

An explanation of Regulation (EC) No. 561/2006 to assist the harmonised enforcement at roadside checks



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1. Purpose and Scope

The purpose of this document is to record a commonly agreed and simplified explanation of Regulation (EC) No 561/2006¹ within the context of roadside checks as specified by Directive 2006/22/EC².

The content is the result of the deliberations of the TRACE working group and takes into account the consultations carried out with trade bodies such as the IRU (International Road Transport Union), UETR (Union Européenne des Transporteurs Routiers) and enforcement agencies represented within ECR (Euro Control Route) and CORTE (Confederation of Organisations in Road Transport Enforcement) with opportunity for input given to enforcement agencies of all 27 Member States.

The explanations given in this document are thus partly sourced from existing uncontentious applications and partly, where consultations had shown that variations in application among control bodies existed, by reference to available guidance material, such as guidance notes, clarifications and court rulings.

The content was collated by a small working group comprised of members with extensive enforcement backgrounds. The deliberations of the working group were routinely disseminated for comment and feedback via the organisations mentioned above, the purpose of this being to optimise, as much as possible, overall agreement with the content. The working group considered all such feedback and where possible incorporated this into the document, but since the project cannot take 'nil' responses to indicate positive feedback universal agreement with the content cannot be claimed.

There remained a small number of issues which the working group identified as hindering an optimised explanation of the Regulation. These have been referred to the Commission via a separate document with a request for assistance. The Commission has indicated that these issues need not be a barrier to the completion of the project.

It is thus the view of the project team that sufficient consultation has taken place to indicate that the content represents a good foundation on which to base the creation of the training products that are valid and fit for purpose.

The training product derived from this document will comprise a trainer guide with notes, a syllabus, workbook, test exercises, a PowerPoint presentation and recommendations for field training.

The training materials produced are intended for use by new entrant control officers as initial training and by experienced officers as refresh training.

Member States will be encouraged to adopt this package as a module to be incorporated into broad based control officer training.

The wider purpose of that training product is to contribute to the elevation of the professional standards of control officers.

In terms of scope, while this document is concerned with a simplified explanation of Regulation (EC) 561/2006, it is not realistically feasible to do this without reference to the requirements contained within Regulation (EEC) No 3821/85³. However a full explanation of Regulation (EEC) No 3821/85 is not within the scope of this document.

Where content refers to best practice and guidance for control officers in identifying infringements, these are specifically intended for the roadside context.

Company/operator checks will almost certainly benefit from better resources and fewer time constraints. A more in depth approach could be expected. Nevertheless this document does have relevance for those kinds of compliance checks.

The content of this document is based on the most up to date information available and any future value will depend on updates to the content to reflect on decisions, legal interpretations and amendments as and when they occur and the ability of the Commission to assist in clarifying the previously mentioned issues identified by the project.

2. Drivers' Hours Rules

2.1 Introduction

Drivers' hours and tachograph rules were introduced on a community wide basis with the introduction of **Council Regulation (EEC) 543/69⁴** on 25th of March 1969. This regulation introduced:

- Minimum age limits for drivers, drivers' mates and conductors
- Limits on continuous and daily driving time
- Minimum durations and other conditions in respect of breaks and daily and weekly rest periods
- The requirement to record activity and promote the use of automated recording

It hoped to improve the social conditions of those involved in the road transport industry, improve road safety and also address competition issues with transport by road, rail and inland waterways.

Regulation (EEC) 3820/85⁵ was introduced on 20th December 1985 and repealed **Regulation (EEC) 543/69** and was itself repealed by **Regulation (EC) No 561/2006** on 11th April 2006. Each subsequent Regulation attempting to further the aims of the outgoing regulation, correct any matters that had come to light brought about by drafting inaccuracies and taking into account other related regulations.

This document attempts to explain the provisions of EC 561/2006 and place them in the context of a compliance monitoring function. In doing so, the aims of each subsequent set of rules should be reiterated, namely:

- Improvement of road safety
- Improvement of the social conditions of staff engaged in road transport
- Promotion of fair competition within the road transport industry and with other transport modes.

This regulation also aims to promote improved monitoring and enforcement practices by Member States and improved practices in the road transport industry.

2.1.1 AETR Treaty

Dependant on the nature of a vehicle/driver journey, AETR⁶ may apply. AETR and Regulation (EC) 561/2006 were closely aligned on the 26th September 2010. It is important to correctly identify the nature of a vehicle journey as well as other factors before a decision can be made on which legal instrument shall apply. Control officers will have to correctly identify the regulation and breach (es) when infringements are discovered, in order to satisfy legal requirements; otherwise challenges to the charge based on technicalities could be successful.

2.1.2 Sanctions

While sanctions applied in relation to infringements of these Regulations are a matter for each MS, it is expected that as a minimum, a sanction should be applied that rectifies the breach. For example if a driver is found to have breached the regulations on daily rest, he should be required to fulfil this obligation before being allowed to continue his journey, independent of any financial penalty imposed.

2.1.3 Roadside Checks

Roadside checks, conducted to monitor compliance with (EC) 561/2006, (EEC) 3821/85, AETR and other regulations are required as a consequence of Directive 2006/22/EC. The Directive requires that 'roadside checks are executed efficiently and quickly, with a view to completing the check in the shortest time possible and with the least delay for the driver'. Moreover, controls on bus and coach drivers should ideally be carried out when their vehicles are not loaded with passengers.

The Directive also considers which requirements in general are to be monitored.

When determining the location of enforcement checks some consideration of the welfare of the drivers affected by roadside checks should be given e.g. access to facilities in the event of prohibition either directly or by virtue of a direction and it follows that control officers must be seen to be honest and impartial when exercising their duties. They should aim to treat others as they themselves would expect to be treated.

All these considerations are to be set against the stated objectives of the Regulation No (EC) No 561/2006 (see 2.1)

2.1.4 Engagement with Drivers

2.1.4.1 Communication

Control officers will encounter many drivers from many different countries therefore communication difficulties are inevitable.

It can be expected, that any driver from any country, involved in an enforcement check, will be aware that he is likely to be required to produce for inspection, certain specific documents. Control officers will not need expert linguistic skills to secure this production.

However, control officers must do more than inspect and validate these documents; they must interpret the information contained on them to verify compliance. Invariably this will require that some form of dialogue is conducted and officers could for example make use of interpreter

services and translated explanatory notes to aid understanding by both driver and control officer.

2.1.4.2 Production

Control officers may only get to the truth by examining other information that the driver may have in his possession e.g. fuel receipts, ferry tickets etc. Such documents should therefore be requested from the driver and compared with other timed recordings; however officers should be aware of any limitation of the right to demand documents. Non production of such items is not necessarily an indication that they are being suppressed in order to cover up infringements.

Documents that must be produced on demand are:

Passport, driving licence, tachograph records/data, driver card, print outs, Community Licence, vehicle technical papers, driver training certificate, insurance documents, authority to drive(if driver non-EU), proof of disposal of an historic offence, CMR, passenger waybill and all paperwork associated with a hazardous load.

2.1.4.3 Attitude

In order for control officers to carry out their function of promoting road safety and fair competition by monitoring compliance with those regulations which are designed for that purpose, they should accept the driver's records as being a true version of events unless they find reasons to suspect otherwise and then they must make all necessary enquiries to establish all facts and satisfy themselves of the authenticity of the records and compliance with the Regulations.

Officers should refrain from a presumption of guilt on the part of drivers or undertakings unless they detect evidence to the contrary, although they are entitled to take in to account the outcomes of previous enforcement checks carried out on an undertaking's vehicles when targeting their activities.

They should guard against adopting behaviour which would be seen by drivers as superior and condescending and which only builds barriers between the officer and the driver.

Exercising professional judgement when evaluating infringements, control officers should take into account mitigating circumstances and when force majeure events arising from the pressures exerted upon commercial transport operations from many quarters, affect regulatory compliance.

They should ensure their enquiries are carried out in a professional manner with objectivity and impartiality.

2.1.5 Document Structure

This document will consider each of the Articles of Regulation (EC) No 561/2006 and consider specifically their impact and influence on roadside enforcement checks carried out at the roadside by control officers. As a consequence of this approach, several Articles, important as they are, are not considered in detail here as they are deemed to be of no significance within the stated context.

Similarly, certain Articles of Regulation (EEC) No 3821/85 that are a pre-requisite to effective roadside enforcement are included in this consideration.

Where typical offences are identified, reference is made to the severity classification that is contained within Annex III Directive 2006/22/EC⁷ (as amended.)

2.2 Regulation (EC) 561/2006

2.2.1 Article 1

2.2.1.1 Text

The Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This regulation also aims to promote improved monitoring and enforcement practices by Member States and improved practices in the road transport industry.

2.2.1.2 Offences

None

2.2.1.3 Roadside Check

There is no direct impact for consideration by control officers, but serves as a useful reminder of the purpose of this Regulation.

2.2.2. Article 2

2.2.2.1 Article. 2.1

2.2.2.1.1 Text

This regulation shall apply to the carriage by road:
(a) of goods where the maximum permissible weight of the vehicle, including any trailer, or semi-trailer, exceeds 3,5 tonnes, or
(b) of passengers by vehicles which are constructed or permanently adapted for carrying more than 9 persons including the driver, and are intended for that purpose.

2.2.2.1.2 Offences

None

2.2.2.1.3 Roadside Check

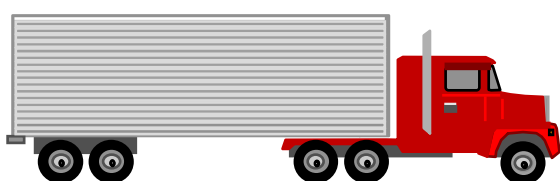
The Article text defines the scope of the Regulation. It specifies in terms of size and capacity those vehicles whose drivers are required to observe the requirements of the Regulation. This paragraph deals with the physical size and capacity of in scope vehicles.

It will be necessary for control officers to determine whether a vehicle being considered for compliance monitoring falls within this scope and at the same time reference must be made to the exemptions in Article 3 and the national derogations listed in Article 13.

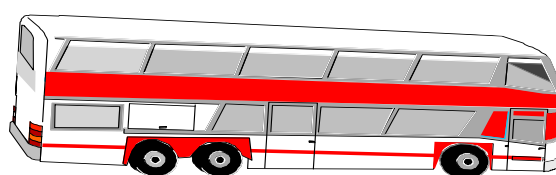
Article 3 specifies certain vehicle types which are exempted from the scope of the Regulation.

Each Member State may grant exemption from Articles 5-9 for vehicles falling within the derogations in Article 13 used within that Member State (for further details see Article 13)

- **Establish if inspected vehicle in scope of Regulation.**



More than 3.5 tonnes



More than 8 passenger seats

Goods vehicles – For most large goods vehicles a visual observation will be sufficient to establish whether they fall into scope but with smaller vehicles it will be necessary to examine technical papers carried by the driver and/or manufacturers data attached to the vehicle to establish maximum permissible weight.

Passenger vehicles – count the number of passenger seats and refer to the technical papers of the vehicle.

It is permitted on passenger vehicles to remove seats to reduce the seating capacity to less than 10 seats including the driver where this change is confirmed by the detail of the technical document. Control officers should be aware that the process of regulating seating reduction will vary from Member State to Member State

Note: The vehicle must be designed to carry goods or passengers and normally used as such; hence a mobile crane or a concrete pumping machine (that carries no concrete) immediately falls out of scope.



Outcomes –

In scope – in terms of vehicle construction - an inspection to establish compliance with the requirements of 561/2006 may continue.

Out of scope - Discontinue or proceed with non-561/2006 inspection.

Where a vehicle, such as is defined by this article, is engaged in the carriage by road of goods or passengers, the journey is always in scope, unless an exemption or derogation as contained in Articles 3 and 13 applies. (Article 13 exempts drivers from the provisions of Articles 5-9 only)

Vehicle Use - Leaseurope

Following a letter to Leaseurope from the European Commission, it has been advised that the driving of goods and passenger vehicles is outside the scope of 561/2006 when the driver is never involved in the carriage of goods or passengers as part of their employment.

Two main impacts of this advice are:

- Drivers employed by vehicle hire companies to collect and deliver, by driving on a road, empty vehicles or move vehicles between local rental branches
- Mechanics and technicians who may collect and deliver empty vehicles for repair or to take empty vehicles for annual test

As a consequence of this, when a control officer is considering whether a particular vehicle is in scope of (EC) 561/2006, the status and activities of the driver should be taken into consideration.

The content of this letter has not met with universal approval from Member States. It is up to each individual Member State to decide whether to be bound by this letter

2.2.2.2 Art. 2.2**2.2.2.2.1 Text**

This regulation shall apply, irrespective of the country of registration of the vehicle, to carriage by road undertaken:

- (a) exclusively within the Community; or*
(b) between the Community, Switzerland and the countries party to the Agreement on the European Economic Area.

2.2.2.2.2 Offences

None

2.2.2.2.3 Roadside Check

The Article specifies which journey types fall under the regulation and, as a consequence, which fall under AETR. It demands, therefore, that the exact nature of a journey undertaken by a vehicle is understood before a decision can be made as to which regulation is applicable to that journey or parts of that journey.

(Note that these journeys are carried out **exclusively** within the areas mentioned)

- Establish home base of vehicle and journey details via on-board documentation or driver consultation.
- See 2.3 on when AETR regulation applies. Reg. (EC) No 561/2006 has precedence over AETR when considering weekly and two weekly driving limits where mixed journey types occur. Where in-scope vehicles registered in a Member State or European Economic Area (EEA) countries are not on 'AETR journeys', then 561/2006 applies.
- Any vehicle regardless of country of registration, which undertakes a journey which is wholly within the areas mentioned falls within the scope of (EC) 561/2006

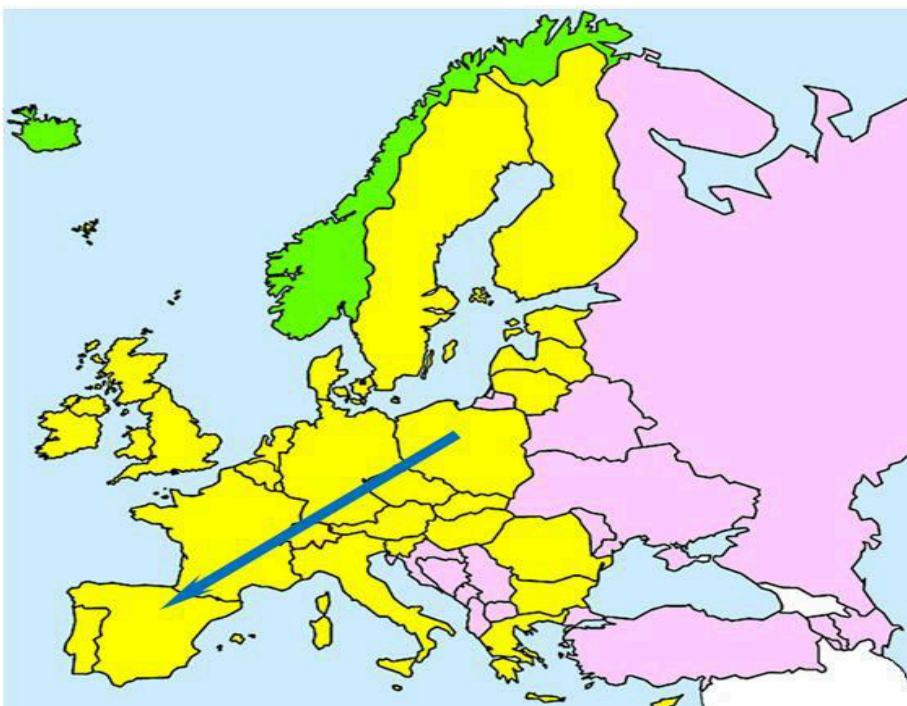
Outcomes -

- **In scope** - an inspection to establish compliance with the requirements of (EC) 561/2006 may continue.
- **Out of scope or exempt** - Discontinue or proceed with non – (EC) 561/2006 inspection.

Note:

- Close to full alignment of AETR with 561/2006 took place 26th September 2010
- '3rd' country and 'AETR' country registered vehicles must comply with 561 when engaged in transports carried out wholly in the regions mentioned here.

Example: The driving of a Polish registered vehicle on a journey from Poland to Spain is in scope of 561/2006 (unless otherwise exempt)



2.2.2.3 Art. 2.3

2.2.2.3.1 Text

The AETR shall apply, instead of this Regulation, to international road transport operations undertaken in part outside the areas mentioned in paragraph 2, to:

(a) vehicles registered in the Community or in countries which are contracting parties to the AETR, for the whole journey;

(b) vehicles registered in a third country which is not a contracting party to the AETR, only for the part of the journey on the territory of the Community or of countries which are contracting parties to the AETR.

The provisions of the AETR should be aligned with those of this Regulation, so that the main provisions in this Regulation apply, through the AETR, to such vehicles for any part of the journey made within the community.

2.2.2.3.2 Offences

None

2.2.2.3.3 Roadside Check

The Article defines those journeys which fall under the AETR, thus the exact nature of the journey being undertaken must be established.

- Establish starting point and journey details including transit points by examining on-board documentation and via driver consultation. The whole journey is to be considered, and not the splits caused by national borders or rest periods.
- Vehicles registered in non-EU countries that are signatories of AETR circulating in the community are on AETR journeys.
- Vehicles that don't originate from EU, AETR, EEA or Switzerland are on AETR journeys while they are circulating in EU or AETR countries.
- Vehicles registered in EU, EEA or Switzerland are on AETR journeys if their journeys are to, through or from AETR countries.

Outcomes

AETR applies - an inspection to establish compliance with the requirements of AETR may continue.

Out of scope of AETR rules- assess if journey falls into scope of (EC) No 561/2006 and if so proceed with (EC) No 561/2006 compliance check.

Out of scope of both EC and AETR – Discontinue or proceed with a non-(EC) No 561/AETR inspection

Note:

The use of 'in part' in this article indicates that some part of the journey must have been carried out outside the region comprised of the community, EEA and Switzerland. AETR concerns itself with **international transport operations** but in this context views a transport operation that remains wholly within the region comprised of the community, EEA and Switzerland as a **national transport operation** regardless of whether state borders are crossed and therefore outside the scope of the AETR.

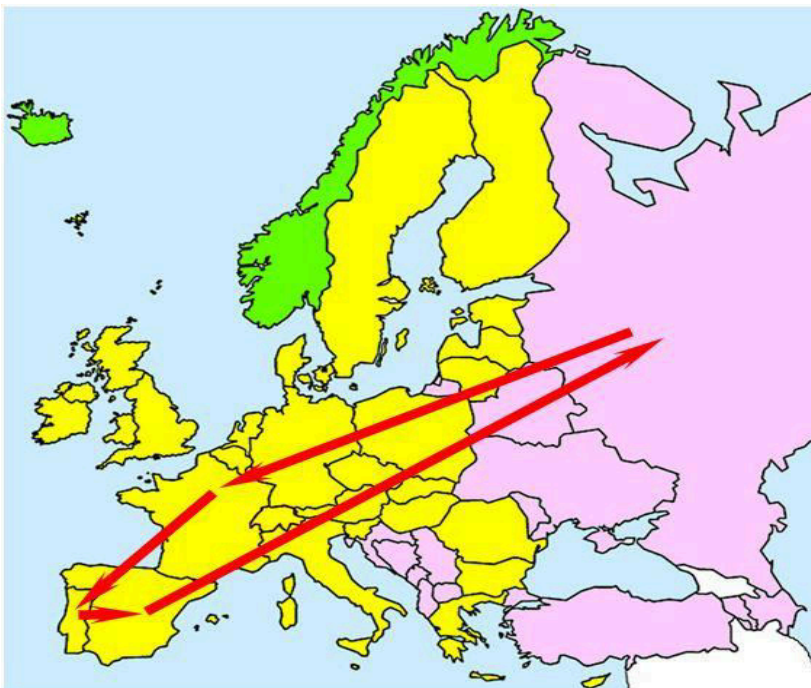
However there is an unsettled legal debate between the EU and the UN over the legitimacy of applying Regulation (EC) No 561/2006 in place of the AETR Agreement to drivers of non-EU registered vehicles, even when they are undertaking journeys exclusively within the EU and notwithstanding Article 2.2 of the EU Regulation.

Although the driving and resting time limits described in AETR and Regulation 561/2006 are now closely aligned, it will be necessary to correctly identify which Regulation is breached and therefore knowledge of which regulation is applicable is vital to offer solid legal grounding to the sanction.

