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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 – Analysis of the final compromise text with a view to agreement

I. INTRODUCTION

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

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

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

II. WORK IN THE COUNCIL AND WITH THE PARLIAMENT

4. Following an initial discussion of the proposal in the Working Party on Land Transport under the Swedish Presidency, and the development of a compromise under the Spanish Presidency, Council reached a general approach on 4 December 2023.²

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

² See ST 16343/23.

5. The European Parliament designated the Committee on Transport and Tourism (TRAN) as the committee responsible for this proposal, where Ms Henna VIRKKUNEN (EPP, FI) is the rapporteur, and the Committee on Employment and Social Affairs (EMPL) as associated committee, where Ms Marianne VIND (S&D, DK) is the rapporteur. A vote on Ms VIND's report took place on 7 November 2023, and on Ms VIRKKUNEN's report on 16 November 2023. On 12 December 2023, the European Parliament adopted, by 477 votes to 101 against, with 41 abstentions, 19 amendments to the proposal and referred the file back to the committee for interinstitutional negotiations.
6. The European Economic and Social Committee adopted an opinion on 21 September 2023. The Committee of the Regions decided not to issue an opinion.
7. Under the Belgian Presidency, two technical meetings with the European Parliament took place on 9 and 22 January 2024. The Permanent Representatives Committee on 26 January 2024 endorsed a compromise proposal and provided a mandate for negotiations in trilogue.
8. In a trilogue meeting on 29 January 2024, the negotiators reached a provisional political agreement, on which the Permanent Representatives Committee was debriefed on 2 February 2024.

III. KEY ELEMENTS OF THE COMPROMISE

9. The political agreement, reflected in the text annexed to this note, is based on the following key elements:
 - a) The derogation relating to breaks in the driving time (Article 7) is formulated according to the amendment by the Parliament, allowing a split of the 45 minutes' break into two breaks of variable duration but at least 15 minutes; the recital (recital 8) is formulated accordingly. As regards the postponement of the daily rest (Article 8(2a), recital 9), the Parliament agreed to the text of the general approach, adding a safeguard relating to working times; in addition, the supporting role of the European Labour Authority is highlighted in recital 9a.

- b) The Parliament agreed to the text of the Council on reinforcing control (Articles 16(4) and (5), 19(2)), adding a task to the Commission to examine the best way towards a digitalisation of journey forms by the end of 2026 (Articles 8(6a), last subparagraph, 16(4) last subparagraph, recital 10aa). For the update of tachographs, the Commission accepted a latest date of 18 months after the entry into force of the Regulation (Article 17(5), recital 10bb), for the date from which the new rules will be applied, the flexibility provided in the Council's text is maintained.
- c) In respect of implementation and monitoring, the Commission will provide an assessment of the experience gained with the new rules by the end of 2018 (new Article 17a, recital 10b). The Parliament's recital relating to stakeholder involvement in the implementation (here recital 11a) was reformulated according to the Commission's suggestion.
10. The Presidency considers that the compromise of the political agreement is balanced and in line with the strategy for the negotiations and the mandate's direction (note ST 5299/24); changes agreed to the text in trilogue did not affect the balance.

IV. CONCLUSIONS

11. In view of the above, the Permanent Representatives Committee is invited to:
- agree on the compromise text as set out in the annex to this note, subject to revision by the lawyer-linguists of both institutions;
 - confirm that, should the Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, as set out in the Annex — subject to legal-linguistic finalisation —, the Council would approve, in accordance with Article 294(4) TFEU, the position of the European Parliament and the act would be adopted in the wording corresponding to the position of the European Parliament;
 - authorise the Presidency to send a letter to the Chair of the TRAN Committee to that effect.

Proposal for a

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

~~Having regard to the opinion of~~ **After consulting** the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

¹ The text is compared to the Commission proposal through bold italics/ strikethrough.

² OJ C , , p. .

³ ~~OJ C , , p. .~~

Whereas:

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

¹ Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1).

- (4) The ex post evaluation of Regulation (EC) No 561/2006 concluded that some of the uniform rules related to minimum breaks and rest periods do not fit the specificities of occasional road passenger transport services. Further assessments undertaken by the Commission in that respect have shown that some of the requirements of Regulation (EC) No 561/2006 on breaks and daily and weekly rest periods are unsuitable and impractical for drivers and operators engaged in the occasional road carriage of passengers, as they have a negative impact on the ability to organise efficient and high-quality occasional passenger services, on the working conditions of drivers, and consequently on road safety.
- (5) Therefore, it is appropriate to adapt the requirements on minimum breaks and rest periods to fit the specific requirements of occasional road passenger transport services. It is also appropriate to align applicable rules for national and international occasional-passenger transport services by road.
- (6) More flexible rules *on* the scheduling of the breaks and rest periods of drivers engaged in occasional road passenger transport services should in no way jeopardise the safety of drivers, road safety, increase the level of fatigue of drivers or lead to a deterioration in working conditions. Such flexibility should therefore not alter the current rules on the total minimum breaks, on maximum driving periods per day and per week ~~and~~, on the maximum fortnightly driving time *and on maximum working time in accordance with applicable law, including Directive 2002/15/EC of the European Parliament and of the Council*¹.

