been met. Such certificate must relate to the specific information taken into consideration in Gibraltar.

Article 21

Certificates of professional competence issued in a relevant State

1. The competent authority shall recognise as sufficient proof of professional competence a certificate which complies with the model certificate set out in Annex III of Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time and which is issued by the authority or body duly authorised in a relevant State for that purpose.

2. A certificate issued before 4 December 2011 as proof of professional competence pursuant to the provisions in force until that date shall be deemed to be equivalent to a certificate which complies with the model certificate set out in Annex III of Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time and shall be recognised as proof of professional competence in Gibraltar. Holders of certificates of professional competence valid only for national transport may be required to pass the examinations, or parts of examinations, referred to in Article 8(1).

CHAPTER VI

FINAL PROVISIONS

Article 22

Penalties

1. *Deleted*

2. The penalties for infringement of this Regulation shall include, in particular provision in relation to, suspension of the authorisation to engage in the occupation of road transport operator, withdrawal of such authorisation and a declaration of unfitness of the transport manager.

Articles 23 to 28

Deleted

Article 29

Repeal

Directive 96/26/EC is hereby repealed.

Article 30

Deleted

Appendix 27-A-1-2

LIST OF SUBJECTS

REFERRED TO IN ARTICLE 8 OF PART A OF ANNEX 27

The knowledge to be taken into consideration for the official recognition of professional competence by the Parties must cover at least the subjects listed below. In relation to those subjects, applicant road transport operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.

The minimum level of knowledge, as indicated below, must correspond at least to the level of knowledge acquired during the course of compulsory education, which is supplemented either by vocational training and supplementary technical training or by secondary school or other technical training.

A. Civil law

The applicant must, in particular:

- (a) be familiar with the main types of contract used in road transport and with the rights and obligations arising therefrom;
- (b) be capable of negotiating a legally valid transport contract, notably with regard to conditions of carriage;
- (c) be able to consider a claim by the applicant's principal regarding compensation for loss of or damage to goods during transportation or for their late delivery, and to understand how such a claim affects the applicant's contractual liability; and
- (d) be familiar with the rules and obligations arising from the CMR Convention on the Contract for the International Carriage of Goods by Road, done in Geneva on 19 May 1956.

B. Commercial law

The applicant must, in particular:

- (a) be familiar with the conditions and formalities laid down for plying the trade, the general obligations incumbent upon transport operators (registration, record keeping, etc.) and the consequences of bankruptcy; and
- (b) have appropriate knowledge of the various forms of commercial companies and the rules governing their constitution and operation.

C. Social law

The applicant must, in particular, be familiar with the following:

- (a) the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);
- (b) the employers' social security obligations;
- (c) the rules governing work contracts for the various categories of worker employed by road transport undertakings (form of the contracts, obligations of the Parties, working conditions and working hours, paid leave, remuneration, breach of contract, etc.);
- (d) the rules applicable to driving time, rest periods and working time, and the practical measures for applying those provisions; and
- (e) the rules applicable to the initial qualification and continuous training of drivers laid down in Section 1 of Part B of Annex 27.

D. Fiscal law

The applicant must, in particular, be familiar with the rules governing:

- (a) value added tax ("VAT") on transport services;
- (b) motor-vehicle tax;
- (c) the taxes on certain road haulage vehicles and tolls and infrastructure user charges; and
- (d) income tax.

E. Business and financial management

The applicant must, in particular:

- (a) be familiar with the laws and practices regarding the use of cheques, bills of exchange, promissory notes, credit cards and other means or methods of payment;
- (b) be familiar with the various forms of credit (bank credit, documentary credit, guarantee deposits, mortgages, leasing, renting, factoring, etc.) and the charges and obligations arising therefrom;
- (c) know what a balance sheet is, how it is set out and how to interpret it;
- (d) be able to read and interpret a profit and loss account;
- (e) be able to assess the undertaking's profitability and financial position, in particular on the basis of financial ratios;
- (f) be able to prepare a budget;
- (g) be familiar with the cost elements of the undertaking (fixed costs, variable costs, working capital, depreciation, etc.), and be able to calculate costs per vehicle, per kilometre, per journey or per tonne;
- (h) be able to draw up an organisation chart relating to the undertaking's personnel as a whole and to organise work plans, etc.;
- (i) be familiar with the principles of marketing, publicity and public relations, including transport services, sales promotion and the preparation of customer files, etc.;
- (j) be familiar with the different types of insurance relating to road transport (liability, accidental injury/life insurance, non-life and luggage insurance) and the guarantees and obligations arising therefrom;
- (k) be familiar with the applications of electronic data transmission in road transport;
- (l) be able to apply the rules governing the invoicing of road haulage services and know the meaning and implications of Incoterms; and
- (m) be familiar with the different categories of transport auxiliaries, their role, their functions and, where appropriate, their status.

F. Access to the market

The applicant must, in particular, be familiar with the following:

- (a) the occupational regulations governing road transport, industrial vehicle rental and subcontracting, and in particular the rules governing the official organisation of the occupation, admission to the occupation, authorisations for road transport operations, inspections and penalties;
- (b) the rules for setting up a road transport undertaking;
- (c) the various documents required for operating road transport services and the introduction of checking procedures to ensure that the approved documents relating to each transport operation, and in particular those relating to the vehicle, the driver, the goods and luggage are kept both in the vehicle and on the premises of the undertaking;
- (d) the rules on the organisation of the market in road haulage services, as well as the rules on freight handling and logistics; and
- (e) border formalities, the role and scope of TIR documents and TIR carnets, and the obligations and responsibilities arising from their use.

G. Technical standards and technical aspects of operation

The applicant must, in particular:

- (a) be familiar with the rules concerning the weights and dimensions of vehicles in the Parties and the procedures to be followed in the case of abnormal loads which constitute an exception to these rules;
- (b) be able to choose vehicles and their components (chassis, engine, transmission system, braking system, etc.) in accordance with the needs of the undertaking;
- (c) be familiar with the formalities relating to the type approval, registration and technical inspection of these vehicles;
- (d) understand what measures must be taken to reduce noise and to combat air pollution by motor vehicle exhaust emissions;
- (e) be able to draw up periodic maintenance plans for the vehicles and their equipment;
- (f) be familiar with the different types of cargo-handling and loading devices (tailboards, containers, pallets, etc.) and be able to introduce procedures and issue instructions for loading and unloading goods (load distribution, stacking, stowing, blocking and chocking, etc.);
- (g) be familiar with the various techniques of "piggy-back" and roll-on roll-off combined transport;
- (h) be able to implement procedures to comply with the rules on the carriage of dangerous goods and waste;
- (i) be able to implement procedures to comply with the rules on the carriage of perishable foodstuffs, notably those arising from the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (ATP) done at Geneva on 1 September 1970; and
- (j) be able to implement procedures to comply with the rules on the transport of live animals.

H. Road safety

The applicant must, in particular:

- (a) know what qualifications are required for drivers (driving licence, medical certificates, certificates of fitness, etc.);
- (b) be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in the Parties (speed limits, priorities, waiting and parking restrictions, use of lights, road signs, etc.);
- (c) be able to draw up instructions for drivers to check their compliance with the safety requirements concerning the condition of the vehicles, their equipment and cargo, and concerning preventive measures to be taken;
- (d) be able to lay down procedures to be followed in the event of an accident and to implement appropriate procedures to prevent the recurrence of accidents or serious traffic offences; and
- (e) be able to implement procedures to properly secure goods and be familiar with the corresponding techniques.

PART II

ORGANISATION OF THE EXAMINATION

1. The Parties will organise a compulsory written examination which they may supplement by an optional oral examination to establish whether applicant road transport operators have achieved the required level of knowledge in the subjects listed in Part I and in particular their capacity to use the instruments and techniques relating to those subjects and to fulfil the corresponding executive and coordination duties.

- (a) The compulsory written examination will involve two tests, namely:
- (i) written questions consisting of either multiple choice questions (each with four possible answers), questions requiring direct answers or a combination of both systems; and
 - (ii) written exercises/case studies.

The minimum duration of each test will be two hours.

(b) Where an oral examination is organised, the Parties may stipulate that participation is subject to the successful completion of the written examination.

2. Where the Parties also organise an oral examination, they must provide, in respect of each of the three tests, for a weighting of marks of a minimum of 25 % and a maximum of 40 % of the total number of marks to be given.

Where the Parties organise only a written examination, they must provide, in respect of each test, for a weighting of marks of a minimum of 40 % and a maximum of 60 % of the total number of marks to be given.

3. With regard to all the tests, applicants must obtain an average of at least 60 % of the total number of marks to be given, achieving in any given test not less than 50 % of the total number of marks possible. In one test only, a Party may reduce that mark from 50 % to 40 %.

ANNEX II

Security features of the certificate of professional competence

The certificate must have at least two of the following security features:

- a hologram,
- special fibres in the paper which become visible under UV light,

- at least one microprint line (printing visible only with a magnifying glass and not reproduced by photocopying machines),
- tactile characters, symbols or patterns,
- double numbering: serial number and issue number,
- a security design background with fine guilloche patterns and rainbow printing.

ANNEX III

Model of the certificate of professional competence

UNITED KINGDOM

GIBRALTAR

(Colour Pantone stout fawn 467, or as close as possible to this colour, format DIN A4 cellulose paper 100 g/m 2 or more.)

(Text in English)

UK

DRIVER AND VEHICLE LICENSING DEPARTMENT
GIBRALTAR (1)

GIBRALTAR

CERTIFICATE OF PROFESSIONAL COMPETENCE IN ROAD HAULAGE/ PASSENGER
TRANSPORT(2)

No

We

hereby certify that⁽³⁾

born on in

has successfully passed the tests for the examination (year:; session:)⁽⁴⁾ necessary for the award of the certificate of professional competence in road haulage/passenger transport⁽⁵⁾ in accordance with Regulation (EC) No 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator.

This certificate constitutes the sufficient proof of professional competence referred to in Article 21 of Regulation (EC) No 1071/2009.

Issued by on⁽⁵⁾



(1) Competent authority in Gibraltar.

(2) Delete as appropriate.

(3) Surname and forename; place and date of birth.

(4) Identification of the examination.

(5) Signature of the authority issuing the certificate and date of issue.

Appendix 27-A-1-1

MOST SERIOUS INFRINGEMENTS FOR THE PURPOSES OF ARTICLE 6(2) OF PART A OF ANNEX

1. Exceeding time limits as follows:

- (a) exceeding the maximum six-day or fortnightly driving time limits by margins of 25 % or more;
- (b) exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more.

2. Not having a tachograph and/or speed limiter, or having in the vehicle and/or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.

3. Driving without a valid roadworthiness certificate and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.

4. Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.

5. Carrying goods without holding a valid driving licence or carrying by an undertaking not holding a valid operator's licence as referred to in Article 278 of the TGEU.

6. Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.

7. Carrying goods exceeding the maximum permissible laden mass by 20 % or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25 % or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

Appendix 27A11bis

LIST OF SERIOUS INFRINGEMENTS FOR THE PURPOSES OF ARTICLE 6(2) OF PART A OF ANNEX 27

The following tables contain categories and types of serious infringements of Annex 27, divided into three categories of seriousness according to their potential to create a risk of fatalities or serious injuries and/or distorting competition in the road transport market: most serious infringement (“MSI”), very serious infringement (“VSI”) and serious infringement (“SI”).

(1) Groups of infringements of Section 2 of Part B of Annex 27, unless stated otherwise.

		LEGAL BASIS	TYPE OF INFRINGEMENT	
		Article 4(1) and Appendix 27-A-1-1	Driving periods	
1.			Exceed daily driving time of 9h if possibilities to extend to 10h not allowed	10h ? ... < 11h
2.				11h ? ...
3.			Exceed daily driving time of 9h by 50 % or more	13h30 ? ...