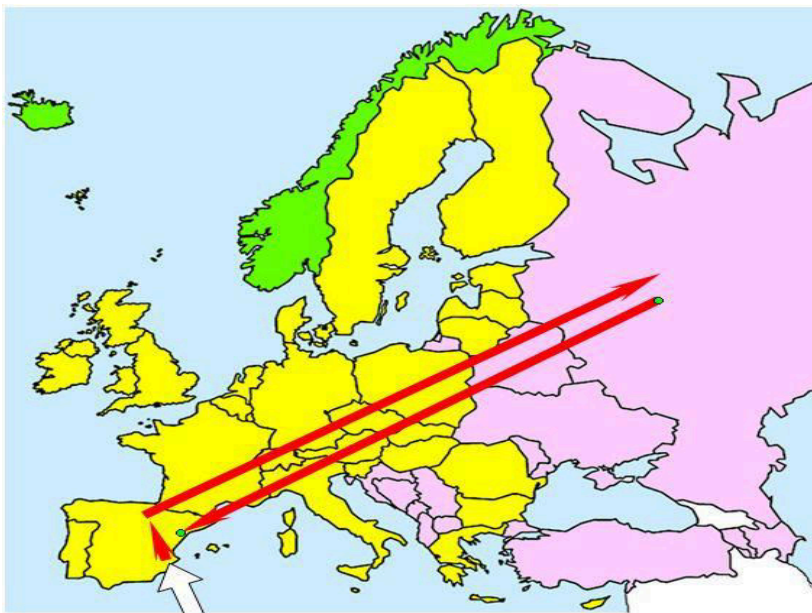
'3rd' country vehicles must comply with AETR rules when on the territory of the community or an AETR signatory when carrying out transport operations as defined in paragraph 3 of the Article.

Where a driver falls within AETR and 561/2006 in a single week, the weekly rest and the permitted driving time should be in line with Regulation (EC) No 561/2006.

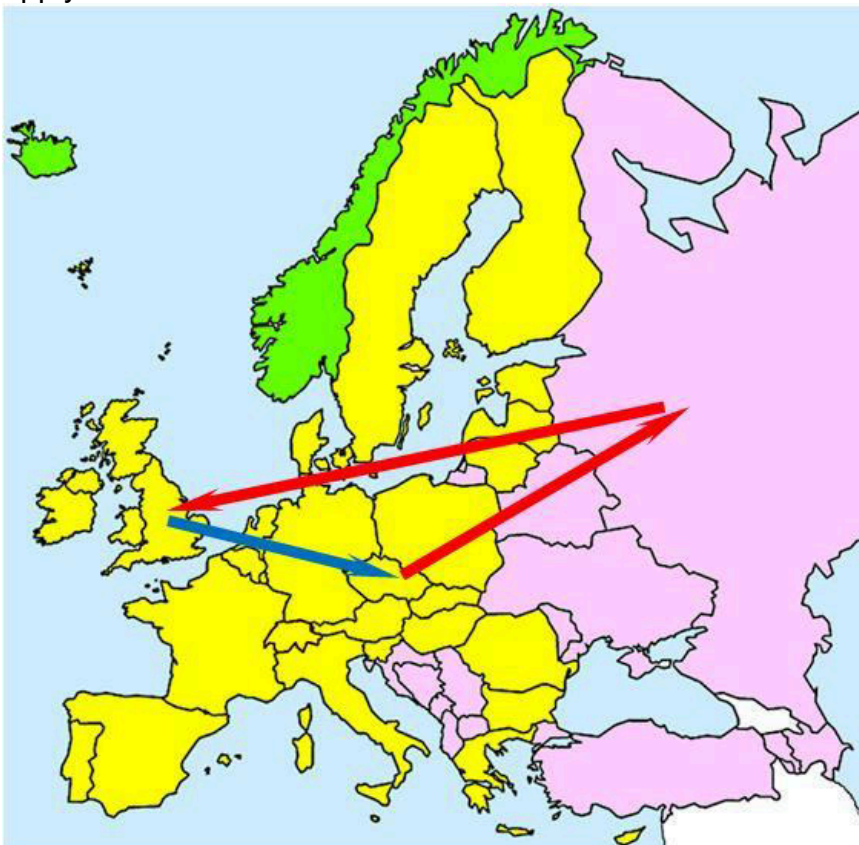
Example: A Russian registered vehicle (single driver) on a multi-stop trip to the EU must observe AETR rules. The journey depicted is a journey of a vehicle carrying consignments to France, Portugal and Spain followed by reloading a shipment from Spain to Russia.



Example: A vehicle registered in Morocco (a '3rd' country) must observe AETR rules, while travelling to or transiting the EU.



Example: A UK registered truck (single driver) delivers to the Czech Republic – (EC) 561/2006 applies. It is then dispatched to Russia to collect a load for delivery in the UK – AETR rules apply.



In summary, control officers must establish whether any vehicle considered for a roadside check falls into the technical scope of a (EC) 561/2006 inspection, taking into consideration the specified exemptions and national derogations which may apply.

At the same time, the nature of the journey being undertaken by the vehicle in question will determine which set of rules are applicable i.e. (EC) 561/2006, AETR or domestic.

The EC Commission Legal Service has indicated that although the wording of Article 2.3 might suggest that the journey carried out by the **vehicle** is the deciding factor when considering the applicable Regulation, Article 1 of Regulation (EC) No 561/2006 specifies that it is driver activity that is under consideration, so a journey is commenced when a **specific driver** joins a vehicle and concludes when he concludes the journey in that vehicle. Thus, in this context, where reference is made to a journey, it should be taken as meaning a vehicle/driver journey. For example, a vehicle is used to transport a load from Moscow via Minsk to Paris. A single driver used for the complete journey must comply with AETR rules. A driver, who drives the vehicle from Moscow to the Polish border must comply with AETR Rules. A second driver, who joins the vehicle at the Polish border and completes the journey, must comply with Regulation (EC) No 561/2006.

Note: The consequences of this explanation have not yet been fully examined and as a result the use a vehicle-based definition of a journey may prevail in some Member States.

Use the following list to identify European and near European states.

EU Member States:

Austria (A), Belgium (B), Bulgaria (BLG), Cyprus (CY), Czech Republic (CZ), Denmark (DK), Estonia (EST), Finland (SF), France (F), Germany (D), Greece (GR), Hungary (H), Ireland (IRL), Italy (I), Latvia (LV), Lithuania (LT), Luxembourg (L), Malta (M), Netherlands (NL), Poland (PL), Portugal (P), Romania (RO), Slovakia (SK), Slovenia (SL), Spain (E), Sweden (S), United Kingdom (GB)

EEA signatory

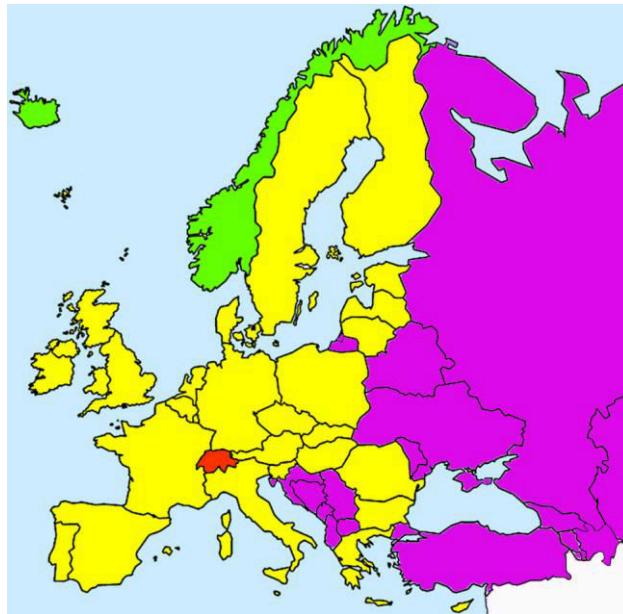
Member States + Iceland (IS), Liechtenstein (FL) and Norway (N)

AETR signatory

All EU Member States + all EEA signatories (except Iceland) + Albania (AL), Andorra (AD), Armenia (AM), Azerbaijan (AZ), Belarus (BY), Bosnia and Herzegovina (BA), Croatia (HR), Georgia (GE), Kazakhstan (KZ), Macedonia (MK), Monaco (MC), Moldova (MD), Russia (SU), San Marino (SM), Serbia (SRB), Montenegro (MNE), Tajikistan (TJ), Turkey (TR), Turkmenistan (TM), Ukraine (UA), Uzbekistan (UZ) + Switzerland (CH)

Other

Switzerland (CH) is a signatory of AETR and though not an EU Member State adheres to Regulation (EC) No 561/2006



2.2.3 Article 3

2.2.3.1 Text

This Regulation shall not apply to carriage by road by:

- a) Vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50Kms*
- b) Vehicles with a maximum authorised speed not exceeding 40kph*
- c) Vehicles owned or hired without a driver by the armed forces, civil defence services, fire services, and forces responsible for maintaining public order when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control*
- d) Vehicles, including vehicles used in the non-commercial transport of humanitarian aid, used in emergencies or rescue operations.*
- e) Specialised vehicles used for medical purposes*
- f) Specialised breakdown vehicles operating within a 100km radius of their base.*
- g) Vehicles undergoing road tests for technical development, repair or maintenance purposes and new or rebuilt vehicles which have not yet been put into service;*
- h) Vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for the non-commercial carriage of goods;*

i) commercial vehicles, which have a historic status according to the legislation of the Member State in which they are being driven and which are used for the non-commercial carriage of passengers or goods.

2.2.3.2 Offences

None

2.2.3.3 Roadside Check

A control officer may have determined that a vehicle falls into scope of an (EC)561/2006 inspection (Art.2) but must be satisfied that the type of vehicle and the nature of its operation does not exempt it from the requirements contained in Regulations (EC) No 561/2006 and (EEC) No 3821/85. The following should assist in establishing the validity of any exemption given in Article 3.

Note: The exemptions contained in this Article are accompanied by equivalent exemptions regarding the fitment of tachographs (and their use) as specified in Art 3(1) of Reg. (EEC) No. 3821/85.

a) Can be verified by referral to the service timetable and a map/route planner, if these are in the driver's possession. Note: the actual route distance applies, not radial distance. Note also that positioning mileage between depot and a service route starting point or even between depots are technically in scope journeys but enforcement bodies of some Member States may take a pragmatic view that these are journeys that do not involve the carriage of passengers and it would be unreasonable to insist that tachographs are fitted.

b) The maximum authorised speed is either indicated on the vehicle or the vehicle specific documents. Includes vehicles where such a restriction is by virtue of a set speed limiter.

c) Such exempted vehicles are commonly evident by their visual appearance.

In such cases seek confirmation from the driver that this is the case, and not a similarly operated private service.

In respect of hired or un-liveried vehicles, questioning of the driver regarding the purpose of the journey will indicate validity of the exemption. It may be necessary to verify with the employers/commanding officer on occasions when doubt exists.

This exemption **does not** apply to commercial operators contracted to those bodies mentioned in the text.

d) This aid supply must be in direct response to an emergency or rescue. Merely supplying humanitarian or charitable aid does not qualify for the exemption. Verify this by examining load documents and questioning the driver.

Definition of emergency to include:

- Danger to life or the health of people or animals,
- serious interruption of essential public services, telecommunication and postal services, use of roads, railways, ports or airports or serious damage to property.

The exemption applies for the duration of the emergency only. When the emergency is brought under control the exemption ceases to apply.

Major disruptions to the transport infrastructure by prolonged and heavy snow fall could lead to such an emergency.

e) Vehicles such as ambulances, blood donor vehicles and body scanners must be equipped with specialised equipment that delivers some kind of medical treatment. Verify this by a physical inspection of vehicle. Primary purpose of the journey must be for treatment, so a coach or bus fitted out to enable the transport of sick or disabled persons to Lourdes for example cannot be exempt from the regulation by claiming to be an ambulance.

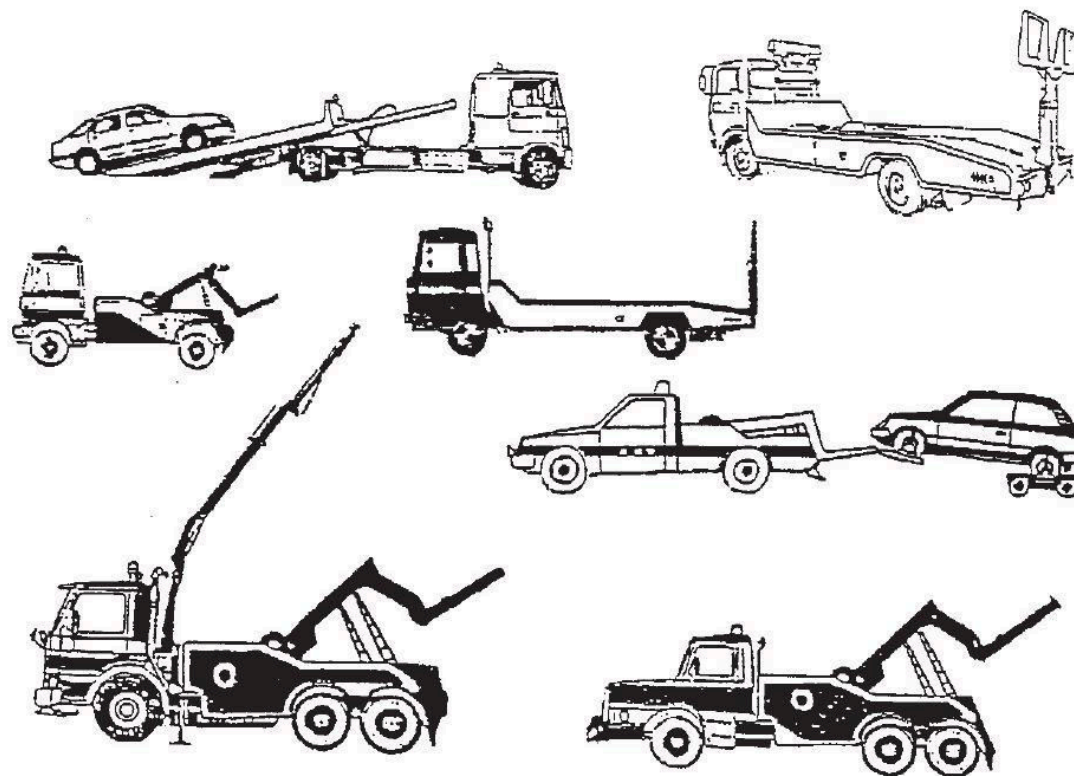


f) A specialised breakdown vehicle must be constructed or adapted to enable the recovery of a disabled vehicle(s) (ECJ ruling). Vehicle operating base must be ascertained in order to verify the 100km radius condition for exemption to apply.

Be aware, within the 100km radius, the vehicle may be used for activities that are not related to breakdown recovery, e.g. A breakdown vehicle fitted with a sliding bed facility for recovering a disabled car, could within 100km radius of the vehicle base be engaged in the carriage of goods other than broken down vehicle and be exempt from the Regulation.

This type of vehicle may be fitted with a tachograph but within the terms of this exemption there is no obligation to use it.

A 'recovery' journey exceeding the 100km radius would require the fitment and use of a tachograph.



g) The nature and purpose of the journey being undertaken must be established (by questioning the driver) to verify application of this exemption. The on board equipment and nature of any load being carried may give an indication that this exemption may not apply. This exemption does not apply when taking a vehicle to a compulsory periodic test. Typical examples of exempt activity could be a mechanic engaged in a journey to check the satisfactory repair of a vehicle's steering.

New vehicles undergoing development checks are exempt.

Rebuilt (or re-engineered) vehicles undergoing pre-use road tests are exempt.

h) The vehicle type/capacity is evidenced by vehicle specific documents. There must be no hire or reward element to the journey and the goods carried are not in connection with a trade or business. The driver should be questioned and the load inspected to verify these facts. A combination vehicle means a vehicle plus trailer or semi-trailer.

i) 'Historic' vehicles are defined in the legislation of each Member State. Such vehicles cannot be used to convey goods or passengers commercially. Drivers and passengers should be questioned and any load inspected to verify these conditions.

Summary

Vehicles identified in Article 3 as exempt are not inspected on the basis of (EC) No 561/2006 but this does not exempt them from other forms of inspection. Claimed exemptions should be tested by control officers and where such claims prove to be unfounded, a full inspection using the scope of (EC) No 561/2006 should follow.

It is recommended that exempted driving is recorded at some point as 'out of scope' to indicate that this period of driving is to be seen as 'other work' when mixed with in scope activities.

2.2.4 Article 4

2.2.4.1 Text

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

(a) **'carriage by road'** means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods;

(b) **'Vehicle'** means a motor vehicle, tractor, trailer or semi-trailer or a combination of these vehicles, defined as follows:

— **'motor vehicle'**: any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and normally used for carrying passengers or goods,

— **'tractor'**: any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines,

— **'trailer'**: any vehicle designed to be coupled to a motor vehicle or tractor,

— **'semi-trailer'**: a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle;

(c) **'Driver'** means any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary;

(d) **'Break'** means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation;

(e) **'other work'** means all activities which are defined as working time in Article 3(a) of Directive 2002/15/EC except 'driving', including any work for the same or another employer, within or outside of the transport sector;

(f) **'Rest'** means any uninterrupted period during which a driver may freely dispose of his time;

(g) **'Daily rest period'** means the daily period during which a driver may freely dispose of his time and covers a 'regular daily rest period' and a 'reduced daily rest period':

— **'regular daily rest period'** means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours,

— *‘reduced daily rest period’ means any period of rest of at least nine hours but less than 11 hours;*

(h) *‘Weekly rest period’ means the weekly period during which a driver may freely dispose of his time and covers a ‘regular weekly rest period’ and a ‘reduced weekly rest period’:*

— *‘regular weekly rest period’ means any period of rest of at least 45 hours,*

— *‘reduced weekly rest period’ means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 8(6), be shortened to a minimum of 24 consecutive hours;*

(i) *‘A week’ means the period of time between 00.00 on Monday and 24.00 on Sunday;*

(j) *‘Driving time’ means the duration of driving activity recorded:*

— *Automatically or semi-automatically by the recording equipment as defined in Annex I and Annex IB of Regulation (EEC) No 3821/85, or*

— *Manually as required by Article 16(2) of Regulation (EEC) No 3821/85;*

(k) *‘daily driving time’ means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period;*

(l) *‘Weekly driving time’ means the total accumulated driving time during a week;*

(m) *‘Maximum permissible mass’ means the maximum authorised operating mass of a vehicle when fully laden;*

(n) *‘regular passenger services’ means national and international services as defined in Article 2 of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (10);*

(o) *‘multi-manning’ means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;*

(p) *‘transport undertaking’ means any natural person, any legal person, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such a personality, which engages in carriage by road, whether for hire or reward or for own account;*

(q) *‘driving period’ means the accumulated driving time from when a driver commences driving following a rest period or a break until he takes a rest period or a break. The driving period may be continuous or broken.*

2.2.4.2 Offences

None

2.2.4.3 Roadside Check

The Article gives the appropriate definitions which serve to enable the intended meaning to be correctly and more easily understood. When explaining the Articles of (EC) 561/2006 frequent reference to these definitions will be required. In many cases the definitions themselves need elaboration and clarification and where applicable this follows:

a) A road open to the public is for each MS to define. A journey (in this case), starts from when a driver takes over a vehicle and finishes when he stops being in control of the vehicle or when he takes a qualifying rest period. In this case, a journey can comprise numerous short journeys. This definition in effect brings into scope of the regulation, off road driving (e.g. on private property) where this is carried out on a journey which also comprises a journey on roads open to the public during a daily driving period. This definition maintains empty vehicles within scope.

b) Reminder: a vehicle can refer to a vehicle combination (vehicle and trailer).

c) This defines passengers who are available to drive as drivers and are thus in scope of the Regulation and of 3821/85 from the moment their working day commences. Being available (as part of duty) to drive must be recorded as available on the driver record.

Where both drivers are on board (1 hour tolerance at start of journey) multi-manning concessions can be claimed otherwise single manning rules apply to both.

Control officers should be aware that drivers may claim to not be available when in fact they are. However, it may be the case that drivers are genuine passengers and are not available for driving and should be treated as such unless there is evidence to the contrary.

d) A break may be taken in a moving vehicle (multi-manning) provided the driver is inactive and the period is used exclusively for recuperation. In the case of multi-manning in a vehicle equipped with a digital tachograph, where a break is taken in a moving vehicle a period of 45 minutes of availability will be taken as a recorded break. (A digital tachograph does not allow the recording of a break in a moving vehicle). In a single – manned vehicle, if a period of availability is recorded and there is no proof that this period has not been exclusively used for recuperation, then such a period is considered to be a break by many Member State enforcement agencies.

e) To include any work other than driving for any employer within or outside the transport sector including out of scope driving. For example, where a person was employed as a security guard for 3 hours by an employer before taking over control of a vehicle in scope of (EC) No. 561/2006 for another employer, the first activity is deemed 'other work' in the context of (EC) No. 561/2006 and must be recorded as such. However there is no obligation to record out of scope driving or other work on any day when no in-scope driving is carried out.

f) Free to dispose etc means the driver can't volunteer to work because even as an unpaid worker he is under the control of an employer. Voluntary work that involves no contractual obligation can be considered as free disposal of time.

g) A regular daily rest is either at least 11 hours continuous or when taken in 2 periods, the first shall be at least 3 hours and the second at least 9 hours.

A reduced daily rest is at least 9 hours but less than 11 hours.

For the purposes of aggregating daily driving (see k), it is necessary to identify when a daily rest period is commenced so for this purpose daily rest taken as a 'split' is deemed to have started once the '9 hour' portion has commenced.

