



EUROPEAN COMMISSION

Cabinet of Commissioner Adina Vălean
Head of Cabinet

Brussels, 24 July 2023

Dear Sirs,

Thank you very much for your letter of 30 May 2023 in which you share your concerns regarding roadside controls of foreign transport undertakings in the territory of France in relation to enforcement of Article 8(8) and (8a) of Regulation (EC) No 561/2006 ⁽¹⁾ on the right to suitable accommodation and on the obligation to organise the return of the driver 'home'.

After a careful analysis of your letter, it is clear that cooperation between Member States on the enforcement of the social pillar of Mobility Package I is still lacking. We believe that more cooperation, notably via the organisation of joint inspections, would be crucial to achieve more convergence and more coherence of enforcement of this legislation on the ground. Indeed, experience has shown that the presence of the competent authorities of Member States of establishment, side by side with the competent authorities of the host Member States, have a very strong added value. This would certainly be useful to better understand the practices at stake, particularly in relation to checks on the right to suitable accommodation and on the obligation to organise the return 'home' of the driver. In that regard, it is worth reminding that the European Labour Authority (ELA) can support Member States from an organisational and financial perspective when organising these joint inspections.

We would therefore encourage you to contact your Member State to request the organisation of joint inspections between your respective national authorities and French controllers. Please also be assured that the Commission services will also remind the French authorities, as well as the rest of Member States, about the need for more frequent and intensive cooperation in this field.

⁽¹⁾ 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 3820/85 (OJ L 102, 11.4.2006, p. 1) as lastly modified by Regulation (EU) 2020/1054 of the European Parliament and of the Council of 15 July 2020 amending Regulation (EC) No 561/2006 as regards minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) No 165/2014 as regards positioning by means of tachographs (OJ L 249, 31.7.2020, p. 1).

According to your letter, drivers checked by the French authorities would be requested to present documents other than those resulting from Article 36 of Regulation (EU) No 165/2014 ⁽²⁾. As indicated in the DG MOVE's note on enforcement practices of Article 8(8) of Regulation (EC) No 561/2006 on the ban on taking regular weekly rest periods in a vehicle ⁽³⁾, roadside enforcers within the performance of their duties are allowed to ask drivers where they spent their regular weekly rest. However, pursuant to Article 34(3) of Regulation (EU) No 165/2014, Member States' authorities may not require drivers to provide documents attesting activities while away from the vehicle to prove compliance with Article 8 of Regulation (EC) No 561/2006. Consequently, roadside enforcers cannot fine drivers for not showing these documents.

EU law requires Member States to organise a system of adequate checks on transport undertakings both at the roadside and at the premises of undertakings. This includes compliance with the principle of proportionality, which is a general principle of EU law. Annex I of Directive 2006/22/EC ⁽⁴⁾ distinguishes between what should be normally checked at the roadside and what should be normally checked at the premises of the undertakings. Recital 9 of the Directive states that 'Member States should seek to ensure, without prejudice to the proper execution of the tasks imposed by this Directive, that roadside checks are executed efficiently and quickly, with a view to completing the check in the shortest time possible and with the least delay for the driver.' In this context, it should be noted that the monitoring of compliance with the obligations falling on undertakings as regards the payment for the accommodation of drivers and the organisation of the work of drivers, in accordance with Article 8 (8) and (8a) of Regulation (EC) No 561/2006, is included in point 5 of Part B of Annex I to that Directive, which means that it must generally be carried out at the premises of undertakings. When authorities request documents, other than those resulting from Article 36 of Regulation (EU) No 165/2014 at the roadside they would be in breach of the Directive and operators affected by such practices, should appeal to the competent French authorities and/or jurisdictions for reimbursement of the imposed fines. Similarly, excessively long roadside checks (e.g. 16 hours as mentioned in the letter) would not be in line with the principle of proportionality and the spirit of recital 9, without prejudice to specific circumstances, such as the lack of cooperation of the driver.

Finally, you state in your letter that a unified controlling practice all around the EU would provide transport operators with necessary legal clarity and improve enforcement of EU rules according to Mobility Package I. I agree with you on this aspect and this is why DG MOVE has over the past years developed several sets of guidelines such as Q&As, guidance notes and also organised webinars in cooperation with ELA to facilitate harmonised enforcement of the social and market pillars of Mobility Package I. DG MOVE also financed the TRACE 2 project which is in its final stage and will deliver different sets of documents to guide enforcers in checking the social and market

⁽²⁾ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).

⁽³⁾ https://transport.ec.europa.eu/document/download/a4fcb90b-16a7-4589-bbb5-b406ddd82924_en?filename=2023_note_enforcement_practices_weekly_rest_periods.pdf

legislation in the field of road transport. Finally, DG MOVE is also working on an implementing act on training of control officers which will include a common curriculum for enforcers checking EU road transport legislation including training on soft skills. This will ensure that EU control officers are appropriately trained and possess the necessary skills to interview drivers during checks at the roadside.

As indicated above, DG MOVE will be informing all Member States about the key messages above and will also be contacting France enquiring about the control practices you reported. We remain committed to maintain our efforts to ensure harmonised and coordinated enforcement of the road transport legislation on our roads.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Walter Goetz', with a stylized flourish at the end.

Walter GOETZ