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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards minimum requirements on minimum breaks and daily and weekly rest periods in the occasional passenger transport sector **[doc 9734/23 - COM (2023) 256]** – Opinion of the European Economic and Social Committee

Delegations will find attached a copy of the above-mentioned opinion.

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European Economic and Social Committee

OPINION

European Economic and Social Committee

Minimum breaks and rest periods for occasional passenger transport

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Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards minimum requirements on minimum breaks and daily and weekly rest periods in the occasional passenger transport sector
[COM(2023) 256 final – 2023/0155 (COD)]

TEN/816

Rapporteur: **Mateusz SZYMAŃSKI**

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Referral	European Parliament, 01/06/2023 Council of the European Union, 28/07/2023
Legal basis	Articles 91(1) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	06/09/2023
Adopted at plenary	21/09/2023
Plenary session No	581
Outcome of vote (for/against/abstentions)	156/96/11

1. Conclusions and recommendations

1.1 The occasional transport sector is characterised by significant staff shortages. This is related to the general characteristics of the transport sector, where it might be difficult to reconcile work and family life.

1.2 It is also crucial to build a level playing field for all operators, which will enable fair competition. Attempts to circumvent existing rules on drivers' working conditions must be firmly tackled by all the competent national and European authorities.

1.3 The European Economic and Social Committee (EESC) acknowledges the Commission's efforts to improve the quality of service and attractiveness of this form of tourism. However, the proposal to increase labour flexibility in the sector should be considered inappropriate, as it would worsen the working conditions of drivers and thus further reduce people's interest in doing this job. Nevertheless, it is welcome that the proposed regulation does not introduce any changes to the minimum duration of breaks or rest periods, nor to maximum driving times. It is in the considerable interest of companies to take care of their drivers and fleets in order to ensure a high standard of road and passenger safety. At the same time, the EESC urges Member States to ensure that secure parking zones for rest periods and breaks are available.

1.4 Furthermore, we have to take into account that the average age of drivers in the sector is already high and increasing. Higher workloads could lead to more accidents on the road. There is a strong link between driver fatigue and road safety. Flexibility is therefore at odds with EU road safety targets.

1.5 The EESC proposes that much more attention be paid to the issue of effective implementation and enforcement of existing rules. There are opportunities for this to happen, not least through the use of digital tools to conduct inspections. This could be supported by EU funds.

1.6 The EESC takes a negative view of the practice of consulting directly with individuals and collating their opinions with those of the representative social partners. This undermines the recognised role of the social partners and runs counter to the principles of social dialogue. At the same time, we call for issues relating to working conditions in the sector to be addressed to a greater extent by the sector-specific social partners, who are most familiar with the realities of the sector, in the process of the social dialogue.

2. Background to the opinion

2.1 The European Commission proposed revision of the rules related to working time in the sector of occasional passenger transport. Changes are focusing on the driving and rest times and aim to introduce more flexibility in this regard.

2.2 The initiative seeks to ensure efficient and high-quality occasional bus and coach services and to improve working and driving conditions for drivers, including by reducing the stress and fatigue of drivers in occasional bus and coach transport.

2.3 The European Commission proposes two specific objectives: to ensure a more flexible distribution of breaks and rest periods and to promote equal treatment between international and domestic occasional bus and coach operations. The commission's proposal does not introduce any change to the minimum duration of breaks or rest periods, nor to maximum driving times.

2.4 The Commission's proposals include changes to the way in which breaks are organised, extension of the '12-day derogation' to occasional domestic passenger transport and the possibility to postpone daily rest by one or two hours, depending on the total daily driving period.

3. General comments

3.1 The EESC acknowledges the Commission's efforts to improve the quality of service and the attractiveness of this form of tourism. Nonetheless the EESC regrets that the Commission's proposal does not properly address the underlying problem of the transport sector: the significant shortage of staff. We doubt that the right solution is to make drivers' working time more flexible or to increase pressure on those drivers who continue to work in the sector. This is because the pressure on drivers is already very high.

3.2 The EESC highlights that practice and the shape of existing regulations already allow for a long duration of working time, exacerbating fatigue, and the proposed new rules can make it even worse. Bearing in mind that the average age of a driver in the occasional passenger transport sector is 50[1], we have to take into account not only purely economic and organisational factors, but also driver health and passenger safety.

3.3 The proposed change in practice will lead to12 consecutive days of driving without any weekly rest whatsoever in both domestic and international trips. This is even more unsuitable knowing that the enforcement of the 12-day derogation is already problematic, with inspectors reporting that there are major difficulties in controlling this derogation. This is due to lack of digital enforcement tools and difficulty ensuring that there is only one group of passengers (single occasional service as in Regulation (EC) No 561/2006). It is regrettable that the Commission did not take the necessary steps to address the existing problems.

3.4 In regard to breaks there will be the possibility for operators to split daily breaks into three periods of a minimum of 15 minutes. This might result in bus and coach drivers not having sufficient time for recovery, especially given that there are more and more passengers on board coaches and drivers are burdened with additional responsibilities.

