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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
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Subject:	Preparation of the Council meeting (<u>Transport</u> , Telecommunications and Energy) on 4 th December 2023 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards minimum requirements on minimum breaks and daily and weekly rest periods in the occasional passenger transport sector – General approach

I. INTRODUCTION

1. On 24 May 2023, the Commission submitted to the Council the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards minimum requirements on minimum breaks and daily and weekly rest periods in the occasional passenger transport sector.

2. The aim of the proposal is a more flexible distribution of breaks and rest times for professional drivers engaged in occasional passenger transport services, and an alignment of rules between international and domestic services of this kind. The Commission does not propose changes to the minimum duration of breaks or rest periods or to maximum driving times. The overall objective is to ensure efficient and high-quality services to the passengers, and at the same time to improve the working conditions of drivers, in particular to minimise their stress and fatigue.
3. Special rules on breaks and rest times for the occasional passenger transport service are motivated by characteristics of that service which are different from passenger line service and from freight carriage by road. This concerns
 - seasonality,
 - interaction with passengers,
 - frequent *ad hoc* changes occurring to the planning,
 - less average daily driving time and
 - more concentrated driving at the beginning and at the end of the trip.

In 2020, the European legislators had asked the Commission to evaluate possible rules in this regard.¹

¹ See Article 8(10) of Regulation (EC) No 561/2006, inserted by amending Regulation (EU) 2020/1054, OJ L 249, 31.7.2020, p. 1.

II. WORK AT OTHER INSTITUTIONS

4. The European Parliament has designated the Committee on Transport and Tourism (TRAN) as the committee responsible for this proposal, where Ms Henna VIRKKUNEN (EPP, FI) is the rapporteur, and the Committee on Employment and Social Affairs (EMPL) as associated committee, where Ms Marianne VIND (S&D, DK) is the rapporteur. A vote on Ms VIND's report took place on 7 November 2023, and on Ms VIRKKUNEN's report on 16 November 2023. A vote in Plenary is planned for the week 11-14 December 2023.
5. The European Economic and Social Committee adopted an opinion on 21 September 2023. The Committee of the Regions decided not to issue an opinion.

III. WORK WITHIN THE COUNCIL AND ITS PREPARATORY BODIES

6. The proposal and its impact assessment were presented to the Working Party on Land Transport on 7 June 2023 under the Swedish Presidency. Some delegations pointed out that they would have preferred that a complementary scientific study had been carried out to evaluate the possible effects of the new rules on driver fatigue.
7. The legislative text was then discussed between 7 July and 13 November 2023 under the Spanish Presidency. Delegations in principle supported the introduction of more flexible rules for drivers in occasional passenger transport services. Their views differed concerning the desired scope of the flexibility and related safeguards, in particular as regards the minimum breaks in the driving time and the postponement of the start of the daily rest. In addition, many delegations expressed concerns about the controllability in terms of the complexity of resulting rules, of technical control means and of supporting documents on board of the bus.
8. The Presidency developed a compromise proposal in September 2023 aiming at a balanced formulation of the scope of the flexibility and related safeguards, and at reinforcing control provisions. The Commission representative defended the Commission's proposal and showed openness towards limited adjustments in the text.

9. The last meeting of the Working Party took place on 13 November 2023. Most delegations supported the Presidency compromise. One delegation did not see a sufficient balance in the compromise as it found that the additional safeguards and cumbersome control provisions made the use of the flexibility unattractive. Relating to the specific breaks and rest time rules, some delegations reiterated their request to tighten the safeguard for the flexibility in taking breaks during the driving time to days on which the overall driving time does not exceed six hours (instead of seven), which was rejected by others. Those other delegations could go along with the limitation to 7 hours but would, like the Commission representative, instead have preferred a limitation related to the daytime driving. A few delegations reiterated their request for more flexibility in the postponement of the daily rest time and an application of this derogation to trips from four days duration onwards (instead of six days).
10. Concerning the control provisions, delegations largely accepted the approach put forward by the Presidency, which is based on three pillars:
- the need to carry on board a filled-in journey form to justify the use of derogations, including for a determined period of work in the past,
 - to allow flexibility in the format to be used in domestic services until the Commission provides a harmonised one,
 - to foresee an upgrade of the tachograph specifications so that the type of passenger carriage can be analysed by reading the tachograph entries, and to reduce the paper-based obligations accordingly.

