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

(recast)

(Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) A number of substantial changes are to be made to Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States, to Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State, and to Directive 2006/94/EC of the European Parliament and of the Council of 12 December 2006 on the establishment of common rules for certain types of carriage of goods by road. In the interests of clarity and simplification, those legal acts should be recast and incorporated into one single regulation.

(2) The establishment of a common transport policy entails, inter alia, laying down common rules applicable to access to the market in the international carriage of goods by road within the territory of the Community, as well as laying down the conditions under which non-resident hauliers may operate transport services within a Member State. Those rules must be laid down in such a way as to contribute to the smooth operation of the internal transport market.

(3) To ensure a coherent framework for international road haulage throughout the Community, this Regulation should apply to all international carriage on Community territory. Carriage from Member States to third countries is still largely covered by bilateral agreements between the Member States and those third countries. Therefore, this Regulation should not apply to that part of the journey within the territory of the Member State of loading or unloading as long as the necessary agreements between the Community and the third countries concerned have not been concluded. It should, however, apply to the territory of a Member State crossed in transit.

(4) The establishment of a common transport policy implies the removal of all restrictions against the person providing transport services on the grounds of nationality or the fact that he is established in a different Member State from the one in which the services are to be provided.

(5) In order to achieve this smoothly and flexibly, provision should be made for a transitional cabotage regime as long as harmonisation of the road haulage market has not yet been completed.

(6) The gradual completion of the single European market should lead to the elimination of restrictions on access to the domestic markets of Member States. Nevertheless, this should take into account the effectiveness of controls and the evolution of employment conditions in the profession, the harmonisation of the rules in the fields of, inter alia, enforcement and road user charges, and social and safety legislation. The Commission should closely monitor the market situation as well as the harmonisation mentioned above and propose, if appropriate, the further opening of domestic road transport markets, including cabotage.

(7) Under Directive 2006/94/EC, a certain number of types of carriage are exempt from Community authorisation and from any other carriage authorisation. Within the framework of the organisation of the market provided for by this Regulation, a system of exemption from the Community licence and from any other carriage authorisation should be maintained for some of those types of carriage, because of their special nature.

(8) Under Directive 2006/94/EC, the carriage of goods with vehicles of a maximum laden weight of between 3,5 tonnes and 6 tonnes was exempt from the requirement for a Community licence. Community rules in the field of road transport of goods, however, apply in general to vehicles with a maximum laden mass of more than 3,5 tonnes. Thus, the provisions of this Regulation should be aligned with the general scope of application of Community road transport rules and should only provide for an exemption for vehicles with a maximum laden mass of up to 3,5 tonnes.

(9) The international carriage of goods by road should be conditional on the possession of a Community licence. Hauliers should be required to carry a certified true copy of the Community licence aboard each of their vehicles in order to facilitate effective controls by enforcement authorities, especially those outside the Member State in which the haulier is established. To this end, it is necessary to lay down more detailed specifications as regards the layout and other features of the Community licence and the certified copies.

(10) Roadside checks should be carried out without direct or indirect discrimination on grounds of the nationality of the road transport operator or the country of establishment of the road transport operator or of registration of the vehicle.

(11) The conditions governing the issue and withdrawal of Community licences and the types of carriage to which they apply, their periods of validity and the detailed rules for their use should be determined.

(12) A driver attestation should also be established in order to allow Member States to check effectively whether drivers from third countries are lawfully employed or at the disposal of the haulier responsible for a given transport operation.

(13) Hauliers who are holders of Community licences provided for in this Regulation and hauliers authorised to operate certain categories of international haulage service should be permitted to carry out national transport services within a Member State on a temporary basis in conformity with this Regulation, without having a registered office or other establishment therein. When such cabotage operations are performed, they should be subject to Community legislation such as Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport(6) and to national law in force in specified areas in the host Member State.

(14) Provisions should be adopted to allow action to be taken in the event of serious disturbance of the transport markets affected. For that purpose it is necessary to introduce a suitable decision-making procedure and for the required statistical data to be collected.

(15) Without prejudice to the provisions of the Treaty on the right of establishment, cabotage operations consist of the provision of services by hauliers within a Member State in which they are not established and should not be prohibited as long as they are not carried out in a way that creates a permanent or continuous activity within that Member State. To assist the enforcement of this requirement, the frequency of cabotage operations and the period in which they can be performed should be more clearly defined. In the past, such national transport services were permitted on a temporary basis. In practice, it has been difficult to ascertain which services are permitted. Clear and easily enforceable rules are thus needed.

(16) This Regulation is without prejudice to the provisions concerning the incoming or outgoing carriage of goods by road as one leg of a combined transport journey as laid down in Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States. National journeys by road within a host Member State which are not part of a combined transport operation as laid down in Directive 92/106/EEC fall within the definition of cabotage operations and should accordingly be subject to the requirements of this Regulation.

(17) The provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services apply to transport undertakings performing a cabotage operation.

(18) In order to perform efficient controls of cabotage operations, the enforcement authorities of the host Member States should, at least, have access to data from consignment notes and from recording equipment, in accordance with Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport.

(19) Member States should grant each other mutual assistance with a view to the sound application of this Regulation.

(20) Administrative formalities should be reduced as far as possible without abandoning the controls and penalties that guarantee the correct application and effective enforcement of this Regulation. To this end, the existing rules on the withdrawal of the Community licence should be clarified and strengthened. The current rules should be adapted to allow the effective sanctioning of serious infringements committed in a host Member State. Penalties should be non-discriminatory and proportionate to the seriousness of the infringements. It should be possible to lodge an appeal in respect of any penalties imposed.

(21) Member States should enter in their national electronic register of road transport undertakings all serious infringements committed by hauliers which have led to the imposition of a penalty.

(22) In order to facilitate and strengthen the exchange of information between national authorities, Member States should exchange the relevant information through the national contact points set up pursuant to 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.

(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 adapt Annexes I, II and III to this Regulation to technical progress. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(25) Member States should take the necessary measures to implement this Regulation, in particular as regards effective, proportionate and dissuasive penalties.

(26) Since the objective of this Regulation, namely to ensure a coherent framework for international road haulage throughout the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, 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 in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation applies to the international carriage of goods by road for hire or reward for journeys carried out partly within Gibraltar.

2. In the event of carriage from Gibraltar to a relevant State or to a third country and vice versa, this Regulation applies to any part of the journey within Gibraltar.

3. *Deleted*

4. This Regulation shall apply to the national carriage of goods by road undertaken on a temporary basis by a non-resident haulier as provided for in Chapter III.

5. The following types of carriage and unladen journeys made in conjunction with such carriage shall not require a Gibraltar licence for the Community or a Community licence and shall be exempt from any carriage authorisation:

(a) carriage of mail as a universal service;

(b) carriage of vehicles which have suffered damage or breakdown;

(c) carriage of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 3,5 tonnes;

(d) carriage of goods in motor vehicles provided the following conditions are fulfilled:

  (i) the goods carried are the property of the undertaking or have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the undertaking;

  (ii) the purpose of the journey is to carry the goods to or from the undertaking or to move them, either inside or outside the undertaking for its own requirements;

  (iii) motor vehicles used for such carriage are driven by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation;

  (iv) the vehicles carrying the goods are owned by the undertaking, have been bought by it on deferred terms or have been hired provided that in the latter case they meet the conditions of Directive 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on the use of vehicles hired without drivers for the carriage of goods by road; and

  (v) such carriage is no more than ancillary to the overall activities of the undertaking;

(e) carriage of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters.

Point (d)(iv) of the first subparagraph shall not apply to the use of a replacement vehicle during a short breakdown of the vehicle normally used.

6. The provisions of paragraph 5 shall not affect the conditions under which Gibraltar nationals may engage in the activities referred to in that paragraph.

Article 2

Definitions

For the purposes of this Regulation:

1. ‘vehicle’ means a motor vehicle registered in Gibraltar or in a relevant State, or a coupled combination of vehicles the motor vehicle of which at least is registered in Gibraltar or in a relevant State, used exclusively for the carriage of goods;

2. ‘international carriage’ means:

(a) a laden journey undertaken by a vehicle where the point of departure is in Gibraltar and the point of arrival is in a relevant State, or vice versa, with or without transit through Gibraltar or one or more relevant States or third countries;

(b) a laden journey undertaken by a vehicle from Gibraltar to a third country or vice versa with or without transit through Gibraltar or one or more relevant States or third countries;

(c) a laden journey undertaken by a vehicle where the point of departure is a relevant State and the point of arrival is a third country, or vice versa, with transit through Gibraltar;

(d) a laden journey undertaken by a vehicle between third countries, with transit through Gibraltar;

(e) a laden journey undertaken by a vehicle between two member States, with transit through Gibraltar;

(f) an unladen journey in conjunction with the carriage referred to in points (a) to (e);

3. host relevant State’ means a relevant State in which a haulier operates other than the haulier’s State of establishment;

4. ‘non-resident haulier’ means a road haulage undertaking which operates in a host State;

5. ‘driver’ means any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary;

6. ‘cabotage operations’ means national carriage for hire or reward carried out on a temporary basis in a host State, in conformity with this Regulation;

7. ‘serious infringement of retained EU law on road transport’ means an infringement which may lead to the loss of good repute in accordance with Article 6(1) and (2) of Regulation (EC) No 1071/2009 and/or to the temporary or permanent withdrawal of a Gibraltar licence for the Community or a Community licence.

8. ‘relevant State’ means an EEA State and includes the United Kingdom, and Gibraltar where the definition permits;

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 as it applies in EU law as amended from time to time, and includes a UK licence for the Community as issued under the retained EU law of the United Kingdom as amended from time to time;

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

11. ‘EU driver attestation’ means a driver attestation issued under Article 5 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 as it has effect in EU law as amended from time to time;

12. ‘Regulation (EC) No 1071/2009’ means 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;

13. ‘Minister’ means the Minister with responsibility for transport in Gibraltar.

CHAPTER II

Article 3

General principle

International carriage shall be carried out subject to possession of a Gibraltar licence for the Community or a Community licence issued by a relevant State and, if the driver is a national of a third country, in conjunction with a driver attestation issued in accordance with this Regulation or an EU driver attestation.

Article 4

Gibraltar licence for the Community

1. The Gibraltar licence for the Community shall be issued by the competent authority, in accordance with this Regulation, to any haulier carrying goods by road for hire or reward who:

(a) is established in Gibraltar in accordance with Gibraltar law; and

(b) is entitled, in accordance with Gibraltar law concerning admission to the occupation of road haulage operator, to carry out the international carriage of goods by road.

2. A Gibraltar licence for the Community shall be issued by the competent authority for renewable periods of up to 5 years.

Community licences and certified copies issued to hauliers established in Gibraltar and in the United Kingdom under Regulation (EC) 1071/2009 and valid before exit day will remain valid and treated as a Gibraltar licence for the Community until the date of their expiry.

The Minister may by regulations adjust the period of validity of the Gibraltar licence for the Community to take account of technical progress, in particular, in the national electronic registers of road transport undertakings as provided for in Article 16 of Regulation (EC) No 1071/2009.

3. The competent authority shall issue the holder with the original of the Gibraltar licence for the Community, which shall be kept by the haulier, and the number of certified true copies corresponding to the number of vehicles at the disposal of the holder of the Gibraltar licence for the Community, whether those vehicles are wholly owned or, for example, held under a hire purchase, hire or leasing contract.

4. The Gibraltar licence for the Community and the certified true copies shall correspond to the model set out in Annex II, which also lays down the conditions governing its use. They shall contain at least two of the security features listed in Annex I.

The Minister may by regulations adapt Annexes I and II to take account of technical progress.

5. The Gibraltar licence for the Community and the certified true copies thereof shall bear the seal of the competent authority as well as a signature and a serial number. The serial numbers of the Gibraltar licence for the Community and of the certified true copies shall be recorded in the national electronic register of road transport undertakings as part of the data relating to the haulier.

6. The Gibraltar licence for the Community shall be issued in the name of the haulier and shall be non-transferable. A certified true copy of the Gibraltar licence for the Community shall be kept in each of the haulier’s vehicles and shall be presented at the request of any authorised inspecting officer.

In the case of a coupled combination of vehicles, the certified true copy shall accompany the motor vehicle. It shall cover the coupled combination of vehicles even where the trailer or semi-trailer is not registered or authorised to use the roads in the name of the licence holder or where it is registered or authorised to use the roads in another State.

7. Regulations under this Article may-

(a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and

(b) make different provision for different cases.

Article 5

Driver attestation

1. A driver attestation must be issued by the competent authority in accordance with this Regulation to any haulier who:

(a) is the holder of a Gibraltar licence for the Community;

(b) employs a driver who is lawfully permitted to seek employment in Gibraltar; and

(c) has employed that driver in compliance with any conditions of employment and vocational training laid down in Gibraltar.

2. The driver attestation must be issued, at the request of the holder of the Gibraltar licence for the Community, for each driver who is not a national of Gibraltar or of a relevant State, nor a person lawfully in Gibraltar who has a right to work in Gibraltar whom that haulier lawfully employs, or who is put at the disposal of the haulier. Each driver attestation must certify that the driver named therein is employed in accordance with the conditions laid down in paragraph 1 .

3. The driver attestation shall correspond to the model set out in Annex III. It shall contain at least two of the security features listed in Annex I.

4. The Minister may by regulation adapt Annex III to take account of technical progress.

5. The driver attestation shall bear the seal of the issuing authority as well as a signature and a serial number. The serial number of the driver attestation may be recorded in the national electronic register of road transport undertakings as part of the data relating to the haulier who puts it at the disposal of the driver designated therein.

6. The driver attestation shall belong to the haulier, who puts it at the disposal of the driver designated therein when that driver drives a vehicle using a Gibraltar licence for the Community issued to that haulier. A certified true copy of the driver attestation issued by the competent authority shall be kept at the haulier's premises. An EU driver attestation shall be presented at the request of any authorised inspecting officer.

7. The Minister must determine the period of validity of a driver attestation, subject to a maximum validity of 5 years.

The driver attestation must be valid only as long as the conditions under which it was issued are satisfied. If those conditions are no longer satisfied, the Minister may require the haulier to return the driver attestation immediately.";

8. Regulations under this Article may-

(a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and

(b) make different provision for different cases.

Article 6

Verification of conditions

1. Whenever an application for a Gibraltar licence for the Community or an application for renewal of a Gibraltar licence for the Community in accordance with Article 4(2) is lodged, the competent authority of establishment shall verify whether the haulier satisfies or continues to satisfy the conditions laid down in Article 4(1).

2. The competent authority of establishment shall regularly verify, by carrying out checks each year covering at least 20 % of the valid driver attestations issued, whether the conditions, referred to in Article 5(1), under which a driver attestation has been issued are still satisfied.

Article 7

Refusal to issue and withdrawal of UK licence for the Community and driver attestation

1. If the conditions laid down in Article 4(1) are not satisfied, the competent authority must reject an application for the issue or renewal of a Gibraltar licence for the Community by means of a reasoned decision in each case. If the conditions referred to in Article 5(1) are not satisfied, the Minister must reject an application to issue a driver attestation by means of a reasoned decision in each case.

2. The competent authority shall withdraw a Gibraltar licence for the Community or a driver attestation where the holder:

(a) no longer satisfies the conditions laid down in Article 4(1) or those referred to in Article 5(1); or

(b) has supplied incorrect information in relation to an application for a Community licence or for a driver attestation.

CHAPTER III

CABOTAGE

Article 8

General principle

1. Any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, shall be entitled, under the conditions laid down in this Chapter, to carry out cabotage operations within Gibraltar.

2. Once the goods carried in the course of an incoming international carriage have been delivered, hauliers referred to in paragraph 1 shall be permitted to carry out, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, up to three cabotage operations following the international carriage from relevant or from a third country to Gibraltar. The last unloading in the course of a cabotage operation before leaving Gibraltar shall take place within 7 days from the last unloading in Gibraltar in the course of the incoming international carriage.

Within the time limit referred to in the first subparagraph, hauliers are limited to carrying out one cabotage operation out of the three cabotage operations permitted in Gibraltar within 3 days of the unladen entry into Gibraltar.

3. National road haulage services carried out in Gibraltar by a non-resident haulier shall only be deemed to conform with this Regulation if the haulier can produce clear evidence of the incoming international carriage and of each consecutive cabotage operation carried out.

Evidence referred to in the first subparagraph shall comprise the following details for each operation:

(a) the name, address and signature of the sender;

(b) the name, address and signature of the haulier;

(c) the name and address of the consignee as well as his signature and the date of delivery once the goods have been delivered;

(d) the place and the date of taking over of the goods and the place designated for delivery;

(e) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognised description, as well as the number of packages and their special marks and numbers;

(f) the gross mass of the goods or their quantity otherwise expressed;

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

4. No additional document shall be required in order to prove that the conditions laid down in this Article have been met.

5. Any haulier entitled in the relevant State of establishment, in accordance with that relevant State's legislation, to carry out the road haulage operations for hire or reward specified in Article 1(5)(a), (b) and (c) shall be permitted, under the conditions set out in this Chapter, to carry out, as the case may be, cabotage operations of the same kind or cabotage operations with vehicles in the same category.

6. Permission to carry out cabotage operations, within the framework of the types of carriage referred to in Article 1(5)(d) and (e), shall be unrestricted.

Article 9

Rules applicable to cabotage operations

1. The performance of cabotage operations shall be subject, save as otherwise provided in retained EU law, to the laws, regulations and administrative provisions in force in Gibraltar with regard to the following:

(a) the conditions governing the transport contract;

(b) the weights and dimensions of road vehicles;

(c) the requirements relating to the carriage of certain categories of goods, in particular dangerous goods, perishable foodstuffs and live animals;

(d) the driving time and rest periods;

(e) the import duty on transport services.

The weights and dimensions referred to in point (b) of the first subparagraph may, where appropriate, exceed those applicable in the haulier's relevant State of establishment, but they may under no circumstances exceed the limits set by Gibraltar.

2. The laws, regulations and administrative provisions referred to in paragraph 1 shall be applied to non-resident hauliers under the same conditions as those imposed on hauliers established in Gibraltar, so as to prevent any discrimination on grounds of nationality or place of establishment.

Article 10

Safeguard procedure

1. In the event of serious disturbance of the national transport market in a given geographical area due to, or aggravated by, cabotage, the Minister may consider whether or not safeguard measures are necessary and may by Order provide for measures as regards operations carried on by resident or non-resident hauliers.

2. For the purposes of paragraph 1:

‘serious disturbance of the national transport market in a given geographical area’ means the existence on the market of problems specific to it, such that there is a serious and potentially enduring excess of supply over demand, implying a threat to the financial stability and survival of a significant number of hauliers,

‘geographical area’ means area covering all or part of Gibraltar.

3. The Minister may consider whether or not safeguard measures are necessary with a view to adopting them if they are necessary .

Such measures may involve the temporary exclusion of the area concerned from the scope of this Regulation.

Measures adopted in accordance with this Article shall remain in force for a period not exceeding 6 months, renewable once within the same limits of validity.

4. The Minister must consult the competent authority and such other persons as he thinks fit before making any Order under paragraph 1.

5. Where the Minister considers that the measures adopted by Order pursuant to paragraph 1 need to be prolonged beyond the period provided for in the third subparagraph of paragraph 3, the Minister must publish a document relating to the proposal to so extend the measures. The proposals must set out:

(a) the reasons why it is necessary to extend the measures;

(b) the forecasted economic impact of the measures on hauliers;

(c) the expected time after which the need for measures to continue must be reviewed .

6. *Deleted*

7. If after considering the responses to the consultation carried out in accordance with paragraph 5, the Minister decides that it is appropriate to continue the safeguard measures beyond the period provided in paragraph 3, or to institute alternative measures, the Minister may by regulations continue those measures or adopt alternative measures.

8. Any Order or regulations under this Article may—

(a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and

(b) make different provision for different cases.

CHAPTER IV

MUTUAL ASSISTANCE AND PENALTIES

Article 11

Deleted

Article 12

Sanctioning of infringements

1. In the event that the competent authority is notified of a serious infringement of this Regulation, or Regulation (EC) 1072/2009 as it applies in the EU and amended from time to time, by any haulier who is established in Gibraltar, the appropriate competent authority for that haulier must take appropriate action which may include a warning to pursue the matter which may lead, inter alia, to the imposition of the following administrative penalties:

(a) temporary or permanent withdrawal of some or all of the certified true copies of the Gibraltar licence for the Community;

(b) temporary or permanent withdrawal of the Community licence.

These penalties may be determined after the final decision on the matter has been taken and shall have regard to the seriousness of the infringement committed by the holder of the Community licence and to the total number of certified true copies of that licence that he holds in respect of international traffic.

2. In the event that the competent authority is notified of a serious infringement regarding any misuse whatsoever of driver attestations by a haulier who is established in Gibraltar, the competent authority shall impose penalties, such as:

(a) suspending the issue of driver attestations;

(b) withdrawing driver attestations;

(c) making the issue of driver attestations subject to additional conditions in order to prevent misuse;

(d) withdrawing, temporarily or permanently, some or all of the certified true copies of the Gibraltar licence for the Community;

(e) withdrawing, temporarily or permanently, the Gibraltar licence for the Community.

These penalties may be determined after the final decision on the matter has been taken and shall have regard to the seriousness of the infringement committed by the holder of the Gibraltar licence for the Community.

3. The competent authority must communicate to the competent authorities of the relevant State in which the infringement was ascertained, as soon as possible and at the latest within 6 weeks of their final decision on the matter, which, if any, of the penalties provided for in paragraphs 1 and 2 have been imposed.

If such penalties are not imposed, the competent authority state the reasons therefor.

4. The competent authority shall ensure that the penalties imposed on the haulier concerned are, as a whole, proportionate to the infringement or infringements which gave rise to such penalties, taking into account any penalty for the same infringement imposed in the relevant State in which the infringement was ascertained.

5. The competent authority may also bring proceedings against the haulier before the magistrates' court or a tribunal. They shall inform the competent authority of the host Member State of any decisions taken to this effect.

6. Hauliers have the right to appeal against any administrative penalty imposed on them pursuant to this Article.

Article 13

Sanctioning of infringements by the host Member State

1. Where the competent authority is aware of a serious infringement of this Regulation or of any retained direct EU legislation attributable to a non-resident haulier, the competent authority must transmit to the relevant authorities of the haulier's relevant State of establishment, as soon as possible and at the latest within 6 weeks of the competent authority's final decision on the matter, the following information:

(a) a description of the infringement and the date and time when it was committed;

(b) the category, type and seriousness of the infringement; and

(c) the penalties imposed and the penalties executed.

The competent authority may request the relevant authorities of the relevant State of establishment to impose administrative penalties in accordance with Article 12 of Regulation (EC) 1072/2009 as it has effect in EU law.

Article 14

Entry in the national electronic registers

The competent authority must ensure that serious infringements of Gibraltar, United Kingdom or EU road transport legislation committed by hauliers established in Gibraltar, which have led to the imposition of a penalty by the competent authority or by a relevant State, as well as any temporary or permanent withdrawal of a Gibraltar licence for the Community or of a certified true copy thereof, are recorded in the national electronic register of road transport undertakings. Entries in the register which concern a temporary or permanent withdrawal of a Gibraltar licence for the Community must remain in the database for 2 years from the time of the expiry of the period of withdrawal, in the case of temporary withdrawal, or from the date of withdrawal, in the case of permanent withdrawal.

CHAPTER V

Deleted

Articles 15 to 17

Deleted

CHAPTER VI

FINAL PROVISIONS

Article 18

Repeals

Regulations (EEC) No 881/92 and (EEC) No 3118/93 and Directive 2006/94/EC are hereby repealed.

References to the repealed Regulations and Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IV.

Article 19

Deleted

ANNEX I

Security features of the Gibraltar licence for the Community and the driver attestation

The Gibraltar licence for the Community and the driver attestation 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 of the Gibraltar licence for the Community, of the certified copy thereof or of the driver attestation as well as, in each case, the issue number,
- a security design background with fine guilloche patterns and rainbow printing.

ANNEX II

Gibraltar licence for the Community model

(a)

(Colour Pantone light blue, format DIN A4 cellulose paper 100 g/m2 or more)

(First page of the licence)

(Text in English)

UK

GIBRALTAR

DRIVER AND VEHICLE LICENSING DEPARTMENT
GIBRALTAR (1)

LICENCE No:
or
CERTIFIED TRUE COPY No:
for the international carriage of goods by road for hire or reward

This licence entitles (2)

to engage in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys carried out for hire or reward within Gibraltar, the UK or a relevant State as laid down in Regulation (EC) 1072/2009.
Particular remarks: ……
……

This licence is valid from …… To……
Issued by …… on……(3)

……..

(1) Competent authority in Gibraltar.
(2) Name or business name and full address of the haulier.
(3) Signature of the authority issuing the certificate and date of issue.

(b)

(Second page of the licence)

(Text in English)

GENERAL PROVISIONS

This licence is issued under Regulation (EC) No 1072/2009.

“relevant State” herein means the United Kingdom or a Member State of the European Union

It entitles the holder to engage in the international carriage of goods by road for hire or reward by any route for journeys or parts of journeys carried out within Gibraltar or a relevant State and, where appropriate, subject to the conditions laid down herein:

- where the point of departure and the point of arrival are situated in;
    - two different countries, one of which is Gibraltar and the other is a relevant State with or without transit through one or more other relevant States or third countries; or
    - two different relevant States, with or without transit through Gibraltar or one or more other relevant States or third countries,
- from Gibraltar or a relevant State to a third country or vice versa, with or without transit through one or more relevant States or third countries,
- between third countries with transit through Gibraltar or one or more relevant States,

and unladen journeys in connection with such carriage.

In the case of carriage from Gibraltar or a relevant State to a third country or vice versa, this licence is valid for that part of the journey carried out within the territory of any relevant State.

The licence is personal to the holder and is non-transferable.

It may be withdrawn by the Driver and Vehicle Licensing Department, for example, where the holder has:

- not complied with all the conditions for using the licence,
- supplied incorrect information with regard to the data needed for the issue or extension of the licence.

The original of the licence must be kept by the haulage undertaking.

A certified copy of the licence must be kept in the vehicle(1). In the case of a coupled combination of vehicles it must accompany the motor vehicle. It covers the coupled combination of vehicles even if the trailer or semi-trailer is not registered or authorised to use the roads in the name of the licence holder or if it is registered or authorised to use the roads in another State.

The licence must be presented at the request of any authorised inspecting officer.

Within Gibraltar or each relevant State, the holder must comply with the laws, regulations and administrative provisions in force in that State, in particular with regard to transport and traffic.

(1) ‘Vehicle’ means a motor vehicle registered in Gibraltar or a relevant State, or a coupled combination of motor vehicles the motor vehicle of which at least is registered in Gibraltar or a relevant State, used exclusively for the carriage of goods.

ANNEX III

Driver attestation model

(a)

(Colour Pantone pink, format DIN A4 cellulose paper 100 g/m2 or more)

(First page of the attestation)

(Text in English)

UK

GIBRALTAR

DRIVER AND VEHICLE LICENSING DEPARTMENT
GIBRALTAR(1)

DRIVER ATTESTATION No:

for the carriage of goods by road for hire or reward under a Gibraltar licence for the Community Regulation (EC) No 1072/2009

This attestation certifies that on the basis of the documents presented by:

…… (2)

The following driver

Name and forename ……...

Date and place of birth …… Nationality ……..

Type and reference number of identity paper ……...

Date of issue …… Place of issue ……..

Driving licence number …….

Date of issue ……... Place of issue ……..

Social security number ……..

is employed, in accordance with the laws, regulations or administrative provisions and rules applicable in Gibraltar on the conditions of employment and of vocational training of drivers that must be met in order to carry out road transport operations.

Particular remarks: ……

…….

…….

This attestation is valid from ……..……. to ……

Issued by…….. on ……(3)

_____

(1) Competent authority in Gibraltar.

(2) Name or business name and full address of the haulier.

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

(b)

(Second page of the licence)

(Text in English)

GENERAL PROVISIONS

This licence is issued under Regulation (EC) No 1072/2009.

It certifies that the driver named therein is employed, in accordance with the laws, regulations or administrative provisions and rules applicable in Gibraltar on the conditions of employment and of vocational training of drivers that must be met in order to carry out road transport operations.

The driver attestation shall belong to the haulier, who puts it at the disposal of the driver designated therein when that driver drives a vehicle (1) engaged in carriage using a Gibraltar licence for the Community issued to that haulier. The driver attestation is not transferable. The driver attestation shall be valid only as long as the conditions under which it was issued are still satisfied and must be returned immediately by the haulier to the issuing authorities if these conditions are no longer met.

It may be withdrawn by the Driver and Vehicle Licensing Department, for example, where the holder has:

– not complied with all the conditions for using the attestation,

– supplied incorrect information with regard to the data needed for the issue or extension of the attestation.

A certified true copy of the attestation must be kept by the haulage undertaking.

An original attestation must be kept in the vehicle and must be presented by the driver at the request of any authorised inspecting officer.

(1) 'Vehicle' means a motor vehicle registered in Gibraltar, or a coupled combination of motor vehicles the motor vehicle of which at least is registered in Gibraltar, the United Kingdom or a Member State, used exclusively for the carriage of goods.

ANNEX IV

Correlation Table

Regulation (EEC) No 881/92	Regulation (EEC) No 3118/93	Directive 2006/94/EC	This Regulation
Article 1(1)			Article 1(1)
Article 1(2)			Article 1(2)
Article 1(3)			Article 1(3)
Annex II		Article 1(1) and (2), Annex I; Article 2	Article 1(5)
		Article 2	Article 1(6)
Article 2			Article 2
Article 3(1)			Article 3
Article 3(2)			Article 4(1)
Article 3(3)			Article 5(1)
Article 4			
Article 5(1)			Article 4(2)

Article 5(2)			Article 4(3)
Article 5(3)			Article 4(4)
			Article 4(5)
Article 5(4), Annex I			Article 4(6)
Article 5(5)			Article 4(2)
Article 6(1)			Article 5(2)
Article 6(2)			Article 5(2)
Article 6(3)			Article 5(3)
Article 6(4)			Article 5(6)
Article 6(5)			Article 5(7)
Article 7			Article 6
Article 8(1)			Article 7(1)
Article 8(2)			Article 7(2)
Article 8(3)			Article 12(1)
Article 8(4)			Article 12(2)
Article 9(1) and (2)			Article 12(6)
	Article 1(1)		Article 8(1)
	Article 1(2)		Article 8(5)
	Article 1(3) and (4)		Article 8(6)
	Article 2		
	Article 3		
	Article 4		
	Article 5		
	Article 6(1)		Article 9(1)
	Article 6(2)		
	Article 6(3)		Article 9(2)
	Article 6(4)		
	Article 7		Article 10
Article 10			Article 17(1)
Article 11(1)	Article 8(1)		Article 11
Article 11(2)			Article 13(1)

Article 11(3)			Article 12(4)
Article 11a			
	Article 8(2) and (3)		Article 13(2)
	Article 8(4), first and third subparagraphs		
	Article 8(4), second subparagraph		Article 12(4)
	Article 8(4), fourth and fifth subparagraphs		Article 12(5)
	Article 9		Article 13(3)
Article 12			Article 18
Article 13			
Article 14	Article 10		
	Article 11		
Article 15	Article 12	Article 4	Article 19
		Article 3	
		Article 5	
		Annex II, III	
Annex I			Annex II
Annex III			Annex III
	Annex I		
	Annex II		
	Annex III		
	Annex IV		