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C.1 - Road Transport

Mobility Package I – Social rules

Driving and rest times

Questions and Answers Part 2

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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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Regulation (EC) No 561/2006 as amended by Regulation (EU) 2020 /1054

DISCLAIMER: This set of questions and answers 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 currently form the object of annulment proceedings before the Court of Justice. The examples given are illustrative.

I. Return of a driver

	How shall the terms “place of residence”, “operational centre” and “where the driver is normally based” be understood and proved? What happens when a company is established in many Member States or outside the EU?	Article 8(8a)
1.	<p>In line with Article 26(2) of Regulation (EU) 165/2014 and Article 8(2) of Regulation (EC) 1071/2009, the ‘place of residence’ should be understood as the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties. However, in case of a driver whose occupational ties are in a different place from his/her personal ties, who performs transport activities in different Member States and who, consequently, may live in turn in different places situated in different Member States, the place of residence of such a driver should be regarded as being the place of his/her personal ties, provided that such person returns there regularly, e.g. for family reasons.</p> <p>The term ‘operational centre’ is not defined in the EU road transport legislation. According to Article 8(8a), the ‘operational centre’ where the driver shall be able to return is the place where he/she is normally based, i.e where his/her work is organized, where his/her weekly rest period normally starts and to which he/she returns on a regular basis, in the territory of the Member State of the effective and stable establishment of his/her employer, within the meaning of Article 3(1)(a) of Regulation (EU) 1071/2009. The conditions of such an effective and stable establishment of road transport operators are set out in Article 5 of Regulation (EU) 1071/2009. It requires, among others, that the undertaking has premises in which it keeps its core business documents, in particular accounting documents, personnel management documents, or documents containing data relating to driving time and rest periods of its drivers.</p> <p>If the undertaking is established in different Member States, in compliance with the requirements set out in Article 5 of Regulation (EC) No 1071/2009, the driver should return to the operational centre where he/she is normally based. If the undertaking is established outside the EU, the operational centre may be in the third country, which, for the purposes of the Regulation, can only be Switzerland or a non-EU party to the EEA agreement, in application of Article 2(2)(b).</p>	
2.	How long should the transport undertaking keep records documenting that it has organised the work of the driver in such a way that he/she was able to return to either the place of residence or to the operational centre of the undertaking?	Article 8(8a)
	Pursuant to Article 33(2) of Regulation (EU) No 165/2014, tachograph records must be kept by the undertaking for at least 1 year after their use. Working time records must be kept for at least 2 years, as required by Article 9(b) of Directive 2002/15/EC. These records should include the documentation on organising the return of the driver, as this obligation will be subject, at the latest as from 2 February 2022, to checks at the premises of the undertaking in accordance with Annex I, Part B of Directive 2006/22/EU, as amended by Directive 2020/1057.	

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3.	Does the obligation of return of the driver “home” apply to vehicles hired from another Member State and to passenger transport drivers?	Article 8(8a)
	Regulation (EC) 561/2006, notably its Article 8(8a), which regulates the relations between employed drivers and employers concerning the organisation of the return of the driver ‘home’, applies to the carriage by road of goods or passengers, irrespective of whether the vehicles are hired or owned by the employer or of whether they are for passenger or goods transportation.	
	What is meant by “more than 45 hours [of rest period] taken in compensation” that a driver must take after taking two reduced weekly rest periods in two consecutive weeks pursuant to the second subparagraph of Article 8(8a)? When should the compensation rest start?	Article 8(8a)
4.	<p>After two reduced weekly rest periods taken in two consecutive weeks outside the Member State of establishment in accordance with Article 8(6), a driver must be able to return to take a regular weekly rest of at least 45 hours. Pursuant to Article 8(6b), this regular weekly rest period shall be preceded by a rest period compensating for the two reduced weekly rests taken in the two preceding weeks. For example, a driver may take the following rest periods:</p> <p>Week 1: 24 hours</p> <p>Week 2: 25 hours</p> <p>Week 3: 21 + 20 + 45 hours, where 21 hours is a compensation for week 1 and 20 hours is a compensation for week 2.</p> <p>The regular weekly rest taken in week 3 must start at the latest by the end of six 24-hour periods from the end of the previous weekly rest period (6x24h), as required by Article 8(6). This means that the compensation for the previous two reduced weekly rest periods must be completed before the end of that 6x24 hour period, when the regular weekly rest shall begin.</p>	
II. Ban to take a regular weekly rest in the cabin of the vehicle		
	Is a self-employed driver allowed to take his/her regular weekly rest in the vehicle?	Article 8(8)
5.	<p>In general terms, Regulation (EC) 561/2006 applies to all drivers, be they employed or self-employed, who are involved in transport operations by vehicles falling in the scope of the Regulation. This includes the prohibition to take a regular weekly rest in the cabin of the vehicle. This is justified by the objective of preventing drivers’ fatigue (employed or self-employed) and eliminating risks to road safety.</p> <p>It is true that some provisions of Regulation (EC) 561/2006 do not apply to self-employed drivers – e.g. Article 8(8a), which regulates the relations between employed drivers and employers as regards the organisation of the drivers’ return ‘home’ (see Q4). That is however not the case with the prohibition to take a regular weekly rest in the cabin of the vehicle. In such a case, any costs for accommodation outside the vehicle should be covered by the self-employed driver.</p>	
III. Ferry rule		
		Article 9
IV. Reduced weekly and daily rests		

