

# **SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE**

**No. 3,107 of 8th June, 1999**

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LEGAL NOTICE NO. 64 OF 1999

## **EUROPEAN COMMUNITIES ACT**

### **THE FEDERAL REPUBLIC OF YUGOSLAVIA (SUPPLY, SALE AND EXPORT OF PETROLEUM AND PETROLEUM PRODUCTS) REGULATIONS 1999**

The Governor, in exercise of the powers conferred on him by section 4(1) of the European Communities Act, and all other enabling powers, and after receiving the approval of the House of Assembly pursuant to section 4(3) of that Act, makes the following Regulations -

#### **Title and commencement.**

1.(1) These Regulations may be cited as the Federal Republic of Yugoslavia (Supply, Sale and Export of Petroleum and Petroleum Products) Regulations 1999 and come into operation on the date of the resolution passed by the House of Assembly approving them.

(2) These Regulations apply to ships and aircraft registered in Gibraltar, wherever they may be.

#### **Interpretation.**

2. In these Regulations the following expressions have the following meanings, unless the context otherwise requires -

“aircraft” means an aircraft referred to in rule 2(3) of the Aeroplane Noise Rules;

“British citizen” means -

- (a) a British citizen;
- (b) a person who is a British subject by virtue of Part IV of the British Nationality Act 1981 and who has the right of abode in the United Kingdom and is therefore exempt from United Kingdom immigration control; or

- (c) a British Dependent Territories citizen who acquires his citizenship from a connection with Gibraltar;
- “commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;
- “the Council Regulation” means Council Regulation (EC) No. 900/99 of 29 April 1999 prohibiting the sale and supply of petroleum and certain petroleum products to the Federal Republic of Yugoslavia;
- “Gibraltar ship” means a ship which is -
  - (a) registered in Gibraltar under the Gibraltar Merchant Shipping (Registration) Act 1993; or
  - (b) a Government ship, within the meaning of section 56 of the Gibraltar Merchant Shipping (Registration) Act 1993;
- “master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;
- “operator”, in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or the vehicle;
- “owner”, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;
- “port” has the meaning given to it in the Port Act;
- “ship” includes every description of vessel used in navigation;
- “specified goods” means the goods specified in the Annex to the Council Regulation;
- “vehicle” means land transport vehicle.

3. Any person who infringes a prohibition referred to in Article 1 of the Council Regulation shall be guilty of an offence and may be arrested.

4.(1) Authorisation for the supply, sale or export of petroleum or petroleum products to the Federal Republic of Yugoslavia as provided for in

the Council Regulation shall in Gibraltar be by way of written licence granted by the Collector of Customs.

- (2) If for the purposes of obtaining a licence any person -
- (a) makes any statement or furnishes any document which to his knowledge is false in a material particular, or
  - (b) recklessly makes any statement or furnishes any document or information which is false in a material particular,

he shall be guilty of an offence; and any licence granted in connection with the application for which the false statement was made or the false document or information furnished shall be void as from the time it was granted.

(3) Any person who, having supplied, sold or exported petroleum or petroleum products under the authority of a licence granted under this regulation, fails to comply with any requirements or conditions to which the licence is subject shall be guilty of an offence unless -

- (a) the licence had previously been modified by the Collector of Customs without that person's consent,
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified, and
- (c) that person proves that the supply, sale or export had taken place before the modification had been made.

**Customs powers to demand evidence of destination which goods reach.**

5. Any exporter or any shipper of goods which have been exported from Gibraltar shall, if so required by the Collector of Customs, furnish within such time as they may allow proof to his satisfaction that the goods have reached either -

- (i) a destination to which they were authorised to be exported by a licence granted under these Regulations; or
- (ii) a destination to which the exportation was not prohibited by the Council Regulation,

and, if he fails to do so, he shall be guilty of an offence under these Regulations unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

**Declaration as to goods: powers of search.**

6.(1) Any person who is about to leave Gibraltar shall if he is required to do so by a Customs officer -

- (a) declare whether or not he has with him any specified goods which are destined for the Federal Republic of Yugoslavia or for delivery, directly or indirectly, to any person connected with the Federal Republic of Yugoslavia; and
- (b) produce any such goods as aforesaid which he has with him,

and such officer, and any person acting under his directions, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(2) Any person who without reasonable excuse refuses to make a declaration, fails to produce any goods or refuses to allow himself to be searched in accordance with the foregoing provisions of this article shall be guilty of an offence under these Regulations.

(3) Any person who under the provisions of this regulation makes a declaration which to his knowledge is false in a material particular or recklessly makes any declaration which is false in a material particular shall be guilty of an offence under these Regulations.

**Investigation, etc. of suspected ships.**

7.(1) Where any authorised officer has reason to suspect that any Gibraltar ship, or any other ship that is for the time being chartered to any person who is a British citizen or a body incorporated and constituted under the law of Gibraltar, has been or is being or is about to be used in contravention of Article 1 of the Council Regulation -

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;
- (b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of Article 1 of the Council Regulation, any authorised officer (either there and then or upon consideration of any information furnished of document or cargo produced in pursuance of such a request made under sub-paragraph (b) above), with a view to the prevention of the commission (or the continued commission) of any such contravention or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2) below.

(2) The further action referred to in paragraph 1(c) of this regulation is either –

- (a) to direct the master to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or
- (b) to request the master to take any one or more of the following steps:
  - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by any authorised officer that the ship may so proceed;
  - (ii) if the ship is then in the port, to cause her to remain there until the master is notified by any authorised officer that the ship may depart;
  - (iii) if the ship is then in any other place, to take her to the port and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii) or this paragraph; or

- (iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of paragraph 10(3) of these Regulations, where -

- (a) a master refuses or fails to comply with a request made under paragraph 2(b) of this regulation; or
- (b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

7

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) In this regulation “authorised officer” means any detaining officer appointed under section 116(2) of the Merchant Shipping Act.

**Investigation, etc. of suspected aircraft.**

8.(1) Where any authorised officer or authorised person has reason to suspect that any aircraft registered in Gibraltar, or any other aircraft that is for the time being chartered to any person who is a British citizen or a body incorporated or constituted under the law of Gibraltar, has been or is being or is about to be used in contravention of Article 1 of the Council Regulation -

- (a) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify;
- (b) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force; and
- (c) if the aircraft is then in Gibraltar any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of such a request made under

sub-paragraph (a) above) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in Gibraltar until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of regulation 10(3) of these Regulations, where an authorised officer or authorised person has reason to suspect that any request made under paragraph (1)(c) of this regulation may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose:

- (a) enter, or authorise entry, upon any land and upon that aircraft;
- (b) detain, or authorise the detention of, that aircraft and any of its cargo; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this regulation, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this regulation -

“authorised officer” means any Customs officer.

“authorised person” means any person authorised by the Collector of Customs for the purpose of this regulation either generally or in a particular case.

**Investigation, etc. of suspected vehicles.**

9.(1) Where any authorised officer or authorised person has reason to suspect that any vehicle in Gibraltar has been or is being or is about to be used in contravention of Article 1 of the Council Regulation -

- (a) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;

- (b) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for the purpose, may use or authorise the use of reasonable force; and
- (c) any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (a) above) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in Gibraltar until notified that the vehicle may depart.

(2) Without prejudice to the provisions of regulation 10(3) of these Regulations, where the authorised person has reason to suspect that any request that has been made under paragraph (1)(c) of this regulation may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose -

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this regulation, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this regulation -

“authorised officer” means any Customs officer;

“authorised person” means any person authorised by the Collector of Customs for the purpose of this regulation either generally or in a particular case.

**Provisions supplementary to regulations 7 to 9.**

10.(1) No information furnished or document produced by any person in pursuance of a request made under regulations 7, 8 and 9 shall be disclosed except-



- (a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right;

- (b) to any person who would have been empowered under regulations 7, 8 and 9 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of the Crown in respect of the Government of the United Kingdom or the Government of Gibraltar; or
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under these Regulations or, with respect to any of the matters regulated by these Regulations, for an offence under any enactment relating to customs.

(2) Any power conferred by regulations 7, 8 and 9 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under these Regulations, that is to say -

- (a) a master of a ship who disobeys any direction given under regulation 7(2) (a) above;
- (b) a master of a ship or a charterer or any operator or a commander of an aircraft who -
  - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under regulations 7, 8 and 9 by any person empowered to make it, or

- (ii) wilfully furnishes false information or produces false documents to such a person in response to such a request;
- (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under regulations 7, 8 and 9.

(4) Nothing in regulations 7 to 9 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

**Obtaining of evidence and information.**

11. The provisions of the Schedule to these Regulations shall have effect in order to facilitate the obtaining, by or on behalf of the Collector of Customs, of evidence and information for the purpose of securing compliance with or detecting evasion of the Council Regulation or these Regulations and in order to facilitate the obtaining, by or on behalf of the Collector of Customs, of evidence of the commission of an offence under these Regulations or, with respect to any of the matters regulated by the Council Regulation or these Regulations, of an offence relating to customs.

**Penalties and proceedings.**

12.(1) Any person guilty of an offence under regulation 3, regulation 4(2) or (3), regulation 6(3), regulation 10(3)(b)(ii) above or paragraph 5(b) or (d) of the Schedule to these Regulations shall be liable:

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person guilty of an offence under regulation 5, regulation 6(2) or regulation 10(3)(a), (b)(i) or (c) above or paragraph 5(a) or (c) of the Schedule to these Regulations shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where any body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Notwithstanding anything in section 65 of the Magistrates' Court Act, a summary offence under these Regulations may be tried by the magistrates' court in Gibraltar if any information is laid at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.

(5) For the purposes of this regulation -

- (a) a certificate signed by or on behalf of the Attorney General as to the date on which such evidence as is referred to in paragraphs (4) above came to his knowledge shall be conclusive evidence of that fact; and
- (b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved.

(6) No proceedings for an offence under these Regulations, other than for a summary offence, shall be instituted in Gibraltar except by the Attorney General:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence.

## **SCHEDULE**

Regulation 11

### **EVIDENCE AND INFORMATION**

1.(1) Without prejudice to any other provision of these Regulations, or any provision of any other law, the Collector of Customs (or any person authorised by him for that purpose either generally or in a particular case)

may request any person in or resident in Gibraltar to furnish to him (or to that authorised person) any information in his possession or control, or to produce to him (or to that authorised person) any document in his possession or control, which he (or that authorised person) may require for the purpose of securing compliance with or detecting evasion of the Council Regulation or these Regulations and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in the foregoing sub-paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

2.(1) If any justice of the peace is satisfied by information on oath given by any constable or person authorised by the Collector of Customs to act for the purposes of this paragraph either generally or in particular case:

- (a) that there is reasonable ground for suspecting that an offence under these Regulations or, with respect to any of the matters regulated by these Regulations, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or
- (b) that any documents which ought to have been produced under paragraph 1 of this Schedule and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any constable or any Customs officer, together with any other persons named in the warrant and any other constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) above may do any or all of the following things-

- (a) inspect and search those premises or any vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on any vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on any vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1 of this Schedule; or
- (d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) above which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A constable or Customs officer lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) above may-

- (a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and

- (b) seize anything he finds in a search referred to in paragraph (a) above, if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph.

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Collector of Customs to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before or on exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by any person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) of this Schedule shall be disclosed except-

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his own right; or

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of the Government of United Kingdom or the Government of Gibraltar; or
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under these Regulations or, with respect to any of the matters regulated by these

Regulations, for an offence under any enactment relating to customs.

5. Any person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it;
- (b) wilfully furnishes false information or a false explanation to any person exercising his powers under this Schedule;
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under these Regulations.

Dated this 8th day of June, 1999

By Command,

P. SPELLER,

Deputy Governor.

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#### **EXPLANATORY MEMORANDUM**

Council Regulation (EC) No. 900/99 of 29 April 1999 prohibits the supply, sale and export to the Federal Republic of Yugoslavia of specified petroleum and petroleum products.

These Regulations -

- (a) make it an offence to infringe that prohibition;

- (b) provide for licensing of supplies, sales and exports in accordance with the Council Regulation; and
- (c) make provision for enforcement.