Some delegations, however, found the control provisions too burdensome, and delegations differed in their views on whether a harmonisation of the journey form should better be made compulsory or even be established in the Regulation directly. In addition, some delegations wanted to incentivise the introduction of a future tachograph version by making the use of derogations conditional on having it on board, while others opposed such an approach as too rigid.

11. The Presidency adapted the compromise in light of the discussion in the Working Party as highlighted in the Annex (new text compared to the previous document, ST 11642/3/23 REV 3) is indicated in **bold-underline** (additions) or ~~striketrough~~ (deletions)).

IV. CONCLUSIONS

12. In light of the above, the Permanent Representatives Committee is invited to endorse the compromise presented in the annex to this report, and to invite the Council (Transport, Telecommunications and Energy) to agree on a general approach at its meeting on 4 December 2023.
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 561/2006 as regards minimum requirements on minimum breaks and daily and weekly rest periods in the occasional passenger transport sector and as regards Member States' power to impose penalties for infringements of Regulation (EU) No 165/2014 committed in another Member State

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) Good working conditions for drivers and fair business conditions for road transport undertakings are of paramount importance to create an efficient, safe and socially accountable road transport sector, ensure non-discrimination and attract qualified workers. It is therefore essential that Union social rules on road transport are clear, proportionate, fit for purpose, easy to apply, and easy to enforce and implemented in an effective and consistent manner throughout the Union.
- (2) The rules on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods laid down by Regulation (EC) No 561/2006 of the European Parliament of the Council¹ apply to road transport operators and their drivers, regardless of whether they are involved in the carriage of passengers or goods or of whether, as regards the carriage of passengers, the transport is regular or occasional.
- (3) However, the specificities of the occasional road passenger transport sector are not shared by the road freight transport or the regular road passenger transport sector. Occasional road passenger transport is characterised by high seasonality and different lengths of time spent driving which depend on the touristic activities undertaken by passengers. It needs to accommodate unscheduled and impromptu requests from passengers in terms of additional stops and changes of the route or the schedule, wherever feasible. Occasional road passenger transport generally involves less driving time when compared to freight transport or regular bus services. In addition drivers usually sleep in hotels, and seldom drive at night. On the other hand, drivers during the working time may be subject to some additional activities, often resulting from interactions with passengers.

¹ 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 (OJ L 102, 11.4.2006, p. 1).

- (4) The ex post evaluation of Regulation (EC) No 561/2006 concluded that some of the uniform rules related to minimum breaks and rest periods do not fit the specificities of occasional road passenger transport services. Further assessments undertaken by the Commission in that respect have shown that some of the requirements of Regulation (EC) No 561/2006 on breaks and daily and weekly rest periods are unsuitable and impractical for drivers and operators engaged in the occasional road carriage of passengers, as they have a negative impact on the ability to organise efficient and high-quality occasional passenger services, on the working conditions of drivers, and consequently on road safety.
- (5) Therefore, it is appropriate to adapt the requirements on minimum breaks and rest periods to fit, as well, the specific requirements of the occasional road passenger transport services. It is also appropriate to align applicable rules for national and international occasional-passenger transport services by road.
- (6) More flexible rules in the scheduling of the breaks and daily rest periods of drivers engaged in occasional road passenger transport services should in no way jeopardise the safety of drivers, road safety, increase the level of fatigue of drivers or lead to a deterioration in working conditions. Such flexibility, which would apply ~~on days~~ **to 24 hour periods** with less than seven **accumulated** driving hours, should therefore not alter the current rules on the total minimum breaks, on maximum driving periods per day and per week and on the maximum fortnightly driving time. The minimum requirements for working time of persons performing mobile road transport activities, as laid down in Directive 2002/15/EC of the European Parliament and of the Council¹, should also continue to apply unchanged.