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	<p>A driver takes two consecutive reduced weekly rests (2 x 24 hours) outside the Member State of establishment. When the driver returns home, he/she takes a compensation (2 x 21 hours) and a regular weekly rest (45 hours). Does the driver, after returning home, need to take his/her daily rest (9 or 11 hours) in line with Article 8(2), before he/she can start the compensation rest and the regular weekly rest?</p>	<p>Article 8(6)</p>
<p>6.</p>	<p>The objective of Article 8(6) and (6b) is to enable a driver involved in international long-haul operations to reach home to benefit from a longer rest period, consisting in the regular weekly rest of at least 45 hours and compensation for two reduced weekly rest periods that may have been taken in two preceding weeks.</p> <p>Those provisions are however without prejudice to Article 8(2), according to which the daily rest period that a driver must take within each period of 24 hours after the end of a previous daily or weekly rest period may be extended to make a regular weekly rest period or a reduced weekly rest period, in line with Article 8(3).</p> <p>This means that even if Article 8(3) does not expressly mention this possibility, it applies also to the situation where the regular weekly rest period is taken together with compensations for previous reduced weekly rest periods.</p>	
<p>7.</p>	<p>Can a driver take more than two reduced weekly rest periods within the reference period of four weeks set out in the third subparagraph of Article 8(6)? Do all reduced weekly rest periods have to be compensated?</p>	<p>Article 8(6)</p>
<p>Article 8(6) specifies that:</p> <p><i>“In any two consecutive weeks a driver shall take at least: (a) two regular weekly rest periods; or (b) one regular weekly rest period and one reduced weekly rest period of at least 24 hours”,</i></p> <p>and that:</p> <p><i>“By way of derogation from the first subparagraph, a driver engaged in international transport of goods may, outside the Member State of establishment, take two consecutive reduced weekly rest periods provided that the driver in any four consecutive weeks takes at least four weekly rest periods, of which at least two shall be regular weekly rest periods.”</i></p> <p>The term ‘at least’ means that a driver can take more weekly rest periods than the minimum required over the reference periods of 2 or 4 weeks.</p> <p>Article 8(6) allows, under certain conditions, for taking two reduced weekly rest periods in two consecutive weeks. However, nothing prevents a driver from taking other rest periods of 24 hours or longer within these two consecutive weeks.</p> <p>When over a 4-weeks reference period a driver takes more than 2 reduced weekly rest periods, the additional reduced weekly rest periods do not have to be compensated. On the other hand, they have no effect on the obligation of compensation for the two reduced weekly rest periods, as required by Article 8(6b). In case of more than 2 reduced weekly rest periods, the reduced weekly rest period taken the closest to the required deadline of six periods of 24 hours from the end of the previous weekly rest period set out in Article 8(6) should be considered as the reduced weekly rest period that should be compensated.</p> <p>For example, within a period of four consecutive weeks a driver can take the minimum required weekly rest periods in combination with additional rest periods in the following sequence:</p>		

