



EUROPEAN COMMISSION  
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Directorate C - Land  
**C.1 - Road Transport**

# Mobility Package I – Social rules

## Driving and rest times

## Questions and Answers

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enforcers

General comment: this is intended for internet publication. It could be translated and contain hyperlinks to the relevant articles and legislation

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*DISCLAIMER: This document was prepared by the Commission services and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. In this context, it is noted that Article 8(8) and Article 8(8a) of Regulation (EC) 561/2006, covered by questions 1 to 6, currently form the object of annulment proceedings before the Court of Justice.*

*The examples given are illustrative and the list of concrete examples will be developed further.*

## I. Return of a driver

<b>Q1</b>	<b>How shall the obligation of return of the driver to “home” be understood and applied? What are the respective obligations and rights of the employer and of the driver ?</b>	Article 8(8a)
A1	<p>The objective of the measure is to improve the working conditions of drivers in road transport by avoiding that they spend excessively long periods on the road.</p> <p>The obligation is on the transport undertaking, to organise the work of drivers in such a way that they are able to return (‘home’) within each period of three or four consecutive weeks (depending whether the driver had two consecutive reduced weekly rests).</p> <p>Article 8(8a) of the Regulation refers to two possible places of return that must be offered and organized by the employer, namely the employer's operational centre where the driver is normally based in the Member State of the employer's establishment, or the drivers' place of residence when the latter differs from the employer’s place of establishment.</p> <p>As stated by Recital (14) of the Regulation, “[...] <i>the drivers are free to choose where to spend their rest period</i>”, it is up to the driver to choose among the two options offered by the employer. This implies that the driver may not be obliged by the employer to choose the employer’s establishment as the place of return.</p> <p>A question can arise where the driver does not express a choice between these two possibilities. In this case, the employer can choose between the two, according to what is considered more convenient. Evidence in this context would include an invitation (e.g. e-mail), put to the driver but not followed up, to choose between the residence or the operational centre of the undertaking.</p> <p>A different matter is where the driver ultimately spends his or her rest. In this respect, the Regulation does not prescribe any particular place and there can be no infringement to EU law on this count. That said, the employer has to offer the possibilities of return as prescribed by the Regulation. The rule establishes an obligation of an organisational nature, combined with an obligation to keep the corresponding records for checks by the competent authorities.</p> <p>While the driver may choose his/her place of rest, he/she has no possibility to release the employer from its obligations to organize the work enabling the regular return to “home”. This obligation on the transport undertaking remains, whatever the driver declares, and whatever he or she ultimately makes out of it.</p> <p>To sum up, the employer is obliged to offer to the driver a possibility of return to either his or her place of residence or to the employer's operational centre where the driver is normally based, through an appropriate organisation of the work. Such organisation has to be actively undertaken, without particular request by the driver. As regards the concrete place of rest, this is a matter for the driver to consider and does not require the employer nor the driver to keep any particular evidence.</p>	

