



Brussels, 29.4.2020
C(2020) 2826 final

COMMISSION DECISION

of 29.4.2020

authorising the Grand Duchy of Luxembourg to grant exceptions from the application of Articles 6 and 8 of Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport

(The only authentic languages are French and German)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 3820/85¹, and in particular Article 14(1) thereof,

Whereas:

- (1) Article 14(2) of Regulation (EC) No 561/2006 allows Member States in urgent cases to grant a temporary exception from the application of Article 6 to 9 of that Regulation for a period not exceeding 30 days, which must be notified immediately to the Commission.
- (2) The COVID-19 outbreak in Europe has led to major disruptions to the transport and supply chains in Member States and third-countries, in particular due to the introduction of controls at internal borders, which have led to significant waiting times for drivers when crossing borders. Important parts of the economy have also slowed down or shut down, leading to disruption in the supply chains, while other sectors are under increased pressure and are facing a significant increase in demand of some products.
- (3) In its Guidelines for border management measures to protect health and ensure the availability of goods and essential services² adopted on 16 March 2020, the Commission stressed the principle that all EU internal borders should stay open to freight and that the supply chains for essential products should be guaranteed.
- (4) On 19 March 2020, Luxembourg notified the Commission of the temporary exception to Article 6(1) and (3), and Article 8(6) of Regulation (EC) No 561/2006 granted for the period from 19 March until 17 April 2020, pursuant to Article 14(2) of that Regulation in view of the exceptional circumstances caused by the COVID-19 outbreak. That flexibility for driving time and rest periods was considered necessary to ensure the national supply of goods in Luxembourg.

¹ OJ L 102, 11.4.2006, p. 1.

² Guidelines for border management measures to protect health and ensure the availability of goods and essential services, C(2020) 1753 final, OJ C 86I, 16.3.2020, p.1. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20200316_covid-19-guidelines-for-border-management.pdf

- (5) In its Communication on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services of 23 March 2020³, the Commission recognised that land supply chains and in particular road which accounts for 75% of freight transport had been severely affected by the introduction of entry bans at internal land border and by restrictions on professional drivers accessing certain Member States. This situation created excessive waiting times on some days at certain internal Union borders.
- (6) Even though some improvement in the waiting times at borders could be noted over the intervening weeks, controls are still in place at many internal borders of the Union. Given the unpredictability of waiting times, this factor cannot be anticipated in a precise manner by transport operators and drivers when planning transport operations. Furthermore, some Member States have also introduced the obligation for trucks not established on their territory to leave the country within 24 hours after delivering their cargo. These circumstances were identified by Member States as justification for the granting of additional flexibility for driving time, breaks and rest periods, to allow road transport operators and drivers to adjust to these constraints.
- (7) In addition, some drivers have been infected by the COVID-19 virus, thereby further contributing to the current shortage of drivers in the Union. While some drivers are working in sectors affected by reductions in wider economic activity could be temporarily redeployed into parts of the road transport sector that have come under severe pressure, such measures could only constitute temporary solutions in view of the need to prepare for the re-start of the economic activity which is already underway in some Member States.
- (8) In the European Roadmap towards lifting coronavirus containment measures⁴, transport is identified as one of the sectors essential to facilitate economic activity and which should be prioritised for the re-start of the economic activity. A redeployment of drivers may therefore not be suitable from subsectors where the drivers should be quickly mobilised in case of a re-launching of the economic activity. This further justifies the need for Member States to grant flexibility in driving times, breaks and rest periods to guarantee the continuity of transport operations.
- (9) As set out in its second notification of 3 April 2020, Luxembourg considers that the exceptional circumstances arising from the COVID-19 pandemic continue to prevail and thus requests, under Article 14(1) of Regulation (EC) No 561/2006, the authorisation to grant exceptions to Articles 6(1) and (3), and Article 8(6) and (8) of that Regulation. This would justify exceptions applying until 31 May 2020.
- (10) Given the continuous disruptive impact of COVID-19 on European transport and mobility, the Commission accepts that exceptional circumstances continue to prevail in Luxembourg.
- (11) According to the notification, the exceptions requested will be limited to the transport of goods on the Luxembourgish territory to ensure national supply of goods. The Commission indicated in its Guidelines for border management measures to protect health and ensure the availability of goods and essential services, that Member States

³ C(2020) 1897 final Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services, *OJ C 96I*, 24.3.2020, p. 1

⁴ Communication - A European roadmap to lifting coronavirus containment measures https://ec.europa.eu/info/sites/info/files/communication_-_a_european_roadmap_to_lifting_coronavirus_containment_measures_0.pdf

should ensure constant provisioning to meet social needs, to avoid panic buying and the risk of dangerous overcrowding of shops, which will require proactive commitment from the entire supply chain.

- (12) Given the wide range of goods to be transported as a matter of urgency, the unpredictability of needs and the complexity of the supply chain where some supply considered as non-essential may actually be needed for the fabrication of essential goods, it was not possible for Luxembourg to limit the temporary exceptions to a certain types of goods. Luxembourg thus requests these temporary exceptions to apply to all transport of goods in order to reflect the complexity of the situation on the ground.
- (13) In view of the continuous impact of the COVID-19 pandemic on road transport, some flexibility on the maximum driving time limits was thus considered necessary by Luxembourg to allow drivers to adapt the organisation of their activities, in particular because of unpredictable waiting times at borders. The increase in the maximum driving time limits should allow drivers to occasionally drive longer hours on some days when they have been impacted by delays during their trip, but always within the limit of maximum 11 hours per day. This should enable them to drive more to complete their transport operations, including for loading or unloading the goods, or to drive back to their Member State of establishment within the prescribed time limit, when they are required to do so.
- (14) Luxembourg therefore requests the daily driving time limit to be increased to 11 hours. The maximum fortnightly driving time limit of 96 hours together with the weekly driving time limit of 56 hours which remains unchanged, should ensure that drivers cannot drive 11 hours every day.
- (15) Luxembourg considers that the maximum fortnightly driving time limit of 96 hours should ensure that a driver who would drive up to 56 hours in the first week shall be obliged to drive less in the second week - up to 40 hours - thereby avoiding accumulated fatigue.
- (16) In addition, Luxembourg confirms that the rules on breaks set out in Article 7 and rules on daily rest periods in Article 8(2) of Regulation (EC) No 561/2006 continue to apply. Drivers are still required to take an uninterrupted break of not less than 45 minutes after a driving period of four and a half hours a driver and daily rest periods of at least 11 hours.
- (17) Transport activities under severe pressure need to benefit from flexibility in the organisation of driving and rest times to respond to the high demand they are facing. This includes the need for drivers to occasionally work during weekends and in particular on Sundays.
- (18) The current requirements on weekly rest periods do not offer enough flexibility for such a quick adaption of weekly schedule when needed. The temporary exceptions requested by Luxembourg aim to remedy to this issue.
- (19) Luxembourg considers that the possibility to postpone the weekly rest period for one more 24-hour period should allow drivers to work for seven days in a row and be available on Sundays when necessary. The fact that drivers, who are making use of this temporary exception, must benefit from a compensation in the next week should avoid accumulated fatigue.
- (20) Furthermore, drivers are still required to take at least one regular weekly rest period and one reduced weekly rest period of at least 24 hours in any two consecutive weeks.

In cases of postponement of a weekly rest up to seven 24-hour periods, counting from the end of the previous weekly rest period, the compensation should be taken in the following week so that the obligation of two weekly rests in two consecutive weeks is respected.

- (21) Luxembourg therefore requests that drivers are allowed to postpone their weekly rest periods so that each such period can be taken up to seven 24-hour period from the end of the previous weekly rest period provided that compensation is provided in the following week.
- (22) In addition, Luxembourg requests the obligation for drivers to take their regular weekly rests in suitable accommodation outside the cabin of the truck to be temporarily suspended to limit contacts and possible infections with COVID-19 and to provide an acceptable alternative in view of the closing down of most hotels and other accommodation during the pandemic, in line with the recommendation made by the Commission in its Communication on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services issued on 23 March 2020⁵.
- (23) In its notification to the Commission, Luxembourg has made it clear that working conditions of drivers and road safety must not be compromised. Drivers shall not be expected to drive whilst tired. Employers remain responsible for the health and safety of their employees.
- (24) Drivers should note on the back of their tachograph charts or printouts the reasons of exceeding normally permitted limits by Regulation (EC) No 561/2006.
- (25) Therefore, the exceptions requested do not as such prejudice the objectives of Regulation (EC) No 561/2006.
- (26) The request of Luxembourg to be authorised to grant exception to Article 6(1) and (3), and Article 8(6) and (8) of Regulation (EC) No 561/2006 should therefore be approved.

HAS ADOPTED THIS DECISION:

Article 1

1. The exceptions granted under this Article are without prejudice to the provisions on the maximum working time limit set out in Article 4 of Directive 2002/15/EC⁶.
2. Luxembourg is authorised to grant the following exceptions from the application of Article 6(1) and (3), and Article 8(6) and (8) of Regulation (EC) No 561/2006 in respect of drivers involved in the transport of goods:
 - (a) increase in a maximum permissible daily driving time from 9 hours to 11 hours up to three times a week;
 - (b) increase of the maximum fortnightly driving limit up to 96 hours;
 - (c) postponement of weekly rest periods so that each such period can be taken up to seven 24-hour period from the end of the previous weekly rest period with the obligation to compensate in the following week;

⁵ C(2020) 1897 final

⁶ 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*).

- (d) possibility for the driver to take the regular weekly rest in the vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

Article 2

This authorisation is valid until 31 May 2020.

Article 3

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 29.4.2020

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission