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	<p>Week 1: 45 hours (e.g. Saturday - Monday)</p> <p>Week 2 : 24 hours (at the latest: Sunday – Monday)</p> <p>Week 3: 24 hours (e.g. Wednesday-Thursday) and 27 hours (at the latest: Sunday – Monday)</p> <p>Week 4: 21+18 (Friday-Sunday) +45 hours (at the latest: Sunday-Tuesday) (the rest periods of 21h and 18h are compensations for two reduced weekly rest periods taken in weeks 2 and 3 (Sunday-Monday), in accordance with Article 8(6b), while the additional rest period taken in week 3 (Wednesday-Thursday) does not have to be compensated).</p>	
	<p>Can the driver spend the daily and reduced weekly rest in the vehicle?</p>	Article 8
8.	<p>According to Article 8(8), the regular weekly rest periods and any weekly rest period of more than 45 hours taken in compensation for previous weekly rest periods shall not be taken in the vehicle. This means that the driver may, on the contrary, choose to spend his/her daily rest and/or reduced weekly rest in the vehicle.</p> <p>Article 4(f) of Regulation (EC) 561/2006 defines ‘rest’ as any uninterrupted period during which a driver may freely dispose of his time. It is clear from this definition that a daily or reduced weekly rest can only be taken in the vehicle when it is stationary, as it is the only circumstance that allows for the driver to freely dispose of his/her time.</p> <p>In addition, Article 8(8) requires that the regular weekly rest period and any weekly rest period of more than 45 hours be taken in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities. As explained in recital 13 of Regulation (EU) 2020/1054, this is necessary to ensure that “drivers enjoy adequate rest conditions”. The same principle applies to the daily and reduced weekly rest periods, which can thus only be taken in the vehicle when it has suitable sleeping facilities. This is in line with the overarching objectives of ensuring adequate working conditions for drivers and improving road safety.</p>	
V. Exceptional exceeding driving time		
	<p>Under the second and third subparagraphs of Article 12, a driver may derogate from Article 6(1) and (2) and Article 8(2) by exceeding the daily and weekly driving time. If the driver’s accumulated daily driving time is less than the maximum allowed can he/she make use of the derogation from Article 8(2) without having to exceed the daily or weekly driving time? If, due to making use of this derogation, a driver starts his/her weekly rest later than at the end of six 24-hour periods from the end of the previous weekly rest period, is it a violation of the Regulation?</p>	Article 12
9.	<p>The objective of the derogation is to enable a driver to, under exceptional circumstances, still spend his/her weekly rest at ‘home’ (that is, in the driver’s place of residence or in the employer’s operational centre), and not in a location which is up to 2 hours driving away from his/her ‘home’. It allows to derogate from driving time limitations (Article 6(1) and (2)) and / or from the obligation to take a daily rest period within 24 hours after the end of the previous rest period (Article 8(2)). Sometimes, a driver will have to depart of both Articles 6 (1) and (2) and Article 8(2), but not necessarily. On other occasions, where for example the driver can drive 1 or 2 hours more without exceeding the maximum daily driving time of 9 or 10 hours set out by Article 6(1) and the maximum weekly driving time of 56 hours set out by Article 6(2), the derogation will be limited to Article 8(2).</p>	

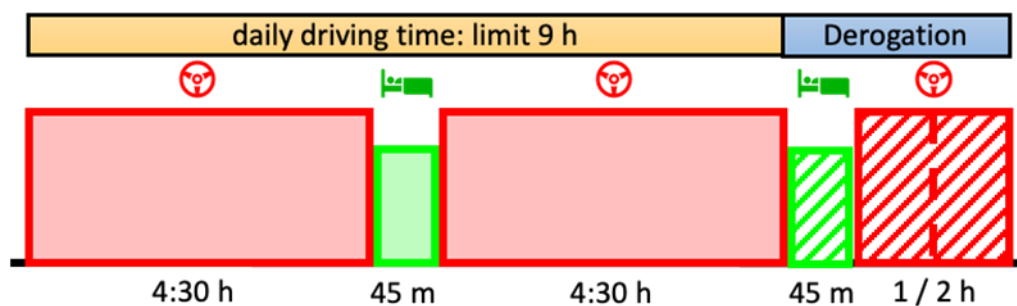
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	<p>However, Article 12 does not allow for a driver to derogate from the obligation of starting a weekly rest period no later than at the end of six 24-hour periods from the end of the previous weekly rest period, as set out in the second subparagraph of Article 8(6). Therefore, the derogation must be used carefully.</p> <p>For instance, if a driver finished his/her previous weekly rest at 8 am on Monday, he/she must start the next weekly rest at 8 am on Sunday. If on Saturday (the sixth 24-hour period of working) a driver started driving at 8 am and drove 12 hours (10 hours allowed + maximum 2 hours under the derogation), taking all necessary breaks (2 hours in total in this example), he/she could reach ‘home’ at around 10 pm on Saturday. This would allow the driver to still start his/her weekly rest within the time period required by Article 8(6).</p>	
10.	<p>How should the derogation from Article 8(2) set out in Article 12, second and third subparagraphs be understood? Is it possible to reduce the daily rest for a set period (1 or 2 hours), to be compensated by the end of the third week following the week in question?</p>	Article 12 Article 8(2)
	<p>Article 8(2) requires a driver to take a daily rest period (of at least 9 for reduced rest or at least 11 hours for regular rest) within 24 hours since the end of the previous daily or weekly rest.</p> <p>The derogation under Article 12 does not allow for shortening the length of a daily rest period. It may however lead to a situation where, due to an extended driving time (by 1-2 hours) necessary for the driver to reach ‘home’ due to exceptional circumstances, a driver will not be able to complete a daily rest within a period of 24 hours after the end of the previous daily or weekly rest, as required by Article 8(2). In this case, the daily rest period would and shall be completed, without being reduced, after the period of 24 hours counted from the end of the previous daily rest period, in derogation of Article 8(2). Such daily rest period can still be extended to make a weekly rest period, as allowed by Article 8(3), provided that that weekly rest starts no later than at the end of six 24-periods, as required by Article 8(6).</p>	
11.	<p>How should additional hours of driving time due to exceptional circumstances be compensated (e.g. should 1 hour more of driving be compensated by 1 hour more of rest)? Does the break of 30 minutes also need to be compensated, or only the additional driving time?</p>	Article 12, second, third and fifth subparagraphs
	<p>As stated in the fifth subparagraph of Article 12 of the Regulation, any period of extension of driving time under this derogation must be compensated by an equivalent period of rest, which must be taken <i>en bloc</i> with any rest period within 3 weeks from using the derogation.</p> <p>Breaks do not need to be compensated, only the additional driving time.</p> <p>For instance, if a driver has driven 1,5 hours longer than the allowed daily driving time limit, he/she should be compensated for this prolonged driving time, by the addition of 1,5 hours of rest time to one of his/her weekly or daily rest periods taken by the end of the third week following the week in question.</p>	
13.	<p>If a driver makes use of the derogation under Article 12, after 4,5 hours driving should he/she take a break of 30 minutes or 45 minutes prior to the additional driving?</p>	Article 12
	<p>Article 7, first subparagraph, requires that a driver takes at least a 45 minute break after a driving period of 4,5 hours. Article 12, subparagraphs 2 to 5 does not allow to derogate from this</p>	

