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)

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)

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[(1)],

Having regard to the opinion of the European Data Protection Supervisor[(2)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

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[(4)] 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

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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[(5)] 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[(6)].

(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

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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.

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(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[7], 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.

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(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[(8)].

(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: