Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (recast) (Text with EEA relevance)

REGULATION (EC) No 1072/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2009

on common rules for access to the international road haulage market

(recast)

(Text with EEA relevance)

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 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States[(3)], to Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State[(4)], and to Directive 2006/94/EC of the European Parliament and of the Council of 12 December 2006 on the establishment of common rules for certain types of carriage of goods by road[(5)]. In the interests of clarity and simplification, those legal acts should be recast and incorporated into one single regulation.

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

(3) To ensure a coherent framework for international road haulage throughout the Community, this Regulation should apply to all international carriage on Community

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 1072/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

territory. Carriage from Member States to third countries is still largely covered by bilateral agreements between the Member States and those third countries. Therefore, this Regulation should not apply to that part of the journey within the territory of the Member State of loading or unloading as long as the necessary agreements between the Community and the third countries concerned have not been concluded. It should, however, apply to the territory of a Member State crossed in transit.

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

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

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

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

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

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

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EC) No 1072/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

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

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

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

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

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

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

(17) The provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services[(8)] apply to transport undertakings performing a cabotage operation.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EC) No 1072/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(18) In order to perform efficient controls of cabotage operations, the enforcement authorities of the host Member States should, at least, have access to data from consignment notes and from recording equipment, in accordance with Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport[(9)].

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

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

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

(22) In order to facilitate and strengthen the exchange of information between national authorities, Member States should exchange the relevant information through the national contact points set up pursuant to Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator[(10)].

(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[(11)].

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

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

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

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EC) No 1072/2009 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1 This Regulation shall apply to the international carriage of goods by road for hire or reward for journeys carried out within the territory of the Community.

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 on the territory of the Member State of loading or unloading, 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:

a provisions relating to the carriage from a Member State to a third country and vice versa included in bilateral agreements concluded by Member States with those third countries;

b provisions relating to the carriage from a Member State to a third country and vice versa included in bilateral agreements concluded between Member States which, under either bilateral authorisations or liberalisation arrangements, allow loading and unloading in a Member State by hauliers not established in that Member State.

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

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

a carriage of mail as a universal service;

b carriage of vehicles which have suffered damage or breakdown;

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

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

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

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

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

(iv) the vehicles carrying the goods are owned by the undertaking, have been bought by it on deferred terms or have been hired provided that in the latter case they meet the conditions of Directive 2006/1/EC of the European