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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 11 to 14 March 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Transport and Tourism (TRAN) Karima DELLI (Greens/EFA, FR) presented on behalf of TRAN a compromise amendment (amendment number 30) to the abovementioned proposal for a Regulation, for which Henna VIRKKUNEN (EPP, FI) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 13 March 2024, the plenary adopted the compromise amendment (amendment number 30) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0150

Minimum requirements on minimum breaks and daily and weekly rest periods in the occasional passenger transport sector

European Parliament legislative resolution of 13 March 2024 on 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 (COM(2023)0256 – C9-0178/2023 – 2023/0155(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0256),
- having regard to Article 294(2) and Article 91(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0178/2023),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 11 September 2023¹,
- after consulting the Committee of the Regions,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 9 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the opinion of the Committee on Employment and Social Affairs,
- having regard to the report of the Committee on Transport and Tourism (A9-0370/2023),

¹ OJ C, C/2023/882, 8.12.2023, ELI: <http://data.europa.eu/eli/C/2023/882/oj>.

1. Adopts its position at first reading hereinafter set out²;
2. Calls on the Commission to refer the matter to Parliament again if it replaces substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

² This position replaces the amendments adopted on 12 December 2023 (Texts adopted, P9_TA(2023)0453).

Position of the European Parliament adopted at first reading on 13 March 2024 with a view to the adoption of Regulation (EU) 2024/... 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 *and as regards Member States' power to impose penalties for infringements of Regulation (EU) No 165/2014 committed in another Member State or in a third country*

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 Committee⁵,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁶,

⁵ OJ C, C/2023/882, 8.12.2023, ELI: <http://data.europa.eu/eli/C/2023/882/oj>.

⁶ Position of the European Parliament of 13 March 2024.

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 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 in Regulation (EC) No 561/2006 of the European Parliament of the Council⁷ 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.

⁷ 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).

- (3) The specificities of the occasional road passenger transport sector are not shared by the road freight transport sector 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 by 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, where 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, during working time drivers can be subject to some additional activities, often resulting from interactions with passengers.
- (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 occasional road passenger transport, 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) It is therefore 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 road passenger transport services.
- (6) More flexible rules *on* the scheduling of breaks and rest periods of drivers engaged in occasional road passenger transport services should in no way jeopardise the safety of drivers or 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 total minimum breaks, on maximum driving periods per day and per week, on 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*⁸.

⁸ *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 a 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 Council⁹ covers both national and international services. It is also appropriate to update the definition of regular passenger service to refer to Regulation (EC) No 1073/2009, which repealed Council Regulation (EEC) No 684/92¹⁰.
- (8) More flexibility in the scheduling of breaks for drivers engaged in occasional road passenger transport services should not in any way ***cause more fatigue or stress for drivers. It should be ensured that drivers 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 mandatory break into ***two*** breaks of at least 15 minutes each ***while respecting the total required minimum break 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 from having additional breaks.***

⁹ 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 (OJ L 300, 14.11.2009, p. 88).

¹⁰ 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 one **hour** where the driving period for that day has not exceeded ■ seven hours ■ , and should be able to postpone the start of their daily rest periods only when carrying out **single occasional passenger services** of **six** days or longer. Such flexibility should be further limited ***so that it is possible to use that derogation from the rules on rest periods only once during the duration of the journey, or twice in single occasional passenger services of eight days or longer. The use of that derogation does not affect the latest start time of a weekly rest period. With a 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.
- (10) ***Checks by the competent national authorities on compliance with the provisions of this Regulation concerning breaks and rest periods will be supported, as appropriate, by the European Labour Authority (ELA).***

- (11) Limiting the possibility to postpone the weekly rest period for up to 12 consecutive 24-hour periods exclusively to international occasional passenger services has a negative impact in terms of ***equal treatment and*** undistorted and fair competition between operators, especially small and medium enterprises. National occasional passenger services might also provide their services under the same conditions as international occasional passenger services in terms of distance travelled, duration of journey or services rendered to passengers. National occasional passenger services should therefore also benefit from such possibility to postpone the weekly rest period.
- (12) ***In order to facilitate enforcement, drivers should carry, on board the vehicle and throughout the journey, a journey form containing key information about the journey. Such a journey form is already in use for international occasional passenger services under Regulation (EC) No 1073/2009. In alignment with provisions in Regulation (EU) No 165/2014 of the European Parliament and of the Council¹¹ on the keeping of manual records, drivers should also carry on board paper or electronic copies of journey forms covering occasional road passenger transport services performed in the previous 28 days and, from 31 December 2024, in the previous 56 days.***
- (13) ***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 which measures are adequate for digitalising the journey form.***

¹¹ 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).

