

SOCIAL PARTNERS AGREEMENT BETWEEN THE INTERNATIONAL ROAD TRANSPORT UNION AND THE EUROPEAN TRANSPORT WORKERS FEDERATION

Joint Position on Articles and Aspects of

EU Regulation 561/2006/EC Requiring Clarification and Enforcement Guidance

I. Purpose and objective of the Joint Position

The EU Driving and Rest Time Rules Regulation (561/2006/EC) entered into force on the 11 April 2007. However, many articles of the Regulation remain unclear and could lead to different interpretations between Member States. This calls for a thorough clarification of such articles and for common enforcement interpretations and or guidance to be elaborated by the European Commission, Member States and Social Partners (IRU/ETF). Such a project is in accordance with article 25.1 (b) of the new Regulation which states the following objective: to 'clarify the provisions of this Regulation, with a view to promoting a common approach'.

A common interpretation and harmonised enforcement of EU Driving and Rest Time Rules will help minimise distortions of competition within the EU as well as the potential for unintentional infringements and unnecessary fines by international operators and drivers. The Social Partners call upon the European Commission and Member States to carry out this work of systematic clarification as quickly as possible and to ensure its practical application in EU road transport enforcement.

Within the framework of the European Commission's Social Sector Dialogue for road transport the Social Partners have identified articles where there is shared appreciation of the need for clarification and or enforcement guidance. Moreover - where the Social Partners have been able to find agreement - this document makes recommendations for the possible resolution of these problems.

In this document the issues identified can be characterized as problems requiring further interpretation, additional enforcement or implementation guidance and clear errors in that have arisen from drafting or translation.

II. Jointly identified Problems and Recommendations

1. Articles Requiring Further Interpretation

Article 4 (d): The definition of a break is given in this article but the insertion of the words that breaks must be 'used exclusively for recuperation' has called into question the ability to take break when the driver is inactive in a moving vehicle engaged in a double manning operation.

The consensus should be formalised that the time a driver spends - as an inactive passenger - in a moving vehicle, during double manned operations can be treated as a break.

Article 6.2: This article states that 'The weekly driving time shall not exceed 56 hours and shall not

result in the maximum weekly working time laid down in Directive 2002/15/EC being exceeded.' It is understood that this reference was made to ensure its provisions relating to a 56 hour week did not supersede the requirement of Directive 2002/15/EC for mobile workers to adhere on average to a 48 hour working week. Nevertheless, the Regulation 561/2006/EC was not intended to regulate Working Time in any way.

It must be emphasised that enforcement officers shall not engage in cross border road side enforcement of the Working Time Directive. However there must be proper enforcement of working time at national level by the competent authorities, and especially through company checks where the relevant information should be available.

Article 7: The second paragraph of this article specifies conditions under which split breaks can be taken during and after a period of 4 hours 30 minutes driving. The contents of paragraph 2 are insufficiently clear in stating that when taking split breaks the 4.5 hour period during which all breaks must be taken refers only to driving time and does not refer to driving time plus break time. The following scenario must remain legitimate even though the second split break was only completed 4 hours 45 minutes after he first began his driving period. The driver has driven for 1 hour and rested for 15 minutes, after which he drives for 3 hours and rests for 30 minutes.

It should be stated that the 'period' during which split breaks must be taken as referred to in article 7 paragraph 2 represents accumulated driving time only and that in accordance with paragraph one a split rest of 30 minutes can be taken immediately after this period of 4 hours 30 minutes of driving time.

Article 9.1: This article gives a derogation allowing a driver to take a regular daily rest period on-board a ferry or a train if he has access to a bunk or a couchette. However this conflicts with article 3 (b) of the Working Time Directive (2002/15/EC) which states that all traveling time must be considered a period of availability.

In this article it should be clear that the Regulation takes precedence over article 3(b) of the Directive on Working Time by permitting a driver to take rest on board a ferry or a train when he has access to a bunk or a couchette.

2. Articles Requiring additional Enforcement or implementation Guidance

- **Article 2.2(b) & 2.3:** These articles assert that from 11 April 2007 the new EU Regulation will apply to all journeys between the European Community, Switzerland and the countries forming the European Economic Area (EEA). However, Switzerland maintains that this cannot be the case under the terms of their bilateral transport agreement with the EU which requires them to pass their own equivalent legislation which may only be in place at the earliest in January 2008. Until that time the Swiss authorities have stated that their country will apply AETR rules. However the actions of EU enforcement officers towards vehicles which travel to, originate from or have transited through Switzerland must be clarified.

Until the situation is officially confirmed to the contrary by both EU and Swiss authorities controls vehicles traveling to, transiting through or originating from Switzerland should be carried out on the basis of the AETR agreement only.

- **Article 10.2:** Article 10.2 requires that a transport undertaking plans the work of its drivers so that

they can comply with the provisions of this Regulation.