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	<p>For example, a Polish driver residing in Slovakia and employed by a company established in Poland carries out transport operations between France and Spain. The employer must offer the choice to this driver, and organise the work accordingly, so as to enable the driver to return either to the place of residence (Slovakia) or the operational centre of the company (Poland) on regular basis. The driver may however inform the employer of his/her decision to take the opportunity of a break to go to another place, e.g. south of Italy for holiday. After the break, the driver will go directly from the place where he took his rest in Italy to the place where he/she will restart work (Spain or France).</p>	
<b>Q2</b>	<p><b>How shall the transport undertaking prove that it has organised the work in such a way that the driver has the possibility to return to either the place of residence or to the operational centre of the undertaking?</b></p>	Article 8(8a)
A2	<p>Transport undertakings shall use tachograph records, duty rosters of the drivers or other documentation to prove compliance with the obligation to organise the return of the driver (recital 14 of Regulation (EC) No 561/2006). Other documentation proving that the employer offered a genuine possibility to the driver to return either to the place of residence or to the operational centre of the undertaking could include, for example, tickets or any other proof of other travel arrangements (e.g. a proof that a driver travelled back ‘home’ by a mini-bus provided by an employer).</p> <p>The evidence must be kept at the premises of the undertaking and be presented if requested by the control authorities of the Member State of establishment of the employer or by the control authorities of any other Member States. The driver should not be requested to possess such have evidence, nor to possess evidence of the place where he spent a regular weekly rest or longer break. After having performed a roadside check, the control authorities could for example decide to request additional information on the activity of a driver to the authorities of the Member State where the road transport undertaking is established. Regulation (EC) No 561/2006 and Directive 2006/22/EC provide that Member States shall assist each other in applying the Regulation and in checking compliance herewith.</p> <p>The obligation of the employer to enable a regular return of a driver is of an organisational nature, combined with an obligation to keep corresponding records for checks by competent authorities. Therefore, a declaration/a waiver signed by a driver (for example, as part of employment contract or a declaration renouncing in advance to the right of return, i.e. before the driver receives an offer from the employer) renouncing his/her right to choose a return “home” cannot exonerate the employer from the obligation to offer a real possibility to return, nor from the obligation to organise the work accordingly.</p>	
<b>Q3</b>	<p><b>Who should pay for the travelling costs of a driver to return to either the operational centre of the undertaking or to the place of residence?</b></p>	Article 8(8a)
A3	<p>If a driver ends his/her working period in the one of the two places of his/her choice for the return or in the vicinity of one of those places, then there are no additional traveling costs involved for the employer.</p> <p>In case where the working period preceding the return to one of the two places ends in a place distant to the chosen place of return, then the employer’s obligation to organize the return of the drivers includes a financial responsibility to cover traveling costs.</p>	

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	<p>When a driver decides not to benefit from the employer’s offer to return to the driver’s place of residence or to the operational centre of the employer and decides to spend his/her rest period in another place, then any travelling costs to and from this place should be covered by the driver.</p> <p>The same principles apply to drivers having a place of residence in a third country and being employed by the company established in the EU.</p>	
<b>Q4</b>	<b>Is the provision applicable to self-employed drivers? How can a self-employed driver prove that s/he fulfilled the obligation of return to the place of residence or to the operation centre of the undertaking?</b>	Article 8(8a)
A4	<p>Article 8(8a) applies to employed drivers only.</p> <p>Regulation (EC) No 561/2006 does not define what marks an employment relationship. However, absent a reference to national law, the concept must be understood as having an autonomous meaning based on objective factors.</p> <p>For its interpretation, inspiration may be drawn from jurisprudence regarding similar situations (see Cases C-658/18, paragraphs 88 et seq.; C-147/17, paragraphs 41 et seq.; C-316/13, paragraphs 27 et seq.). Thus, the determination of the existence of an employment relationship should be guided, by the facts relating to the actual performance of the work and not by the parties' description of the relationship. According to the Court, whether a person is an employed person or not must be determined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he/she receives remuneration.</p> <p>To the same effect, even though the definition of “self-employed driver” contained in Directive 2002/15/EC is not as such applicable in the context of Regulation (EC) No 561/2006, regard may be had as well to that definition. An activity conducted as “self-employed driver” within the meaning of that definition should not be considered as giving rise to an employment relationship for the purposes of Article 8(8a) of Regulation (EC) No 561/2006.</p> <p>Genuinely self-employed persons do not fall within the scope of Article 8(8a). However, a person, that is merely declared to be self-employed but whose situation fulfils the conditions characterising an employment relationship with another (natural or legal) person, instead must be considered as employed person for the purposes of Article 8(8a) and is thus covered by this provision.</p>	
<b>II. Ban to take a regular weekly rest in the cabin of the vehicle</b>		
<b>Q5</b>	<b>What constitutes suitable gender-friendly accommodation to take the regular weekly rest periods?</b>	Article 8(8)
A5	<p>The legislation clarifies that regular weekly rests of at least 45 hours must be taken in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities, they cannot be taken in the cabin of the vehicle.</p> <p>There is no definition nor a list of criteria to define the notion of suitable accommodation in the legislation and it is important to leave flexibility on the type of accommodation that drivers may use.</p> <p>However, Article 8(8) clearly requires that the accommodation offers adequate sleeping facilities and</p>	