A daily rest period may have attached to it a period of compensation for a previously reduced weekly rest

h) A weekly rest period is a period of continuous rest of sufficient duration such that it can be **at least** either a regular weekly rest period or a reduced weekly rest period.

A regular weekly rest period is at least 45 hours continuous.

A reduced weekly period is at least 24 hours but less than 45 hours continuous.

So a weekly rest of 49 hours qualifies as a regular weekly rest and one of 31 hours qualifies as a reduced weekly rest.

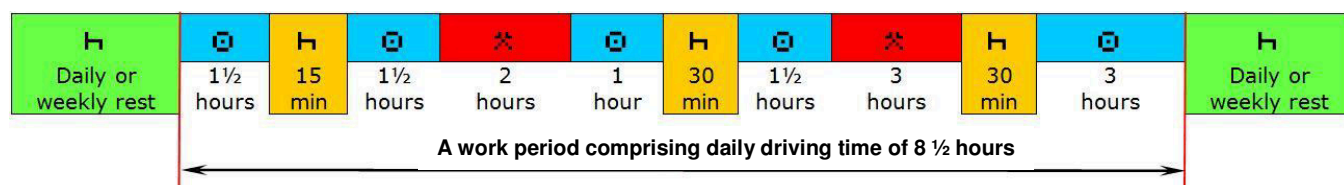
A weekly rest period may comprise a regular or reduced weekly rest plus compensation for a previously reduced weekly rest.

i) A week means the 'fixed week', i.e. 0000 hours Monday – 2400 hours Sunday (local)

j) This refers to the time spent driving as recorded automatically or semi-automatically by a correctly operated tachograph or manually when required.

Note that due to limitations of digital recording equipment that this may differ slightly from actual driving time (see Guidance Note 4).

k) It is accepted that this definition also encompasses driving between weekly rest periods and daily rest periods or between two weekly rest periods.



l) Weekly driving time means total accumulated driving time during a week. It will also include any driving time resulting from interruptions to regular daily rest periods as a result of ferry or train movements.

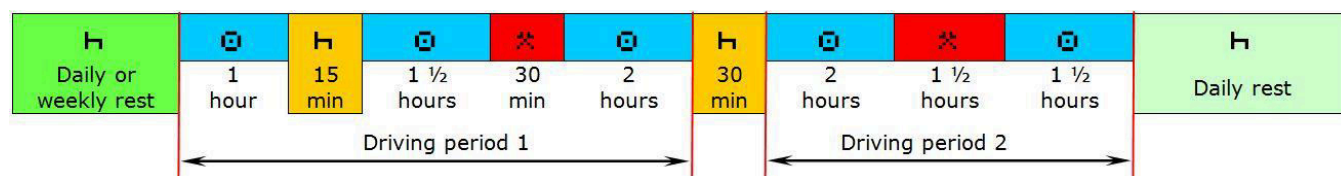
m) The Regulation applies to vehicles or vehicle and trailer combinations with a maximum authorised mass in excess of 3,500kgs. Control officers must take care to correctly interpret the vehicle technical papers or the manufacturer's data. The maximum authorised mass will commonly be given for both types of operation i.e. in solo or combination mode. Some vehicles will be out of scope of the regulation when operated 'solo' but fall into scope when operated as a combination.

n) No clarification needed.

o) One driver may be joined by more than one other driver in the course of the journey, this is also multi-manning. In this way, one driver may claim the multi-manning exemptions, while other drivers who made up the crew during the working period might not be allowed this concession (see Article 8).

p) Anyone who operates the vehicle. This could be a person or any other legal entity.

q) A **daily driving period** will be made up of several driving periods which in themselves may be continuous or broken.



2.2.5 Article 5

2.2.5.1 Text

1. *The minimum age for conductors shall be 18 years.*

2. *The minimum age for drivers' mates shall be 18 years. However, Member States may reduce the minimum age for drivers' mates to 16 years, provided that:*

(a) the carriage by road is carried out within one Member State within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centre of which is situated within that radius;

(b) The reduction is for the purposes of vocational training; and

(c) There is compliance with the limits imposed by the Member State's national rules on employment matters.

2.2.5.2 Offences

Ages of crew	561- 5
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2.2.5.3 Roadside Check

Control officers should establish vehicle base and journey details through information provided by the driver. Examination of driver identity or driver licence can be used to establish age. Infringement occurs if the conductor is under age.

If drivers' mates aged between 16-18 yrs check that the radius limit of 50km has not been breached.

A breach of the minimum age requirement should be considered a *serious infringement* according to the guidelines contained in Annex III Directive 2006/22/EC (as amended.)

2.2.6 Article 6

2.2.6.1 Text

The daily driving time shall not exceed nine hours.

- 1. However, the daily driving time may be extended to at most 10 hours not more than twice during the week.*
- 2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time laid down in Directive 2002/15/EC being exceeded.*
- 3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.*
- 4. Daily and weekly driving times shall include all driving time on the territory of the Community or of a third country.*
- 5. A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability, as defined in Article 15(3)(c) of Regulation (EEC) No 3821/85, since his last daily or weekly rest period. This record shall be entered either manually on a record sheet, a printout or by use of manual input facilities on recording equipment.*

2.2.6.2 Offences

Exceed 10 hours driving	561- 6-1
Exceed 9 hours when only 9 allowed (no 10s left)	561- 6-1
Exceed weekly driving limit of 56	561- 6-2
Exceed 2 weekly limit of 90	561- 6-3
Breach of 3821/85 concerning recording of duties.	561- 6-5

2.2.6.3 Roadside Check

Control officers should analyse each tachograph record sheet produced (or digital data) to establish the daily driving time and accumulate these appropriately to establish weekly driving totals. Weekly driving totals are then reviewed to establish two-weekly driving totals. Use the following two-step process:

Step 1

- Verify recorded driving time from tachograph record sheet or digital data.
To do this, accumulate the driving periods between the end of a daily or weekly rest and the beginning of the next daily/weekly rest period to establish the daily driving period.

[The Commission has recommended that for the purposes of establishing daily driving times, driving periods interrupted by rest periods of at least 7 hours should not be aggregated. Note that despite this, such an inadequate rest period would still constitute an infringement of daily rest requirements. (Not all Member States follow this recommendation)]

- Verify that the 10 hour driving limit has not been breached.
- Repeat this for each record produced.
- Where this limit is breached this constitutes an infringement on each occasion. Exceeding this limit by :
 - up to 1 hour constitutes a *minor infringement*
 - more than 1 hour but less than 2 hours constitutes *serious infringement*
 - more than 2 hours constitutes a *very serious infringement*

Verify that in a week (see definition of 'week' in Article 4) that the 9 hour daily driving period has been exceeded not more than twice.

- Where this has occurred each event that exceeds the permitted two occasions is a daily driving (9 hours) infringement. On these occasions, exceeding the 9 hour limit by:
 - up to 1 hour constitutes a *minor infringement*
 - more than 1 hour but less than 2 hours constitutes a *serious infringement*
 - more than 2 hours constitutes a *very serious infringement*
- Accumulate the daily driving periods in each week applicable to the produced records to establish weekly driving. Note that when a driver's work pattern is not aligned to the 'fixed week' it is possible for a driver to accumulate 58 hours driving between weekly rest periods and still comply. Where, in any week, the weekly driving exceeds 56 hours, this is an infringement. Exceeding this limit by:
 - up to 4 hours constitutes a *minor infringement*
 - more than 4 hours but less than 14 hours constitutes a *serious infringement*
 - more than 14 hours constitutes a *very serious infringement*.
- Add together (fixed) consecutive weekly driving to establish two-weekly total. Each two-(fixed) weekly total that exceeds the permitted 90 hours is an infringement. Exceeding this limit by:
 - up to 10 hours is a *minor infringement*
 - more than 10 hours but less than 22.5 hours is a *serious infringement*
 - more than 22.5 hours is a *very serious infringement*

Step 2

Examine each record in order to establish that all drivers' activities have been accounted for e.g. other work or out of scope driving. The record must include work carried out before taking control of the vehicle and after relinquishing control. The requirement is to record as "other work":-

- any time spent as defined as working time in Article 3(a) of 2002/15/EC,
- any time spent driving a vehicle used for commercial operations not falling within the scope of (EC) 561/2006,

And in addition, appropriately record

- any periods of availability as defined in Article 15(3)(c) of 3821/85

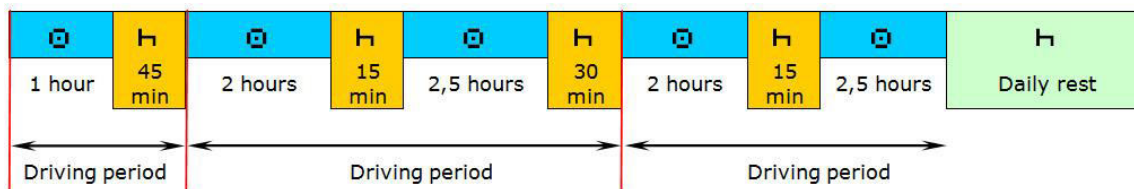
since his last daily or weekly rest period.

It shall be recorded either manually on a record sheet, a print-out or by use of manual input facilities on recording equipment.

A non-continuous record will require that the driver needs to explain the reasons for this. Where it is established through questioning of the driver or other evidence that is available to the control officer, that regulated activities were undertaken and these are not recorded, this indicates a failure to record and is an infringement of this Article.

Such a breach constitutes a *very serious infringement*.

i) Example of a 10 hour driving day with correctly taken breaks



ii) Incomplete daily rest may lead to a breach on a daily driving time.



Daily driving period: 17 1/2 hours. [Art 4f)]

iii) Examples of correct distribution of driving time and weekly rests.

S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T
Week 1		Week 2							Week 3							Week 4			
H Weekly rest (week 1)		☐ Driving 9 hours	☐ Driving 9 hours	☐ Driving 9 hours	☐ Driving 9 hours	H Red. weekly rest (week 2)	☐ Driving 10 hours	☐ Driving 10 hours	☐ Driving 10 hours	☐ Driving 10 hours	☐ Driving 9 hours	☐ Driving 5 hours	H Weekly rest (week 3)		☐ Driving 10 hours	☐ Driving 9 hours	☐ Driving 9 hours	☐ Driving 10 hours	
		4 24-hour periods					6 24-hour periods				4 24-hour periods								
		Weekly driving time: 56 hours							Weekly driving time: 34 hours							Weekly driving time: 38 hours			

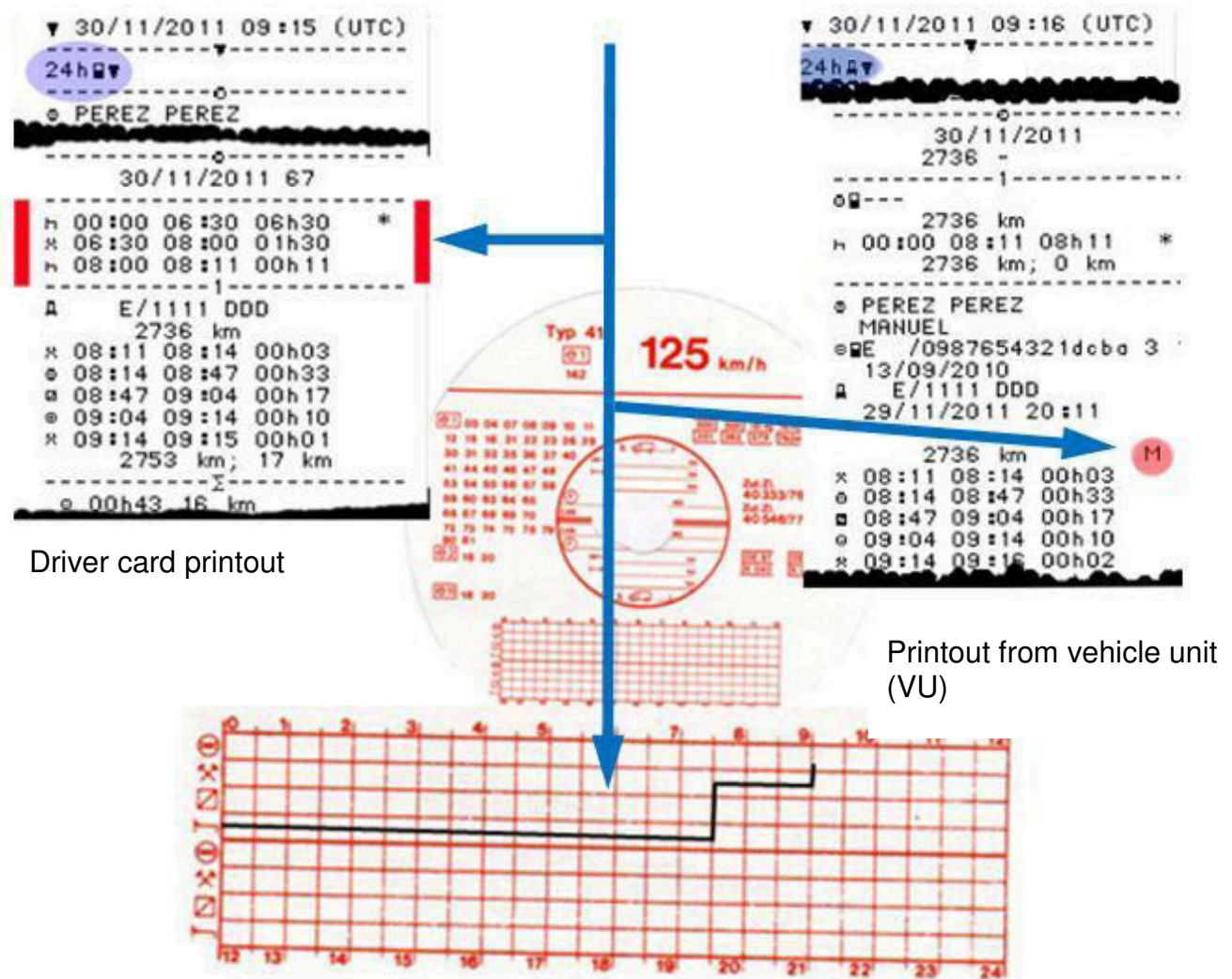
S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T
week 1		Week 2							Week 3							Week 4			
Weekly rest (week 1)		Driving 9 hours	Driving 9 hours	Driving 9 hours	Driving 9 hours	Red. weekly rest (week 2)	Driving 10 hours	Driving 10 hours	Driving 10 hours	Driving 10 hours	Driving 9 hours	Driving 5 hours	Weekly rest (week 3) Despite the completed qualifying weekly rest, the two-weekly driving limit permits no more driving until the start of a new fixed week.	Other work (*)	Driving 10 hours	Driving 9 hours	Driving 9 hours	Driving 10 hours	
		4				Red. weekly rest (week 2)	6							5					
		24-hour periods					24-hour periods							24-hour periods					
		Weekly driving time: 56 hours							Weekly driving time: 34 hours							Weekly driving time: 38 hours			
		Two weeks driving time: 90 hours																	

		Week 1							Week 2							Week 3							Week 4							Week 5							Week 6						
S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S							
Weekly rest		Driving 7 h	Driving 8 h	Driving 8 h	Red. weekly rest	Driving 10 h	6 24-hours periods	Weekly rest	Driving 9 h	Driving 9 h	Driving 10 h	Driving 10 h	Driving 9 h	5 24-hours periods	Weekly rest	Driving 9 h	Driving 9 h	Driving 9 h	Driving 10 h	Driving 10 h	Driving 9 h	6 24-hours periods	Red. weekly rest	Driving 9 h	Driving 9 h	Driving 10 h	Driving 10 h	Driving 5 h	Driving 5 h	Driving 7 h	Driving 8 h	Driving 9 h	Driving 10 h	Red. weekly rest									
		Weekly driving time							Weekly driving time							Weekly driving time							Weekly driving time							Weekly driving time													
		Two weeks driving time (week 1 and 2)														Two weeks driving time (week 3 and 4)														Two weeks driving time (week 5 and 6)													
								Two weeks driving time (week 2 and 3)														Two weeks driving time (week 4 and 5)																					

Notes:

- It can be seen from the examples above that the driver is not required to align his working pattern with the 'fixed weeks' (in other words take his weekly rest at the weekend) or that the working week can be of variable length up to the 6 X 24 hour. maximum (see also '12 day' exemption for coach drivers at Article 8(6a)).
- A new driver's week (not to be confused with the fixed week) begins at the completion of a qualifying weekly rest period which must be of sufficient duration to allow compliance with weekly (fixed) and two weekly driving limits. This can mean that if a driver has reached the weekly/two-weekly driving limit, he may still not be able to drive until the start of the next fixed week despite taking a qualifying weekly rest period.
- It can also be seen that a driver's week could in theory contain a legal 58 hours driving period while fully complying with the regulations concerning 'fixed week' limits.
- Note also that the 90 hour two-weekly limit refers to 'fixed week' limits and has, in the example shown above, been complied with.

- iii) The following are examples of activities undertaken away from the vehicle that are recorded manually.



Note:

This example shows the manual entry on the reverse of a record sheet of a driver who took rest from 0000 hours to 0730 hours and then was engaged in 'other work' from 0730 hours to 0900 hours at which point he commenced driving. From that point on the record sheet was inserted into the recording equipment and the subsequent activities were recorded automatically on the waxed side of the record sheet.

2.2.7 Article 7

2.2.7.1 Text

After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless he takes a rest period.

This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

2.2.7.2 Offences

Failure to take a qualifying break.	561- 7
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2.2.7.3 Roadside Check

For each record, accumulate the driving time (starting from the first period of driving after a rest period) until 4 ½ hours is reached. This driving period must either include a 45 minute break or a period of at least 15 minutes followed by a further period of at least 30 minutes or be followed by such a break or breaks.

Note: The requirement to record 'breaks' as 'breaks' is explicit. However before disregarding recorded periods of availability as 'breaks', control officers should assess whether or not such periods have been used solely for recuperation.

Where these conditions are not met an infringement has occurred.

Where a qualifying break (at least 45min or 15+30mins) is taken before 4 ½ hours of driving is accumulated, this 'wipes the slate clean' and the calculation recommences. Starting at the end of each qualifying break continue evaluating recorded driving periods in this manner until a daily rest period is commenced. Where a breach is discovered accumulate the periods of driving recorded between qualifying rest or break periods. This then establishes the severity of the breach.

Where the accumulated driving period before a qualifying break is taken exceeds the permitted 4.5 hours:

- by up to 30 minutes - this is considered a *minor infringement*.
- by between 30 minutes and 1 hour 30minutes - a *serious infringement*
- by more than 1 hour 30 minutes - a *very serious infringement*

This approach to establishing compliance with this regulation as defined in the ECJ ruling C116/92⁸ ('Charlton')

A break of at least 30 minutes followed by a further break of at least 15 minutes is not a qualifying break. In the same way it should be noted that a driver who takes, say, a 25 minute break during, and another at the end of a 4 ½ hour driving period also does not qualify. The break does not comply with the regulation despite its 50 minute duration, 5 minutes more than the requirement.

Breaks of less than 15 minutes do not contribute to a qualifying break but they are not to be considered as driving or other work.

Note: There are only three instances where the time spent travelling can be regarded as 'rest' or 'break'. The first is when a driver accompanies a vehicle which is transported by ferry boat or train. In this case the driver may take his rest or break provided he has access to a bunk or couchette. Where there is no access to a bunk or couchette a rest may not be taken but such a period of availability could be viewed as a break.

The second is where a vehicle is manned by more than one driver. In this scenario a crew member who is available for driving when necessary and is sitting next to the driver of the vehicle recording a 'period of availability'.

The third case is where a vehicle is manned by more than one driver. When a second crew member is available for driving when necessary, is sitting next to the driver of the vehicle and is not actively involved in assisting the driver driving the vehicle, a period of 45 minutes of that crew member's 'period of availability' can be regarded as 'break'.

'Out of scope' driving periods should be excluded from these calculations however control officers are advised to seek validation for recording this mode of activity.

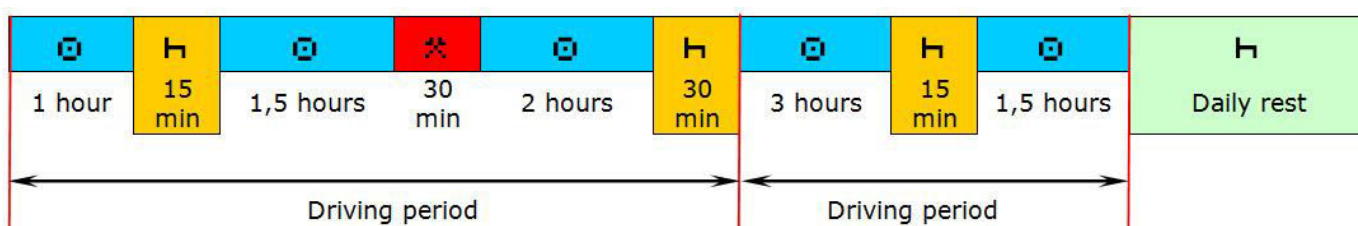
Charlton case (Ref: C116/92) on how to calculate break requirements should be consulted if there are uncertainties.