¹ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

- (7) To ensure the uniform definition of occasional passenger services, it is necessary to clarify that the definition set out in Regulation (EC) No 1073/2009 of the European Parliament and of the Council¹ covers both national and international services. It is also appropriate to update the reference to Regulation (EC) No 1073/2009, which repealed Council Regulation (EEC) No 684/92².
- (8) More flexibility in the scheduling of breaks for drivers engaged in occasional road passenger transport services should not prevent those drivers from taking breaks of the minimum duration necessary to enable them to rest properly. Therefore, it is appropriate to set a minimum duration for each break. Therefore, drivers engaged in occasional road passenger transport services should be allowed to split their obligatory break into separate breaks of at least 15 minutes each, in addition to the other possibility of splitting a break.
- (9) To ensure that greater flexibility in the scheduling of rest periods of drivers engaged in occasional road passenger transport services is not abused, it is essential to clearly delimit the scope of such flexibility and also to provide for appropriate checks. Drivers should therefore be able to postpone the start of their daily rest periods for a maximum period of 1 hour, in cases where the driving period for that day has not exceeded 7 hours, and should postpone the start only when carrying out single occasional services of 6 days or longer. Such flexibility should be further limited so that the derogation may be used only once during the period of the tour, or twice in single occasional services of 8 days or longer. The use of the derogation does not change the latest start time of a weekly rest period. It should be also possible to counter check such circumstances with a printout from the recording equipment or the duty roster, in addition to the tachograph records.

¹ 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) (OJ L 300, 14.11.2009, p. 88).

² Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ L 74, 20.3.1992, p. 1).

- (10) Limiting the possibility to postpone the weekly rest period for up to 12 consecutive 24-hour periods exclusively to occasional international passenger services has a negative impact in terms of undistorted and fair competition between operators, especially small and medium enterprises. Occasional national passenger services might as well provide their services under the same conditions as occasional international passenger services in terms of the distance travelled or the duration or services rendered to passengers. Occasional national passenger services should therefore also benefit from such possibility.
- (10a) In order to enable effective and efficient controls of the proper use of the flexibility in scheduling breaks and of the possibility to postpone the daily and weekly rest periods in occasional passenger services, the drivers should carry on board the vehicle, throughout the journey, a ‘journey form’, containing key information about the journey; **such a journey form is already in use in the international occasional passenger transport service under Regulation (EC) No 1073/2009**. Aligned with control provisions in Regulation (EU) No 165/2014 on the keeping of manual records, the drivers should also carry on board paper or electronic copies of journey forms covering occasional transport performed in the previous 28 days and, from 31 December 2024, in the previous 56 days. The Commission should, when reviewing the technical specifications of the tachograph, develop a possibility to record the type of the passenger service (regular or occasional passenger service).
- (10b) Regulation (EC) No 561/2006 requires Member States to lay down rules on penalties applicable to infringements of that Regulation and Regulation (EU) No 165/2014, and to ensure that they are implemented. In its judgment in case C-906/19, the Court of Justice made clear that Member States are precluded from imposing a penalty after having detected an infringement against Regulation (EU) No 165/2014 which was committed on the territory of another Member State and for which a penalty has not yet been imposed, and recognised in its paragraph 45 that ‘in so far as that aspect of the EU rules in force may have adverse effects on working conditions for drivers and on road safety, it is for the EU legislature to decide on any possible amendments’. Given that infringements on those two Regulations often occur simultaneously and that the purpose of Regulation (EU) No 165/2014 is to ensure compliance with Regulation (EC) No 561/2006, it is appropriate that the imposition of penalties on an undertaking or a driver for an infringement detected on the territory of one Member States, but committed on the territory of another Member States, may relate to infringements of both Regulations.