3.5 In the EESC's view, the need to pay particular attention to the problem of fatigue is due to the associated risks. Fatigue is the cause of numerous driving accidents and fatalities each year.

3.6 It also seems that the priorities of EU policy should not only be reducing the workload of employees, but also properly enforcing existing regulations. A number of problems related to

1 IRU Intelligence Briefing, Driver Shortage Global Report 2022 Summary.

the application of regulations and decreasing number of checks, which was already insufficient[2], in road transport are observed. This is due to the inadequacies in controls and inspections and lack of digital tools. Efficient, practical and timely enforcement is essential to improve drivers' working conditions, tackle fatigue and ensure road safety. The EESC highlights the importance of close cooperation between Member States and the efficient exchange of information. EU funds could be used for this, especially for digitalising the available tools.

3.7 It is also crucial to build a level playing field for the all operators, which will enable fair competition. The search for a better position in the market by some transport companies by circumventing existing rules and requirements creates a situation of unfair competition that undermines the operation of honest entrepreneurs. This should be firmly tackled by all the competent national and European authorities.

3.8 The EESC proposes that some aspects of working time organisation should be left to social partner agreement to ensure a fair work-life balance e.g., predictability of shifts, given the high level of complexity and specificity of the sector. Moreover, there is a need to work on more efficient enforcement of the existing rules, which already create proper grounds for fair competition.

3.9 The proposed changes to the sector in question also appear to run counter to the objectives of the Mobility Package already adopted. The revision will undermine the Mobility Package's goal of improving working conditions in the road transport industry and will threaten road safety. Moreover, the reform goes against the Strategic Action Plan on Road Safety and the envisaged Vision Zero target of zero deaths or serious injuries in road accidents by 2050[3].

4. Specific comments

4.1 It is in the considerable interest of companies to take care of their drivers and fleets in order to ensure a high standard of road and passenger safety. Therefore the calculation of rest periods and breaks must be carried out with the utmost care, allocating appropriate importance to it, in order to prevent accidents from occurring, thus reducing risks for employees and for the businesses themselves.

4.2 Staff shortages in the sector are becoming increasingly acute and threaten the future of the sector. The increasing average age of drivers highlights the need to make the sector more attractive. Inaction and the gradual retirement of drivers will only exacerbate the problems observed. It appears that targeting regulatory changes to improve conditions for professional drivers could make the sector more attractive and increase interest in the job, particularly among younger people.

4.3 Reducing such significant staff shortages in the sector will also be possible by supporting all those who would be interested in starting to work in the area of occasional passenger transport. The high fees for the training and licences required to drive represent a significant barrier here.

2 COM(2023) 183 final.

3 COM(2018) 293 final, Annex 1.

The EESC therefore calls on the Commission and the Member States to ensure that public employment services and other relevant bodies introduce support programmes in this domain.

4.4 Another important aspect that could contribute to the attractiveness of this type of work would be an improvement in drivers' working conditions. Investment in secure parking places to facilitate rest, even for short periods, is still necessary. In this respect, the gender-inclusivity perspective may be particularly important in order to ensure safe and healthy working conditions with access to decent facilities.

4.5 One response to the staff shortage has also been to open up the sector to third-country nationals. In practice, this solution is proving to be ineffective, as there is considerable variation in working conditions among EU countries, as well as problems with the enforcement of existing legal requirements – both national and EU ones. It is therefore necessary to ensure that all drivers in the sector, throughout the EU, be effectively protected from abuse.

4.6 In addition, for the purposes of the above, but also so that future decisions on the organisation of working time in the sector are based on the latest data, it is recommended that new studies be carried out on the impact of driving, rest and working time on safety in the sector, as well as on the main challenges in enforcing existing legal requirements in this area. Studies by the European Agency for Safety and Health at Work seem to be of particular relevance.

4.7 In its opinions, the EESC stresses the importance of representative democracy, including social dialogue mechanisms involving representative employers' and workers' organisations. For this reason, the European Commission's practice of taking the views of individual drivers and collating them with the views of the sector's representative trade union in the results of the consultation, and drawing conclusions from these views in order to create universally applicable legislation, is to be criticised.

4.8 The EESC wishes to stress the importance not only of legislation and its enforcement, but also of raising awareness among employers and drivers of the dangers of over-tiredness and fatigue. Public campaigns should be particularly publicised. In doing so, the EESC encourages cooperation with authorities responsible for road safety and health and safety at work (e.g. labour inspectorates). It is also recommended that Fatigue Risk Management strategies and use of systems to detect drowsiness and lack of concentration for drivers be promoted as part of the European Commission Road Safety policies, strategies and action plans. The European Commission may dedicate 2025 to the bus and coach sector, with a strong focus on how to tackle the driver shortage.

4.9 In the case of tourist agencies offering coach excursions, the EESC strongly recommends limiting the 'other work' arrangements where the driver needs to carry out tasks such as finding parking spaces, supervising loading and unloading activities or loading and unloading passenger luggage, and many more. This in practice means that drivers very often skip breaks, although this time is registered as a break. This definitely restricts the driver's real break and rest time and can constitute a significant danger.

Brussels, 21 September 2023.

Oliver Röpke
The president of the European Economic and Social Committee

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N.B.: Appendix overleaf.

APPENDIX I to the OPINION

The following counter-opinion, which received at least a quarter of the votes cast, was rejected during the discussion (Rule 71(7) of the Rules of Procedure):

AMENDMENT 1

TEN/816
Minimum breaks and rest periods for occasional passenger transport

Replace the whole opinion presented by the TEN Section with the following text (explanation/reason at the end of the document):

Tabled by:

MALLIA Stefano
MASTANTUONO Alena
DE MELLO Vasco
PUECH d'ALISSAC Arnold
ANTONIOU Michalis
YGLESIAS Isabel
BARCELÓ DELGADO Andrés
MINCHEVA Mariya
TEDER Reet
SCHWENG Christa
GAVRILOVS Vitālijs
KROPP Thomas
SVENTEK David
PILAWSKI Lech
EDELENYI Andras
ROTH Jürgen
DIAMANTOUROS Konstantinos
ZVOLSKA Marie
DE MÛELENAERE Robert
DANISMAN Mira-Maria
GKOFAS Panagiotis
MENSI Maurizio

Amendment
1. Conclusions and Recommendations
1.1 The EESC strongly supports the Commission proposal for a regulation as regards minimum requirements on minimum breaks and daily and weekly rest periods in the occasional passenger transport sector. The EESC recognizes the sector specific characteristics which differ from freight transport and regular passenger transport and considers that the flexibility in resting times and breaks proposed by the European Commission is justified and in the interests of both road safety, drivers, customers, and businesses.
1.2 The EESC suggests the drivers should be able to postpone the start of their daily rest period by one hour once per week (between two weekly rests) if their driving time does not exceed 7 hours because the most tourism tours are shorter than eight days. Drivers should be allowed to split the 45-minute break into a

maximum of 3 breaks of at least 15 minutes each, as proposed by the European Commission.

1.3 The EESC expects that the proposal will respond to the current needs of the sector. It welcomes that the impact assessment accompanying the proposal draws attention to the close link between working conditions and safety. The Commission working document states that the drivers themselves expect the new rules to result in improved working conditions and to facilitate compliance with the rules, thereby leading to reduced driver stress and fatigue, and indirectly to increased road safety.

1.4 As a long-time advocate of the level playing field on the single market, the EESC welcomes that the proposed rules aim to treat the international and domestic occasional passenger transport operations in equal way. Drivers engaged in national tourism journeys should also have the possibility to postpone their weekly rest for up to 12 consecutive days to complete a single service.

1.5 There is an alarming shortage of drivers in the transport sector and viable solutions must be found. The EESC expects that the situation will be even aggravated in 2026, when in many European countries, a high percentage of active drivers retire, without any substitutes. The EESC recommends to take further measures to attract more people to the sector and harmonise the rules for obtaining driving licences, while creating financial support for obtaining such licences.

1.6 The EESC believes in a fair and efficient enforcement of rules. It therefore proposes to legislators to confer implementing powers to the European Commission, to be able to modernise, adapt and digitalise the relevant control documents and tools, whilst at the same time invite social partners to jointly contribute to fair and efficient enforcement of these rules by issuing joint recommendations to their members.

2. Background, EU and national context and institutional and legal framework

2.1 The existence of an area of free movement of persons and goods has meant the creation of a common transport policy, which implies the existence of common rules on transport within the European area, in particular road transport.

2.2 Apart from certain exceptions, the Regulation (EC) No 561/2006 applies equally to road-transport operators and their drivers. Compared to freight transport, or even to regular passenger transport, occasional passenger transport, whose main activity is to move and accompany tourists, presents highly specific characteristics (e.g., high seasonality) and needs related to the driver's work. The ex-post evaluation of the Regulation carried out in 2017 concluded that some of the rules on the organisation of breaks and rest periods may not be fit for the occasional-passenger transport sector because of the sector's distinct service needs. The proposal builds on these findings and adapts the rules to the work rhythm in this sector.

2.3 The 2017 ex post evaluation also recognised the EU-added value and EU-wide positive results that came from harmonising the minimum working conditions for drivers and operators engaged in domestic and cross-border transport activities in the EU. EU-level action would contribute to achieving appropriate rules for the occasional passenger-transport-by-road sector and also contribute to reducing the shortage of drivers.

Reason

This text comprises an amendment which aims to set out a generally divergent view to an opinion presented by the section and is therefore to be described as a counter-opinion. It sets out the many

reasons why the EESC agrees with the European Commission proposal that adapts to the current needs of the sector.

Outcome of the vote:	
In favour:	110
Against:	151
Abstention:	6