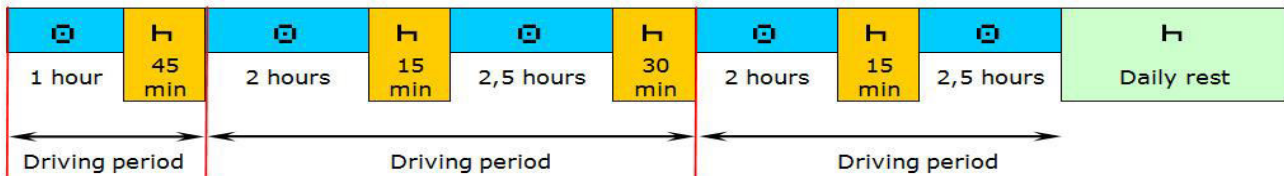
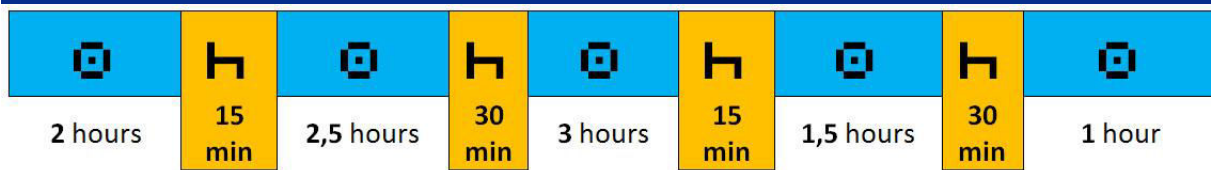
Note: (EC) No 561/2006 sought to address an anomaly under Regulation (EEC) No 3820/85 where it was possible to drive for almost 9 hours with a break of only 15 minutes interrupting that period. This issue is addressed by the 15+30 split. Allowing a 30+15 split undermines this intention so must be seen as a breach despite the apparently minor nature.

Other breaches of this requirement may also seem trivial in nature especially when accumulated breaks exceed the required quantity but do not meet other criteria. Nevertheless, control officers must defend the Regulation, it is not acceptable to adapt and modify the Regulation to suit operational needs. Nevertheless, where isolated instances of this nature are encountered they deserve to be treated with some pragmatism.

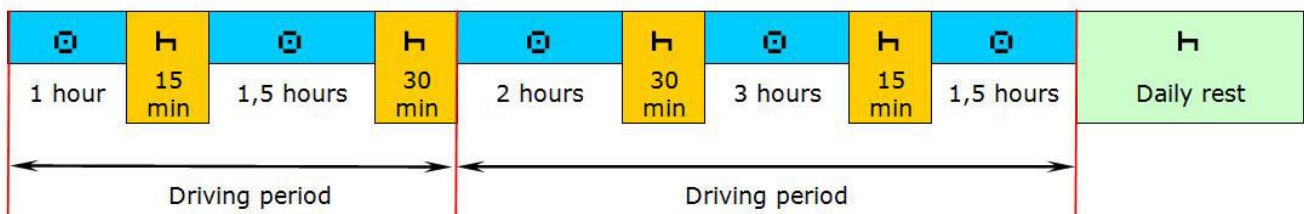
Examples:

i) correctly taken breaks





ii) Incorrectly taken breaks

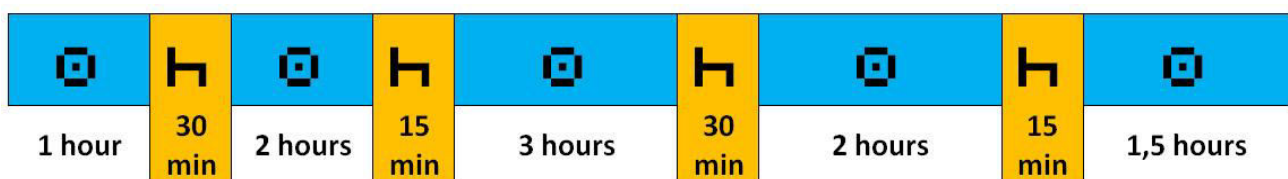


The second driving period includes recorded breaks of 45 minutes

- a) after a total of 5 hours driving and
- b) the 45 minutes are not distributed in the prescribed manner.

This distribution shows the anomaly that too many breaks distributed badly throughout the driving period constitutes a breach of the Regulation. (If the driver had not taken the 30 min. break in the first driving period there would have been no infringement, see example i) second diagram)

Control officers might view such breaches as technical and minor in nature and worthy of advice rather than a penalty.



In the above example, 6 hours have been driven before a qualifying break has been taken.

2.2.8 Article 8

2.2.8.1 Text

1. A driver shall take daily and weekly rest periods.

2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period.

2. If the portion of the daily rest period which falls within that 24 hour period is at least nine hours but less than 11 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.

3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.

4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.

5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least nine hours.

6. In any two consecutive weeks a driver shall take at least:

- two regular weekly rest periods, or
- one regular weekly rest period and one reduced weekly rest period of at least 24 hours.

However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.

6a. By way of derogation from paragraph 6, a driver engaged in a single occasional service of international carriage of passengers, as defined in 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 (11), may postpone the weekly rest period for up to 12 consecutive 24-hour periods following a previous regular weekly rest period, provided that:

- (a) the service lasts at least 24 consecutive hours in a Member State or a third country to which this Regulation applies other than the one in which the service started;
- (b) the driver takes after the use of the derogation:
 - (i) either two regular weekly rest periods; or
 - (ii) one regular weekly rest period and one reduced weekly rest period of at least 24 hours.

However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the end of the derogation period;

- (c) after 1 January 2014, the vehicle is equipped with recording equipment in accordance with the requirements of Annex IB to Regulation (EEC) No 3821/85; and
- (d) after 1 January 2014, if driving during the period from 22,00 to 06,00, the vehicle is multi-manned or the driving period referred to in Article 7 is reduced to three hours.

6a. The Commission shall monitor closely the use made of this derogation in order to ensure the preservation of road safety under very strict conditions, in particular by checking that the total accumulated driving time during the period covered by the derogation is not excessive. By 4 December 2012, the Commission shall draw up a report assessing the consequences of the derogation in respect of road safety as well as social aspects. If it deems it appropriate, the Commission shall propose amendments to this Regulation in this respect.

7. Any rest taken as compensation for a reduced weekly rest period shall be attached to another rest period of at least nine hours.
8. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.
9. A weekly rest period that falls in two weeks may be counted in either week, but not in both.

2.2.8.2 Offences

Insufficient daily rest.	561- 8-2
Insufficient daily rest (DM)	561- 8-5
Failure to take sufficient weekly rest.	561- 8-6

2.2.8.3 Roadside Check

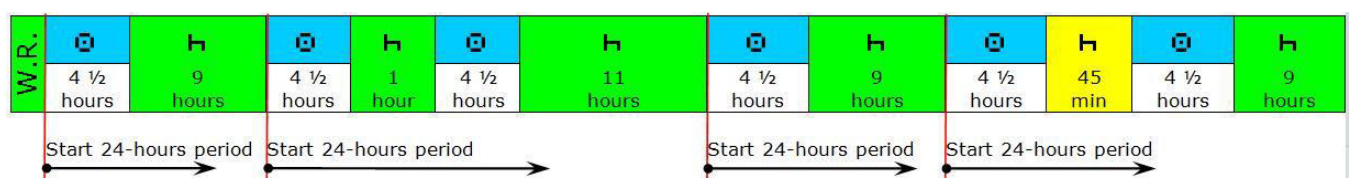
To carry out a compliance check, the produced tachograph records (or digital data) should be examined to identify rest periods that would make up or constitute qualifying daily rest periods (11, 3+9 or 9 hours). In addition, it is necessary to identify qualifying weekly rest periods (24 hours, 45 hours).

Control officers should be aware that any rest period over 9 hours may comprise a reduced daily rest plus compensation (see 'Weekly rest rules') and should ascertain from the driver if this is the case before assessing compliance.

Daily and weekly rest periods may not be taken in a moving vehicle.

Daily rest rules: A new 24 hour period commences with the resumption of activities after a **qualifying** weekly or daily rest period.

A driver must complete a regular daily rest period (at least 11 hours **or** 3+9 hours) or a reduced daily rest period (at least 9 hours but less than 11 hours) within the 24 hours.



These are the minimum rest durations to qualify, drivers may exceed these rest times but these minimum rest amounts **must fall within the 24 hours since the start of duty**.

A driver may have completed this daily rest requirement within the 24 hours at which point the next 24-hour period is started.

Between qualifying weekly rest periods, a driver may substitute a regular daily rest period for a reduced daily rest period no more than 3 times. If this number is exceeded then a regular daily

rest offence will have been committed for each occasion (apart from the permitted 3 occasions) where less than 11 hours is taken.

A qualifying daily rest period (i.e. a rest period of sufficient duration and completed within 24 hours of the conclusion of the previous daily or weekly rest period) can be extended in duration to qualify as a weekly rest period. In this way a driver is not required to take both a daily and a weekly rest at the end of a week.

Multi-manning: Different rules apply where more than one driver is operating as a crew. Each driver is obliged to complete a daily rest period of at least 9 hours in the 30 hours since the commencement of duty following a weekly or daily rest period. In order to qualify for this derogation there must be at least two drivers on board the vehicle available for driving except for the first hour (aggregated) when one driver may drive alone. It is not necessary for the same two drivers to be on board for the duration of the journey (see graphics). Remember: rest cannot be taken in a moving vehicle.

Note: Tachograph records (if correctly kept) will show whether a driver has been driving as part of a crew. On analogue record sheets, periods of availability and break will be recorded in a moving vehicle and a digital record will contain a 'crew' indicator.

Breaches of this regulation are detected by examining each 24 hour (or 30 hour period in the case of multi-manning) period of recording activity since the commencement of duty after a weekly or daily rest period to verify the duration of continuous rest taken. The duration of such a period of driver activity indicates the severity of the breach.

Insufficient daily rest periods are categorised in the following way:

Where a regular daily rest period (11 hours) is reduced (only applicable if a reduced daily rest period is not allowed) by:

- up to 1 hour – *a minor infringement*
- more than 1 hour but less than 2.5 hours – *a serious infringement*
- more than 2.5 hours – *a very serious infringement*

Where a reduced daily rest (if permitted) or a multimanning rest is reduced by:

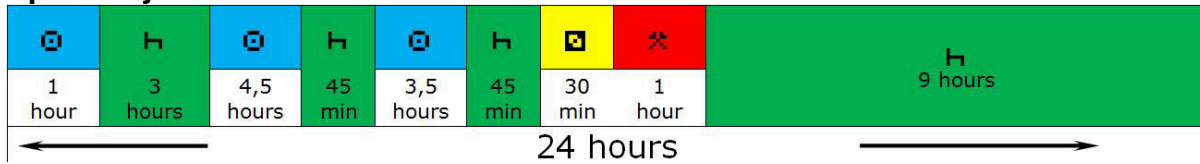
- up to 1 hour – *a minor infringement*
- more than 1 hour but less than 2 hours – *a serious infringement*
- more than 2 hours – *a very serious infringement*

Where the 9 hour portion of a split daily rest period is reduced by:

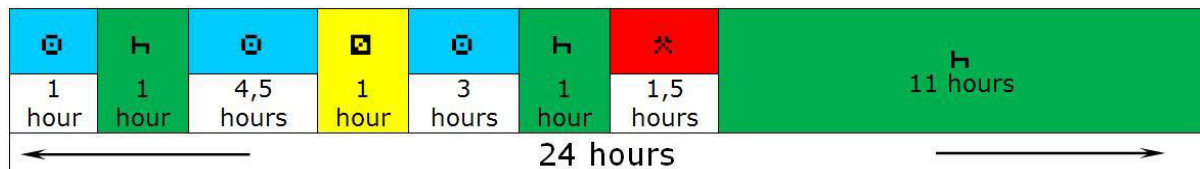
- up to 1 hour – *a minor infringement*
- more than 1 hour but less than 2 hours – *a serious infringement*
- more than 2 hours – *a very serious infringement*

Note: Interrupted daily rest may disqualify the rest period (see Art 9(1) for those occasions when a rest period may be interrupted).

Split daily rest



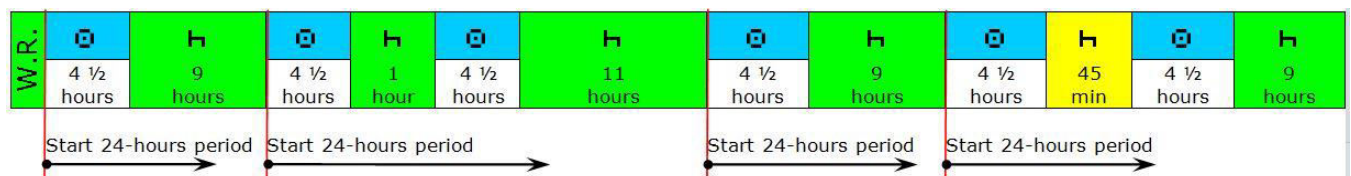
Regular daily rest



Reduced daily rest



Driver's day less than 24 hours



Successive daily rest infringements

The Article text is unclear, where, following a breach of daily rest requirements, the starting point is, for assessing ongoing compliance with daily rest rules.

The EU Commission's Legal Service has indicated that, where enforcers are confronted with periods of activity following a regular daily or weekly rest period, during which drivers take daily rest periods of less than 7 hours and in order to allow enforcers to identify and sanction all relevant infringements, they should:

- Divide the abovementioned periods of activity into "theoretical", consecutive periods of 24 hours (as textually permitted by Article 8 (1) of Regulation (EC) No 561/2006 of the European Parliament and of the Council) and
- Apply the usual rules on daily driving times and daily rest periods to each of these 24 hours.

In order to be consistent with the Commission implementing decision on the calculation of driving time (see 2.2.6.3), 7 hours of rest should trigger a new starting point of the beginning of the next period of 24 hours. However, it would certainly remain an infringement of the daily rest period.

Using this method it will always be possible to accurately identify and describe daily rest infringements.

Note: The consequences of this explanation have not yet been fully examined and as a result this method has been met with some misgivings.

Weekly rest rules

A weekly rest period as defined in Article 4 may be a regular weekly rest of at least 45 hours duration or a reduced weekly rest of at least 24 hours (but less than 45 hours) duration.

A driver is required to start a weekly rest period no later than 144 hours (6X24 hours) since the completion of the previous qualifying weekly rest period.

In any two consecutive 'fixed weeks' (Mon-Sun), a driver is required to take (or start) either:

- two regular weekly rests (minimum of 45 hours); or
- a regular weekly rest (minimum of 45 hours) and a reduced weekly rest (minimum of 24 hours)

Note: This number of weekly rests is a minimum requirement and other qualifying weekly rests may be taken in addition to this minimum requirement.

Reductions in weekly rests must be compensated for by taking the reduction **en bloc** as rest, **attached to a rest period of at least 9 hours** before the end of the **3rd week following the week when the reduction took place**.

A weekly rest period that spans two weeks may be counted in either but not in both.

A rest period of a minimum of 69 hours duration may be considered as two consecutive weekly rests (in separate fixed weeks) provided the 6x24(144) hour rule is not breached before or after the period in question.

A compliance check carried out by an examiner should include the following steps:

1: Starting with the oldest record (data) produced, identify two weekly rest periods (45 + 45, 45 + 24 or 24 + 45) in any two successive fixed weeks. If there are not two qualifying weekly rest periods, it means an infringement has been identified.

2: If there are sufficient weekly rest periods, establish that there are no more than 6 X 24 hours in between any two successive weekly rest periods. If not, that indicates an infringement.

Then move one week forward and start calculating from step 1 again.

3: In the event of a check carried out at company premises, a realistic evaluation of compliance with compensation requirements is possible. At the roadside however such checks are restricted by the limited number of records that are required to be produced.

Note: Merely checking that the gap between qualifying weekly rests does not exceed 6 X 24 hours is not sufficient.

Where a rest period has been taken within a fixed week but is found to be of insufficient duration to meet with the requirement of the Regulation, this also constitutes a breach.

A reduction of a reduced weekly rest (when permitted) by:

- up to 2 hours is a *minor infringement*
- more than 2 hours but less than 4 hours is a *serious infringement*
- more than 4 hours is a *very serious infringement*

A reduction of a regular weekly rest by:

- up to 3 hours is a *minor infringement*
- more than 3 hours but less than 9 hours is a *serious infringement*
- more than 9 hours is a *very serious infringement*

When checking for compliance with compensation requirements, an officer should attempt to establish when compensation for the reduced weekly rest has been taken, through questioning of the company or the driver.

In determining whether the rule concerning ‘the 3rd week following etc’, is complied with, it will be necessary to determine which week the weekly rest is assigned to (see above). Failure to satisfy the compensation requirements in respect of a reduced weekly rest makes that weekly rest insufficient and constitutes a breach

A compliance check of a multi-man crew will require that all the drivers' records are examined together (if possible) to verify that the conditions of multi-manning derogation have been complied with. In the event where only one driver's records are available, a limited inspection is still possible based on the 30 hour period.

A weekly rest of sufficient length may be split into qualifying weekly rest periods assigned to 2 fixed weeks e.g. a weekly period of at least 69 hours commenced at 1800 hours on a Friday.

The Regulation does not prohibit the taking of a weekly rest period on board a train or ferry as long as the driver has access to a bunk or couchette.

By specifically allowing a reduced weekly rest period (24 hours) to be taken in a suitably equipped vehicle, the Regulation appears to be excluding the possibility of taking regular weekly rests in a vehicle. In reality this is rarely enforced given that the Regulation also does not exclude from this concession, rest periods that comprise a reduced weekly rest plus compensation for previously reduced weekly rest.

Example of inadequate weekly rest: In the 2-week period comprising week 2 and week 3 there is only one weekly rest period.

S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T
Week 1		Week 2							Week 3							Week 4			
Work / driving	Red. weekly rest (week 1)	Work / driving	Work / driving	Work / driving	Work / driving	Work / driving	Work / driving	Weekly rest (week 2)	Work / driving	Work / driving	Work / driving	Work / driving	Work / driving	Work / driving	Red. weekly rest (week 4)	Work / driving	Work / driving	Work / driving	
		6							6							3			
		24-hour periods							24-hour periods							24-hour periods			

Correctly taken weekly rest:

S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T
Week 1		Week 2							Week 3							Week 4			
Weekly rest (week 1)		Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Weekly rest (week 2)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Red. weekly rest (week 3)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)	Work / driving (☒/☒)
		6							5					4					
		24-hour periods							24-hour periods					24-hour periods					

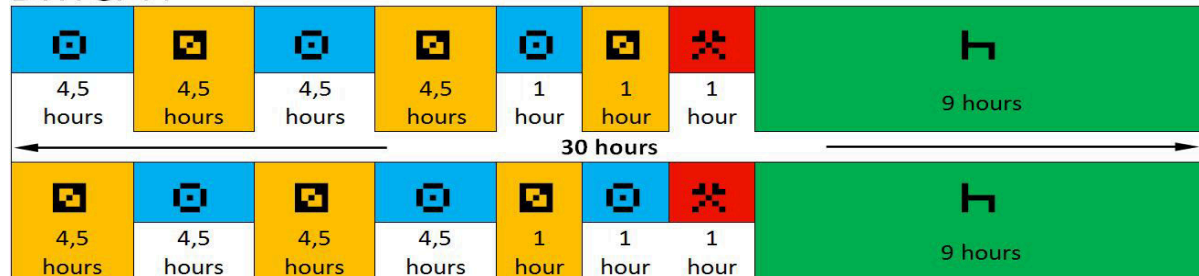
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T
	Week 2							Week 3							Week 4			
Weekly rest	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Red. weekly rest	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Weekly rest	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)	Work / driving (🚗/🚗)		
5 24-hour periods					6 24-hour periods						3 24-hour periods							

Weekly rest compensation:

S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
Week 1		Week 2							Week 3							Week 4						
Red. weekly rest (week 1)	Driving 10 hours	Driving 9 hours	Driving 9 hours	Driving 9 hours	Weekly rest (week 2)		Driving 10 hours	Driving 10 hours	Driving 10 hours	Driving 9 hours	Driving 9 hours	Red. weekly rest (week 3)	Driving 3 hours	Driving 2 hours	Driving 9 hours	Driving 10 hours	Driving 9 hours	Driving 9 hours	Weekly rest (week 4) and compensation of reduced weekly rest			
	4					6							6			from Week 1						
24-hour periods		24-hour periods					24-hour periods					24-hour periods										
		Weekly driving time: 47 hours					Weekly driving time: 43 hours					Weekly driving time: 37 hours										
		Two weeks driving time: 90 hours																				
									Two weeks driving time: 80 hours													

Multi-manning examples: the following examples show possible distributions of activities of drivers acting as crews in compliance with this Regulation.

