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, and amending Regulation (EC) No 561/2006 (recast) (Text with EEA relevance)

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, and amending Regulation (EC) No 561/2006

(recast)

(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 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) A number of substantial changes are to be made to Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus[(3)] and to Council Regulation (EC) No 12/98 of 11 December 1997 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State[(4)]. In the interests of clarity and simplification, those Regulations should be recast and incorporated into one single regulation.

(2) The establishment of a common transport policy entails, inter alia, laying down common rules applicable to the international carriage of passengers by road as well as the conditions under which non-resident carriers may operate national transport services within a Member State.

(3) To ensure a coherent framework for the international carriage of passengers by coach and bus throughout the Community, this Regulation should apply to all international carriage on Community territory. Carriage from Member States to third countries is still largely covered by bilateral agreements between the Member States and those third countries. Therefore, this Regulation should not apply to that part of the journey within the territory of the Member State of picking up or setting down, as long as the necessary

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agreements between the Community and the third countries concerned have not been concluded. It should, however, apply to the territory of a Member State crossed in transit.

(4) Freedom to provide services constitutes a basic principle of the common transport policy and requires that carriers from all Member States be guaranteed access to international transport markets without discrimination on grounds of nationality or place of establishment.

(5) The international carriage of passengers by coach and bus should be conditional on the possession of a Community licence. Carriers should be required to carry a certified true copy of the Community licence aboard each of their vehicles, in order to facilitate effective controls by enforcement authorities, especially those outside the Member State in which the carrier is established. The conditions governing the issue and withdrawal of Community licences, their periods of validity and the detailed rules for their use should be determined. It is also necessary to lay down detailed specifications as regards the layout and other features of the Community licence and the certified copies thereof.

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

(7) There should be provision for flexible arrangements subject to certain conditions for special regular services and certain occasional services, in order to satisfy market demand.

(8) While maintaining authorisation arrangements for regular services, certain rules should be amended, particularly as regards authorisation procedures.

(9) The authorisation for regular services should henceforth be granted subsequent to an authorisation procedure, unless there are clearly specified grounds for refusal attributable to the applicant. The grounds for refusal relating to the relevant market should be either that the service applied for would seriously affect the viability of a comparable service operated under one or more public service contracts on the direct sections concerned or that the principal purpose of the service is not to carry passengers between stops located in different Member States.

(10) Non-resident carriers should be allowed to operate national road passenger services, but regard should be had to the specific characteristics of each form of service. When such cabotage operations are performed, they should be subject to Community legislation such as Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport[(5)] and to national law in force in specified areas in the host Member State.

(11) The provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services[(6)] apply to transport undertakings performing a cabotage operation.

(12) Where regular services are concerned, only regular services provided as part of a regular international service, excluding urban and suburban services, should be opened up to

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non-resident carriers, subject to certain conditions, and in particular to the legislation in force in the host Member State.

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

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

(15) Member States should enter in their national electronic register of road transport undertakings all serious infringements attributable to carriers which have led to the imposition of a penalty.

(16) In order to facilitate and strengthen the exchange of information between national authorities, Member States should exchange the relevant information through the national contact points set up pursuant to Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator[(7)].

(17) 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[(8)].

(18) In particular, the Commission should be empowered to establish the format of certain documents to be used for the application of this Regulation and to adapt Annexes I and II of this Regulation to technical progress. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation 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.

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

(20) In order to encourage tourism and the use of environmentally friendly means of transport, Regulation (EC) No 561/2006 should be amended to allow drivers engaged in a single occasional service providing international carriage of passengers to postpone their weekly rest period for up to 12 consecutive 24-hour periods if they are involved in passenger transport activities that typically do not include continuous and long driving hours. Such a postponement should only be allowed under very strict conditions which preserve road safety and take into account the working conditions of drivers, inter alia, the obligation to take weekly rest periods immediately before and after the service. The Commission should monitor closely the use of this derogation. If the factual situation which justifies the use of this derogation changes substantially and

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the derogation results in a deterioration of road safety, the Commission should take appropriate measures.

(21) Since the objective of this Regulation, namely to ensure a coherent framework for the international carriage of passengers by coach and bus throughout the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1 This Regulation shall apply to the international carriage of passengers by coach and bus within the territory of the Community by carriers for hire or reward or by own-account carriers established in a Member State in accordance with its law, using vehicles which are registered in that Member State and are suitable and intended, by virtue of their construction and equipment, to carry more than nine persons, including the driver, and to the movement of such vehicles when empty in connection with such carriage.

A change of vehicle or an interruption of carriage to enable part of a journey to be made by another means of transport shall not affect the application of this Regulation.

2 In the event of carriage from a Member State to a third country and vice versa, this Regulation shall apply to the part of the journey on the territory of any Member State crossed in transit. It shall not apply to that part of the journey within the territory of the Member State of picking up or setting down, as long as the necessary agreement between the Community and the third country concerned has not been concluded.

3 Pending the conclusion of the agreements referred to in paragraph 2, this Regulation shall not affect provisions relating to the carriage from a Member State to a third country and vice-versa contained in bilateral agreements concluded between Member States and those third countries.

4 This Regulation shall apply to national road passenger services for hire or reward operated on a temporary basis by a non-resident carrier as provided for in Chapter V.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. ‘international carriage’ means:

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(a) a journey undertaken by a vehicle the point of departure and the point of arrival of which are in two different Member States, with or without transit through one or more Member States or third countries;

(b) a journey undertaken by a vehicle of which the point of departure and the point of arrival are in the same Member State, while the picking up or setting down of passengers is in another Member State or in a third country;

(c) a journey undertaken by a vehicle from a Member State to a third country or vice versa, with or without transit through one or more Member States or third countries; or

(d) a journey undertaken by a vehicle between third countries, with transit through the territory of one or more Member States;

2. 'regular services' means services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;

3. 'special regular services' means regular services, by whomsoever organised, which provide for the carriage of specified categories of passengers to the exclusion of other passengers;

4. 'occasional services' means services which do not fall within the definition of regular services, including special regular services, and the main characteristic of which is the carriage of groups of passengers constituted on the initiative of the customer or the carrier himself;

5. 'own-account transport operations' means operations carried out for non-commercial and non-profit-making purposes by a natural or legal person, whereby:
   — the transport activity is only an ancillary activity for that natural or legal person, and
   — the vehicles used are the property of that natural or legal person or have been obtained by that person on deferred terms or have been the subject of a long-term leasing contract and are driven by a member of the staff of the natural or legal person or by the natural person himself or by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation;

6. 'host Member State' means a Member State in which a carrier operates other than the carrier's Member State of establishment;

7. 'cabotage operations' means either:
   — national road passenger services for hire and reward carried out on a temporary basis by a carrier in a host Member State, or
   — the picking up and setting down of passengers within the same Member State, in the course of a regular international service, in compliance with the provisions of this Regulation, provided that it is not the principal purpose of the service;

8. 'serious infringement of Community road transport legislation' means an infringement which may lead to the loss of good repute in accordance with Article 6(1) and (2) of Regulation (EC) No 1071/2009, and/or to the temporary or permanent withdrawal of a Community licence.