		LEGAL BASIS	TYPE OF INFRINGEMENT	
4.		Exceed extended daily driving time of 10h if extension allowed	11h ? ... < 12h	
5.			12h ? ...	
6.		Exceed daily driving time of 10h by 50 % or more	15h ? ...	X
7.		Article 4(2) and Appendix 27-A-1-1	Exceed weekly driving time	60h ? ... < 65h
8.				65h ? ... < 70h
9.			Exceed weekly driving time by 25 % or more	70h ? ...
10.		Article 4(3) and Appendix 27-A-1-1	Exceed maximum total driving time during 2 consecutive weeks	100h ? ... < 105h
11.				105h ? ... < 112h30
12.			Exceed maximum total driving time during 2 consecutive weeks by 25 % or more	112h30 ? ...
		Breaks		
13.		Article 5	Exceed uninterrupted driving time of 4,5 hours before taking the break	5h ? ... < 6h
14.				6h ? ...
		Rest Periods		
15.		Article 6 (2)	Insufficient daily rest period of less than 11h if reduced daily rest period not allowed	8h30 ? ... < 10h
16.				... < 8h30
17.			Insufficient reduced daily rest period of less than 9h if reduction allowed	7h ? ... < 8h
18.				... < 7h
19.			Insufficient split daily rest period of less than 3h + 9h	3h + [7h ? ...< 8h]
20.				3h + [... < 7h]
21.		Article 6 (5)	Insufficient daily rest period of less than 9h for multi-manning	7h ? ... < 8h
22.				... < 7h
23.		Article 6 (6)	Insufficient reduced weekly resting period of less than 24h	20h ? ... < 22h
24.				... < 20h
25.			Insufficient weekly resting period of less than 45h if reduced weekly resting period not allowed	36h ? ... < 42h
26.				... < 36h
27.			Exceeding 6 consecutive 24-hour periods following the previous weekly rest period	3h ? ... < 12h
28.				12h ? ...
29.		Article 6 (7)	No compensation rest for two consecutive reduced weekly rest periods	

		LEGAL BASIS	TYPE OF INFRINGEMENT	
30.		Article 6 (9)	Regular weekly rest period or any weekly rest period of more than 45 hours taken in a vehicle	
31.			The employer not covering costs for accommodation outside the vehicle	
		Work organisation		
32.		Article 6 (10)	Transport undertaking not organising the work of drivers in such a way that the drivers are able to return to the employer's operational centre, or to return to the drivers' place of residence	
33.		Article 7 (1)	Link between wage/payment and distance travelled, speed of delivery and/or amount of goods carried	
34.		Article 7 (2)	No or improper organisation of driver's work, no or improper instructions given to driver enabling him to comply with the law	

(2) Groups of infringements of Section 4 of Part B and Section 2 of Part C of Annex 27

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Installation of tachograph					
1.	Articles 3 and 5 of Section 2 of Part C and Appendix 27-A-1-1	Not having type-approved tachograph installed and used	X		
Use of tachograph, driver card or record sheet					
2.	Article 6(1) of Section 2 of Part C	Using a tachograph not inspected by an approved workshop		X	
3.	Article 3 of Section 4 of Part B and Appendix 27-A-1-1	Driver holding and/or using more than one own driver card		X	
4.		Driving with a driver card that has been falsified (considered as driving without driver card)	X		
5.		Driving with a driver card of which the driver is not the holder (considered as driving without driver card)	X		
6.		Driving with a driver card which has been obtained on the basis of false declarations and/or forged documents (considered as driving without driver card)	X		
7.	Article 7(1) of Section 4 of Part B and Article 15(1) of Section 2 of Part C	Tachograph not correctly functioning (e.g.: tachograph not properly inspected, calibrated and sealed)		X	

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
8.	Tachograph improperly used (e.g.: deliberate, voluntary or imposed misuse, lack of instructions on correct use, etc.)		X		
9.	Article 7(2) of Section 4 of Part B and Appendix 27-A-1-1	Having in the vehicle and/or using a fraudulent device able to modify the records of the tachograph	X		
10.		Falsifying, concealing, suppressing or destroying data recorded on the record sheets or stored and downloaded from the tachograph and/or the driver card	X		
11.	Article 15(2) of Section 2 of Part C	Undertaking not keeping record sheets, printouts and downloaded data		X	
12.		Recorded and stored data not available for at least a year		X	
13.	Article 6(1) of Section 4 of Part B	Incorrect use of record sheets/driver card		X	
14.		Unauthorised withdrawal of record sheets or driver card which has an impact on the record of relevant data		X	
15.		Record sheet or driver card used to cover a period longer than that for which it is intended, and data is lost		X	
16.	Article 6(2) of Section 4 of Part B	Use dirty or damaged record sheets or drivers card and data not legible		X	
17.	Article 6(3) of Section 4 of Part B	Not using manual input when required to do so		X	
18.	Article 6(4) of Section 4 of Part B	Not using correct record sheet or driver card not in the correct slot (multi-manning)			X
19.	Article 6(5) of Section 4 of Part B	Incorrect use of switch mechanism		X	
Producing information					
20.	Article 6(5), point (b)(v) of Section 4 of Part B	Incorrect use or non-use of the ferry/train sign			X
21.	Article 6(6) of Section 4 of Part B	Required information not entered on the record sheet		X	
22.	Article 6(7) of Section 4 of Part B	Records not showing the symbols of the countries whose borders were crossed by the driver during the daily working period			X
23.	Article 6(7) of Section 4 of Part B	Records not showing the symbols of the countries where the driver's daily working period started and finished			X
24.	Article 10 of Section 4 of Part B	Refusing to be checked		X	
25.		Unable to produce manual records and printouts made during the current day and the previous 56 days		X	

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
26.	Unable to produce a driver card, if the driver holds one		X		
Malfunctioning					
27.	Article 16(1) and Article 5(1) of Section 2 of Part C	Tachograph not repaired by an approved fitter or workshop		X	
28.	Article 11 of Section 4 of Part B	Driver not marking all required information for the periods of time, which are no longer recorded while tachograph is unserviceable or malfunctioning		X	

(3) Groups of infringements of Section 3 of Part B of Annex 27

	LEGAL BASIS	TYPE OF INFRINGEMENT		LEVEL OF SERIOUSNESS		
				MSI	VSI	SI
Maximum weekly working time						
1.	Article 3	Exceeding maximum weekly working time of 48h if possibilities to extend to 60h already consumed	56h ? ... 60h			X
2.			60h ? ...		X	
3.		Exceeding maximum weekly working time of 60h if no derogation under Article 7 granted	65 ? ... < 70h			X
4.			70h ? ...		X	
Breaks						
5.	Article 4	Insufficient obligatory break taken when working time between 6 and 9 hours	10 < ... ? 20 min			X
6.			... ? 10 min		X	
7.		Insufficient obligatory break taken when working time over 9 hours	20 < ... ? 30min			X
8.			... ? 20 min		X	
Night work						
9.	Article 6	Daily working time in each 24h when night work performed if no derogation under Article 7 granted	11h ? ... < 13h			X
10.			13h ? ...		X	
Records						
11.	Article 8	Employers falsifying working time records or refusing to provide records to inspection officer			X	
12.		Employed/self-employed drivers falsifying records or refusing to provide records to inspection officer			X	

(4) Groups of infringements against Section 1 of Part C of Annex 27

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS			
			MSI	VSI	SI	
Weights						
1.	Article 1 and Appendix 27?A?1?1	Exceed maximum permissible weights for N3 vehicles	5 % ? ... < 10 %			X
2.			10 % ? ... < 20 %		X	
3.			20 % ? ...	X		
4.		Exceed maximum permissible weight for N2 vehicles	5 % ? ... < 15 %			X
5.			15 % ? ... < 25 %		X	
6.			25 % ? ...	X		
Lengths						
7.	Article 1	Exceed maximum permissible length	2 % < ... < 20 %			X
8.			20 % ? ...		X	
Width						
9.	Article 1	Exceed maximum permissible width	2,65 ? ... < 3,10 metres			X
10.			3,10 metres ? ...		X	

(5) Groups of infringements of rules on technical roadside inspection

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Roadworthiness					
1.	Annex 27, Part A, Article 6(1)(b)(iv) and Appendix 27?A?1?1	Driving without a valid proof of roadworthiness tests passed, as required by the Union and the law of the United Kingdom, in respect of Gibraltar	X		
2.		Not keeping a vehicle in a safe and roadworthy condition resulting in a very serious deficiency of the braking system, the steering linkages, the wheels/tyres, the suspension or chassis or other equipment that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle	X		

(6) Groups of infringements of rules on speed limitation devices

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 27, Part A, Article 6(1)(b)(vii)	Speed limitation device not fitted	X		
2.		Speed limitation device not satisfying the applicable technical requirements		X	

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
3.	Speed limitation device not fitted by an approved workshop			X	
4.	Having and/or using a fraudulent device able to falsify data of speed limitation device or having and/or using a fraudulent speed limitation device	X			

(7) Groups of infringements of Section 1 of Part B of Annex 27

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Training and Licence					
1.	Article 3	Carrying goods without a compulsory initial qualification and/or compulsory periodic training		X	
2.	Article 9 and Appendix 27-B-1-2	Driver unable to present the valid qualification card or the driving licence with the marking, as required by the national law (e.g.: lost, forgotten, damaged, unreadable)			X