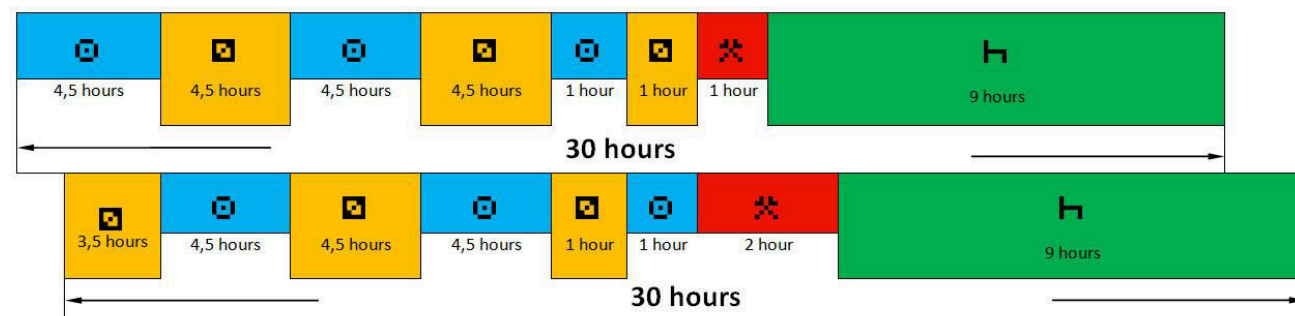
Driver A



Driver B

In the case shown below, driver A drives alone for 1 hour before being joined by driver B, this is permitted under multi-manning.

Driver A



Driver B

In this case, driver A carried out 'other work for 3 ½ hours, then started driving and was joined 1 hour later by driver B. This is permitted under multi-manning.

Note however that if the multi manned journey resumes, driver A cannot recommence driving until driver B completes his daily rest. Driver A could carry out other work for 1 hour.

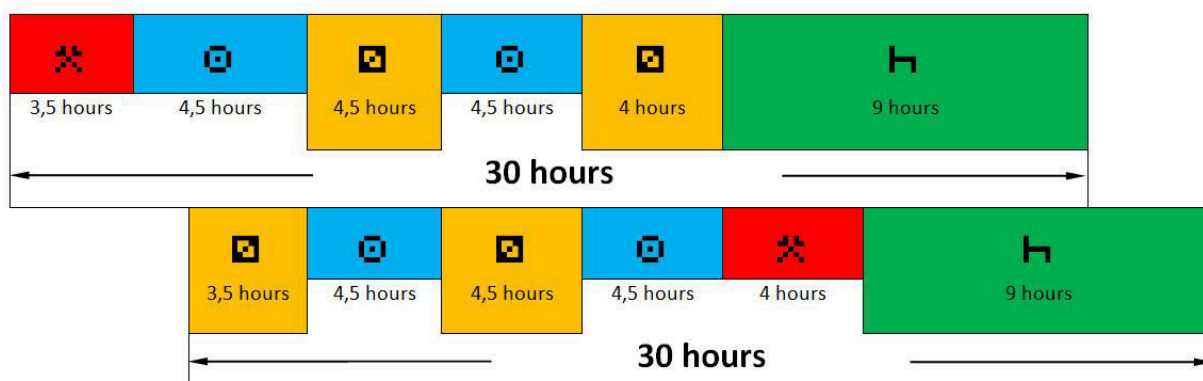
Driver A



Driver B

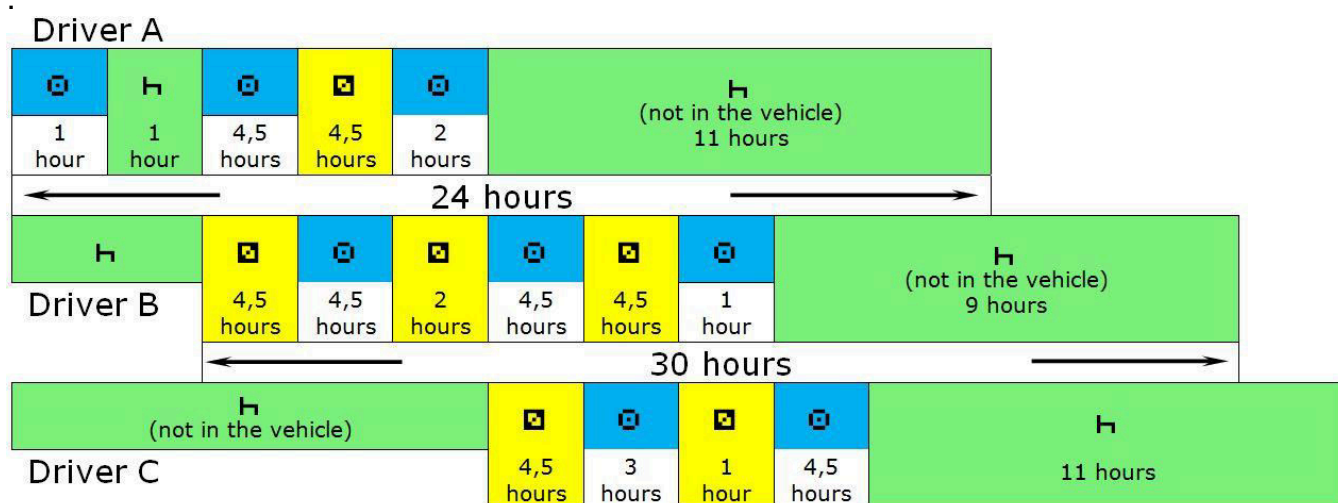
Similarly, the following distribution of activities is also permissible.

Driver A



Driver B

This example shows how a vehicle could be driven by 3 drivers. Only driver B may make use of the multi-manning derogation. Note: daily rest cannot be taken in a moving vehicle.



2.2.8.4 '12 Day rule'

Article 8(6a) of Regulation (EC) No 561/2006 was amended by Article 29 of Regulation (EC) No 1073/2009 to include a derogation for drivers on single international journeys to postpone their weekly rest period until the end of the twelfth day. It also requires the driver to take a regular 45 hour rest period prior to the journey beginning, in addition to requiring at least one regular and one reduced weekly rest period back-to-back on the journey's completion, in effect 69 hours.

This is a derogation from the normal weekly rest requirements (Article 8(6) of Regulation (EC) No 561/2006). For the driver to be entitled to postpone the weekly rest he must comply with **all** of the requirements.

Where these requirements are not complied with, a driver is required to take a normal weekly rest period as defined in Article 8(6) and consequently any offences will be weekly rest offences

2.2.8.5 Emergency interruptions of rest periods

Normally, an interrupted daily or weekly rest period constitutes an infringement (except for the 'ferry' rule). In an emergency situation, or on the instruction of the police or other authority, it is acceptable for a driver to interrupt his rest period for a few minutes in order to reposition or relocate his vehicle (See Annex, Guidance Note 3). The interruption should be recorded, if necessary manually, with an annotation by the instructing authority. This should not be deemed an offence.

2.2.9 Article 9

2.2.9.1 Text

1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest period the driver shall have access to a bunk or couchette.

2. *Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Regulation, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a bunk or couchette.*
3. *Any time spent by a driver driving a vehicle which falls outside the scope of this Regulation to or from a vehicle which falls within the scope of this Regulation, which is not at the driver's home or at the employer's operational centre where the driver is normally based, shall count as other work.*

2.2.9.2 Offences

Insufficient daily rest	561- 8-2
Fail to keep a record	561- 6-5

2.2.9.3 Roadside Check

1. This derogation allows a driver to interrupt a regular daily rest period (11hours or 3+9 hours) a maximum of **twice** when accompanying a vehicle on a train or a ferry. The total of these interruptions may not exceed 1 hour.
2. During any component part of such a split rest, the driver must have access to a bunk or couchette.
3. To check for compliance with the detail of this derogation, identify the daily rest period being interrupted and check that its accumulated duration is not more than 1 hour and that the components of the interrupted daily rest periods still together constitute a regular daily rest period.

Control officers should also request the production of a rail or ferry ticket to assist in the validation of the derogation although officers should be aware that tickets are not always issued by ferry companies.

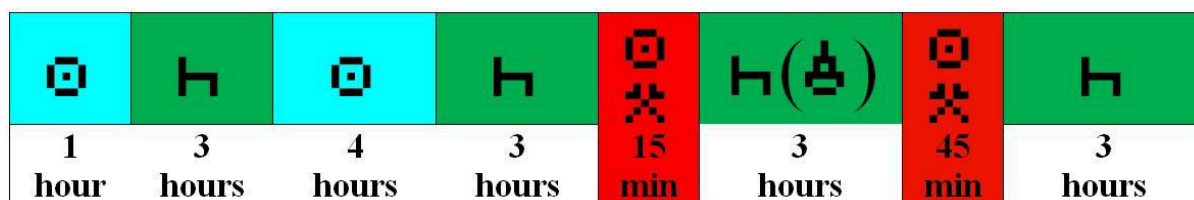
Where these conditions are not met a **daily rest offence** (see Article 8) has been committed and this breach continues until a qualifying daily rest period is taken. (See also Annex Guidance Note 6)

Below is an example which shows how a regular daily rest is interrupted to embark and disembark a ferry and makes use of this derogation:



Note: Driving carried out during such an interruption cannot, in accordance with the Regulation, be applied to the daily driving period that applies before and after the interrupted daily rest, however it counts towards both the weekly and two-weekly driving limits. Weekly rest compensation can be added to a daily rest taken in this manner.

Below: Interruption (ferry) of a split rest:

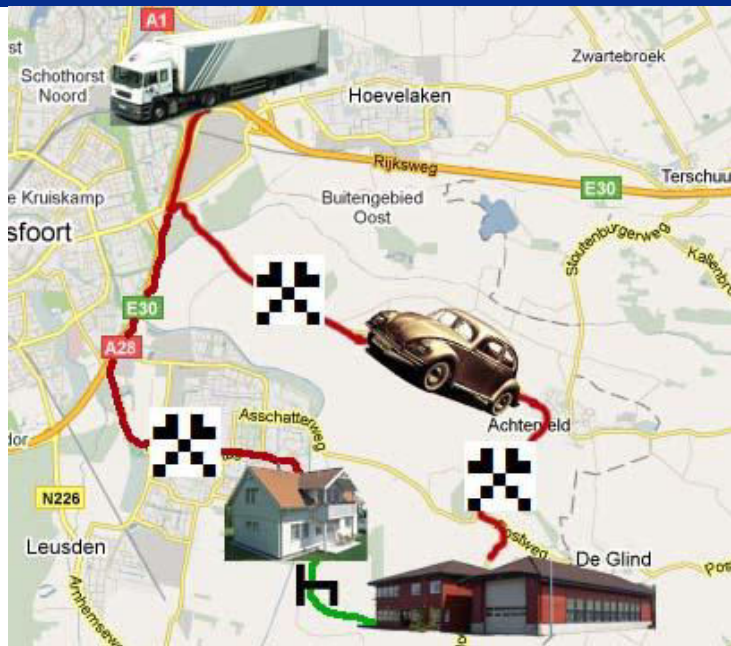


Note: It should be noted that such interruptions are not permissible where a daily rest of 9 hours is taken during a multi-manned journey. To make use of this derogation, multimanning drivers must take a **regular** daily rest of at least 11 hours.

4. A driver travelling to a specific place, other than the employer's operating centre, indicated to him by his employer in order to take over and drive a tachograph equipped vehicle is satisfying an obligation towards his employer and therefore not able to freely dispose of his time. Hence, any time travelling to or from a location which is not the driver's home or the employer's operating centre and where the driver takes charge of or leaves an in-scope vehicle, regardless of whether the employer gave instructions as to when and how to travel or whether that decision was made by the driver should be recorded as 'other work' (Ref. ECJ 124/09⁹).

Also any time spent by a driver driving an out of scope vehicle to or from a location which is not his usual employers operational centre or the driver's home and where the driver is supposed to take over or quit an in scope vehicle, should be recorded as 'other work'. (See also Annex, Guidance Note 2)

5. This means in theory, a driver that completes his working day away from his normal working place cannot carry out any further work, such as driving home, without recording this activity and may be committing an infringement.



Where suspicion exists that in-scope activities have been carried out but not recorded, then the driver should be questioned to clarify exactly what activities have been undertaken during those periods of time.

Records that show that a driver completed his duties at one location and resumed them the following day at a different location may indicate a failure to record activities set out in this Article.

Drivers taking over control of a vehicle far from their home or normal place of employment must be questioned about the journey to collect the vehicle with a view to establishing whether the driver has failed to record all their activities.

Failure to record in scope activities is a breach of Regulation (EEC) No 3821/85 and is categorised as a *very serious infringement*.

2.2.10 Article 10

2.2.10.1 Text

1. A transport undertaking shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation.
2. A transport undertaking shall organise the work of drivers referred to in paragraph 1 in such a way that the drivers are able to comply with Regulation (EEC) No 3821/85 and Chapter II of this Regulation. The transport undertaking shall properly instruct the driver and shall make regular checks to ensure that Regulation (EEC) No 3821/85 and Chapter II of this Regulation are complied with.
3. A transport undertaking shall be liable for infringements committed by drivers of the

undertaking, even if the infringement was committed on the territory of another Member State or a third country.

Without prejudice to the right of Member States to hold transport undertakings fully liable, Member States may make this liability conditional on the undertaking's infringement of paragraphs 1 and 2. Member States may consider any evidence that the transport undertaking cannot reasonably be held responsible for the infringement committed.

4. Undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation.

5.

(a) A transport undertaking which uses vehicles that are fitted with recording equipment complying with Annex IB of Regulation (EEC) No 3821/85 and that fall within the scope of this Regulation, shall:

(i) ensure that all data are downloaded from the vehicle unit and driver card as regularly as is stipulated by the Member State and that relevant data are downloaded more frequently so as to ensure that all data concerning activities undertaken by or for that undertaking are downloaded;

(ii) ensure that all data downloaded from both the vehicle unit and driver card are kept for at least 12 months following recording and, should an inspecting officer request it, such data are accessible, either directly or remotely, from the premises of the undertaking;

(b) for the purposes of this paragraph 'downloaded' shall be interpreted in accordance with the definition laid down in Annex IB, Chapter I, point (s) of Regulation (EEC) No 3821/85;

(c) the maximum period within which the relevant data shall be downloaded under (a)(i) shall be decided by the Commission in accordance with the procedure referred to in Article 24(2).

2.2.10.2 Offences

Operator offences of failing to secure tachograph data.

2.2.10.3 Roadside Control

This article places obligation on operators. The offences detailed here under paragraphs 1.2 and 4 cannot realistically be properly detected or investigated during roadside checks and are best left to be investigated during operator checks carried out at their premises where there is likely to be access to the necessary evidence. Where a wider culpability in respect of cross-border transport operations is suspected, it is good practice to forward any intelligence collated to the enforcement authorities of the 'home' Member State.

Regarding the offence made in paragraph 3 ('operator liability'), it will be necessary to consult the national law of each Member State.

It is likely that national law imposes practical limitations on the ability of an enforcement body to pursue a foreign entity for these types of regulatory offence.

Nevertheless, information gathered at roadside checks may be useful for the Member State to identifying those operators that may need investigating.

The offence made in paragraph 5 is concerned with the obligations of an operator to download and secure digital data and is therefore primarily relevant during company investigations.

2.2.11 Article 11

2.2.11.1 Text

A Member State may provide for longer minimum breaks and rest periods or shorter maximum driving times than those laid down in Articles 6 to 9 in the case of carriage by road undertaken wholly within its territory. In so doing, Member States shall take account of relevant collective or other agreements between the social partners. Nevertheless, this Regulation shall remain applicable to drivers engaged in international transport operations

2.2.11.2 Offences

None

2.2.11.3 Roadside Check

While individual Member States may provide for stricter limits than those imposed by this Regulation, Regulations (EC) No 561/2006 and (EEC) No 3821/85 still apply to international journeys.

Standard checks should still be applied to drivers/vehicles on international journeys.

Enforcement checks in those Member States that have a stricter regime for national journeys will be carried out in accordance with their own domestic legislation.

2.2.12 Article 12

2.2.12.1 Text

Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 6 to 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place.

2.2.12.2 Offences

None, (although this may depend on national legislation) but if the exemption is not correctly applied by the driver, offences in relation to Articles 6-9 should be considered.

2.2.12.3 Roadside Check

Provided that road safety is not jeopardised and to enable a driver to reach a suitable stopping place, a departure from EU Rules may be permitted to the extent necessary to ensure the safety of persons (including passengers), the vehicle or its load.

Drivers must note the reason for the departure on the back of their tachograph record sheets (if using analogue records) or on a printout or temporary sheet (if using a digital tachograph), at the latest on reaching the suitable stopping place.

According to ECJ C-235/94¹⁰, this exemption can only apply in cases where it unexpectedly becomes impossible to comply with the rules on drivers' hours during the course of a journey. In other words planned breaches of the rules are not allowed. This means that when an unforeseen event occurs, it is for the driver to decide whether it is necessary to depart from the rules. In doing so, a driver will have to take into account the need to ensure road safety in the process.

Control officers should:

- Verify the exact nature of the event which caused the driver to make use of the provisions in this Article. Be aware of the specific instances contained in **Guidance Note 1**.
- Check the recordings for validation of exemption.
- Check that exemption is used to enable a suitable stopping point to be reached. *Note: this is not a carte blanche dispensation to complete a journey. However, examiners must also be mindful that at the time of the control the journey may not have reached a suitable stopping place and thus the departure from the rules may not have been noted down. In such circumstances such an omission should not be considered an infringement.*
- Check whether the stopping place was the first suitable location.
- Check for systematic and repeated use of exemption via previous records. If this exemption is incorrectly claimed, check for breaches of Articles 6-9.

2.2.13 Article 13

2.2.13.1 Text

1. Provided the objectives set out in Article 1 are not prejudiced, each Member State may grant exceptions from Articles 5 to 9 and make such exceptions subject to individual conditions on its own territory or, with the agreement of the States concerned, on the territory of another Member State, applicable to carriage by the following:

- (a) vehicles owned or hired, without a driver, by public authorities to undertake carriage by road which do not compete with private transport undertakings;*
- (b) vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking;*
- (c) agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle;*
- (d) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used:*

- *by universal service providers as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service to deliver items as part of the universal service, or*
 - *for carrying materials, equipment or machinery for the driver's use in the course of his work. These vehicles shall be used only within a 50 kilometre radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity;*
 - (e) vehicles operating exclusively on islands not exceeding 2 300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles;*
 - (f) vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7,5 tonnes;*
 - (g) vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers;*
 - (h) vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers;*
 - (i) vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers;*
 - (j) specialised vehicles transporting circus and funfair equipment;*
 - (k) specially fitted mobile project vehicles, the primary purpose of which is use as an educational facility when stationary;*
 - (l) vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed;*
 - (m) specialised vehicles transporting money and/or valuables;*
 - (n) vehicles used for carrying animal waste or carcasses which are not intended for human consumption;*
 - (o) vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals;*
 - (p) vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses within a radius of up to 50 km.*
- 2. Member States shall inform the Commission of the exceptions granted under paragraph 1 and the Commission shall inform the other Member States thereof.*
- 3. Provided that the objectives set out in Article 1 are not prejudiced and adequate protection for drivers is provided, a Member State may, after approval by the Commission, grant on its own territory minor exemptions from this Regulation for vehicles used in predefined areas with a population density of less than five persons per square kilometre, in the following cases:*
- *regular domestic passenger services, where their schedule is confirmed by the authorities (in which case only exemptions relating to breaks may be permitted), and*
 - *domestic road haulage operations for own account or for hire or reward, which have no impact on the single market and are needed to maintain certain sectors of industry in the territory concerned and where the exempting provisions of this Regulation impose a limiting radius of up to 100 km.*
- Carriage by road under this exemption may include a journey to an area with a population*

density of five persons or more per square kilometre only in order to end or start the journey. Any such measures shall be proportionate in nature and scope.

2.2.13.2 Offences

None if exemption correctly applied.

2.2.13.3 Roadside Check

Control officers should validate the use of this exemption by establishing journey details, usage of vehicle, nature of vehicle specific equipment and load details through engagement with the driver. It should be remembered that this Article grants exemptions from Articles 5-9 only.

Note: The corresponding exemption from the requirement to fit (and use) a tachograph is contained in Article 3(2) of Reg. (EEC) No. 3821/85.

Control officers should also be aware that a driver or operator may not realise that a specific exemption is applicable and attempt to comply with (EC) 516/2006 etc when other regulations may apply.

These are **national** derogations and will vary from Member State to Member State and commonly will only have validity within national borders of the Member States, although there may well be local agreement between neighbouring states that allows for mutual recognition (e.g. UK and IRE).

Refer to domestic legislation for further guidance.

Activities carried out under these derogations should be recorded as other work if carried out in combination with in scope driving during the working day.

Incorrect application by a driver of a derogation should result in a detailed inspection based on (EC) 561/2006 and (EEC) 3821/85.

Where it becomes necessary to validate a claimed derogation, the EU website:

http://ec.europa.eu/transport/road/social_provisions/driving_time/driving_time_en.htm offers access to a definitive list of national derogations that prevail in each Member State. Control officers should therefore be aware of them when carrying out roadside inspections.