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

- (7) To ensure the uniform definition of occasional passenger services, it is necessary to clarify that the definition set out in Regulation (EC) No 1073/2009 of the European Parliament and of the Council¹ covers both national and international services. It is also appropriate to update the reference to Regulation (EC) No 1073/2009, which repealed Council Regulation (EEC) No 684/92².
- (8) More flexibility in the scheduling of breaks for drivers engaged in occasional road passenger transport services should not ~~prevent those~~ **cause in any way more fatigue or stress for drivers. from taking** ***It should be ensured that they take*** breaks of the minimum duration necessary to enable them to rest properly ***and sufficiently***. Therefore, it is appropriate to set a minimum duration for each break. ***Drivers engaged in occasional road passenger transport services should be allowed to split their obligatory break into three separate-two*** breaks of at least 15 minutes each, ~~in addition to the other possibility of splitting a break~~ ***while respecting the total required minimum rest time of 45 minutes. More flexibility in the scheduling of those breaks, however, should not prevent drivers from having breaks longer than the required minimum duration or having additional breaks.***

¹ Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (recast) (OJ L 300, 14.11.2009, p. 88).

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

- (9) To ensure that greater flexibility in the scheduling of rest periods of drivers engaged in occasional road passenger transport services is not abused, it is essential to clearly delimit the scope of such flexibility. Drivers should therefore be able to postpone the start of their daily rest periods for a maximum period of 1 ~~or 2 hours~~ **hour**, in cases where the driving period for that day has not exceeded 5 ~~or 7 hours~~ **respectively**, and should postpone the start only when carrying out ~~journeys of 8~~ **single occasional services of 6** days or longer. Such flexibility should be further limited to ~~only one of each derogation~~ **so that the derogation may be used only once** during the period of the **journey, or twice in single occasional services of 8 days or longer. The use of the derogation does not change the latest start time of a weekly rest period.** ~~It should be also possible to counter check such circumstances~~ **With a printout from the recording equipment or the duty roster** ~~view to effective and efficient enforcement, until a digital journey form is available, a copy of the journey form in paper or electronic format should be used~~, in addition to the tachograph records.
- (9a) ***The checks on compliance with the provisions of this Regulation concerning breaks and rest periods by the competent national authorities will be supported, as appropriate, by the European Labour Authority (ELA).***
- (10) Limiting the possibility to postpone the weekly rest period for up to 12 consecutive 24-hour periods exclusively to occasional international passenger services has a negative impact in terms of **equal treatment and** undistorted and fair competition between operators, especially small and medium enterprises. Occasional national passenger services might as well provide their services under the same conditions as occasional international passenger services in terms of the distance travelled or the duration or services rendered to passengers. Occasional national passenger services should therefore also benefit from such possibility.

- (10a)** *In order to facilitate enforcement, drivers should carry on board the vehicle, throughout the journey, a ‘journey form’, containing key information about the journey; such a journey form is already in use in the international occasional passenger transport service under Regulation (EC) No 1073/2009. Aligned with control provisions in Regulation (EU) No 165/2014 on the keeping of manual records, the drivers should also carry on board paper or electronic copies of journey forms covering occasional transport performed in the previous 28 days and, from 31 December 2024, in the previous 56 days.*
- (10aa)** *In order to improve the effectiveness and efficiency of enforcement, control measures and requirements should be established taking full advantage of digital tools. The Commission should assess adequate measures to digitalise the journey form.*
- (10b)** *To ensure efficient and high-quality occasional passenger transport services as well as good working and driving conditions for drivers, the Commission should evaluate the enforcement of these rules and their effect on the working conditions of the drivers and the attractiveness of the sector.*
- The Commission should, in particular, monitor the use of the derogations by assessing whether the total accumulated driving time during the period covered by the derogation is not excessive or contributing to driver fatigue and stress and weighing on road safety..*
- (10bb)** *Regulation (EC) No 561/2006 requires Member States to lay down rules on penalties applicable to infringements of that Regulation and Regulation (EU) No 165/2014, and to ensure that they are implemented. In its judgment in case C-906/19, the Court of Justice made clear that Member States are precluded from imposing a penalty after having detected an infringement against Regulation (EU) No 165/2014 which was committed on the territory of another Member State and for which a penalty has not yet been imposed, and recognised in its paragraph 45 that ‘in so far as that aspect of the EU rules in force may have adverse effects on working conditions for drivers and on road safety, it is for the EU legislature to decide on any possible amendments’. Given that infringements on those two Regulations often occur simultaneously and that the purpose of Regulation (EU) No 165/2014 is to ensure compliance with Regulation (EC) No 561/2006, it is appropriate that penalties on an undertaking or a driver can be imposed for infringements of both Regulations, when they are detected on the territory of one Member State, but committed on the territory of another Member State.*