(8) Groups of infringements of driving licence requirements

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 27, Part A, Article 6(1)(b)(viii) and Appendix 27-A-1-1	Carrying goods without holding a valid driving licence	X		
2.		Using a driving licence which is damaged or unreadable or not in line with common model			X

(9) Groups of infringements of rules on the transport of dangerous goods by road

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI

1.	Annex 27, Part A, Article 6(1)(b)(vi) and Appendix 27?A-1-1	Transporting dangerous goods that are prohibited for transport	X		
2.		Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle	X		
3.		Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle	X		
4.		Leakage of dangerous substances		X	
5.		Carriage in bulk in a container which is not structurally serviceable		X	
6.		Carriage in a vehicle without an appropriate certificate of approval		X	
7.		Vehicle no longer complies with the approval standards and presents an immediate danger		X	
8.		The rules governing the securing and stowage of the load have not been complied with		X	
9.		The rules governing mixed loading of packages have not been complied with		X	
10.		The provisions limiting the quantities carried in one transport unit have not been complied with, including permissible degrees of filling tanks or packages;		X	
11.		Information relevant to the substance being carried enabling determination of level of seriousness of offence is missing (e.g. UN number, proper shipping name, packing group)		X	
12.		Driver does not hold a valid vocational training certificate		X	
13.		Fire or an unprotected light is being used		X	
14.		The ban on smoking is not being observed.		X	
15.		The vehicle is not properly supervised or parked			X
16.		The transport unit comprises more than one trailer/semi-trailer			X
17.		Vehicle no longer complies with the approval standards but does not present an immediate danger			X
18.		The vehicle is not carrying operational fire extinguishers as required			X
19.		The vehicle does not carry the equipment required in the ADR or in the instructions in writing			X
20.		Packages with damaged packaging, IBCs or large packaging or damaged uncleaned empty packaging are being carried			X

21.	Carriage of packaged goods in a container which is not structurally serviceable			X
22.	Tanks/tank containers (including ones that are empty and uncleaned) have not been closed properly			X
23.	Incorrect labelling, marking or placarding on the vehicle and/or containment			X
24.	There are no instructions in writing conforming to the ADR, or the instructions in writing are not relevant to the goods carried			X

(10) Groups of infringements of Chapter 2 of Title III of Part Three of the TGEU, unless stated otherwise

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Licence					
1.	Article 278(1) and Appendix 27-A-1-1	Carrying goods without holding a valid licence (i.e.: a licence is non-existent, falsified, withdrawn, expired, etc.)	X		
2.	Article 278(3)	The haulage undertaking or the driver unable to present a valid licence or a valid certified true copy of the licence to the inspecting officer (i.e.: licence or certified true copy of the licence lost, forgotten, damaged, etc.)		X	
Driver attestation					
3.	Annex 27, Part A, Article 6(1)(b)(v)	Drivers carrying goods without holding a valid driver attestation (i.e. driver's attestation is non-existent, falsified; withdrawn, expired, etc.)		X	
4.	Annex 27, Part A, Article 6(1)(b)(v)	The driver or the haulage undertaking unable to present a valid driver attestation or a valid certified true copy of the driver attestation to the inspecting officer (i.e. driver attestation or certified true copy of the driver attestation lost, forgotten, damaged, etc.)			X
Specific transport operations allowed under the TGEU					

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
5.	Article 277	Carrying out cabotage or other transport operations not in compliance with the laws, regulations and administrative provisions, including limitations on the number of journeys, in force in the host Party.		X	

(11) Groups of infringements of rules on animal transport

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 27, Part A, Article 6(1)(b) (x)	Partitions are not strong enough to withstand the weight of animals		X	
2.		Using loading or unloading ramps that have slippery surfaces, that lack lateral protections or that are too steep			X
3.		Using lifting platforms or upper floors that do not have safety barriers preventing animals from falling or escaping during loading and unloading operations			X
4.		Means of transport not approved for long journeys, or not approved for the type of animals being transported.			X
5.		Transporting without valid required documentation, journey log or transporter authorisation or certificate of competence			X

(12) Groups of infringements of laws applicable to contractual obligations

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 27, Part A, Article 6(1)(b)(xii)	Violation of the law applicable to contractual obligations		X	

Degrees of seriousness of serious infringements

(1) The degrees of seriousness of infringements shall be serious (“SI”), very serious (“VSI”) and most serious (“MSI”).

(2) Serious and very serious infringements, when committed repeatedly by the same operator, shall be regarded as more serious by the competent authority in the Party of establishment. When calculating the frequency of occurrence of repeated infringements, the competent authorities in the Party shall take into account the following factors:-

The seriousness of the infringements (SI or VSI);

- Time (at least one rolling year from the date of a control);
- Number of vehicles used for the transport activities managed by the transport manager (average per year).

(3) Taking into account the potential of creating a risk to road safety, the maximum frequency of serious infringements beyond which they should be considered as more serious shall be established as follows:

- three SI per vehicle and per year = one VSI;
- three VSI per vehicle and per year = launch of a national procedure on good repute.

(4) The number of infringements per vehicle per year is an average figure calculated by dividing the total number of all infringements of the same level of seriousness (SI or VSI) by the average number of vehicles used during the year. The frequency formula provides for a maximum threshold for occurrence of serious infringements beyond which they shall be considered more serious. Competent authorities in the Parties may establish stricter thresholds if envisaged in their national administrative procedure for assessing good repute.

Appendix 27-A-1-5

Part 1

Data contained in the national electronic registers of road transport undertakings and the conditions of access to this data

1. The national electronic registers referred to in Article 13(1) of Part A of Annex 27 to the TGEU shall contain at least the following data-

- (a) the name and legal form of the road transport undertaking;
- (b) the address of its establishment;
- (c) the names of the transport managers designated as meeting the requirements laid down in Article 3 of Section 1 of Part A of Annex 27 to the TGEU relating to good repute and professional competence or, as appropriate, the name of a legal representative;
- (d) the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the licence referred to in Article 278(1) of the TGEU and of the certified true copies;
- (e) the number, category and type of serious infringements, as referred to in Article 6(2) of Section 1 of Part A of Annex 27 to the TGEU, which have resulted in a conviction or penalty during the last two years;
- (f) the name of any person declared to be unfit to manage the transport activities of an undertaking, as long as the good repute of that person has not been re-established pursuant to Article 6(4) of Section 1 of Part A of Annex 27 to the TGEU, and the rehabilitation measures applicable;
- (g) the registration numbers of the vehicles at the disposal of the undertakings pursuant to Article 5(f) of Section 1 of Part A of Annex 27 to the TGEU ; and
- (h) the risk rating band of the undertaking pursuant to the law and/or procedures applicable in each Party.

2. The data referred to in points (a) to (d) of paragraph 1 shall be publicly accessible, in accordance with the relevant provisions of the law on personal data protection applicable in each Party.

The Minister may choose to keep the data referred to in points (e) to (h) of paragraph 1 in separate registers. In such cases, the data referred to in points (e) and (f) of paragraph 1 shall be made available upon request or

shall be directly accessible to all the competent authorities of the Party in question. The requested information shall be provided within five working days of receipt of the request.

The data referred to in points (g) and (h) of paragraph 1 shall be made available to the competent authorities during roadside checks.

The data referred to in points (e) to (h) of paragraph 1 shall only be accessible to authorities other than the competent authorities where those authorities are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to secrecy or are otherwise under a formal obligation of secrecy.

3. Data concerning an undertaking whose authorisation has been suspended or withdrawn shall remain in the national electronic register for two years from the expiry of the suspension or the withdrawal of the licence and shall thereafter be immediately removed.

Data concerning any person declared to be unfit for the occupation of road haulage operator shall remain in the national electronic register as long as the good repute of that person has not been re-established pursuant to Article 6(4) of Section 1 of Part A of Annex 27 to the TGEU. Where such a rehabilitation measure or any other measure having an equivalent effect is taken, the data shall be immediately removed.

The data referred to in the first and second subparagraphs shall specify the reasons for the suspension or withdrawal of the authorisation or the declaration of unfitness, as appropriate, and the corresponding duration.

4. The Parties shall take all necessary measures to ensure that all the data contained in the national electronic register are kept up to date and are accurate.

Part 2

Minimum requirements for the data to be entered in the national electronic register of road transport undertakings

1. The minimum requirements for the data to be entered in the national electronic registers established by competent authorities in each Party in accordance with Article 13 of Part A of Annex 27 of the TGEU shall be as set out in the Annex to the Commission Decision 2009/992/EU and in Article 1 of the Commission Implementing Decision (EU) 2024/2164 as amended in the following paragraphs.