While a transport undertaking should plan the work of his drivers in such a way as to comply with the provisions of the Regulation, it must be recognised that the undertaking cannot be held liable if a driver gives misinformation concerning work carried out for other employers.

- **Article 10.4:** The principle of co-liability throughout the supply chain for infringements against the regulation is established in this article. The recognition that transport service contractors such as shippers and freight-forwarders can through their instructions to undertakings become responsible for infringements is positive. However this principle needs practical measures for implementation.

Member States should make known the mechanisms which will be established under their respective legal systems to put into practice the principle of co-liability. Evidence such as written instructions to transport operators should be recognised as evidence for a transport service contractor's liability for a specific infringement of the Regulation.

– **Article 19.2:** Under article 19.2 the Regulation establishes the principle of extraterritorial sanctions. This would allow an enforcement office to apply a sanction against a foreign or national haulier for an offence committed outside the territory on which it was detected. According to the Regulation this could be carried out through an on the spot fine or until 1 January 2009 through requesting the competent authorities in the operator's country of registration to apply sanctions under their own law.

Extraterritoriality for offences should only be implemented once a Member State has clearly chosen and announced the option to be used to pursue the offence. This will ensure consistent treatment of international drivers and operators by the same national authority.

- **Article 19.4:** The article requires Member States to establish a system of proportionate penalties for infringements of the Regulation which can be applied to undertakings, transport service contractors and driver employment agencies.

Member States must develop a harmonised system of penalties for infringements applicable across the whole EU.

- **Article 20.3:** This article states that a driver who is employed or at the disposal of more than one transport undertaking shall provide sufficient information to each undertaking to enable it to comply with Chapter II (crews, driving times, breaks and rest periods).

As indicated above concerning article 10.2 it must recognise that the undertaking can not be held liable for any inaccurate information supplied by the driver concerning activities undertaken for another employer.

Article 26.4: Amendments to paragraph 1 of article 15 specify alternative means for a driver to record his activities when using a digital tachograph 'where a driver card is damaged, malfunctions, or is not in the possession of the driver...'

The MOU should make clear that a driver whose driver card has not been delivered within the maximum time limits set down by the card issuing authorities may continue to drive by making use of the provisions set down in article 26.4 (a) for alternative means of recording driving and rest times.

– **Article 26.4:** Amendments to paragraph 7 of article 15 oblige drivers to have in their possession tachograph charts or record sheets showing their activities ‘during the current week and the previous 15 days’.

It should be confirmed that drivers are required to carry records for the current week and the previous 15 ‘calendar’ days not ‘working days’ as previously considered by certain Member State authorities. It should also be confirmed that until the current AETR rules are aligned with the new EU Regulation drivers operating under the scope of that agreement need only carry with them tachograph records for the current week and the last day of the previous week in which they drove.

3. Drafting Errors

- **Article 4(k):** In giving the definition of daily driving time this article states that this is ‘the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period’.

It should be confirmed that daily driving time is also the driving time between a ‘weekly rest period and a daily rest period’.

4. Errors in Translation

- **Article 4 (c):** This article describes a driver as ‘any person who drives the vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary’. However, in the Danish translation of the Regulation - and potentially in others – the words ‘as part of his duties’ have been omitted, creating the possibility that any crew member on board the vehicle who is qualified to drive - but have not been instructed to do so - are considered to be drivers. This was clearly not the intention of the Regulator and should be clarified.

All language versions must be consistent in specifying that drivers mean only those persons who drive or are expected to drive ‘as part of their duties’.

- **Article 6.3:** The Dutch language version and possibly others are insufficiently clear on this article, which sets a limit of 90 hours driving during any two consecutive weeks. The English text reveals that this means that the enforcer can look at any pair of consecutive weeks to verify that the 90 hour limit has been observed. By way of an example this means a driver checked in week 24 could have his total driving time in week 23 and week 24 examined or equally week 22 and week 23.

The EU should confirm that for all language versions, checks are not carried out on fixed pairs of calendar weeks but rather can extend to any two consecutive weeks.

- **Article 13 (h):** Article 13 (h) deals with permitted national exemptions from the Regulation provided to vehicles used in connection with essential services such as the provision of gas, electricity, refuse, road maintenance and sewerage. However regarding sewerage, in the Danish language version the exemption is effectively limited to vehicles used for constructing sewerage facilities rather than to all vehicles used in connection with the handling of sewerage, as is the case with other language versions. Regarding household refuse, in several language versions the collection and disposal is limited to door-to-door operations whereas in other language versions door-to-door is not mentioned.

All language versions of the Regulation should offer the same possibilities to Member States concerning the scope of national exemptions. It must be ensured that all Member States interpret the national exemption for vehicles used in connection to sewerage and household refuse in line with the most flexible language version.