- (11) Since the objectives of this Regulation, namely to ensure fair competition and improve working conditions and road safety through the harmonisation of the rules on breaks and rest periods for drivers engaged in occasional road passenger transport services, ***and to ensure that Member States are able to impose penalties for infringements of tachograph rules detected on their territory irrespective of where those infringements were committed***, cannot be sufficiently achieved by the Member States, but can rather, by reason of the nature of the objectives, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (11a) ***The Commission should promote, with the full involvement of social partners and Member States, a common approach on the implementation, application and enforcement of this Regulation, including by developing guidelines and fostering cooperation between all parties concerned.***
- (11b) ***In order to allow for proper enforcement of this Regulation, the Commission should include, at the earliest occasion of reviewing Commission Implementing Regulation (EU) 2016/799 or any implementing act replacing it, and not later than 18 months after the entry into force of this Regulation, technical specifications for smart tachographs facilitating the verification of compliance by control authorities, in a way that the smart tachograph should also record whether the vehicle is engaged in regular or occasional passenger transport.***
- (12) Regulation (EC) No 561/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) Article 4 is amended as follows:

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

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

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

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

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

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

‘For a driver engaged in an occasional passenger service the break referred to in the first paragraph may also be replaced by ~~three~~**two** breaks, of at least 15 minutes each, distributed over the driving period referred to in the first paragraph, in such a way as to comply with the first paragraph.’;

(3) Article 8 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. Provided that road safety ~~is~~ and the working conditions of the driver are not thereby jeopardised, a driver engaged in ~~an~~ a single occasional passenger service with a duration of at least 8 days ~~6 consecutive 24 hour periods~~ may derogate from paragraph 2, first subparagraph, ~~in the following ways:~~ by taking the daily rest period once within a maximum of 25 hours after the end of the previous daily rest period or weekly rest period, provided that the total accumulated driving time for that day has not exceeded 7 hours. Complying with the same conditions, this derogation may be used twice in a single occasional passenger service with a duration of at least 8 consecutive 24 hour periods. Those derogations are without prejudice to the maximum working time under the applicable law.’;

~~(a) postponing the daily rest period by at most 1 hour, provided that the total accumulated driving time for that day has not exceeded 7 hours;~~

~~(b) postponing the daily rest period by at most 2 hours, provided that the total accumulated driving time for that day has not exceeded 5 hours.’~~

~~Each of the derogations referred to in the first subparagraph, points (a) and (b), may be used only once during the journey referred to in the first subparagraph.~~

~~The driver shall indicate the reason for such derogation, manually on the record sheet of the recording equipment, on a printout from the recording equipment or in the duty roster, at the latest on arrival at the destination or at the suitable stopping place.’;~~

- (b) in paragraph 6a, the introductory phrase and point (a) are replaced by the following:

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

- (c) ~~the service lasts at least 24 consecutive hours~~ *in paragraph 6a, point (a) is deleted;*

- (d) in paragraph 6a, the following subparagraph is added:

‘The Commission shall examine the options for digitalisation of the journey form in the context of broader digitalisation efforts in the road transport sector.’;

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

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

- a) until a digital journey form is available, by carrying a completed form (‘journey form’) on board of the vehicle. The transport undertaking shall be responsible for equipping the driver with completed journey forms prior to each journey. The journey form shall contain the required information set out in accordance with Regulation (EC) No 1073/2009;*
- b) until a digital journey form is available, by carrying on board paper or electronic copies of such journey forms which cover the previous 28 days, and, from 31 December 2024, the previous 56 days. That obligation shall cease to apply at the latest when the vehicle uses a tachograph allowing the recording of the type of passenger service referred to in paragraph 5.*

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

No later than 31 December 2026, the European Commission shall assess the digitalisation of the journey form for drivers engaged in occasional services of carriage of passengers in terms of feasibility, cost-effectiveness and its impact on enforceability and working conditions of the drivers, and if appropriate, present to the Parliament and the Council a proposal regarding this digitalisation. The assessment shall cover the development of a digital journey form with the required information set out in Regulation (EC) No 1073/2009 to allow it to be electronically registered prior to the start of the journey in a multilingual interface, to which operators have access. For this purpose, the Commission may also explore the possibility of developing one or more new modules for IMI.

5. *To ensure uniform application and enforcement of Article 7, fourth subparagraph, and Article 8(2a) and (6a), the Commission shall include, at the earliest occasion of reviewing Commission Implementing Regulation (EU) 2016/799* or any implementing act replacing it, and at the latest 18 months after the entry into force of [OJ: refer to the amending Regulation], appropriate technical specifications allowing to record and store data on the tachograph relating to the type of the passenger service, namely regular or occasional passenger service. The implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2a); the date of application of those implementing acts shall be set after consultation of the relevant stakeholders. ';*

*** Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ L 139, 26.5.2016, p. 1).**

(5) A new Article 17a is added as follows:

'Article 17a

By 31 December 2028, the Commission shall draw up a report assessing the consequences of the rules of this Regulation applicable to the occasional passenger sector in respect of road safety as well as social aspects, in particular the working conditions of the drivers. The Commission shall send the report to the European Parliament and the Council. If it deems it appropriate, the Commission shall make relevant legislative proposals.'

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

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

Article 2

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

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

Done at _____ ,
