

COMMISSION CLARIFICATION 4
- Application of Article 26 of the Regulation-

Articles: 26 of Regulation (EC) No 561/2006 introducing, *inter alia*, Articles 2 and 3(1) of Regulation (EEC) No 3821/85

Issue raised: According to Article 26 "recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Article 3 of Regulation (EC) No 561/2006.[...]" It is argued that the result of this provision is an obligation to install recording equipment (tachographs) also in vehicles with a maximum permissible weight of 3.5 tonnes or below.

Clarification:

According to Article 3 of Regulation 3821/85, only the list of particular vehicle categories laid down in Article 3 of Regulation 561/2006 is specifically exempted from the obligation to install recording equipment.

However, it is clear that the purpose of Regulation 3821/85 is to provide for effective enforcement of the so-called "social rules" - on driving times, rest periods, etc. - as laid down in Regulation 561/2006, and that the scope of the obligation to install tachographs must by consequence mirror the scope of application of those social rules.

However, in the absence of an express reference in Regulation 3821/85 to Article 2 of Regulation 561/2006, such a result must be deduced from a combined reading of Articles 2, 4 and 26 of Regulation (EC) No 561/2006.

Thus, according to Article 26(1) of Regulation 561/2006, the definitions set out in its Article 4 are to apply also "for the purposes" of Regulation 3821/85. Article 4 contains a definition of "carriage by road", but this definition has to be read in the light of the restriction on the scope of the Regulation in Article 2 to exclude small goods and passengers vehicles. The result is that vehicles exempted under Article 2 of Regulation 561/2006 will similarly be exempted from the obligation to install and use tachographs.

Comment: clarification provided by the European Commission services to German authorities (letter of 28 June 2006)

DISCLAIMER: The present note sets out the Commission services views on implementation and application of certain rules of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport. It should be noted that, in any event, interpretation of Union law is ultimately the role of the European Court of Justice.