- (14) *To ensure efficient and high-quality occasional passenger services as well as good working and driving conditions for drivers, the Commission should evaluate the enforcement of the rules applicable to occasional passenger services and their effect on the working conditions of drivers and the attractiveness of the sector. The Commission should, in particular, monitor the use of the derogations introduced by this Regulation by assessing whether or not the total accumulated driving time during the period covered by a derogation is excessive, contributing to driver fatigue and stress, or affects road safety.*
- (15) *Regulation (EC) No 561/2006 requires Member States to lay down rules on penalties applicable to infringements of that Regulation and of Regulation (EU) No 165/2014, and to ensure that those rules are implemented. In its judgment of 9 September 2021 in case C-906/19¹², the Court of Justice made clear that Member States are precluded from imposing a penalty after having detected an infringement of 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. The Court recognised that in so far as that aspect of the Union rules in force might have adverse effects on working conditions for drivers and on road safety, it is for the Union legislature to decide on any possible amendments. Given that infringements of Regulations (EC) No 561/2006 and (EU) No 165/2014 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 can be imposed on an undertaking or a driver for infringements of both Regulations where such infringements are detected on the territory of one Member State but have been committed on the territory of another Member State or of a third country.*

¹² Judgment of the Court of Justice of 9 September 2021, Criminal proceedings against FO, C-906/19, ECLI:EU:C:2021:715, paragraph 45.

- (16) 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.
- (17) ***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.***

(18) *In order to allow for proper enforcement of this Regulation, the Commission should include, at the earliest occasion of reviewing Commission Implementing Regulation (EU) 2016/799¹³ 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 checks on compliance by control authorities, so that smart tachographs also record whether the vehicle is engaged in regular or occasional passenger services.*

(19) Regulation (EC) No 561/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

¹³ *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).*

Article 1

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

(1) in Article 4, point (n) is replaced by the following:

- ‘(n) ‘regular passenger services’ means ‘regular services’ and ‘special regular services’ as defined in Article 2, points 2 and 3, respectively, of Regulation (EC) No 1073/2009 of the European Parliament and of the Council*, whether national or international;
- (na) ‘occasional passenger services’ means ‘occasional services’ as defined in Article 2, point 4, of Regulation (EC) No 1073/2009 ■ , whether national or international;

* 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) No 561/2006 (OJ L 300, 14.11.2009, p. 88).’; ■

- (2) in Article 7, the following **■** paragraph is inserted after the second paragraph:

‘For a driver engaged in an occasional passenger service, the break referred to in the first paragraph may also be replaced by **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 provisions of the first paragraph.’;

- (3) Article 8 is amended as follows:

- (a) the following paragraph is inserted:

‘2a. Provided that road safety **and the working conditions of the driver are** not thereby jeopardised, a driver engaged in **a single** occasional passenger service with a duration of at least six **consecutive 24 hour periods** may derogate from paragraph 2, first subparagraph, **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 seven hours. **Complying with the same conditions, that derogation may be used twice in a single occasional passenger service with a duration of at least eight consecutive 24 hour periods. The use of that derogation is without prejudice to the maximum working time under the applicable law.**’;

(b) paragraph 6a is amended as follows:

(i) the introductory phrase *is* 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:’;

(ii) *point (a) is deleted;*

(iii) *the following subparagraph is added:*

‘The Commission shall examine the options for digitalising the journey form referred to in Article 16(4) 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 roadside checks, until a digital journey form is available, the driver shall be able to justify the use of the derogations under Article 7, third paragraph, and Article 8(2a) and (6a) by:

(a) carrying on board the vehicle a completed journey form, containing the information required in accordance with Regulation (EC) No 1073/2009, which the transport undertaking shall be responsible for providing the driver with prior to each journey; and

(b) carrying on board the vehicle paper or electronic copies of such journey forms which cover the previous 28 days, and, from 31 December 2024, the previous 56 days.

The obligation in point (b) of the first subparagraph 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 for international services may be used, indicating its use for national service. The Commission may adopt an implementing act establishing the format of the journey form for national services to simplify checks on compliance, 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 Commission shall assess the options for digitalising the journey form for drivers engaged in occasional passenger services in terms of feasibility, cost-effectiveness and its impact on enforceability and working conditions of drivers and, if appropriate, present to the European Parliament and the Council a legislative proposal regarding such digitalisation.

That assessment shall cover the development of a digital journey form containing the information required in accordance with Regulation (EC) No 1073/2009 to allow such information to be electronically registered prior to the start of the journey in a multilingual interface to which operators have access. To that end, the Commission may also explore the possibility of developing one or more new modules for the Internal Market Information System established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council.*

5. *To ensure uniform application and enforcement of Article 7, third paragraph, and Article 8(2a) and (6a), the Commission shall, at the earliest occasion of reviewing Commission Implementing Regulation (EU) 2016/799** or any implementing act replacing it, and at the latest by ... [18 months after the date of entry into force of this amending Regulation], adopt implementing acts laying down appropriate technical specifications that enable the recording and storage on the tachograph of data relating to the type of passenger service, namely regular or occasional passenger service. The date of application of those implementing acts shall be set after consulting the relevant stakeholders. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2a).*

* *Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).*

** *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) *the following Article is inserted:*

‘Article 17a

By 31 December 2028, the Commission shall draw up a report assessing the consequences of the provisions of this Regulation relating to the occasional passenger services sector in respect of road safety and social aspects, in particular the working conditions of drivers. The Commission shall send that report to the European Parliament and the Council. If it considers it to be appropriate, the Commission shall make relevant legislative proposals.’;

(6) *in Article 19(2), the first subparagraph 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 ...,

For the European Parliament

The President

For the Council

The President