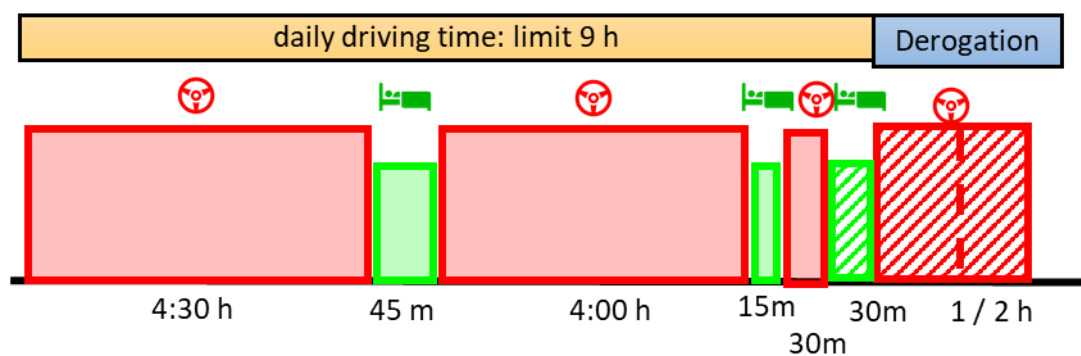
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requirement. Hence, after 4,5 hours of driving, and prior to the following driving period, a driver must take a break of 45 minutes. In case where a driver has taken the 45 minutes break (or 30 minutes break followed by prior 15 minutes break) and after that needs to continue driving for another 1-2 hours, the driver is not obliged to take an additional break of 30 minutes before he/she resumes the additional driving. In cases where he/she is allowed to drive 10 hours during the day and if he/she has already reached that daily driving time limit and needs to continue driving between 1 and 2 hours to reach his/her 'home' for a weekly rest, he/she must take an additional 30 minute break prior to this additional driving. On the other hand, no additional 30 minute break is required when the driver exceeds the daily driving time by less than one hour.

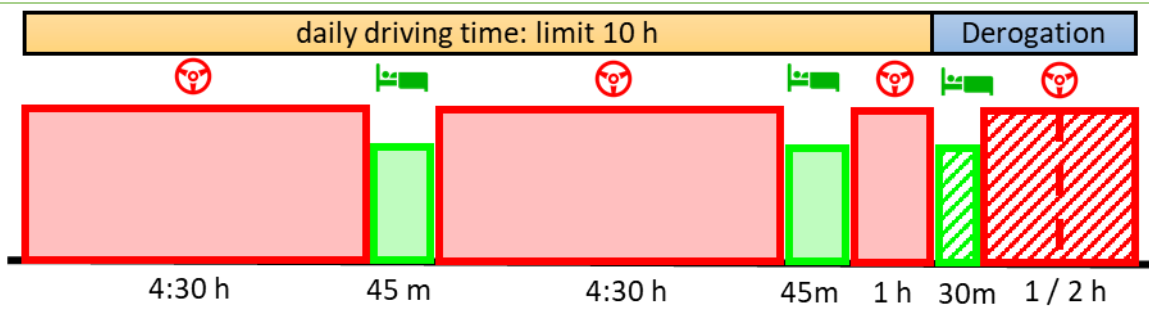
Example 1: a driver was driving for 4,5 hours, and then took a 45 minute break; then he/she drove for another 4,5 hours, and took another 45 minute break. He/she reached his/her daily limit of 9 hours driving, but he/she still needs to continue driving between 1 or 2 hours to reach 'home'. In this case, he/she can resume driving after the 45 minute break following the second driving period of 4,5 hours.



Example 2: a driver was driving for 4,5 hours, and then took a 45 minute break; then he/she drove for another 4 hours, and took a part of a break of 15 minutes, then he/she continued driving for another 30 minutes after which he/she stopped to take 30 minutes break. This is in line with Article 7 which allows to split a break of at least 45 minutes to two parts, that is a break of at least 15 minutes followed by a break of at least 30 minutes) If after this 30 minutes break, he/she needs to continue driving between 1 or 2 additional hours to reach 'home' he/she does not have to take additional 30 minutes of break.



Example 3: a driver was driving for 4,5 hours, and then took a 45 minute break; then he/she drove for another 4,5 hours, and took another 45 minute break. If his/her daily driving time limit is 10 hours, he/she can still drive for an additional 1 hour. If after this hour of driving, he/she needs to drive for an additional period between 1 and 2 hours to reach 'home', then he/she must take a new 30 minute break prior to the additional driving.



In all the above examples a driver may take his/her obligatory break in two parts, i.e. minimum 15 minutes followed by minimum 30 minutes break distributed over the period of 4,5 hours of driving, as allowed by the second paragraph of Article 7. This does not have an effect on the obligation (or not) of taking an additional 30 minutes break before the extended driving time of 1-2 hours.

VI. Multi-manning

14.	<p>How should a 45 minute break be recorded in a moving vehicle for the second driver involved in multi-manning, considering that the digital tachograph automatically registers availability for the driver? In which interval can the driver take the 45 minutes break, i.e. at the beginning, at the end of the availability period, or in any interval of the availability period?</p>	Article 7
	<p>Article 7, first paragraph, requires drivers to take a break at the latest after a driving period of 4,5 hours. This break shall therefore follow immediately the driving period.</p> <p>A driver driving in a team may (multi-manning) take his/her break of 45 minutes in a moving vehicle under the condition that the driver is not involved in assisting the driver actually driving the vehicle.</p> <p>As current versions of tachographs do not allow to record breaks in a moving vehicle, it is a common practice among the enforcers to consider the consecutive period of 45 minutes of the driver's availability in a multi-manning situation as a break.</p>	
15.	<p>Is it possible to take a split break in the multi-manning situation?</p> <p>The possibility to take a break of at least 45 minutes in two parts, which must be at least 15 minutes followed by at least 30 minutes, is not limited to the situation of solo driving. Therefore, in principle, drivers driving in a team (multi-manning) may also split their breaks.</p> <p>However, it would appear impractical to split the break in multi-manning situations, as this would mean that either the second driver drives for only 15 minutes while the first driver takes a break, and then hands over driving to that first driver, or that the first driver takes the 15 minute break during the entire period of 4,5 hours of driving by the other driver.</p>	Article 7

VII. Border crossing

VIII. Tachographs		
16.	How can enforcers enforce the registration of loading and unloading activities if there is no legal obligation on drivers to make these records?	Article 8(1) of Regulation (EU) 165/2014
	<p>The second version of smart tachographs shall include a new functionality of automatically recording the position of the vehicle during activities of loading and unloading of the vehicle. The recording of the location must be triggered by the driver, who will have to indicate a load, unload or simultaneous load-unload operation for the recording of location to happen. This operation shall be manually entered through the tachograph menu.</p> <p>Regulation (EU) 165/2014 indeed does not clearly oblige drivers to record loading and unloading operations. However, recording activities are an important part of a driver’s work, and a full set of records is important for ensuring that controls are cost-effective and not excessively burdensome. Therefore, it is crucial that drivers are appropriately instructed to use all functionalities of smart tachographs, in order to ensure the existence of a full set of records and to avoid lengthy controls, in particular at roadside.</p>	
VIII OTHER		