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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the application of the derogation provided in Article 8(6a) of Regulation (EC) N°
561/2006 of the European Parliament and of the Council (12-day rule)**

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1. INTRODUCTION

The European Union (EU) has established a framework of social rules for goods and passenger road transport, with the aim of avoiding distortion of competition, improving road safety and ensuring adequate health and safety conditions of road transport mobile workers. 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) N° 3821/85 and (EC) N° 2135/98 and repealing Council Regulation (EEC) N° 3820/85 ("Regulation (EC) N° 561/2006")¹ provides for a common set of EU minimum requirements on, *inter alia*, driving times, breaks and rest periods. These rules apply to all professional drivers, be they employed or self-employed, engaged in passengers or goods transport operations, subject to specific exceptions and national derogations.

As a general rule Regulation (EC) N° 561/2006 provides in its Article 8 that a driver should start a weekly rest period no later than at the end of six 24-hour periods from the end of the previous weekly rest. However, Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) N° 561/2006 (recast)² introduced a derogation from this weekly rest provision. The new Article 8(6a) allows drivers, who are engaged in a single occasional service of international carriage of passengers, to postpone the weekly rest period for up to 12 consecutive 24-hour periods (hereinafter called the "12-day rule") following a previous regular weekly rest, provided that specific conditions are met.

In order to address certain concerns expressed at the time of its adoption, Article 8 (6a) of Regulation (EC) No 561/2006 specifies that the Commission should closely monitor the use made of this derogation and should draw up a report assessing the consequences of the derogation in respect of road safety as well as social aspects and, if deemed appropriate, to propose amendments to this Regulation in this respect. The present report follows this monitoring obligation and provides for an overview of the use of the 12-day rule derogation in the Member States and its perceived impacts in the context of the Regulation's main objectives.

¹ OJ L 102, 11.4.2006, p. 1.

² OJ L 300, 14.11.2009, p. 88.

2. BACKGROUND

The 12-day rule was first introduced by Council Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport³. Paragraph 1 of Article 6 of that Regulation provided that:

(...)

A driver must, after no more than six daily driving periods, take a weekly rest period as defined in Article 8 (3).

The weekly rest period may be postponed until the end of the sixth day if the total driving time over the six days does not exceed the maximum corresponding to six daily driving periods.

In the case of the international carriage of passengers, other than on regular services, the terms 'six' and 'sixth' in the second and third subparagraphs shall be replaced by 'twelve' and 'twelfth' respectively.

Member States may extend the application of the previous subparagraph to national passenger services within their territory, other than regular services.

This Regulation was repealed by Regulation (EC) No 561/2006, which did not include such a provision. Therefore the 12-day rule was no longer applicable as from 11 April 2007 when Regulation (EC) No 561/2006 entered into force. This modification triggered extensive discussions among various stakeholders. It was perceived as a negative development by the European coach tourism industry, which systematically pursued an agreement between the social partners in order to reinstate the 12-day rule. The challenge was to meet the concerns of the industry with regard to the efficient and cost-effective organisation of tourist trips by coach and, at the same time, not compromising road safety and the well-being of drivers.

A detailed presentation of the issue in question and of the relevant arguments has been reflected in two studies, which were conducted at the time. The study “*The New Regulation on Driving and Rest Times: The Impact of the Abolition of the “12 Days Exception” for Buses*”⁴, commissioned by the European Parliament, provided an assessment of impacts of the abolition of the 12-day rule in the international transport of passengers by road, especially in relation to economic, social and safety effects. In summary, the study argued that the abolition of the 12-day rule would have strong negative economic impacts, without having significant positive safety or social benefits. Among the policy options examined, the one recommended was the reintroduction of the derogation with certain accompanying measures related to safety of tours and to drivers’ working conditions. The accompanying measures proposed concerned, inter alia, the effective enforcement of the use of the digital tachograph, the enforcement of the rotation of drivers in firms engaged in international trips in order to limit excessive workloads, the enforcement of Directive 2003/59/EC on the initial qualification and periodic

³ OJ L 370, 31.12.1985, p. 1.

⁴ [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2008/405378/IPOL-TRAN_ET\(2008\)405378_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2008/405378/IPOL-TRAN_ET(2008)405378_EN.pdf)

training of drivers of certain road vehicles for the carriage of goods or passengers⁵ and the partial reintroduction of the 12-day rule for transport undertakings that comply with specific quality parameters and only for vehicles equipped with a digital tachograph. Following this study the European Parliament voted an ‘own initiative report’ to reinstate the 12-day derogation.

A critical review of the above-mentioned study was presented in the “*Study of passenger transport by coach*”⁶, which was subsequently commissioned by the European Commission. The review concluded that the initial European Parliament study might have significantly overestimated the economic impact of the abolition of the 12-day rule, and also possibly underestimated the social impacts. The review concluded that the social and environmental impacts of the withdrawal of the 12-day rule are small, with a certain doubt as to whether the net effect of these impacts would be positive or negative. The two studies agreed that, though difficult to be quantified, the impact on road safety is rather small, as coaches are already a relatively safe mode of transport.

The overall discussions led to the reintroduction of the 12-day rule with certain additional requirements. Article 29 of Regulation (EC) No 1073/2009 provides that:

"In Article 8 of Regulation (EC) No 561/2006, the following paragraph shall be inserted:

"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, 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

⁵ OJ L 226, 10.9.2003, P. 4

⁶ http://ec.europa.eu/transport/modes/road/studies/doc/2009_06_passenger_transport_by_coach.pdf

(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.

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.

The 12-day rule, in its current form, became applicable as of 4 June 2010. Since then there have been certain discussions concerning the requirements under which this provision can be applied and in particular the requirement for the driver to be engaged in an international transport operation. During the recent revision of Regulation (EEC) No 3821/85⁷ the European Parliament proposed the application of the rule also to domestic trips arguing that the impact on road safety is not related to the international nature of the transport operation. During the legislative process the Member States did not consider it appropriate to introduce this modification and the provision of Article 8(6a) remained unchanged.

In the same context, during its accession negotiations, Iceland requested a derogation from this provision in order to allow the application of the rule also for domestic transport. The arguments supporting this request were related to the geographical circumstances of the country, which is located far away from the European mainland, the exceptionally sparse population and the importance of tourism industry for the Icelandic economy. During the negotiations the Commission rejected this request arguing that such a derogation is not applicable to other Member States and that despite the geographic specificities, the domestic transport in Iceland could be organised in such a way so as to respect the general provision that a rest is taken after six 24-hour periods of driving. In addition, tourism in Iceland is not affected by the provision in question, as it is only marginally exposed to international competition.

3. DATA COLLECTION

In order to collect the necessary information for this report, the Commission enquired of the Member States a number of questions in July 2012. The same questionnaire was also sent to the EU social partners in road transport, namely to the International Road Union (IRU) as the employers' organization and to the European Transport Workers' Federation (ETF) representing the workers in the sector.

The questionnaire covered a number of topics in order to assess the possible impacts of the derogation in the areas mentioned in Regulation (EC) No 561/2006. Each question was

⁷ repealed by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014, OJ L 60 of 28.2.2014, p.1

formulated in a way so that both quantifiable and descriptive answers could be provided and the Member States/social partners had the possibility to reply in the way of their choice.

The first two questions aimed at assessing whether the Member States are monitoring the use of the derogation either by keeping statistical data or by other sources. The third question was dedicated to road safety and impacts of the derogation on it. Question number four addressed the issue of encouraging tourism and the use of environmentally friendly means of transport, while question number five focused on the effect of the derogation on fair competition in the road transport sector. The well-being of drivers was requested to be assessed by question number six. In the two final questions the Member States/social partners were asked to provide their general perception of the provision in question as well as any additional comments or proposals.

By the end of 2013 the Commission received the replies from 23 Member States and from the employers' and workers' organizations mentioned above. No further information was received, following that date, despite reminders. An aggregated table with the answers received is included in Annex II to this report. It is noted that Romania sent replies from both the Romanian Road Transport Authority (ARR) and the Road Transport Control (ISCTR). Both institutions have had control responsibilities since the application of the rule (ARR up to 4 December 2011 and ISCTR after that date).

4. ANALYSIS OF THE DATA

Out of the 23 Member States that provided answers to the questionnaire, eight did not provide figures for questions n° 2-7, on the grounds of lack of information to support a quantifiable answer. The limited amount of quantifiable data received (15 cases) does not allow for an in-depth statistical analysis. However, based on the answers given and in conjunction with the descriptive parts of the questionnaire, various conclusions can be drawn. The analysis below follows the structure of the questionnaire and the elements examined by each question.

4.1. Availability of data - Frequency of use of the derogation

None of the Member States that provided answers to the questionnaire retain statistical data on the application of the 12 day rule or on the compliance with driving time limits during the period covered by the derogation. The legislation in force does not impose such an obligation on Member States and this lack of monitoring by the competent national authorities deprives them of the possibility to have a comprehensive overview of the current situation in the field in question. Despite the absence of an obligation to systematically monitor the use of the derogation some Member States provided the corresponding figures, according to which in most cases the derogation is not intensively used. In five Member States (EE, LT, LV, LU, SE) the frequency of use is quantified in the middle of the scale indicated (3 in a scale from 0 to 5) while in all other cases the reported figures indicate a less intensive use of the provision. The explanations provided for the limited use of the rule include the restrictive nature of the provision (international single trip and extended rest period afterwards) and the lack of knowledge of the provision by the operators/drivers.

4.2. Impact on road safety

The majority of Member States that provided quantified replies on this question indicated that the provision has no negative impact on road safety. On the other hand, two Member States (BE, LT) indicated a strong negative impact (4 in a scale from 0 to 5), which, however, is not based on accident statistics, but on the presumption that continuous driving for 12 days may have a direct impact on a driver's fatigue, which will consequently endanger road safety. The same approach has been followed in the reply by the ETF, which indicated an even stronger negative impact on the basis of the alleged fatigue of the driver. The rest of the replies received indicated a minimum negative impact, always based on a similar assumption and not on actual accident data. The IRU indicated a zero impact on road safety underlining that during such trips the actual daily driving time is rather short.

4.3. Effect in encouraging tourism and the use of environmentally friendly means of transport

While certain Member States (AT, BE, DK, NL, PL, ES) and the ETF see no effect on tourism and the environment, the other Member States that provided quantified replies on this question indicated a positive effect. Three Member States (LU, RO, SE) indicated a very strong positive effect (4-5 in a scale from 0 to 5) with the justification that the rule allows for lower costs for the passengers, better organisation of the trips and improved quality of the coaches used in such operations. For similar reasons, another four Member States (BG, EE, LV, SI) indicated an important positive effect (3 in a scale from 0 to 5). The IRU pointed out a narrow positive effect due to the restrictive nature of the derogation, which limits its attractiveness to transport undertakings.

4.4. Effect on competition

Most of the Member States and the IRU are neutral with regard to this aspect. However, one Member State (BG) indicated a rather negative effect in terms of distortion of competition, based on the fact that the derogation is only applicable to occasional international operations and not to regular ones thus creating discrimination between the two. Five other Member States (HU, LT, LV, LU, SE) are much more positive claiming that the flexibility provided by the derogation offers increased opportunities for undertakings to operate without infringing the rules and even allows small enterprises to benefit equally.

4.5. Impact on well-being of drivers

In this question the workers' side has taken a very strong negative position, arguing that the derogation allows for long trips that directly affect the health of drivers, mainly due to accumulated fatigue. In a similar approach, but to a much more limited extent, three Member States (AT, BE, RO⁸) also reported a negative effect. On the contrary some Member States (EE, LU, RO⁹, SE) perceive the issue from a different angle by stating that the provision allows the drivers to take longer uninterrupted rest periods, usually at their homes with their families. In a different approach, the employers consider the long compensation rest periods

⁸ State Inspectorate for Road Transport Control (ISCTR)

⁹ Romanian Road Transport Authority (ARR)

to be taken after the use of derogation, as a loss of income for drivers, especially during short touristic seasons and they prefer the derogation in its previous form.

4.6. General perception of the provision

In line with the answers given in the individual aspects of the questionnaire, the majority of the Member States that provided quantified replies on this question had a positive overall perception of the provision and in some cases a very strong positive perception (HU, LU, SE, LV, EE). The IRU has a less positive approach, considering that the current version of the derogation is less attractive than the previous one due to its too restrictive character. The Member States with a negative perception of the rule are mainly those with concerns about road safety issues (AT, BE, LT). The ETF sees no added value in this derogation and argues that it should have a limited application in order to control its negative effects and that no further flexibility should be allowed.

4.7. Additional comments/proposals

In this part of the questionnaire the Member States were able to freely express their comments and proposals concerning the derogation in question. Despite the liberty provided, the responses received were rather limited. A group of Member States (BG, DE, LU, UK) without necessarily sharing the same objectives, appear ready to consider more flexible criteria and a certain extension of the derogation either to domestic operations or to international regular services. One Member State (ES) claimed that the derogation should be made applicable to the transportation of goods, which would improve a company's efficiency by having the vehicle back at its base much earlier and would enhance working conditions by enabling drivers to spend their weekly rest at home. Other Member States are either against such a perspective (AT) or consider that the provision should be changed in line with goods transport (LT). Other issues raised are the practical problems with regard to road safety (BE) and to the compatibility with EU social rules and those of the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) (FI). The ETF is strongly opposed to the development of any separate social provisions for passenger transport, noting that such a development would lead to more complex regimes, massive enforcement problems and would compromise the overall objectives of the driving and rest time rules. On the other hand the IRU argues that the industry urgently needs more practical arrangements and greater flexibility for all types of national and international services, and strongly supports the extension of the scope of the derogation to cover domestic operations as well.

5. CONCLUSIONS

Despite the lack of factual data, following the analysis presented above, certain conclusions can be drawn with regard to impacts of the application of the derogation on road safety and working conditions in the field of international passenger transport services.

According to the opinions of most of the Member States and the employer's side, there is no concrete indication of a real negative effect on road safety. The workers have expressed the view that the 12 consecutive daily driving periods create accumulated and disproportionate fatigue of the driver. However, no factual evidence was provided proving the worsening of

road safety due to the use of derogation. On the other hand, the employers are of the opinion that in this type of operation the daily driving time is usually shorter than the maximum limits set by legislation. The specificity of international coach tours was the main concept behind the introduction of the derogation.

Concerning the other areas examined, namely: tourism, the environment, undistorted competition and the well-being of drivers, the responses received include both positive and negative assessments, with predominance of positive aspects indicated, except on the issue of the driver's quality of life. On the latter one, both sides of the industry indicated the negative consequences, but for different reasons and affecting different aspects of a driver's well-being. Whilst the workers highlighted the negative consequence of the greater fatigue of drivers due to postponement of the weekly rest, the employers pointed out the driver's limited possibility for higher income due to a mandatory long compensation weekly rest after the use of the derogation. The positive aspects of the derogation included: the reduction of costs for tourists, the use of better vehicles for such long, international trips, the increased opportunities for undertakings, including small ones and the better organisation of drivers' rest periods, with the possibility of spending more time at home. Much of the criticism concerned the restrictive character of the 12-day rule, whilst the concept of derogation was acknowledged as valuable.

It is worth noting the contradicting nature of the answers received to most of the questions revealing differences in the way the measure is perceived. A very demonstrative example concerns the views expressed by both sides of the industry that took part in the questionnaire survey. While the representatives of the employers identify the additional requirements of the derogation as being the main obstacle to its proper implementation, the representative of drivers considers any attempt to water down these provisions or extending the scope of the derogation as being unacceptable.

Having analysed the views expressed by Member States and the social partners, and bearing in mind certain needs of the market such as simplification of the rules and cost-effective enforcement, the Commission does not consider it appropriate to propose any amendments to the relevant legislation. The current regime was established after long discussions, appears to be operating without substantial problems and is widely known to the stakeholders. The Commission will continue its efforts, in cooperation with Member States, to further enhance enforcement of the existing rules, and in particular with regard to the proper application of the derogations.

The Commission invites the Member States and the social partners to continue monitoring the implementation and the impacts on road safety and social aspects of the 12-day derogation and may revert to the issue should the need arise.