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COMMISSION DECISION

of 29.4.2020

authorising the Kingdom of Sweden 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 language is Swedish)

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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 Articles 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 Union internal borders should stay open to freight and that the supply chains for essential products should be guaranteed.
- (4) On 16 March 2020, Sweden notified the Commission of the temporary exception to Article 6(1), (2) and (3), and Article 8(2) and (6) of Regulation (EC) No 561/2006 granted for the period from 16 March until 14 April 2020, pursuant to Article 14(2) of that Regulation 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 and continuity of services for transport in Sweden which was affected by the shortage of drivers due to the COVID-19 outbreak.

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 borders 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 2 April 2020, Sweden 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 61/2006, the authorisation to grant exceptions to Article 6(1), (2) and (3), and Article 8(2) and (6) of that Regulation. This would justify derogations 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 Sweden.
- (11) According to the notification, the exceptions requested would apply to transport of goods and passengers on the Swedish territory to ensure the national supply of goods and relieve congestion in passenger transport. The Commission indicated in its Guidelines for border management measures to protect health and ensure the

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

availability of goods and essential services, that Member States 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 Sweden to limit the temporary exceptions to a certain types of goods. Sweden 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) Sweden also indicated that due to geographical circumstances, most parts of the territory are scarcely populated and as a consequence the passenger transport network is constituted of lines of regular services where routes covered by the service often exceeds 50 kilometres. This means that an important number of these lines fall within the scope of Regulation (EC) No 561/2006. In order to contain the spread of the virus, passenger transport operators were recommended to have less passengers per bus to limit close contact between passengers themselves and between passengers and bus drivers. This led to an increase in demand of bus drivers which could not be satisfied by transferring drivers from one region to another as this measure could have contributed to the spread of the virus. Sweden therefore considers necessary to provide more flexibility on driving time and rest periods for drivers involved in passenger transport.
- (14) 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 Sweden 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.
- (15) Sweden therefore requests the daily driving time limit to be increased to 11 hours. The maximum weekly and fortnightly driving time are limited to respectively 60 and 120 hours. This should ensure that drivers cannot drive more than 10 hours per day on average.
- (16) Some backlogs and delays at the distribution centres and at the ports across Europe were reported by the industry. Those delays might cause the drivers to be subject to very long periods of availability and to exceed their daily spread, thereby breaching the rules regarding daily rests.
- (17) Sweden thus considers that allowing drivers affected by these delays to take reduced daily rest periods is therefore necessary to allow them to cope with these unexpected situations and to allay the risk of being exposed to sanctions thereafter.
- (18) According to Sweden, the limits on daily driving time and on the maximum weekly working time should, applied together, contribute to avoid consecutive long daily driving hours. This should allow drivers to have daily rests of 11 hours while leaving them the flexibility to reduce some of those to nine hours when needed.

- (19) Sweden confirms that the rules on breaks set out in Article 7 remain unchanged. 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.
- (20) 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.
- (21) The current requirements on weekly rest periods do not offer enough flexibility for such a quick adaptation of weekly schedules when needed. The temporary exception requested by Sweden aim to remedy to this issue. Sweden considers that the possibility not to compensate the reduced weekly rests will allow drivers to be mobilised more easily to drive during weekends when needed. However, the general obligation for drivers to take at least one regular weekly rest and one reduced weekly rest in any two consecutive weeks continues to apply, thereby ensuring that drivers benefit from adequate and sufficient resting periods at regular intervals.
- (22) Sweden therefore requests that, drivers are 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 but that the reduction in rest must not be compensated.
- (23) In its notification to the Commission, Sweden 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 the Sweden to be authorised to grant exception to Article 6(1), (2) and (3), and Article 8(2) and (6) 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/EC⁵.
2. Sweden is authorised to grant the following exception from the application of Article 6(1), (2) and (3), and Article 8(2) and (6) of Regulation (EC) No 561/2006 in respect of drivers involved in the transport of goods and/or the transport of passengers:
 - (a) increase in a maximum permissible daily driving time up to 11 hours;
 - (b) increase of the maximum permissible weekly driving limit up to 60 hours;
 - (c) increase of the maximum fortnightly driving limit up to 120 hours;
 - (d) reduction in a minimum permissible daily rest from 11 hours to 9 hours;

⁵ 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*).

- (e) in any two consecutive weeks, a driver shall take at least one regular weekly rest and one reduced weekly rest period of at least 24 hours. The requirement to compensate the reduction by an equivalent period of rest taken *en bloc* before the end of the third week following the week in question does not apply.

Article 2

This authorisation is valid until 31 May 2020.

Article 3

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 29.4.2020

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission