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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 Annex IV 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;
 - (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;

- (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 satisfy the requirement laid down in Article 3(1)(a), an undertaking shall:

- (a) have an establishment situated in Gibraltar with premises in which it keeps its core business documents, in particular its accounting documents, personnel management documents, documents containing data relating to driving time and rest and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Regulation. The Minister may require that establishments also have other documents available at their premises at any time;
- (b) once an authorisation is granted, have at its disposal one or more vehicles which are registered or otherwise put into circulation, whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract;
- (c) conduct effectively and continuously with the necessary administrative equipment its operations concerning the vehicles mentioned in point (b) and with the appropriate technical equipment and facilities at an operating centre situated in Gibraltar.

Article 6

Conditions relating to the requirement of good repute

1. Subject to paragraph 2 of this Article, the Minister shall determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute laid down in Article 3(1)(b).

In determining whether an undertaking has satisfied that requirement, the competent authority may consider the conduct of the undertaking, its transport managers and any other relevant person as may be determined by the competent authority. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the competent authority.

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; 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 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.

2. For the purposes of point (b) of the third subparagraph of paragraph 1:

- (a) where the transport manager or the transport undertaking has, in Gibraltar or in one or more relevant States, been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of rules as set out in Annex IV, the competent authority must carry out in an appropriate and timely manner a duly completed administrative procedure, which may include, if appropriate, a check at the premises of the undertaking concerned.

The procedure shall determine whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified.

If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected. In such case, the reasons shall be recorded in the national register. The number of such decisions shall be indicated in an annual report which the competent authority must compile and send to the Minister.

If the competent authority does not find that the loss of good repute would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good repute;

- (b) the competent authorities must take into account any information on the categories, types and degrees of seriousness of any infringements referred to in Annex IV and Commission Regulation (EU) 2016/403, including information received from relevant States, when setting the priorities for checks pursuant to Article 12(1).

Additional measures, designed to amend non-essential elements of this Regulation by supplementing it and which relate to this list, may be adopted by the Minister.

To this end, the Minister may make regulations which:

- (i) lay down the categories and types of infringement which are most frequently encountered;
- (ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and
- (iii)

provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

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 satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year. To this end, the undertaking 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 totalling at least £8,000 when only one vehicle is used and £4,500 for each additional vehicle used.

The accounting items referred to in the first subparagraph shall be understood as those defined in Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies.

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 such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the undertaking in respect of the amounts specified in the first subparagraph 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 laid down in Article 3(1)(d), the person or persons concerned shall possess knowledge corresponding to the level provided for in Part I of Annex I in the subjects listed therein. That knowledge shall be demonstrated by means of a compulsory written examination which, may be supplemented by an oral examination. Those examinations shall be organised in accordance with Part II of Annex I. The person concerned may require training prior to the examination.

2. The person concerned must sit the examination in Gibraltar if this is where they have their normal residence when working.

‘Normal residence’ shall mean the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who, consequently, lives in turn in different places situated in Gibraltar and one or more relevant States, shall be regarded as being in the place of his personal ties, provided that such person returns there regularly. This last condition shall not be required where the person is living in Gibraltar or a relevant State

in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

3. Only the competent authority in Gibraltar, in accordance with defined criteria, may organise and certify the written and oral examinations referred to in paragraph 1. The competent authority must ensure that the conditions under which the examinations are conducted are in accordance with Annex I.

4. The competent authority may duly authorise, in accordance with criteria defined by it, bodies to provide applicants with high-quality training to prepare them for the examinations and transport managers with continuous training to update their knowledge if they wish to do so. The competent authority shall regularly verify that these bodies at all times fulfil the criteria on the basis of which they were authorised.

5. The competent authority may promote periodic training on the subjects listed in Annex I at 10-year intervals to ensure that transport managers are aware of developments in the sector.

6. The competent authority may require persons who possess a certificate of professional competence, but who have not managed a road haulage undertaking or a road passenger transport undertaking in the last 5 years, to undertake retraining in order to update their knowledge regarding the current developments of the legislation referred to in Part I of Annex I.

7. The competent authority may exempt the holders of certain higher education qualifications or technical education qualifications issued in Gibraltar, specifically designated to this end and entailing knowledge of all the subjects listed in Annex I from the examination in the subjects covered by those qualifications. The exemption shall only apply to those sections of Part I of Annex I for which the qualification covers all subjects listed under the heading of each section.

The competent authority may exempt from specified parts of the examinations holders of certificates of professional competence valid for national transport operations in Gibraltar.

8. A certificate issued by the authority or body referred to in paragraph 3 shall be produced as proof of professional competence. That certificate shall not be transferable to any other person. It shall be drawn up in accordance with the security features and the model certificate set out in Annexes II and III and shall bear the seal of the duly authorised authority or body which issued it.

9. The Minister may make regulations which adapt Annexes I, II and III due to technical progress.

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. A transport undertaking which complies with the requirements laid down in Article 3 shall, upon application, be authorised to engage in the occupation of road transport operator. The competent authority shall ascertain that an undertaking which submits an application satisfies the requirements laid down in that Article.

2. The competent authority shall record in the national electronic register referred to in Article 16 the data relating to undertakings which it authorises and which are referred to in points (a) to (d) of the first subparagraph of Article 16(2).

3. The time limit for the examination of an application for authorisation by the competent authority shall be as short as possible and shall not exceed 3 months from the date on which the competent authority receives all documents necessary to assess the application. The competent authority may extend this time limit for one additional month in duly justified cases.

4. When assessing the good repute of an undertaking, the competent authority shall verify, by accessing the data referred to in point (f) of the first subparagraph of Article 16(2), either by direct secure access to the relevant part of the national registers or by request, whether at the time of the application the designated transport manager or managers are declared as unfit to manage the transport activities of an undertaking pursuant to Article 14.

5. Undertakings with an authorisation to engage in the occupation of road transport operator shall, within a period of 28 days or less, notify the competent authority which granted the authorisation of any changes to the data referred to in paragraph 2.

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 the competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking 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 undertaking to rectify the situation:

- (a) a time limit not exceeding 6 months, which may be extended by 3 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 6 months where the undertaking has to rectify the situation by demonstrating that it has an effective and stable establishment;
- (c) a time limit not exceeding 6 months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement will again be satisfied on a permanent basis.

2. The competent authority may require an undertaking 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 undertaking 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 transport 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 an undertaking.

2. Unless and until a rehabilitation measure is taken, the certificate of professional competence, referred to in Article 8(8), of the transport manager declared to be unfit, shall no longer be valid.

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. For the purposes of the implementation of this Regulation, and in particular Articles 11 to 14 thereof, the competent authority must keep a national electronic register of road transport undertakings which have been authorised to engage in the occupation of road transport operator. The data contained in that register must be processed under the supervision of the Minister. The relevant data contained in the national electronic register must be accessible to any competent authority.

2. The national electronic register shall contain at least the following data:

- (a) the name and legal form of the undertaking;
- (b) the address of its establishment;
- (c) the names of the transport managers designated to meet the conditions as 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 Community licence and of the certified copies;
- (e) the number, category and type of serious infringements, as referred to in Article 6(1)(b), which have resulted in a conviction or penalty during the last 2 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(3), and the rehabilitation measures applicable.

The Minister may choose to keep the data referred to in points (e) and (f) of the first subparagraph in separate registers. In such a case, the relevant data shall be available upon request or directly accessible to the competent authorities of relevant States. The requested information shall be provided within 30 working days of receipt of the request. The data referred to in points (a) to (d) of the first subparagraph shall be publicly accessible, in accordance with the relevant provisions on personal data protection.

In any case, the data referred to in points (e) and (f) of the first subparagraph shall only be accessible to authorities other than the competent authorities where they are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to, or otherwise are 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 2 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 transport 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(3). 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 competent authority shall take all necessary measures to ensure that all the data contained in the national electronic register is kept up to date and is accurate, in particular the data referred to in points (e) and (f) of the first subparagraph of paragraph 2.

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

ANNEX I

I. LIST OF SUBJECTS REFERRED TO IN ARTICLE 8

The knowledge to be taken into consideration for the official recognition of professional competence by the competent authority must cover at least the subjects listed below for road haulage and road passenger transport respectively. In relation to these subjects, applicant road haulage and road passenger transport operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.U.K.

The minimum level of knowledge, as indicated below, may not be below level 3 of the training-level structure laid down in the Annex to Council Decision 85/368/EEC, namely 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, in relation to road haulage and passenger transport:

1. be familiar with the main types of contract used in road transport and with the rights and obligations arising therefrom;

2. be capable of negotiating a legally valid transport contract, notably with regard to conditions of carriage;

in relation to road haulage:

3. be able to consider a claim by his 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 his contractual liability;

4. be familiar with the rules and obligations arising from the CMR Convention on the Contract for the International Carriage of Goods by Road;

in relation to road passenger transport:

5. be able to consider a claim by his principal regarding compensation for injury to passengers or damage to their baggage caused by an accident during transportation, or regarding compensation for delays, and to understand how such a claim affects his contractual liability.

B. Commercial law

The applicant must, in particular, in relation to road haulage and passenger transport:

1. 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;
2. 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, in relation to road haulage and passenger transport, be familiar with the following:

1. the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);
2. the employers' social security obligations;
3. 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.);
4. the rules applicable to driving time, rest periods and working time, and in particular the provisions of:
 - (a) 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 and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85;
 - (b) Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport;
 - (c) the Transport Act 1998;
 - (d) Road Transport (Working Time) Regulations 2005;
 - (e) the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008;
 - (f) the Tachographs (Miscellaneous Provisions) Regulations 2015;
 - (g) the practical measures for applying the provisions in paragraphs (a) to (f); and
5. the rules applicable to the initial qualification and continuous training of drivers as set out in the Traffic (Drivers' Qualification and Training) Regulations 2008.