2. For the purposes of this Appendix, the following amendments to the Annex in Commission Decision 2009/992/EU shall apply-

- (a) all references to “Member State” is replaced by “Country”;
- (b) all references to ‘Community licence’, wherever they occur, are replaced by ‘licence referred to in Article 278(1) of the TGEU’;
- (c) in respect of Gibraltar, the following fields are not required-
 - (i) “Number of people employed”; and
 - (ii) “Risk rating.”;
- (d) for “Article 16(2)(c), of Regulation (EC) No 1071/2009” substitute “point (c) of Part 1 of Appendix 27-A-1-5 of Annex 27 to the TGEU”; and
- (e) the data item “Country of Registration of the Vehicle” referred to in Article 1 of Commission Implementing Decision (EU) 2024/2164 shall, in the case of the United Kingdom, be set by default to “GI”.

Part 3

Modalities for the exchange of information referred to in Article 14(3) and (4) of Part A of Annex 27

1. The Government of Gibraltar and the Member States of the Union shall use the European Registers of Road Transport Undertakings (ERRU), established by Commission Implementing Regulation (EU) 2016/480, for the exchange of information referred to in Article 14(3) and (4) of Part A to Annex 27.

2. The competent authority shall carry out the interconnection of its national electronic register to ERRU in accordance with the procedures and technical requirements laid down in Regulation (EU) 2016/480 as adapted by Part 4 of this Appendix.

3. Each Party shall ensure that the processing of personal data in the context of this Appendix is carried out solely for the purpose of verifying compliance with Chapter 2 of Title III of Part Three of the TGEU and with Annex 27 of the TGEU.

4. The Government of Gibraltar, and each Member State of the Union shall designate an ERRU contact point responsible for the exchange of information with the other Party with regard to the application of this Appendix.

Part 4

Adaptations to the technical specifications of ERRU

For the purposes of this Appendix, the following amendments to Regulation (EU) 2016/480 apply-

1. References to “Member State”, wherever they occur, shall be taken as references to “Country”, and references to “Member States”, wherever they occur, shall be taken as references to “Countries.”

2. References to “this Regulation”, “Annexes I to VII to this Regulation” and “Annex VIII to this Regulation”, wherever they occur, shall be taken as references to “Appendix 27-A-1-5 of Annex 27 to the TGEU.”

3. The references to “Community licence”, wherever they occur, shall be taken as references to “licence referred to in Article 278(1) of the TGEU.”

4. In Articles 1 to 3 for “Article 16 of Regulation (EC) No 1071/2009” and “Article 16(5) of Regulation (EC) No 1071/2009”, substitute “Appendix 27-A-1-5 of Annex 27 to the TGEU.”

5. In Article 2, for “Article 2 of Regulation (EC) No 1071/2009” substitute “Article 2 of Part A of Annex 27 to the TGEU.”

6. In Article 2, point (e), for “Article 8(8) of Regulation (EC) No 1071/2009” substitute “Article 280 of the TGEU.”

7. Articles 6 and 7 shall not be applicable for the purpose of this Appendix;

8. In point 1.3 of Annex II-

- (a) for “risk rating and risk rating band” substitute “risk rating band”; and
- (b) the reference to “number of employees” is deleted.

9. In the Appendix to Annex III-

- (a) the following fields shall not be contained in a Check Transport Undertaking Data Response message - “Number of People Employed”; and “Risk Rating”;
- (b) for ‘Appendix 27-A-1-1 to Regulation (EC) No 1071/2009 and Annex I to Commission Regulation No (EU) 2016/403’, substitute “Appendix 27-A-1-1 and Appendix 27A11bis of Annex 27 to the TGEU.”

10. In Section 1 of Annex VIII, for “Article 11(4) of Regulation (EC) No 1071/2009”, substitute “Article 12(2) of Part A of Annex 27 of the TGEU.”

11. In Section 2.1 of Annex VIII, for “Directive 2006/22/EC or in Regulation (EC) No 1071/2009” substitute “Appendix 27-A-1-1 and Appendix 27A11bis of Annex 27 to the TGEU.”

Part 5

Suspension of Gibraltar connection to ERRU

The Union may suspend the access of Gibraltar to ERRU if Gibraltar ceases to meet the conditions set out in this Appendix.”.