(11) Since the objectives of this Regulation, namely to ensure fair competition and improve working conditions and road safety through the harmonisation of the rules on breaks and rest periods for drivers engaged in occasional road passenger transport services, and to ensure that Member States may impose penalties for infringements of tachograph rules detected on their territory irrespective of where those infringements were committed, cannot be sufficiently achieved by the Member States, but can rather, by reason of the nature of the objectives, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 those objectives.

(12) Regulation (EC) No 561/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 561/2006 is amended as follows:

(1) Article 4 is amended as follows:

(a) point (n) is replaced by the following:

‘(n) ‘regular passenger services’ means national and international services as defined in Article 2, points 2 and 3, of Regulation (EC) No 1073/2009 of the European Parliament and of the Council*;

* Regulation (EC) No 1073/2009 of the European Parliament and the Council of 21 October 2009 on common rules for access to the international market for coach and bus services and amending Regulation (EC) N° 561/2006 (OJ L 300, 14.11.2009, p. 88).’;

(b) the following point (na) is inserted:

‘(na) ‘occasional passenger services’ means national and international occasional services as defined in Article 2, point 4, of Regulation (EC) No 1073/2009;’;

(2) in Article 7, the following fourth paragraph is added:

‘For a driver engaged in an occasional passenger service the break referred to in the first paragraph may also be replaced by breaks of at least 15 minutes each, distributed over the driving period referred to in the first paragraph, in such a way as to comply with the first paragraph, provided that the total **accumulated daily** driving time for that day does not exceed 7 hours.

(3) Article 8 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. Provided that road safety is not thereby jeopardised, a driver engaged in a single occasional passenger service with a duration of at least 6 consecutive 24 hour periods may derogate from paragraph 2, first subparagraph, by taking once the daily rest period within a maximum of 25 hours after the end of the previous daily rest period or weekly rest period, provided that the total accumulated driving time for that day has not exceeded 7 hours. Complying with the same conditions, this derogation may be used twice in a single occasional passenger service with a duration of at least 8 consecutive 24 hour periods.’;

(b) in paragraph 6a, the introductory phrase is replaced by the following:

‘By way of derogation from paragraph 6, a driver engaged in a single occasional passenger service may postpone the weekly rest period for up to 12 consecutive 24-hour periods following a previous regular weekly rest period, provided that:’;

(c) in paragraph 6a, point (a) is deleted;

(4) In Article 16, the following paragraphs are added:

‘4. For the purpose of road side checks, the driver shall be able to justify the use of the derogations under Article 7(4) and Article 8(2a) and (6a):

a) by carrying a completed form (‘journey form’) on board of the vehicle. The transport undertaking is responsible for equipping the driver with completed journey forms prior to each journey. The journey form shall contain at least the following information:

(i) the type of service;

(ii) the main itinerary, including dates of the journey;

(iii) the carrier(s) involved.

b) by carrying on board paper or electronic copies of such journey forms which cover the previous 28 days, and, from 31 December 2024, the previous 56 days. That obligation shall cease to apply when the ~~bus~~ **vehicle** uses a tachograph allowing the recording of the type of passenger service referred to in paragraph 5.

For national services, the journey form applying to international services may be used, adapted to indicate its use for national service. The Commission may, by way of an implementing act, establish the format of the journey form for national services to simplify control, if appropriate. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 24(2a).

5. To ensure uniform application and enforcement of Article 7(4) and Article 8(2a) and (6a), the Commission shall include, at the earliest occasion of reviewing tachograph specifications **Commission Implementing Regulation (EU) 2016/799 or any implementing act replacing it**, appropriate technical specifications allowing to record and store data **on the tachograph** relating to the type of the passenger service, namely regular or occasional passenger service. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2a). Those new tachograph specifications shall apply as from a date to be decided by the Commission after consultation with the Member States and the relevant stakeholders.**’;

(5) In Article 19, the first subparagraph of paragraph 2 is replaced as follows:

‘2. A Member State shall enable the competent authorities to impose a penalty on an undertaking and/or a driver for an infringement of this Regulation or of Regulation (EU) No 165/2014 detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country.’.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