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	<p>sanitary facilities. The facilities should leave enough privacy for each individual.</p> <p>Several types of accommodation may fulfil those criteria, for instance, a hotel, motel rental apartment or a private home.</p>	
<b>Q6</b>	<b>What evidence should a driver present to a controller to prove that he/she has not spent the regular weekly rest in the truck but in a suitable accommodation?</b>	Article 8(8)
<b>A6</b>	<p>Article 34(3) of Regulation (EU) No 165/2014 specifies that Member States shall not impose on drivers a requirement to present any forms attesting for drivers' activities away from the vehicle. This covers also a situation of taking a regular weekly rest outside the vehicle. Thus, enforcers cannot require from drivers documents proving that their regular weekly rest preceding the roadside inspection was not spent in the vehicle.</p> <p>Drivers or employers can only be fined for non-compliance with the prohibition of taking the regular weekly rest (or rest of more than 45 hours taken in compensation) in the vehicle when they/their drivers are caught having a regular weekly rest inside the vehicle at the time of the control.</p>	
<b>III. Ferry rule</b>		
<b>Q7</b>	<b>Does a driver accompanying a vehicle transported by ferry or train, for a journey of 8 hours or more, and with access to a sleeper cabin, have to take the other parts of the regular weekly rest period in a suitable accommodation, or is s/he allowed to spend these parts of the regular weekly rest in the vehicle?</b>	Article 9
<b>A7</b>	<p>According to Article 8(8) of Regulation (EC) No 561/2006, the regular weekly rest periods and any weekly rest period of more than 45 hours taken in compensation for previous reduced weekly rest periods must not be taken in a vehicle. They must be taken in suitable accommodation, as detailed in the Regulation.</p> <p>Article 9(1) of the Regulation deals with the situation where a driver accompanies a vehicle which is transported by ferry or train, and in this context provides for certain derogations. While referring to Article 8 as whole, it does not allow to derogate from the ban established in Article 8(8), of taking certain types of rest in the vehicle. Instead, as follows from its terms, derogations permitted thereunder may only concern the possibility to "interrupt" certain rest periods, i.e. a regular daily rest period, a reduced weekly rest period or a regular weekly rest. It thus only derogates from the provision whereby a "rest" constitutes "any uninterrupted period during which a driver may freely dispose of his time".</p> <p>As a result, the driver may not, before embarking and/or after disembarking from the ferry/train, spend a part of his/her regular weekly rest in the vehicle.</p>	
<b>IV. Reduced weekly rests</b>		
<b>Q8</b>	<b>When a driver has taken two reduced weekly rest periods consecutively, may the two compensation periods be attached</b>	Article 8(6b)

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	<b>separately to other rest periods of at least nine hours and performed during the international transport operation?</b>	
A8	<p>Any derogation from the general rules must be interpreted and applied strictly, so as not to jeopardize the objectives of the legislation. As indicated in recital 8 of Regulation (EU) 2020/1054 amending Regulation (EC) No 561/2006, the intention of the legislator is to allow drivers engaged in a long-distance international journey to return home for the regular weekly rest and be compensated for previous reduced weekly rest periods.</p> <p>Article 8(6b) of the Regulation clearly specifies that the regular weekly rest taken after two reduced weekly rests shall be preceded by the rest taken in compensation for the previous two consecutive reduced weekly rests and not by any other activities such as driving or other work. Thus, the two compensations must be taken <i>en bloc</i> and attached to the obligatory regular weekly rest following the two consecutive reduced weekly rests.</p>	
<b>V. Exceptional exceeding driving time</b>		
Q9	<b>What are the exceptional circumstances when the driver may exceed the daily and weekly driving time? How to control such exceptional circumstances?</b>	Article 12, paragraphs 2 and 3
A9	<p>Exceeding the daily and/or weekly driving times<sup>1</sup> is allowed exclusively to enable the vehicle to reach a suitable stopping place and to the extent necessary to ensure the safety of persons, of the vehicles or its load<sup>2</sup>, or in exceptional circumstances in cases where a driver needs to reach his/her place of residence or the employer's operational centre in order to take a weekly rest period<sup>3</sup>, or a regular weekly rest period<sup>4</sup>. These two new derogations may be used when, due to unforeseen circumstances independent from the driver's or operator's will (weather conditions, congestion, delays at loading/unloading points, etc.), a driver is not able to reach one of the places indicated above for a weekly rest without breaching rules on daily or weekly rests.</p> <p>For instance, a driver from a peripheral country engaged in long international journey who, due to unforeseen circumstances which delayed the journey, is not able to reach his place of residence, would, relying on this provision, not need to spend 45 hours of a regular weekly rest in another place not far from his/her place of residence.</p> <p>As indicated in the new paragraph 4 of Article 12 of the Regulation, the driver is required to indicate the reason for departure from the driving time limits manually on the printout or record sheet or duty rooster. This statement makes the driver accountable for the inserted information.</p> <p>The extension of the driving times under the exceptional circumstances mentioned above must not result in shortening the rest period following this extension. As stated in the new paragraph 5 of Article 12 of the Regulation, any period of extension under this Article must be compensated by an equivalent period of rest taken <i>en bloc</i> with any rest period, by the end of the third week following</p>	