2.2.14 Article 14

2.2.14.1 Text

1. Provided that the objectives set out in Article 1 are not prejudiced, Member States may, after authorisation by the Commission, grant exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances.

2. in urgent cases Member States may grant a temporary exception for a period not exceeding 30 days, which shall be notified immediately to the Commission.

3. The Commission shall inform the other Member States of any exception granted pursuant to this Article.

2.2.14.2 Offences

None

2.2.14.3 Roadside Check

The Regulation permits Member States (on application to the Commission) to relax the requirement to comply with driving limits imposed by Articles 6-9. Similarly, Member States may respond to exceptional circumstances or emergencies. (E.g. extreme disruptive weather conditions or foot & mouth epidemic in UK) and grant temporary exemptions for a period of up to 30 days while also notifying the Commission.

Whilst for the duration of any emergency, control officers are likely to be aware of such a relaxation, however, they must be aware that such relaxations may have been applicable when inspecting records some time after the event.

Where a driver claims that breaches of the regulation were not infringements but were authorised by a relaxation of the regulation, a copy of the authorisation should be requested from the driver. If no such copy can be produced then validation should be sought from the Commission which is required to be made aware of all such authorisations.

An updated list is found on the following web address:

http://ec.europa.eu/transport/road/social_provisions/driving_time/doc/temporary-relaxation-of-drivers.pdf

Since these are relaxations of the regulation which apply locally, it can be expected that the competent authority has made control officers aware of them. Thus they are only of interest to other Member States when a driver subsequently enters another Member State and produces for examination, records which contain apparent infringements but may in fact be authorised breaches.

A control officer should therefore confirm the existence of any relaxation claimed and in those instances where confirmation fails then apply the limits imposed by Articles 6 - 9.

2.2.15 Article 15

2.2.15.1 Text

Member States shall ensure that drivers of vehicles referred to in Article 3(a) are governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods.

2.2.15.2 Offences

None

2.2.15.3 Roadside Check

This article requires Member States to put in place regulations concerning driving and rest times for drivers of vehicles exempted from these regulations by Article 3(a). These are of national interest only.

2.16 Article 16

2.2.16.1 Text

1. *Where no recording equipment has been fitted to the vehicle in accordance with Regulation (EEC) No 3821/85, paragraphs 2 and 3 of this Article shall apply to:*
 - (a) *regular national passenger services, and*
 - (b) *regular international passenger services whose route terminals are located within a distance of 50 km as the crow flies from a border between two Member States and whose route length does not exceed 100 km.*
2. *A service timetable and a duty roster shall be drawn up by the transport undertaking and shall show, in respect of each driver, the name, place where he is based and the schedule laid down in advance for various periods of driving, other work, breaks and availability. Each driver assigned to a service referred to in paragraph 1 shall carry an extract from the duty roster and a copy of the service timetable.*
3. *The duty roster shall:*
 - (a) *include all the particulars specified in paragraph 2 for a minimum period covering the previous 28 days; these particulars must be updated on regular intervals, the duration of which may not exceed one month;*
 - (b) *be signed by the head of the transport undertaking or by a person authorised to represent him;*
 - (c) *be kept by the transport undertaking for one year after expiry of the period covered by it. The transport undertaking shall give an extract from the roster to the drivers concerned upon request; and*
 - (d) *be produced and handed over at the request of an authorised inspecting officer.*

Notes

Article 16 ceased to apply from 31/12/2007 (see Article 26 of (EC) 561/2006 which amended Article 3 of 3821/85).

2.2.17 Article 17, 18

These articles are not considered here as they have no relevance to roadside enforcement activity.

2.2.18 Article 19

2.2.18.1 Text

1. *Member States shall lay down rules on penalties applicable to infringements of this Regulation and Regulation (EEC) No 3821/85 and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate, dissuasive and non-discriminatory. No infringement of this Regulation and Regulation (EEC) No 3821/85 shall be subjected to more than one penalty or procedure. The Member States shall notify the Commission of these measures and the rules on penalties by the date specified in the second subparagraph of Article 29. The Commission shall inform Member States accordingly.*

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 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.*

By way of exception, where an infringement is detected:

— which was not committed on the territory of the Member State concerned, and

— which has been committed by an undertaking which is established in, or a driver whose place of employment is, in another Member State or a third country,

a Member State may, until 1 January 2009, instead of imposing a penalty, notify the facts of the infringement to the competent authority in the Member State or the third country where the undertaking is established or where the driver has his place of employment.

3. Whenever a Member State initiates proceedings or imposes a penalty for a particular infringement, it shall provide the driver with due evidence of this in writing.

4. Member States shall ensure that a system of proportionate penalties, which may include financial penalties, is in force for infringements of this Regulation or Regulation (EEC) No 3821/85 on the part of undertakings, or associated consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies.

2.2.18.2 Offences

None

2.2.18.3 Roadside Check

At a roadside check, control officers should be aware that this Article enables them to pursue drivers (and operators) for breaches of the requirements of Regulation (EC) 561/2006 that have been detected as having taken place on the territory of another Member State or a 3rd country. The exact wording of the Article implies that this power does not extend to breaches of Regulation (EEC) 3821/85 though this may depend on the wording of the enabling legislation put in place by individual Member States.

2.2.19 Article 20

2.2.19.1 Text

1. The driver shall keep any evidence provided by a Member State concerning penalties imposed or the initiation of proceedings until such time as the same infringement of this Regulation can no longer lead to a second proceeding or penalty pursuant to this Regulation.

2. The driver shall produce the evidence referred to in paragraph 1 upon request.

3. A driver who is employed or at the disposal of more than one transport undertaking shall provide sufficient information to each undertaking to enable it to comply with Chapter II.

2.2.19.2 Offences

None

2.2.19.3 Roadside Check

Examiners must anticipate evidence of proceedings or penalty in a variety of forms.

The standard CORTE approved form adopted by some Member States is set out based on the similar requirement contained in Directive 2000/30/EU Annex 1 which is concerned with the reporting of the outcome of a roadside technical inspection.

In its basic state, this evidence may take the form of a signed message on a printout or tachograph chart.

Non production of previous penalty evidence leaves the driver open to further penalty for the same breach. If such a further penalty has been imposed and evidence of the previous penalty is subsequently provided then the latter penalty must be withdrawn.

2.2.20 Article 21

2.2.20.1 Text

To address cases where a Member State considers that there has been an infringement of this Regulation which is of a kind that is clearly liable to endanger road safety, it shall empower the relevant competent authority to proceed with immobilisation of the vehicle concerned until such time as the cause of the infringement has been rectified. Member States may compel the driver to take a daily rest period. Member States shall, where appropriate also withdraw, suspend or restrict an undertaking's licence, if the undertaking is established in that Member State, or withdraw, suspend or restrict a driver's driving licence. The Commission, acting in accordance with the procedure in Article 24(2) shall develop guidelines with a view to promoting a harmonised application of this Article.

2.2.20.2 Offences

None

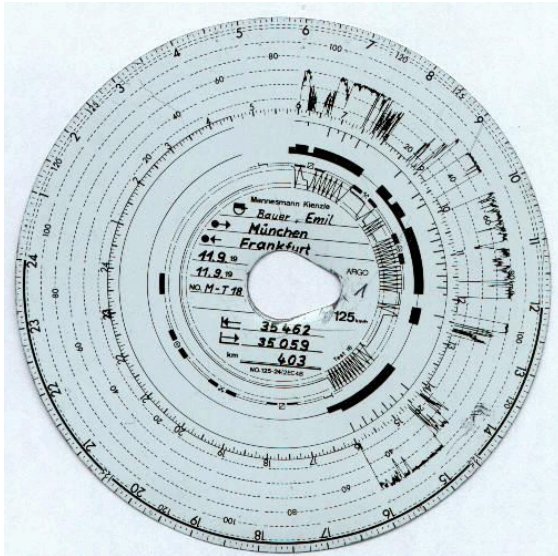
2.2.20.3 Roadside Check

This Article empowers Member States to introduce legislation enabling the immobilisation of a vehicle associated with an infringing driver and permits administrative sanctions against operators and drivers. Not all Member States have put in place measures to permit prohibition or immobilisation.

2.2.21 Articles 22 - 29

These articles are not considered here as they have no relevance to roadside enforcement activity although control officers should be aware that Article 27(1) amends Regulation (EC) No 3821/85 and thereby defines those Member State registered vehicles that are required to be fitted with digital tachographs

3. Regulation (EEC) No 3821/85 – Rules on tachograph equipment and record keeping



3.1 Regulation (EEC) No 3821/85

Tachograph equipment makes the necessary recordings that are crucial to any compliance checking carried out by control officers. These recordings are either recorded to a tachograph record sheet or digital data files and are collected either automatically or as manual (driver) inputs. It is the inspection of these recordings which for the most part enables control officers to establish whether the rules on driving times and rest periods have been complied with. Regulation (EEC) 3821/85 defines certain technical matters in connection with type approval, installation and inspection of these instruments, and places an obligation on drivers to comply with its requirements.

A detailed study of (EEC) 3821/85 is not within the scope of this document and it should be noted that this Regulation applies to vehicles registered in EU Member States only although compliance with this Regulation is deemed to be sufficient to comply with similarly drafted requirements within AETR.

The most relevant requirements concerned with the use of tachographs are contained in Articles 3 and 13 -16. These articles place strict and detailed obligations on drivers and will give rise to many infringements detected at roadside checks carried out by control officers.

Without adherence to the Regulation a realistic evaluation of compliance with the requirements set out in (EC) 561/2006 is not possible. A control officer will be monitoring compliance with (EC) 561/2006 and at the same time be ensuring that the relevant requirements of (EEC) 3821/85 are met.

Control officers must be familiar with these regulations and capable of inspecting and evaluating tachograph records.

3.1.1 Article 3

3.1.1.1 Text

1. Recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Article 3 of Regulation (EC) No 561/2006. Vehicles referred to in Article 16(1) of Regulation (EC) No 561/2006 and vehicles, which were exempt from the scope of application of Regulation (EEC) No 3820/85, but which are no longer exempt under Regulation (EC) No 561/2006 shall have until 31 December 2007 to comply with this requirement.
2. Member States may exempt vehicles mentioned in Articles 13(1) and (3) of Regulation (EC) No 561/2006 from application of this Regulation.
3. Member States may, after authorisation by the Commission, exempt from application of this Regulation vehicles used for the transport operations referred to in Article 14 of Regulation (EC) No 561/2006.
4. In the case of national transport operations, Member States may require the installation and use of recording equipment in accordance with this Regulation in any of the vehicles for which its installation and use are not required by paragraph 1.

3.1.1.2 Offences

Tachograph not fitted in accordance with regulations

3.1.1.3 Roadside

Control officers are required to verify that non-exempted vehicles are fitted with a tachograph recording instrument of the correct type and that its fitment corresponds with the requirements contained in (EEC) 3821/85. This Article provides the exemption from fitting a tachograph to those vehicles engaged in the carriage by road as listed in Art 13(1) and (3) of Reg.(EC) No.561/2006.

Note that vehicles that are registered in non-EU AETR countries can comply with Article 10 of the AETR by complying with the requirements of Regulation (EEC) No 3821/85 but this is not the only way of complying. The requirements of AETR regarding construction, use and installation, mirror to a large extent the requirements in Regulation (EEC) No 3821/85 and will not be investigated in this document. Examiners should therefore take care when identifying infringements associated with construction, use and installation of control devices fitted to non-EU AETR registered vehicles that the correct requirement is referenced.

3.1.2 Article 13

3.1.2.1 Text

The employer and drivers shall ensure the correct functioning and proper use of, on the one hand, the recording equipment and, on the other, the driver card where a driver is required to drive a vehicle fitted with recording equipment in conformity with Annex IB.

3.1.2.2 Offences

Fail to ensure the correct functioning of the tachograph recording equipment.
Use of a vehicle with a defective tachograph – these are *very serious infringements*.

3.1.2.3 Roadside Check

During a roadside inspection, control officers should monitor the correct functioning of the tachograph by examination of the produced records and review of the diagnostic reports available for the various tachograph systems. Any defect affecting the accurate recording of a driver's activities could also limit the ability of a control officer to monitor compliance with regulations.

Analogue Tachographs

Missing or misaligned traces, the presence of fault indicating traces (e.g. full scale deflections or block traces) or any unusual trace activity are good indications that the tachograph is not functioning as intended.

Digital Tachographs

The driver card is an integral part of a digital tachograph system and the correct functioning of the card itself is a requirement of this Article.

Information on malfunctions, errors and faults may have been recorded on the 'Events and Faults' file contained in the vehicle unit.

Examiners should take into account if it is clear that any such defect has just occurred (e.g. en route) and allow for the repair to be made. Note that Article 16 of (EEC) 3821/85 provides that 'in the event of a breakdown or faulty operation of the equipment, the employer shall have it repaired by an approved fitter or workshop, as soon as circumstances permit. If the vehicle is unable to return to the premises within a period of one week calculated from the day of the breakdown or of the discovery of the defective operation, the repair shall be carried out en route'.

Nevertheless, examiners should look for evidence that the tachograph faults are of long standing rather than having just occurred and take the appropriate enforcement action.

An apparently malfunctioning tachograph may also indicate that recordings are or were being interfered with and control officers should bear this in mind when investigating these types of faults.

3.1.3 Article 14

3.1.3.1 Text

1. The employer shall issue a sufficient number of record sheets to drivers of vehicles fitted with recording equipment in conformity with Annex I, bearing in mind the fact that these sheets are personal in character, the length of the period of service and the possible obligation to replace sheets which are damaged, or have been taken by an authorised inspecting officer. The employer shall issue to drivers only sheets of an approved model suitable for use in the equipment installed in the vehicle.

Where the vehicle is fitted with recording equipment in conformity with Annex IB, the employer and the driver shall ensure that, taking into account the length of the period of service, the printing on request referred to in Annex IB can be carried out correctly in the event of an inspection.

2. The undertaking shall keep record sheets and printouts, whenever printouts have been made to comply with Article 15(1), in chronological order and in a legible form for at least a year after their use and shall give copies to the drivers concerned who request them. The undertaking shall also give copies of downloaded data from the driver cards to the drivers concerned who request them and the printed papers of these copies. The record sheets, printouts and downloaded data shall be produced or handed over at the request of any authorised inspecting officer.

3. The driver card as defined in Annex IB shall be issued, at the request of the driver, by the competent authority of the Member State where the driver has his normal residence. A Member State may require any driver subject to the provisions of Regulation (EEC) No. 3820/85 and normally resident on its territory, to hold a driver card.

(a) For the purposes of this Regulation 'normal residence' means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living. However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a fixed-term assignment.

(b) Drivers shall give proof of their place of normal residence by any appropriate means, such as their identity card or any other valid document.

(c) Where the competent authorities of the Member State issuing the driver card have doubts as to the validity of a statement as to normal residence made in accordance with point (b), or for the purpose of certain specific controls, they may request any additional information or evidence.

(d) The competent authorities of the issuing Member State shall, as far as this can be done, ensure that the applicant does not already hold a valid driver card.

4. (a) The competent authority of the Member State shall personalise the driver card in accordance with the provisions of Annex IB. For administrative purposes, the driver card may not be valid for more than five years. The driver may hold one valid driver card only. The driver is authorised to use only his own personalised driver card. The driver shall not use a driver card which is defective or which has expired.

When a new driver card is issued replacing the old, the new card shall bear the same driver card issue number but the index shall be increased by one. The issuing authority shall keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of administrative validity. If the driver card is damaged, malfunctions or is lost or stolen, the authority shall supply a replacement card within five working days of receiving a detailed request to that effect. In the event of a request for the renewal of a card whose expiry date is approaching, the authority shall supply a new card before the expiry date provided that the request was sent to it within the time limits laid down in the second subparagraph of Article 15(1).

(b) Driver cards shall be issued only to applicants who are subject to the provisions of Regulation (EEC) No 3820/85.

(c) The driver card shall be personal. It may not, during its official period of validity, be withdrawn or suspended for whatever reason unless the competent authority of a Member State finds that the card has been falsified, or the driver is using a card of which he is not the holder, or that the card held has been obtained on the basis of false declarations and/or forged documents. If such suspension or withdrawal measures are taken by a Member State other than the Member State of issue, the former shall return the card to the authorities of the Member State which issued it and shall indicate the reasons for returning it.

(d) Driver cards issued by Member States shall be mutually recognised. Where the holder of a valid driver card issued by a Member State has established his normal place of residence in another Member State, he may ask for his card to be exchanged for an equivalent driver card; it shall be the responsibility of the Member State which carries out the exchange to verify if necessary whether the card produced is actually still valid.

Member States carrying out an exchange shall return the old card to the authorities of the Member State of issue and indicate the reasons for so doing.

(e) Where a Member State replaces or exchanges a driver card, the replacement or exchange, and any subsequent replacement or renewal, shall be registered in that Member State.

(f) Member States shall take all the necessary measures to prevent any possibility of driver cards being falsified.

5. Member States shall ensure that data needed to monitor compliance with Regulation (EEC) No 3820/85 and Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (1) which are recorded and stored by recording equipment in conformity with Annex IB to this Regulation can be made available for at least 365 days after the date of their recording and that they can be made available under conditions that guarantee the security and accuracy of the data.

Member States shall take any measures necessary to ensure that the resale or decommissioning of recording equipment cannot detract, in particular, from the satisfactory application of this paragraph.

3.1.3.2 Offences

Driver fails to ensure that printing can be carried out successfully due to:

- a) Insufficient paper – *minor infringement*
- b) Other e.g. defective vehicle unit – *very serious infringement*

Use a driver card when not the holder of that card – *very serious infringement*

Use a defective driver card – *very serious infringement*

In possession of more than one driver card bearing his details – *very serious infringement*

Fail to use a driver card (e.g. when no card is held but a digital vehicle is driven) – *very serious infringement*

Fail to keep records (1 year) – operator offence – *very serious infringement*

3.1.3.3 Roadside Check

Paragraph 1 of this article places certain obligations on operators and drivers regarding compliant operation of the tachograph recording system.

The driver must ensure that at all times he is able to make a printout when required or requested to do so and in practical terms this means that the driver must keep a sufficient stock of paper rolls with him. Being unable to print for this reason is an infringement. (Drivers should be encouraged to keep a healthy stock of printer rolls)

Operators are obliged to issue the driver with sufficient reserve of tachograph record sheets compatible with the instrument in use. Failure to meet these obligations would mean the employer/operator has committed an infringement.

Paragraph 2 places requirements on undertakings (operators, companies) regarding the securing and the manner of storage of record sheets and downloaded data and while non-compliance is a company infringement this has little relevance at roadside checks.

Paragraphs 3 and 4 are mainly concerned with the issuing procedures, composition and features of driver cards issued by Member States and card issuing authorities which are of little relevance at roadside checks.

However the text prohibits drivers from holding more than one valid driver card, authorising him to use only his own personalised driver card and forbids the use of defective/damaged or expired cards. If the card has been falsified, obtained on the basis of a false declaration or forged documents or the driver is using a card of which he is not the holder, then it may be withdrawn or suspended (by the competent authority).

3.1.4 Article 15

3.1.4.1 Text

1. Drivers shall not use dirty or damaged record sheets or driver cards. The sheets or driver cards shall be adequately protected on this account. Where a driver wishes to renew his driver card, he shall apply to the competent authorities of the Member State in which he has his normal residence not later than 15 working days before the expiry date of the card.

In case of damage to a sheet bearing recordings or driver card, drivers shall attach the damaged sheet or driver card to the spare sheet used to replace it.

If the driver card is damaged, malfunctions or is lost or stolen, the driver shall apply within seven calendar days for its replacement to the competent authorities of the Member State in which he has his normal residence.

Where a driver card is damaged, malfunctions, or is not in the possession of the driver, the driver shall:

(a) at the start of his journey, print out the details of the vehicle the driver is driving, and shall enter onto that printout:

(i) details that enable the driver to be identified (name, driver card or driver's licence number), including his signature;

(ii) the periods referred to in paragraph 3, second indent (b), (c) and (d);

(b) at the end of his journey, print out the information relating to periods of time recorded by the recording equipment, record any periods of other work, availability and rest undertaken since the printout that was made at the start of the journey, where not recorded by the tachograph, and mark on that document details that enable the driver to be identified (name, driver card or driver's licence number), including the driver's signature.

2. Drivers shall use the record sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorized. No record sheet or driver card may be used to cover a period longer than that for which it is intended.

When as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the periods of time referred to in paragraph 3, second indent (b), (c) and (d) shall:

(a) if the vehicle is fitted with recording equipment in conformity with Annex I, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet; or

(b) if the vehicle is fitted with recording equipment in conformity with Annex IB, be entered onto the driver card using the manual entry facility provided in the recording equipment.

Where there is more than one driver on board the vehicle fitted with recording equipment in conformity with Annex IB, each driver shall ensure that his driver card is inserted into the correct slot in the tachograph.

Drivers shall amend the record sheets as necessary should there be more than one driver on board the vehicle, so that the information referred to in Chapter II (1) to (3) of Annex I is recorded on the record sheet of the driver who is actually driving.

3. Drivers shall:

— ensure that the time recorded on the sheet agrees with the official time in the country of registration of the vehicle,

— operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:

(a) Under the sign:  driving time;

(b) 'other work' means any activity other than driving, as defined in Article 3(a) of 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 (1), and also any work for the same or another employer within or outside of the transport sector, and must be recorded under this sign .

(c) 'Availability' defined in Article 3(b) of Directive 2002/15/EC must be recorded under this sign .

(d) Under the sign:  breaks in work and daily rest periods.

4. Lapsed

5. Each crew member shall enter the following information on his record sheet:

(a) On beginning to use the sheet — his surname and first name;

(b) The date and place where use of the sheet begins and the date and Place where such use ends;

(c) the registration number of each vehicle to which he is assigned, both at the start of the first journey recorded on the sheet and then, in the event of a change of vehicle, during use of the sheet;

(d) *The odometer reading:*

- *At the start of the first journey recorded on the sheet,*
- *At the end of the last journey recorded on the sheet,*
- *In the event of a change of vehicle during a working day*

(Reading on the vehicle to which he was assigned and reading on the vehicle to which he is to be assigned);

(e) *The time of any change of vehicle.*

5a. *the driver shall enter in the recording equipment in conformity with Annex IB the symbols of the countries in which he begins and ends his daily work period. However, a Member State may require drivers of vehicles engaged in transport operations inside its territory to add more detailed geographic specifications to the country symbol provided that the Member State has notified them to the Commission before 1 April 1998 and that they do not number more than 20.*

The above data entries shall be activated by the driver, and may be entirely manual or automatic if the recording equipment is linked to a satellite tracking system.

6. *the recording equipment defined in Annex I shall be so designed that it is possible for an authorized inspecting officer, if necessary after opening the equipment, to read the recordings relating to the nine hours preceding the time of the check without permanently deforming, damaging or soiling the sheet.*

The equipment shall, furthermore, be so designed that it is possible, without opening the case, to verify that recordings are being made.

7. (a) *Where the driver drives a vehicle fitted with recording equipment in conformity with Annex I, the driver must be able to produce, whenever an inspecting officer so requests:*

(i) *The record sheets for the current week and those used by the driver in the previous 28 days;*

(ii) *The driver card if he holds one, and*

(iii) *Any manual record and printout made during the current week and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006.*

(b) *Where the driver drives a vehicle fitted with recording equipment in conformity with Annex IB, the driver must be able to produce, whenever an inspecting officer so requests:*

(i) *The driver card of which he is holder;*

(ii) *any manual record and printout made during the current week and the previous 15 days as required under this Regulation and Regulation (EC) No 561/2006, and*

(iii) *The record sheets corresponding to the same period as the one referred to in the previous subparagraph during which he drove a vehicle fitted with recording equipment in conformity with Annex I.*

However, after 1 January 2008, the time periods referred to under (ii) shall cover the current day and the previous 28 days.

(c) *An authorised inspecting officer may check compliance with Regulation (EC) No 561/2006 by analysis of the record sheets, of the displayed or printed data which have been recorded by the recording equipment or by the driver card or, failing this, by analysis of any other supporting document that justifies non-compliance with a provision, such as those laid down in Article 16(2) and (3).*

8. *It shall be forbidden to falsify, suppress or destroy data recorded on the record sheet, stored in the recording equipment or on the driver card, or print-outs from the recording equipment as defined in Annex IB. The same applies to any manipulation of the recording equipment, record sheet or driver card which may result in data and/or printed information being falsified, suppressed or destroyed. No device which could be used to this effect shall be present on the vehicle.*

3.1.4.2 Offences

Fail to produce records at the roadside
 Fail to produce book, register, or any other document when requested at the roadside
 Fail to use tachograph record sheet or driver card
 Fail to issue sufficient charts (operator)
 Fail to return sheets to employer
 Use incorrect record sheet for instrument
 Fail to amend tachograph record sheet or driver card as necessary (double manning)
 Fail to ensure driver card is inserted in the correct slot of a digital tachograph
 Fail to enter either manually, automatically or other, the required periods of time
 Centrefield details (analogue)
 Incorrect use of mode switch
 Fail to input country of origin symbol (digital)
 Tachograph time incorrect
 Fail to print at the start or end of the journey and enter the appropriate details (where digital tachograph/card defective)
 Fail to apply for a replacement driver card within 15 days (renewal) or within 7 days (defective, lost or stolen)
 Unauthorised withdrawal of (analogue) record sheet or (digital) driver card.
 Use record sheet for longer than intended.
 Use dirty or damaged record sheets
 Unauthorised device (i.e. for the purposes of manipulating/suppressing tachograph recordings)

3.1.4.3 Roadside Check

The Regulation places detailed obligations on the driver in connection with the making, keeping and production of records; the operation of a tachograph; and procedures to be followed when exceptional circumstances arise.

Article 15.1

The Regulation text is clear on the procedures to be followed. Failure to do so in a wilful manner will result action taken for:

- a) using dirty or damaged record sheets e.g. sheets that have either suffered as a result of poor care after or before use. Clearly, the onus is on the driver not to use record sheets that have become dirty or damaged. After use, they must be kept in a way that prevents such dirtying or damaging which might corrupt or make unreadable the recordings held on a chart. Occasional and slight damage/dirt that does not inhibit a compliance check might be considered a minor breach.
- b) failing to apply for a replacement driver card that is lost, stolen or malfunctioning within 7 days (implicit here is the requirement to evidence the application of such a replacement). Where a driver produces the prescribed print-outs which indicate a malfunction or loss of more than 7 days duration, proof of application must also be produced to avoid enforcement action for this apparent breach.

- c) Failing to print at the start/end of the journey in the case of a driver card that malfunctions, is damaged or not in the possession of the driver, where the inability to record to the driver card is evident or indicated by the VU.

*Note: ...**not in the possession of the driver** [i.e. driver card] the driver must be able to produce the driver card that has been issued to him. A driver has only a limited period of time (7 days) in which he may drive a digital tachograph equipped vehicle following formal notification of loss or malfunction when he is not in possession of the card. A driver must be issued with a driver card before he is permitted to drive a vehicle fitted with a digital tachograph.*

Article 15.2

The Regulation text adds further requirements on the operation of the recording equipment. The tachograph must be utilised to record all in-scope driver activity:

- a) the period between commencing work and before taking over control of the vehicle
- b) during periods when in control of a vehicle
- c) the period between relinquishing control of a vehicle and the end of a working day.

Therefore, where a driver fails to keep a full record of his activities using both the recording equipment and by making manual entries it may lead to enforcement action (see also Article 6(5) of Regulation (EC) No. 561/2006)

A driver is not allowed to withdraw a record sheet or driver card before the end of his daily working period unless this is authorised. Such authorisation is implied by other regulatory requirements such as:

- a) change of vehicle
- b) production to enforcement/control officers
- c) requirement to annotate a manual entry
- d) due to a malfunctioning recording device

Control officers should be aware that any unauthorised withdrawal of a tachograph record sheet or a driver card may conceal activities, which if recorded, would breach Regulation (EC) No. 561/2006.

Drivers must not use a record sheet for more than 24 hours as this could lead to corruption or destruction of previously recorded activities. This breach is easily determined on inspection of the record sheets where there are overlapping traces and when found enforcement action will follow.

Such a breach is not possible with digital tachograph equipment or a digital driver card.

The corresponding breach would be the loss of recorded data due to failure to download data.

This Regulation requires certain procedures in the case of double manning.

Drivers must ensure that the driver card of the person actually driving is in the correct slot of the vehicle unit and in the case of analogue record sheets that the record sheet of the person

actually driving is correctly positioned in the instrument to allow distance, speed and driving time to be recorded.

An examination of the vehicle unit and both driver cards, or both analogue record sheets at the time of the control will reveal this breach.

Article 15.3

This section deals with the requirements regarding the operation and settings of the recording equipment.

Drivers must ensure that the time set on an analogue tachograph agrees with the official time in the country of registration. Failure to do this is an infringement

Control officers should be aware that this may be different to the official time that prevails at the control location. Random time settings may be indicative that there has been some manipulation so there should in such cases be some investigation to rule out possible falsifications. Even where this is not the case, a breach of this requirement will result in enforcement action.

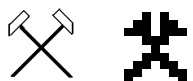
In the case of digital tachographs, the VU will record to Universal Time Coordinated (UTC) time but may display the local time.

The driver must record the activities via the recording device using the prescribed methods particular to the tachograph type in use as set out below.

Failure to do so could result in enforcement action.



- 'Driving time'. Be aware that in most modern recording devices this is done automatically as long as the record sheet/driver card is correctly installed.



- 'Other work'. Covers all activities defined as work, other than driving in-scope of EU/AETR rules. This includes any work for the same or another employer within or outside the transport sector.



- 'Periods of availability'. This is defined in Article 3(b) of Directive 2002/15/EC which is summarised as:
 - periods other than break and rest periods during which the driver is not required to remain with the vehicle, but is available to answer any calls to start or resume driving or to carry out other work. Typical examples of this are:
 - accompanying a vehicle being transported by ferry or train

- waiting while the vehicle is loaded/unloaded
- frontier delays
- during traffic prohibitions

These periods and their foreseeable durations shall be known in advance either before departure or shortly before the actual start of the period in question.

This activity must be selected by a crew member for the time spent accompanying a vehicle being driven by another driver, when he is carrying out other work (e.g. navigation). However, up to 45 minutes of the time recorded as 'availability' by such an inactive crew member may be treated as a break, since it is not technically possible to register such a break on a digital tachograph under the bed/rest symbol.



- Breaks or rest periods. This covers breaks in work/driving and daily or weekly rest periods. Drivers may not carry out any driving or any other work. Break periods are used exclusively for recuperation. During a rest period a driver must be able to dispose of his time. A driver who is engaging in work while his tachograph is set to break or rest is committing an offence.

Where drivers have selected a particular mode in error, it is reasonable to expect them to make a manual entry or a printout giving the details of the error as soon as such an error becomes evident.

Article 15.5

This Article defines the information to be entered manually to complete a tachograph record sheet. If a driver does not record this information at the prescribed time, this regulation is breached and enforcement action may follow.

- On commencing his duty the driver must enter his name, to include the first name and surname. He should take care not to extend this name into the recording area of the record sheet. Nicknames and initials are not acceptable unless entered in addition to the stated requirements. If a name is too long to be accommodated in the space provided such that abbreviations must be used, the full name should be written on the reverse of the record sheet.
- It is preferable that the name is entered as surname then first name. This is to assist authorities who might be unfamiliar with naming customs in the different Member States but such non-compliance with this standard is not considered to be an infringement. Entry of a false name renders the record false.
- The date and start location must be entered. The entry of a false date or location renders the record false. At the end of the duty period the date and location must be entered. Where use of the chart starts and finishes on the same date this date should be entered twice. Use of ditto marks is unacceptable. Location details should indicate

the nearest town or village and must be entered twice if the start and finish locations are the same.

- The registration number of each vehicle which the driver is assigned to.
- The start and finish odometer readings for the daily record and the start odometer readings at each vehicle driven.

Missing centrefield information may be due to lack of diligence on behalf of the driver or as a preparation for falsification and it may be difficult for control officers to differentiate between the two. In each case, attempts should be made to establish the cause of the missing information, viewing an occasional lapse as less serious than persistent breaches, before deciding on enforcement action.

Article 15.5a

In the case of digital tachographs the driver is required to enter the country symbol of where he starts/finishes his daily work period, and this extends to any vehicle changes that take place. Failure to do so is an infringement.

Article 15.6

This relates to the design of analogue recording equipment and has little influence on enforcement activities that requires further interpretation.

Article 15.7

A driver (or a crew member) of a vehicle fitted with a tachograph must be able to produce on demand (by an inspecting officer) the following:

- any current record sheet and /or those used on that day or in the previous 28 days
Note: This is not a requirement to produce 28 record sheets. Non full-time crew members may generate much fewer record sheets in 28 calendar days. The current record may be kept on a driver card but record sheets produced on analogue systems over the previous 28 days must still be produced.
- the driver card if held.
Even if the current record is kept on an analogue record sheet, a driver must produce, if one has been issued, the driver card so that any digital driving days during the previous 28 days can be monitored for compliance.
If a driver card that has been issued cannot be produced, this is an infringement. Tachonet or national records should be used to verify any card produced or whether a card has been issued.
- A driver must also be able to produce digital tachograph print-outs where these have been generated. Where an inspecting officer establishes a need for print-outs in accordance with these regulations and the driver is unable to produce them, this is an infringement.
- Any other manual record kept by the driver during the period in question. These may take any form.

Attestation Letters

Periods of sick or annual leave will result in no records being kept for sometimes lengthy periods of time which means drivers undergoing inspections at a later date will be unable to produce records covering such periods.

Such situations may be incorrectly mistaken for suppressed production caused by an attempt to hide infringements. To avoid this suspicion, some drivers carry 'letters of attestation', which if they are generated and filled out in the prescribed format, will be accepted and scrutinised for validity by control officers.

Production of a false attestation e.g. where the validity of the letter is undermined by other evidence, however, is an infringement. In some Member States, letters of attestation are required to be carried by drivers to cover sickness and leave periods, but this requirement does not extend beyond the national borders. (See Annex, Guidance Note 5). Note also that there is no requirement to evidence daily/weekly rest periods even though in many cases drivers will produce records to support these.

Within Member States it would not be uncommon for drivers to withdraw an analogue record sheet at the end of the work period and record via a manual entry the commencement and conclusion of a daily rest period. In some Member States such recording is a requirement. Control officers should be aware of this practice when analysing a drivers previous records. Such behaviour is much less common during international transport where the same vehicle is used for several consecutive days.

Newly employed drivers should be able to produce their work records from a previous employer if the previous employment falls within the period of 28 days preceding the first day of the new employment.

In the case of digital records this is not problematic, however in the case of analogue records, this requirement might be at odds with the requirement of an employer to secure drivers' records for at least one year. Under those circumstances, control officers may be presented with copy records for the period concerned. While this does not strictly constitute compliance some consideration by the officer of this difficulty may be helpful. Where a driver has previously worked outside of the regulated transport sector this could be verified by an appropriately worded letter from the new employer.

Article 15.7(c) gives the power to control officers to monitor compliance with Regulation No (EC) 561/2006 by checking record sheets, VU data and driver card data. Officers may enter a vehicle to carry out this function. Where such documents are not produced and a valid reason is being claimed, the control officer is entitled to inspect and analyse documents such as ferry tickets, fuel receipts that support or justify these reasons. If such reasons are found to have no validity, then an infringement has been committed.

Article 15.8

It is a serious infringement to falsify, suppress or destroy any data that has been recorded in accordance with Regulation No (EEC) 3821/85.

It is also a serious infringement to manipulate or attempt to manipulate the equipment so that it does not accurately record.

Such manipulations can be perpetrated by unauthorised withdrawal of record sheet or driver card or active interference in the recording process.

Devices which could be used to prevent the correct recording of activity should not be in the vehicle and their installation into the recording system is an offence.

Where a device is not installed, it would be correct to evaluate the intent to use it. Where any device is fitted, but is not connected or in use, this is still sufficient to establish the offence.

3.1.5 Article 16**3.1.5.1 Text**

1. In the event of breakdown or faulty operation of the equipment, the employer shall have it repaired by an approved fitter or workshop, as soon as circumstances permit.

If the vehicle is unable to return to the premises within a period of one week calculated from the day of the breakdown or of the discovery of defective operation, the repair shall be carried out en route. Measures taken by Member States pursuant to Article 19 may give the competent authorities power to prohibit the use of the vehicle in cases where breakdown or faulty operation has not been put right as provided in the foregoing subparagraphs.

2. While the recording equipment is unserviceable or malfunctioning, drivers shall mark on the record sheet or sheets, or on a temporary sheet to be attached to the record sheet or to the driver card, on which he shall enter data enabling him to be identified (driver's card number and/or name and/or driving licence number), including his signature, all information for the various periods of time which are no longer recorded or printed out correctly by the recording equipment.

If a driver card is damaged, malfunctions or is lost or stolen, the driver shall, at the end of his journey, print out the information relating to the periods of time recorded by the recording equipment and mark on that document the details that enable him to be identified (the driver card number and/or name and/or driving licence number), including his signature.

3. If a driver card is damaged or if it malfunctions, the driver shall return it to the competent authority of the Member State in which he has his normal residence. Theft of the driver card shall be the subject of a formal declaration to the competent authorities of the State where the theft occurred. Loss of the driver card must be reported in a formal declaration to the competent authorities of the State that issued it and to the competent authorities of the Member State of normal residence where they are different.

The driver may continue to drive without a driver card for a maximum period of 15 calendar days or for a longer period if this is necessary for the vehicle to return to its premises, provided he can prove the impossibility of producing or using the card during this period. Where the authorities of the Member State in which the driver has his normal residence are different from those which issued his card and where the latter are requested to renew, replace or exchange the driver card, they shall inform the authorities which issued the old card of the precise reasons for its renewal, replacement or exchange

3.1.5.2 Offences

No offences defined here, however Article 16 sets out actions to be taken by the driver so as not to breach other articles. Such breaches include:

- Use a vehicle with a defective tachograph.
- Fail to keep a manual record.
- Fail to report loss or theft of driver card within 7 days.
- Fail to print at the start/end of a journey.

3.1.5.3 Roadside Check

Article 16 lays out the procedures to be followed by a driver in the event of a malfunction of the tachograph recording equipment (this includes the driver card, sender and cabling). It follows that if a control officer discovers that these procedures are not followed in these specific circumstances then enforcement action should be considered.

If the equipment ceases to be fully functioning in accordance with Annex 1 or 1b of 3821/85, it shall be considered as a breakdown.

The equipment must be fully repaired as soon as practical and in every case within 7 days calculated from the breakdown or when any person became aware that the tachograph was not fully functioning.

The repair should be organised by the person responsible for operating the vehicle.

Continuing to use a vehicle without taking the appropriate steps as detailed above or where opportunities to remedy the defect have clearly been neglected is an infringement and enforcement action against the driver will result.

Annex 1

Guidance Note 1

Issue: Exceptional deviation from minimum rest and maximum driving limits in order to find a suitable stopping place.

Article: 12 of Regulation (EC) No 561/2006

Approach to be followed: Article 12 contains provisions that permit a driver to depart from the minimum rest requirements and maximum driving times contained in Articles 6 to 9 in order to find a suitable stopping place. This article does not authorize a driver to derogate from the Regulation for reasons known before the journey commenced. It is designed to enable drivers to deal with cases where it unexpectedly becomes impossible to comply with the Regulation during the course of the journey, that is in situations of abnormal difficulties, independent of the will of the driver and apparently unavoidable that may not be anticipated, even if all due care is taken. The derogation has also the function of ensuring the safety of persons, of the vehicle and of its load and the requirement that road safety must in any event be taken into account.

Three parties have certain obligations in relation to such situations:

- 1) A transport undertaking must plan carefully a driver's safe trip foreseeing, for instance, regular traffic jams, weather conditions and access to adequate parking places, that is, it must organize work in such a way that drivers are able to comply with the Regulation and should take into account the requirements of shippers and insurance companies concerning safe parking are satisfied.
- 2) A driver must rigorously stick to the rules and not deviate from driving time limits unless exceptional circumstances occur unexpectedly and it becomes impossible to comply with the Regulation without endangering road safety, the safety of persons, the vehicle or its load. If a driver decides that it is necessary to derogate from the Regulation and that this will not jeopardise road safety he/she must indicate the nature and reason for derogation manually (in any Community language, on the record sheet or on the print out from the recording equipment or on the duty roster) as soon as he/she stops.
- 3) An enforcer must apply professional discretion when controlling a driver and assessing whether the departure from driving limits is justified.

When assessing the legitimacy of the deviation on the basis of Article 12 all circumstances must be examined carefully by an enforcer including:

- (a) a history of driver's driving records to establish the pattern of driver's performance and verify whether the driver normally complies with driving and rest time rules, and that the deviation is exceptional;
- (b) the deviation from driving time limits must not be a regular occurrence and must be caused by exceptional circumstances such as: major traffic accidents, extreme weather conditions, road diversions, no place at the parking area, etc. *(This list of possible exceptional circumstances is only indicative. The principle for assessment is that the motive of possible deviation from driving limits must not be known or even possible to foresee beforehand);*
- (c) daily and weekly driving limits should be respected, hence the driver should not have any 'time gains' by exceeding driving limit in search of a parking place;
- (d) the deviation from the driving time rules must not lead to a reduction of the required breaks, daily and weekly rest.

Comment: European Court of Justice, Case C-235/94

Guidance Note 2

Issue: Recording the travelling time of a driver to a location that is not the usual place for taking charge or relinquishing of a vehicle in the scope of Regulation (EC) No 561/2006

Article: 9 of Regulation (EC) No 561/2006

Approach to be followed:

A driver travelling to a specific place, other than the employer's operating centre, indicated to him/her by the employer in order to take over and drive a 'tachograph vehicle' is satisfying an obligation towards his/her employer and therefore he/she does not freely dispose of his/her time.

Hence, in line with Articles 9(2) and 9(3):

- any time spent by a driver travelling to or from a location, which is not the driver's home or the employer's operational centre and where the driver is supposed to take over or to leave a vehicle in the scope of the Regulation, regardless of whether the employer gave instructions as to when and how to travel or whether that choice was left to the driver, should be recorded as either 'availability' or 'other work' depending on the Member State's national legislation; and
- any time spent by a driver driving **a vehicle, which is out of scope of the Regulation, to or from a location, which is not the driver's home or the employer's operational centre and where a driver is supposed to take over or to leave a vehicle which falls within the scope of the Regulation should be recorded as 'other work'**

In the following three cases the time spent travelling can be regarded as 'rest' or 'break'.

The first case is when a driver accompanies a vehicle which is transported by ferry boat or train. In this case the driver may take his/her rest or break provided that he/she has an access to a couchette or a bunk (Art. 9.1).

The second case is when a driver is not accompanying a vehicle, but is travelling by train or ferry to or from a place where he/she will take charge or has relinquished control of a vehicle within the scope of the Regulation (Art. 9.2) provided that he/she has an access to a couchette or bunk on that ferry or train.

The third is where a vehicle is manned by more than one driver. When a second crew member is available for driving when necessary, is sitting next to the driver of the vehicle and is not actively involved in assisting the driver driving the vehicle, a period of 45 minutes of that crew member's 'period of availability' can be regarded as 'break'.

There is no differentiation as to the character of the employment contract of the driver. Thus these rules apply to both permanent drivers and drivers employed by a temporary employment undertaking hiring out of labour.

For a 'temporary driver' the 'employer's operational centre' means an operational centre of an undertaking using the services of that driver for its road transport ('user undertaking'), and not the head office of the 'temporary employment undertaking'.

Comment: European Court of Justice, Case C-76/77 and Case C-297/99

Guidance Note 3

Issue: Ordering the interruption of a break or daily or weekly rest in order to move a vehicle forward at a terminal, at parking places or at border areas.

Article: 4(d) and (f) of Regulation (EC) No 561/2006

Approach to be followed: Generally, during a daily or weekly rest a driver should be able to dispose freely of his/her time and should therefore not be obliged to stay in reach of his/her vehicle.

In general, interrupting a break, daily or weekly rest is an infringement (unless the "ferry rule" applies – Article 9(1)). However, at a terminal or a parking place there may occur a sudden abnormal situation or an emergency where a vehicle needs to be moved. At a terminal there is usually a driver (terminal employee) who moves vehicles, if necessary.

If that is not the case and the movement of the vehicle becomes inevitable due to extraordinary circumstances, the driver may interrupt his/her rest only upon the demand of a competent authority or terminal official who are authorised to order vehicle's movements.

In other places (e.g. at parking places, at border crossings and in cases of emergency), if there are objective emergency reasons for which the vehicle must be moved or if the police or another authority (e.g.: fireman, road administration authorities, customs officer, etc.) give an order to move a vehicle, the driver must interrupt his/her break or rest for a few minutes and in that case should not be prosecuted.

If such a necessity arises Member States enforcers must grant some tolerance following an individual situation assessment.

Such an interruption of a driver's rest or break must be recorded manually by the driver and should, if possible, be authenticated by the competent authority that ordered the driver to move the vehicle

Guidance Note 4

Issue: Recording of driving time by digital tachographs when drivers are involved in frequent- or multi-drop stop operations

Article: 1 of Regulation (EEC) No 3821/85 referring to Regulation (EC) No 1360/2002 (Annex 1B)

Approach to be followed:

As digital tachographs record more accurately than analogue tachographs drivers involved in frequent or multi-drop stop operations may be faced with higher records of driving time when using a digital tachograph than it would be with an analogue tachograph. This situation is temporary and may affect mainly local delivery transport operations. It will last only for the transitional period during which both the analogue and digital tachograph coexist.

In order to encourage a fast spread of the digital tachograph while providing for equal treatment of drivers - regardless of the recording instrument used - a tolerance should be possible for national enforcement agencies during this transitional period. This transitional tolerance should apply to those vehicles that are involved in frequent-stop or multi-drop journeys and that are equipped with digital tachographs.

However, and at all times, enforcers will be expected to apply professional discretion. Furthermore, whenever a driver is behind the wheel of the vehicle and actively engaged in an in-scope transport operation, he/she will be considered as driving irrespective of his/her circumstances (for example, in cases when the driver is in a traffic jam or at traffic lights).

Therefore:

- Member States should inform their Control Officers that they have the possibility to allow, on checking digital tachograph data, up to a 15 minutes tolerance over a four and a half (4.5) hour block of driving time for vehicles involved in frequent- or multi-stop drop journeys, provided such claims can be supported by evidence. This tolerance may be applied, for example, as a deduction of one minute per driving time block, between stops, with a maximum of 15 minutes per four and a half (4.5) hour block of driving time;
- Control Officers should, when exercising their discretion, be guided by the circumstances and use the evidence made available to them at the time (such as verifiable proof that the driver was involved in frequent- or multi-drop stops), and must verify that their interpretation does not detract from the proper application of the Drivers' Hours Rules, and thereby undermine road safety.
- Member States may use analysis software which is configured to integrate a toleration period into the driving-time calculations but should be aware that this may lead to problems of evidence at a later stage. In all circumstances, the tolerance must not exceed the 15 minute toleration threshold for a four and a half hour (4.5) block of driving time.
- The tolerance should not discriminate or disadvantage either national or international drivers, and should only be considered for those operations where the journey clearly involves frequent- or multi-stop operations.

Guidance Note 5

Issue: Form for an attestation of activities established by the Commission Decision (2009/959/EU) of 14.12.2009 amending Decision 2007/230/EC on a form concerning social legislation relating to road transport activities

Articles: 11(3) and 13 of Directive 2006/22/EC

Approach to be followed: The form of attestation shall not be required for activities that can be recorded by the tachograph. The primary source of information at the roadside checks is the recordings made by the tachograph, and the lack of records should only be justified with an attestation if tachograph records, including manual entries, were not possible for objective reasons. In all circumstances, the complete set of tachograph records, complemented by the form, when necessary, shall be accepted as sufficient evidence to prove compliance with Regulation (EC) No 561/2006 or the AETR, unless there is a justified suspicion.

The attestation covers certain activities during the period mentioned in article 15 (7) (a) of Regulation (EEC) No 3821/85, namely the current day and the previous 28 days.

The attestation may be used when a driver has:

- been on sick leave
- been on leave, which forms part of the annual leave according to the legislation of the Member State where the undertaking is established
- been on leave or rest
- driven another vehicle exempted from the scope of Regulation (EC) No 561/2006 or AETR
- performed other work than driving
- been available
- and where it has been impossible to record these activities by the recording equipment.
- The box "leave or rest" may be used in a situation when the driver has not been involved in any driving, in other work or has not been available, has not been on sick leave or annual leave, including for instance also cases of partial unemployment, strikes or lock-outs.

Member States are not obliged to require the use of the form in the cases of lack of records, but if a form is required, this standardised form must be recognised valid. However, no form of any type shall be requested concerning ordinary daily or weekly rest periods.

The electronic and printable form as well as information regarding the Member States that accept solely this form is available at:

http://ec.europa.eu/transport/road/policy/social_provision/social_form_en.htm

The form is accepted all over the EU in any official EU language. Its standard format facilitates understanding as it contains numbered pre-determined fields to be filled in. In AETR transport, it is recommended to use the form produced by the United Nations Economic Commission for Europe

<http://www.unece.org/trans/main/sc1/sc1.html>

All the fields in the form must be filled in by typing. In order to be valid, the form must be signed both by the company representative and by the driver before the journey. For self-employed drivers, the driver signs once as the company representative and once as the driver. Only the signed original is valid. The text of the form may not be modified. The form may not be pre-signed nor may it be altered by handwritten statements. If it is legally possible according to the national legislation, a telecopy (fax) or a digitalised copy of the form may be accepted.

The form may be printed on paper containing the company logo and contact details, but the fields containing the company information must also be filled in.

Guidance Note 6

Issue: Recording of time spent on board of a ferry or train where the driver has access to a bunk or couchette.

Article: 9 (1) of Regulation (EC) No 561/2006

Approach to be followed: Generally during a rest, a driver shall be able, according to Article 4(f), to dispose freely of his/her time. However, a driver is entitled to take his/her break or rest, daily or weekly, when he/she is travelling by ferry or train, provided that he/she has access to a bunk or couchette. This stems from the wording of Article 9(2) which stipulates that any time spent travelling "shall not be counted as a rest or break **unless the driver is on ferry or a train and has access to a bunk or couchette**".

Furthermore, in line with Article 9(1) a **regular daily rest period** of at least 11 hours taken on a ferry or a train (if a driver has access to a bunk or a couchette) may be interrupted twice as a maximum, by other activities (such as embarking or disembarking from the ferry boat or train). The total time of these two interruptions may not exceed 1 hour. This time must not, in any case, result in any reduction of a regular daily rest period.

In case of a regular daily rest taken in two periods, the first of which must be of at least 3 hours and the second of at least 9 hours (as stipulated in Article 4(g)), the number of interruptions (maximum two) concerns the whole period of daily rest and not each part of a regular daily rest taken in two periods.

The derogation under Article 9(1) does not apply to a weekly rest period, whether reduced or regular.

Annex 2

Commission Clarification 1

Topic: National Regulations inspired by the Community rules

Article: scope of Regulation (EC) No 561/2006, Articles 1, 2, 11 of the Regulation.

Issue Raised:

German law requires that Community rules on driving time, breaks and rest periods introduced by the Regulation (EC) No 561/2006 apply also to smaller 'goods vehicles' than those specified in Article 2.1 (a) of the Regulation, namely to vehicles exceeding 2.8 tonnes

Clarification:

The fact that some types of transport are not within the scope of the Regulation does not mean that they are exempt from any legislation. On the contrary, this provision implies that Member States are free to legislate in this domain. If Member States proceed so, nothing prevents them to adopt national rules that are inspired by Community legislation or is identical with it.

Comment

Clarification provided by the European Commission services to the Luxembourg authorities (letter of February 1993)

Commission Clarification 2

Topic: Vehicles being driven for repair, washing or maintenance purposes

Article: 1, 2, 4(a), 4(c)

Issue Raised:

Vehicles being driven for repair, washing or maintenance purposes

Clarification:

According to Article 4(a) of the Regulation, carriage by road is defined as any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods. Hence, when a driver drives a vehicle for the purpose of going to a garage, to a washing facility, to a fuel station, to various locations to drop off or take over vehicles from clients etc. by using entirely or in part roads open to the public, this type of journey falls under the definition of carriage by road under the Regulation (EC) No. 561/2006. This is valid for any driver regardless whether his employment is of temporary or permanent nature.

Article 1 of the Regulation, however, stipulates that the rules on driving times, breaks and rest periods are applicable for drivers engaged in the carriage of goods and passengers by road. Depending on the particular circumstances, the duties of the employees of certain companies may, by the nature of their functions, not include the activity of transporting goods or passengers by road. In such cases these employees would in fact not be engaged in the carriage of goods as defined by the Regulation and would thus fall outside the scope of its provisions.

In any case, nothing prevents Member States from applying the rules set out in the Regulation also to other transport operations or vehicles or drivers that are not explicitly covered by the Regulation.

Comment

Clarification provided by the European Commission services to Member of the Luxembourg authorities (letter of February 1993)

Commission Clarification 3

Topic: Vehicles used as local shops at local markets

Article: 13 (1)(f) of Regulation (EEC) No 3820/85 and 13 (1)(d), 2nd indent of Regulation (EC) No 561/2006

Issue Raised:

Vehicles used as local shops at local markets or for door to door selling could be exempt from drivers' hours rules under Article 13(1)(f) of Regulation (EEC) No 3820/85. This possibility does not exist any more under Regulation 561/2006. Drivers of such vehicles do not drive long distances and long hours, and their main professional activity is not transporting goods, but selling them.

Clarification:

Regulation (EC) No 561/2006 under Article 13(1)(d), 2nd indent allows for [the] exemption of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying material, equipment or machinery for driver's use in the course of his work. These vehicles shall be used only within 50 km radius from the base of the undertaking and on condition that driving vehicles does not constitute the driver's main activity.

The Court ruling, Case C-128/04, verifies that the terms 'material or equipment' cover not only tools and instruments, but also goods which are required for the performance of the work involved in the main activity of the driver of the vehicle concerned.

In this context it would mean that vehicles used as local shops at local markets could be exempt under this article provided that the distance travelled does not exceed 50kms radius from the base and that driving does not constitute the main activity of the driver.

It must be however recalled that this exception is not automatic but subject to an individual Member State's decision whether to grant it or not on its own territory.

Comment

Clarification provided by the European Commission services to Member of Parliament Patrick Doering (letter of 12 November 2007)

Commission Clarification 4

Topic: Application of Article 26 of the Regulation

Article: 26

Issue Raised: According to Article 26 'recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of goods or passengers by road, except the vehicles referred to in Article 3 of Regulation (EC) 561/2006.[...]'

Result of this amendment is an obligation to install recording equipment also in vehicles with a maximum permissible weight of 3,5 tonnes or below.

Clarification: According to Article 3 of Regulation 3821/85, only the list of particular vehicle categories laid down in Article 3 of Regulation 561/2006 is specifically exempted from the obligation to install recording equipment.

That being said, it is clear that the very purpose of the Regulation 3821/85 is to provide for effective enforcement of the rules laid down on driving times, rest periods etc. as now contained in Regulation 561/2006 and that the scope of application of those rules.

However, in the absence of an express reference in Regulation 3821/85 to the new Article 2 of Regulation 561/2006, such a result must be deduced from a combined reading of Articles 2, 4 and 26 of Regulation (EC) No 561/2006.

Thus according to Article 26(1) of Regulation 561/2006, the definitions set out in its Article 4 are to apply 'for the purposes' of Regulation 3821/85. Article 4 contains a definition of 'carriage by road', but this must itself be read in the light of the restriction on the scope of this term in Article 3 of Regulation 3821/85, with the result that the vehicles exempted by Article 2 of Regulation 561/2006 will similarly be exempted from any obligation to install and use recording equipment.

Comment

Clarification provided by the European Commission services to German authorities (letter of 28th June 2006)

Commission Clarification 5

Topic: Recording of a mixed activity of 'in' and 'out' of scope driving.

Article: 3(h), 13(i)

Issue Raised: Recording of a mixed activity of 'in' and 'out' of scope driving.

Clarification:

According to Article 3(a), the Regulation does not apply to carriage by road by 'vehicles used for the carriage of passengers on regular services where the route covered by the services in the question does not exceed 50 kms'. This stipulates that the Regulation applies to drivers who perform this type of excluded service only insofar as they also perform activities which fall within its scope, and only in relation to those 'included' activities.

Further to this Article 6(5) of the Regulation requires a driver to record as 'other work' any time spent driving a vehicle used for commercial operations not falling within the scope of the Regulation. In other words, driving activities which do not fall within the definition of 'driving time' for the purposes of the Regulation cannot count as 'rest' as defined in Article 4(f), with the result that they must be taken into account in its overall application.

Hence, should a bus driver be engaged in a mix of regular services, he/she must use tachograph records regardless which driving activity, i.e. out of scope or within the scope of the Regulation, is predominant. For those journeys exceeding 50km a driver should record 'driving time' and for shorter trips he/she should register 'out of scope driving' under 'other work' sign.

Comment

Clarification provided by the European Commission services to the Italian organisation ANAV (letter of 23rd July 2007)

Annex 3

Synopsis of REGULATION (EC) No 561/2006

Article	Description	Offences
1	Introduces Regulation and sets out the purpose and aims of the document	No
2	Specifies the vehicles in scope of the Regulation	No
3	Specifies vehicle types exempted from the Regulation	No
4	Gives definitions of certain terms used in the Regulation text. (Note 'Split Rest' introduced here.)	No
5	Defines minimum ages for conductors and drivers' mates	Yes
6	Sets the daily driving, weekly driving and two weekly driving limits. Requires the recording of out of scope driving and POA on any day when in scope.	Yes
7	Defines the requirement to take a break from driving, the driving limits and makeup of qualifying breaks.	Yes
8	Requirement for drivers to take daily and weekly rests and applicable rules. Introduces regular and reduced rest periods and rules on usage. Requirement to compensate for reduced weekly rest.	Yes
9	Introduces the rules regarding permissible splitting of rest in order to make use of ferry or train services. Requires drivers to record work related activities prior to and after taking over a vehicle to be recorded. Requires 'out of scope' driving to be recorded as 'other work'	Yes
10	Defines unacceptable payment regimes. Requires transport operators to respect the Regulation when organising drivers' work. Establishes culpability of operators for breaches of Regulation by drivers wherever committed. Defines limits to operator liability. Requires contractual partners to respect Regulation in drawing up schedules and timings. Defines Operator requirements regarding the regular downloading and securing of digital tachograph data.	Yes
11	Permits Member States to introduce stricter limits for national journeys, these must take into account other agreements. Applicable only to national journeys.	No
12	Sets out the right of driver to depart from the requirements of the Regulation in emergency and defines the conditions attached to this right.	No
13	Allows Member States to grant derogations from a defined list for specific types of traffic circulating nationally from the requirements of Articles 5 -9 inclusive.	No
14	Permits Member States to dis-apply the Regulation in exceptional circumstances for a limited period	No
15	Sets out requirement on Member States to put in place controls	No

	applicable to traffic exempted by Art 3(a)	
16	Concerns regular passenger services where no tachograph is fitted. Imposes the requirement to produce timetables and rosters. Lapses on 31/12/2007 due to Article 26.	Yes
17	Defines reporting and monitoring requirements imposed on Member States	No
18	Requires Member States to put in place legislative measures to give Regulation force	No
19	Concerns the penalties imposed by Member States for infringements of the Regulation. Defines characteristics of these penalties and the requirement that infringements should only be penalised only once. Extraterritoriality.	No
20	Introduces the requirement that a driver must keep and be able to produce evidence of an imposed penalty. Requires drivers to disclose relevant information to multiple employers to enable them to comply with their obligations.	Yes
21	Introduces immobilisation (prohibition) for infringements that impact on road safety. Requires administrative sanctions for Member State on infringing operators.	No
22	Compels Member States to assist each other with compliance monitoring and to exchange information regarding penalties imposed on Member State residents	No
23	Imposes a requirement on the Commission	No
24	Procedural technicalities	No
25	Contains the right of Member State to require the Commission to address differences in application and enforcement of the Regulation.	No
26	Amends 3821/85 (aligns exemptions, limits shelf life of Article 16)	No
27	Amends 2135/98	No
28	Repeals Regulation 3820/85	No
29	Gives date Regulation to come into force	No

Annex 4

Synopsis of REGULATION (EEC) No 3821/85

Article	Description	Offences
1	Defines construction, installation, use and testing of recording equipment as integral part of regulation	No
2	Shares definitions with Regulation (EC) No 561/2006	No
3	Defines, by reference to Regulation (EC) No 561/2006 those vehicles required to be fitted with tachographs and allows optional use for out of scope vehicles on national journeys	Yes
4	States 'recording equipment' includes 'its components'	No
5	Deals with type approval and asserts security requirements. Reference to technical specification in Annex.	No
6	Deals with type approval markings. Reference to Annex	No
7	Type approval management	No
8	Type approval withdrawal and dispute procedures	No
9	Record sheet approval process	No
10	Defines EEC approval markings as authority to be used	No
11	Type approval withdrawal requirements	No
12	Installation and inspection procedures (workshop)	No
13	Employer and driver jointly required to ensure proper installation and use of recording equipment and driver card	Yes
14	Rules concerning use of recording equipments and driver cards	Yes
15	More rules concerning use of recording equipments and driver cards	Yes
16	Recording equipment breakdowns and malfunctions – procedures	Yes
17	Procedural technicalities	No
18	Procedural technicalities	No
19	Cooperation between Member States regarding enforcement	No
20	Procedural technicalities	No

21	In force date	No
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Sources

CORTE/VOSA Working Group
 MIDT (EU-MIDT/ENC/003 – 2005 rev 6)
 MOU (agreed explanation of Regulation (EC) No 561/2006)
 Council Regulation (EEC) No 3821/85
 Regulation (EC) No 561/2006

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

² DIRECTIVE 2006/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the minimum conditions for the implementation of Council Regulation (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC

³ COUNCIL REGULATION (EEC) No 3821/85 of 20th December 1985 on recording equipment in road transport

⁴ REGULATION (EEC) No 543/69 of the Council of 25th March 1969 on the harmonisation of certain social legislation relating to road transport

⁵ COUNCIL REGULATION (EEC) No 3820/85 of 20th December 1985 on the harmonisation of certain social legislation relating to road transport.

⁶ European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR)

⁷ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006

⁸ CJEU, judgement of 15th December 1993, case C-116/92

⁹ CJEU, judgement of 29th April 2010, case 124/09

¹⁰ CJEU, judgement of 9th November 1995, case C-235/94