

## COMMISSION CLARIFICATION 7

- recording and controlling activities and inactivity periods of drivers when away from a vehicle -

**Articles:** 34(1) and (3) of Regulation (EU) No 165/2014, 15(7) of Regulation (EEC) No 3821/85, 6(5) of Regulation (EC) No 561/2006, 11(3) of Directive 2006/22/EC.

### **Clarification:**

In order to ensure more rapid, effective and comprehensive controls of compliance with the provisions of Regulation (EC) No 561/2006 on driving times, breaks, rest periods, the EU legislation requires from a driver and a transport undertaking producing a full set of records of driver's activities over a relevant period of time.

In this regard Article 34(1) of Regulation (EU) No 165/2014 requires the drivers to use record sheets or driver cards every day on which they are driving, and Article 34(3) stipulates that when, as a result of being away from the vehicle, a driver is unable to use the tachograph fitted to the vehicle, periods of other work, availability and periods of breaks and rest shall be entered by using manual inputs. Second paragraph of Article 34(3) prohibits Member States from imposing the use of the form attesting for driver's activities while away from the vehicle. However, it does not prohibit the use of such a form by drivers for the purpose of attesting activities when away from the vehicle and when it was impossible for them to record such activities retroactively by manual entries. The rationale behind this provision is to prevent unnecessary burdens on drivers and undertakings and to promote the use of tachograph as a main tool to display, record, store and print details on driver's activities and inactivity periods.

In accordance with Article 15(7) of Regulation (EEC) No 3821/85 (which Article 36 of Regulation (EU) No 165/2014 will substitute) a driver should be able to produce and present to the competent authorities the full set of tachograph records, including manual entries, for the current day and the previous 28 days.

This obligation is reiterated by Article 6(5) of Regulation (EC) No 561/2006, which requires the driver to record other work and availability periods on each and every day since his last daily or weekly rest period, and not only on the days when a driver performs operations falling within the scope of the Regulation. It would be against the objectives and the spirit of the Regulation if only records for the day when the 'in-scope' driving is performed would be required. Indeed, other work outside the transport sector or out-of-scope driving may also have bearing on driver's fatigue, and subsequently endanger road safety as well as deteriorate his health and working conditions.

Article 11(3) of Directive 2006/22/EC provides that in certain situations when a driver was away from the vehicle, within the period of 28 days, an electronic and printable form established by Commission Decision of 14 December 2009 [C(2009) 9895] should be used. This "attestation of activity" form serves to register the information which could not be registered in a tachograph via manual entries.

*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 and other relevant EU legal acts. It should be noted that, in any event, interpretation of Union law is ultimately the role of the European Court of Justice.*

**Practical implementation:**

All the above-mentioned provisions must be read jointly. Subsequently, it is to be understood that a driver is obliged to produce and present the full set of tachograph records for the current day and the previous 28 days. These records should cover all periods of activity (driving, availability, out of scope driving, other work, etc.) and inactivity (breaks, rest periods, annual leave, sick leave, etc.) for each and every day. When, as a result of being away from the vehicle, it is not possible to use the tachograph on each and every day to record driver's activities and inactivity periods, these should be recorded retroactively by using manual entries on the day when a driver activates tachograph following the period of being away from the vehicle. If, for technical reasons, such retroactive recording is not possible (e.g. in case of 1<sup>st</sup> generation of digital tachographs) or appears excessively burdensome (e.g. a driver was working out of scope for a longer period preceding the activity of driving in-scope) a driver may use the standard attestation form established by Commission Decision C(2009) 9895 in order to cover the gaps in the tachograph records. Member States' enforcement authorities are recommended to accept that standard attestation form in such justified situations, but at the same time Member States should not impose the use of this form (or any other form attesting for driver's activities when away from the vehicle) and should not penalize the drivers for a lack of such a form.

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