



CAS/BR8739/OKA

Brussels, 22 February 2023

## **DRIVING AND REST TIME RULES**

*European Commission note*

### **European Commission note on the enforcement of the ban to take regular weekly rest in a vehicle**

Members are kindly invited to find in annexe the just published European Commission note on the enforcement of the ban to take the regular weekly rest in a vehicle.

Whilst confirming its previous interpretation that “*drivers or employers can be fined for non-compliance with the prohibition of taking the regular weekly rest (or rest of more than 45 hours taken in compensation) in the vehicle when they/their drivers are caught having a regular weekly rest inside the vehicle at the time of the control*”, the EC services enlarge their interpretation with the following new aspects:

- a) Enforcers have the right to ask drivers, where they spent their regular weekly rest, although they cannot require drivers to produce evidence for that and, as result, cannot impose a fine for the absence of such evidence. Yet, drivers can, on a voluntary basis, provide relevant evidence, such as hotel bills.
- b) Nothing prevents authorities to check the rests taken in the preceding four weeks (28 + current day) in another Member State.
- c) In cases, where the national legislation allows “*an oral admission of the driver as a valid proof*” to establish a breach, authorities can issue a fine, based on driver’s oral admission.
- d) In cases where there is a suspicion of a breach by the authority of a “host” Member State, but the evidence available is not sufficient to confirm it, “host” and “establishment” Member States’ authorities are encouraged to communicate among themselves and support each other.

The note will be translated and made available in all EU languages at the EC website at [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/driving-rest-times\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/driving-rest-times_en).

Members are invited to share this note with their own members, the fleet operators.

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EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate C – Land  
C.1 – Road Transport

## NOTE

### **on enforcement practices of Article 8(8) of Regulation (EC) No 561/2006 on the ban to take regular weekly rest periods in a vehicle**

This note concerns the implementation and enforcement of the measures prohibiting drivers from spending regular weekly rest periods in the vehicle, as laid down in Article 8(8) of Regulation (EC) No 561/2006 <sup>(1)</sup>.

It sets out the Commission services' view on this matter. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

#### Context

The Commission has been informed on several occasions that some national authorities during roadside checks were requiring drivers to provide evidence, such as hotel bills, to prove that they spent their regular weekly rest periods in adequate accommodation outside the vehicle.

#### Legal framework

Article 36 of Regulation (EU) No 165/2014 <sup>(2)</sup> on tachographs in road transport provides an exhaustive list of records to be carried and produced by the driver on a request of a control officer. These are: the record sheets, the driver card if one is held, and any manual records and printouts (in case of analogue tachographs), or any manual records and printouts and the driver card (in case of digital tachographs) <sup>(3)</sup>.

Article 34(3) of Regulation (EU) No 165/2014 specifies that Member States must not impose on drivers a requirement to present any forms attesting for the drivers' activities while away from the vehicle.

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- (1) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).
  - (2) Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).
  - (3) Pursuant to Article 36(3), if the driver fails to produce such documents, the control officer may further require other supporting documents that justify non-compliance with a provision.

Article 4(6) of Directive 2006/22/EC <sup>(4)</sup> lays down an obligation for assistance between Member States as regards checking compliance with the rules on driving and rest times.

*“If, in a Member State, the findings of a roadside check on the driver of a vehicle registered in another Member State afford grounds for believing that infringements have been committed which cannot be established during the check owing to a lack of necessary data, the competent authorities of the Member States concerned shall assist each other in clarifying the situation.”*

### Clarification

As explained in the Questions and Answers published by the Commission on driving and rest time rules <sup>(5)</sup> (Question 6), drivers or employers can be fined for non-compliance with the prohibition of taking the regular weekly rest (or rest of more than 45 hours taken in compensation) in the vehicle when they/their drivers are caught having a regular weekly rest inside the vehicle at the time of the control.

It must be clarified that roadside enforcers, within the performance of their duties, are allowed to ask drivers where they spent their regular weekly rest. However, pursuant to Article 34(3) of Regulation (EU) No 165/2014, Member States' authorities may not require drivers to provide documents attesting activities while away from the vehicle to prove compliance with Article 8 of Regulation (EC) No 561/2006. Consequently, roadside enforcers cannot fine drivers for not showing these documents. Hence, in the context of roadside checks, compliance with the requirements set under Regulation (EC) No 561/2006 must be checked based on the documents referred to in Article 36. This is without prejudice to the driver showing on a voluntary basis other documents such as hotel bills in order to ease the roadside check.

As set out in Article 36(1) and (2) of Regulation (EU) N° 165/2014 and in Annex I of Directive 2006/22/EC, whenever an authorised control officer performing checks at the roadside so requests, drivers must produce their driver card, the record sheets for the current day and the previous 28 days <sup>(6)</sup> as well as any manual records and printouts for the same period. These data must cover all drivers' activities (e.g. driving, other work) and inactivity periods (e.g. availability, breaks and rest periods) over the preceding 28 days, regardless of the Member State where the driver worked and/or took his rest. This also applies to checks of Article 8(8) of Regulation (EC) No 561/2006 requiring drivers to spend their regular weekly rest in suitable accommodation. Therefore, nothing prevents Member States from controlling compliance with Article 8(8) of Regulation (EC) No 561/2005 for the rest(s) taken in the preceding weeks and/or in another Member State, as long as those rests fall within the controlling period referred to in Article 36(1) and (2) of Regulation (EC) No 165/2014.

In cases where the Member States' national legislation recognises an oral admission of the driver as valid proof for establishing a breach of Article 8(8) of Regulation (EC) No

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(4) Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

(5) [https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/driving-rest-times\\_en](https://transport.ec.europa.eu/transport-modes/road/mobility-package-i/driving-rest-times_en)

(6) From 31 December 2024, this will be increased to the preceding 56 days in accordance with Article 3 of Regulation (EU) 2020/1054

561/2006, nothing in that Regulation nor in Regulation (EU) 165/2014 prevents the national authorities from issuing a fine on this basis.

Where there is a suspicion of infringement to the prohibition of taking a regular weekly rest in the vehicle, which cannot be established due to a lack of data at the roadside control, national authorities are encouraged to use the possibility of mutual assistance set out in Article 4(6) of Directive 2006/22/EC.

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