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(Acts whose publication is obligatory)

REGULATION (EC) No 484/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 1 March 2002 amending Council Regulations (EEC) No 881/92 and (EEC) No 3118/93 for the purposes of establishing a driver attestation

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 [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having consulted the Committee of the Regions,

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

Whereas:

(1) Pursuant to Regulation (EEC) No 881/92 [4] the international carriage of goods by road is made conditional on possession of a Community authorisation, i.e. a uniform document.

(2) The absence of a similar uniform document certifying the entitlement of drivers to drive the vehicles engaged in such carriage subject to Community authorisation, namely the international carriage covered by Regulation (EEC) No 881/92 and the cabotage as defined and provided for in Regulation (EEC) No 3118/93 [5] prevents Member States from checking whether drivers from non-member countries are lawfully employed or are lawfully at the disposal of the haulier responsible for the transport operation.

(3) It is therefore appropriate to establish a driver attestation, to limit the scope of this Regulation to drivers who are nationals of non-member countries and to decide subsequently, on the basis of an assessment by the Commission, whether or not the Regulation should be extended.

(4) This Regulation leaves the legislation and statutory provisions of Member States and the Community governing movement, residence and access to an activity as an employed person unaffected.

(5) The fact that it is impossible to check whether drivers outside the Member State of establishment of the haulier are employed or supplied lawfully has led to a market situation where drivers from non-member countries are sometimes engaged unlawfully and solely for international carriage outside the haulier's Member State of establishment with an intent to breach the national legislation of the Member State of establishment that issued the haulier's Community authorisation.

(6) Such unlawfully employed drivers often work in precarious conditions and are underpaid, which jeopardises road safety.

(7) Such a systematic breach of national legislation has led to serious distortion of competition between hauliers engaged in such practices and those resorting solely to lawfully employed drivers.

(8) The authorised bodies find it impossible to control the working conditions of those unlawfully employed drivers.

(9) A driver attestation cannot be adequately introduced by the Member States and can therefore be better introduced at Community level, 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 for that purpose.

[1] OJ C 96 E, 27.3.2001, p. 207.
[2] OJ C 193, 10.7.2001, p. 28.
[3] Opinion of the European Parliament of 16 May 2001 (not yet published in the Official Journal), Council Common Position of 23 October 2001 (OJ C 9, 11.1.2002, p. 17) and Decision of the European Parliament of 17 January 2002.
[4] 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 (OJ L 95, 9.4.1992, p. 1). Regulation as amended by the 1994 Act of Accession.
[5] 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 (OJ L 279, 12.11.1993, p. 1).

(10) Member States need time to have the new driver attestation printed and distributed and this Regulation shall therefore apply only after sufficient time has been given to Member States to adopt the measures necessary for its implementation.

(11) It should be expressly confirmed that Member States may require vehicles for which they issue a certified true copy of the Community authorisation to be registered in their territory.

(12) Regulation (EEC) No 881/92 should be amended accordingly; Regulation (EEC) No 3118/93 should also be amended to the effect that drivers who are nationals of non-member countries should hold a driver attestation,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 881/92 is hereby amended as follows:

1. in Article 2 the following indent shall be added:

'— "driver" shall mean the person who drives a vehicle, or who is carried in that vehicle in order to be available for driving if necessary;';

2. Article 3 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. International carriage shall be carried out subject to Community authorisation in conjunction with a driver attestation if the driver is a national of a non-member country.';

(b) the following paragraph shall be added:

'3. A driver attestation shall be issued by a Member State, in accordance with Article 6, to any haulier who:

— is the holder of a Community authorisation,

— in that Member State lawfully employs drivers who are nationals of non-member countries or lawfully uses drivers who are nationals of non-member countries put at his disposal in accordance with the conditions of employment and of vocational training laid down in that same Member State:

— by laws, regulations or administrative provisions, and, as appropriate,

— by collective agreements, in accordance with the rules applicable in that Member State.';

3. in Article 4 the present text shall become paragraph 1 and the following paragraph shall be added:

'2. The driver attestation referred to in Article 3 shall certify that in the context of transport by road covered by Community authorisation, a driver who is a national of a non-member country carrying out such transport is employed in the haulier's Member State of establishment in accordance with the laws, regulations or administrative provisions and, as appropriate, the collective agreements, in accordance with the rules applicable in that Member State, on the conditions of employment and of vocational training of drivers to carry out road transport operations in that State.';

4. the following paragraph shall be added to Article 5:

'5. A Community authorisation shall be issued for a renewable period of five years.';

5. Article 6 shall be replaced by the following:

'*Article 6*

1. The driver attestation referred to in Article 3 shall be issued by the competent authorities of the Member State of establishment of the haulage undertaking.

2. A driver attestation shall be issued by the Member State at the request of the holder of the Community authorisation for each driver who is a national of a non-member country whom he lawfully employs or who is lawfully put at his disposal in accordance with the laws, regulations or administrative provisions and, as appropriate, the collective agreements, in accordance with the rules applicable in that Member State, on the conditions of employment and of vocational training of drivers applicable in that same Member State. Each driver attestation shall certify that the driver named therein is employed in accordance with the conditions laid down in Article 4.

3. The driver attestation shall conform to the model set out in Annex III, which also lays down the conditions governing its use. Member States shall take all steps necessary to prevent the forgery of driver attestations. They shall inform the Commission thereof.

4. The driver attestation shall belong to the haulier, who puts it at the disposal of the driver designated therein when that driver drives a vehicle using a Community authorisation issued to that haulier. A certified true copy of the driver attestation shall be kept at the haulier's premises. The driver attestation shall be produced whenever required by an authorised inspecting officer.

5. A driver attestation shall be issued for a period to be determined by the issuing Member State, subject to a maximum validity of five years. The driver attestation shall be valid only as long as the conditions under which it was

issued are satisfied. Member States shall take appropriate measures to ensure that if those conditions are no longer met the haulier returns the attestation immediately to the issuing authorities.';

6. in Article 7 the present text shall become paragraph 1 and the following paragraph shall be added:

'2. The competent authorities of the Member State of establishment shall regularly verify, by carrying out checks each year, covering at least 20 % of the valid attestations issued in that Member State, whether the conditions referred to in Article 3(3) under which a driver attestation has been issued are still satisfied.';

7. Article 8 shall be replaced by the following:

'Article 8

1. If the conditions laid down in Article 3(2) or those referred to in Article 3(3) are not satisfied, the competent authorities of the Member State of establishment shall reject an application for the issue or renewal of a Community authorisation or of a driver attestation, by means of a decision which states the reasons therefor.

2. The competent authorities shall withdraw a Community authorisation or a driver attestation where the holder:

— no longer satisfies the conditions laid down in Article 3(2) or those referred to in Article 3(3), or

— has supplied incorrect information in relation to the data required for the issue of a Community authorisation or of a driver attestation.

3. In the event of serious infringements or repeated minor infringements of carriage regulations, the competent authorities of the Member State of establishment of the haulier who has committed such infringements may, *inter alia*, temporarily or partially withdraw the certified true copies of the Community authorisation and may withdraw driver attestations. These sanctions shall be determined having regard to the seriousness of the infringement committed by the holder of the Community authorisation and having regard to the total number of certified true copies of that authorisation that he holds in respect of international traffic.

4. In the event of serious infringements or repeated minor infringements regarding any misuse whatsoever of driver attestations, the competent authorities of the Member State of establishment of the haulier who committed such infringements shall impose appropriate sanctions, such as:

— suspension of the issue of driver attestations,

— withdrawal of driver attestations,

— making the issue of driver attestations subject to additional conditions in order to prevent misuse,

— temporary or partial withdrawal of the certified true copies of the Community authorisation.

These sanctions shall be determined having regard to the seriousness of the infringement committed by the holder of the Community authorisation.';

8. in Article 9 the present text shall become paragraph 1 and the following paragraph shall be added:

'2. The Member States shall guarantee that the holder of a Community authorisation can appeal against any decision by the competent authorities of the Member State of establishment to refuse or withdraw a driver attestation or to make the issue of driver attestations subject to additional conditions.';

9. in Article 11(3) 'in Article 8(3)' shall be replaced by 'in Article 8(3) and (4)';

10. the following Article shall be inserted:

'Article 11a

The Commission shall examine the consequences of restricting the obligation to hold a driver attestation to drivers who are nationals of non-member countries and shall, should there be sufficient justification for doing so, submit a proposal for the amendment of this Regulation.';

11. Annex III, as set out in the Annex to this Regulation, shall be added.

Article 2

Article 1 of Regulation (EEC) No 3118/93 shall be amended as follows:

1. paragraph 1 shall be replaced by the following:

'1. Any road haulage carrier for hire or reward who is a holder of the Community authorisation provided for in Regulation (EEC) No 881/92 and whose driver, if he is a national of a non-member country, holds a driver attestation in accordance with the conditions laid down in the said Regulation, shall be entitled, under the conditions laid down in this Regulation, to operate on a temporary basis national road haulage services for hire or reward in another Member State, hereinafter referred to respectively as "cabotage" and as the "host Member State", without having a registered office or other establishment therein.';

2. the following subparagraph shall be added to paragraph 2:

'If the driver is a national of a non-member country, he must hold a driver attestation in accordance with the conditions laid down in Regulation (EEC) No 881/92.'

Article 3

Member States shall communicate to the Commission the measures they take to implement this Regulation.