D. Fiscal law

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the rules governing:

1. value added tax (VAT) on transport services;
2. motor-vehicle tax;
3. the taxes on certain road haulage vehicles and tolls and infrastructure user charges;

4. income tax;

5. Gibraltar import duty taxes.

E. Business and financial management of the undertaking

The applicant must, in particular, in relation to road haulage and passenger transport:

1. 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;

2. 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;

3. know what a balance sheet is, how it is set out and how to interpret it;

4. be able to read and interpret a profit and loss account;

5. be able to assess the undertaking's profitability and financial position, in particular on the basis of financial ratios;

6. be able to prepare a budget;

7. 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;

8. be able to draw up an organisation chart relating to the undertaking's personnel as a whole and to organise work plans, etc.;

9. be familiar with the principles of marketing, publicity and public relations, including transport services, sales promotion and the preparation of customer files, etc.;

10. 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;

11. be familiar with the applications of electronic data transmission in road transport;

in relation to road haulage:

12. be able to apply the rules governing the invoicing of road haulage services and know the meaning and implications of Incoterms;

13. be familiar with the different categories of transport auxiliaries, their role, their functions and, where appropriate, their status;

in relation to road passenger transport:

14. be able to apply the rules governing fares and pricing in public and private passenger transport;

15. be able to apply the rules governing the invoicing of road passenger transport services.

F. Access to the market

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the following:

1. the occupational regulations governing road transport for hire or reward, industrial vehicle rental and subcontracting, and in particular the rules governing the official organisation of the occupation, admission to the occupation, authorisations for intra-Community and extra-Community road transport operations,

inspections and penalties;

2. the rules for setting up a road transport undertaking;

3. 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;

in relation to road haulage:

4. the rules on the organisation of the market in road haulage services, as well as the rules on freight handling and logistics;

5. border formalities, the role and scope of T documents and TIR carnets, and the obligations and responsibilities arising from their use;

in relation to road passenger transport:

6. the rules on the organisation of the market in road passenger transport;

7. the rules for introducing road passenger transport services and the drawing up of transport plans.

G. Technical standards and technical aspects of operation

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the rules concerning the weights and dimensions of vehicles in Gibraltar and in the relevant States and the procedures to be followed in the case of abnormal loads which constitute an exception to these rules;

2. be able to choose vehicles and their components (chassis, engine, transmission system, braking system, etc.) in accordance with the needs of the undertaking;

3. be familiar with the formalities relating to the type approval, registration and technical inspection of these vehicles;

4. understand what measures must be taken to reduce noise and to combat air pollution by motor vehicle exhaust emissions;

5. be able to draw up periodic maintenance plans for the vehicles and their equipment;

in relation to road haulage:

6. 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.);

7. be familiar with the various techniques of 'piggy-back' and roll-on roll-off combined transport;

8. be able to implement procedures to comply with the rules on the carriage of dangerous goods and waste, notably those arising from:

- (a) Transport (Carriage of Dangerous Goods by Road) Regulations 2010;
- (b) Transportable Pressure Equipment Regulations 2011;
- (c) Public Health Act;
- (d) Pollution Prevention and Control Regulations 2013; and
- (e) Regulation (EC) No 1013/2006 (2);

9. 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);

10. be able to implement procedures to comply with the rules on the transport of live animals.

H. Road safety

The applicant must, in particular, in relation to road haulage and passenger transport:

1. know what qualifications are required for drivers (driving licence, medical certificates, certificates of fitness, etc.);

2. be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in Gibraltar and relevant States (speed limits, priorities, waiting and parking restrictions, use of lights, road signs, etc.);

3. 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;

4. 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;

5. be able to implement procedures to properly secure goods and be familiar with the corresponding techniques;

in relation to road passenger transport:

6. have elementary knowledge of the layout of the road network in Gibraltar and relevant States.

II. ORGANISATION OF THE EXAMINATION

1. The competent authority shall organise a compulsory written examination which it may supplement with 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;

(ii)

written exercises/case studies.

The minimum duration of each test will be two hours.

(b)

Where an oral examination is organised, the competent authority may stipulate that participation is subject to the successful completion of the written examination.

2. Where the competent authority 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 competent authority 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 Member State 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/m² or more.)

(Text in English)

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.

ANNEX IV

Most serious infringements for the purposes of Article 6(2)(a)

1.
 - (a) Exceeding the maximum 6-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 without taking a break or without an uninterrupted rest period of at least 4,5 hours.
2. Not having a tachograph and/or speed limiter, 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 if such a document is required under Community law 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 passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence.
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.