<sup>1</sup> referred to in Article 6(1) and (2) of Regulation (EC) No 561/2006

<sup>2</sup> pursuant to paragraph 1 of Article 12 of the Regulation

<sup>3</sup> new paragraph 2 of Article 12 of the Regulation

<sup>4</sup> new paragraph 3 of Article 12 of the Regulation



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	the week during which the derogation has been applied.	
<b>Q10</b>	<b>Can a driver exceeding the daily and weekly driving time because of exceptional circumstances also exceed the maximum fortnightly driving time limit of 90 hours?</b>	Article 12, paragraphs 2 and 3
<b>A10</b>	<p>The possibility for drivers to exceed daily and/or weekly driving times in exceptional circumstances to reach their place of residence or the employer's operational centre in order to take a weekly rest or a regular weekly rest period does not allow drivers to derogate from the maximum fortnightly driving time limit of 90 hours set out in Article 6(3) of Regulation (EC) No 561/2006.</p> <p>The new paragraph 2 of Article 12 of the Regulation enumerates clearly the provisions from which the driver may depart, which are Articles 6(1) and (2) on the maximum daily and weekly driving time limits and Article 8(2) on the obligation for the driver to have taken a new daily rest period within each period of 24 hours after the end of the previous daily or weekly rest period. The driver must in all cases comply with the maximum 90-hours driving limit over two weeks.</p> <p>For instance, a driver who has driven 56 hours in a given week (week 1) may drive two additional hours after having taken a break of 30 minutes in order to reach his or her home to take a regular weekly rest. In the subsequent week (week 2), the driver will have to ensure that s/he does not drive more than 32 hours. This extension of two hours will have to be compensated by an equivalent period of rest taken <i>en bloc</i> before the end of the third week following week 1.</p>	
<b>VI. Multi-manning</b>		
<b>Q11</b>	<b>Is a driver involved in multi-manning obliged to take a break of 45 minutes in the moving vehicle? Can the break be longer than 45 minutes?</b>	Article 7
	<p>A driver involved in multi-manning operation is not obliged to take a break of 45 minutes in the moving vehicle, sitting next to a driver actually driving a vehicle. It is up to the driver to choose whether or not he want to take his/her break in a moving vehicle or outside the vehicle.</p> <p>The break can certainly be longer than 45 minutes if it is taken outside the vehicle. The break taken in a moving vehicle must be a break of 45 minutes taken <i>en bloc</i>, as stipulated in the new (third) paragraph of Article 7 of Regulation (EC) No 561/2006. The remaining time spent in the vehicle sitting next to a driver actually driving that vehicle must be recorded as period of availability, as specified in the third paragraph of Article 3(b) of Directive 2002/15/EC.</p>	
<b>VII. Border crossing</b>		
<b>Q12</b>	<b>When does the obligation of manual recording of border crossing start applying?</b>	Article 34(6), point (f) and Article 34(7) of Regulation 165/2014
	Articles 34(6) point (f) and (7) of Regulation (EU) 165/2014 provide that drivers shall manually record the symbol of the country that they enter after having crossed a border of a Member State.	



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The obligation applies from 20 August 2020 in respect of vehicles equipped with an analogue tachograph and from 2 February 2022 in respect of vehicles equipped with a digital tachograph.

The driver must stop at the nearest possible stopping place at or after the border. Where the crossing of the border of a Member State takes place on a ferry or train, the driver must enter the symbol of the country at the port or station of arrival.

It is also important to note that, since 20 August 2020, drivers of vehicles fitted with an analogue tachograph are required to record the symbol of the countries in which the daily working period started and finished, as was already the case for vehicles fitted with a digital tachograph.