

GUIDANCE NOTE 2

Issue: Recording the travelling time of a driver to a location that is not the usual place for taking charge or relinquishing of a vehicle in the scope of Regulation (EC) No 561/2006

Article: 9 of Regulation (EC) No 561/2006

Approach to be followed:

A driver travelling to a specific place, other than the employer's operating centre, indicated to him/her by the employer in order to take over and drive a 'tachograph vehicle' is satisfying an obligation towards his/her employer and therefore he/she does not freely dispose of his/her time.

Hence, in line with Articles 9(2) and 9(3):

- any time spent by a driver travelling to or from a location, which is not the driver's home or the employer's operational centre and where the driver is supposed to take over or to leave a vehicle in the scope of the Regulation, regardless of whether the employer gave instructions as to when and how to travel or whether that choice was left to the driver, should be recorded as either 'availability' or 'other work' depending on the Member State's national legislation; and

- any time spent by a driver driving a **vehicle, which is out of scope of the Regulation, to or from a location, which is** not the driver's home or the employer's operational centre **and where a driver is supposed to take over or to leave a vehicle which falls within the scope of the Regulation should be recorded as 'other work'**

In the following three cases the time spent travelling can be regarded as 'rest' or 'break'.

The first case is when a driver accompanies a vehicle which is transported by ferry boat or train. In this case the driver may take his/her rest or break provided that he/she has an access to a couchette or a bunk (Art. 9.1).

The second case is when a driver is not accompanying a vehicle, but is travelling by train or ferry to or from a place where he/she will take charge or has relinquished control of a vehicle within the scope of the Regulation (Art. 9.2) provided that he/she has an access to a couchette or bunk on that ferry or train.

The third is where a vehicle is manned by more than one driver. When a second crew member is available for driving when necessary, is sitting next to the driver of the vehicle and is not actively involved in assisting the driver driving the vehicle, a period of 45 minutes of that crew member's 'period of availability' can be regarded as 'break'.

There is no differentiation as to the character of the employment contract of the driver. Thus these rules apply to both permanent drivers and drivers employed by a temporary employment undertaking hiring out of labour.

For a 'temporary driver' the 'employer's operational centre' means an operational centre of an undertaking using the services of that driver for its road transport ('user undertaking'), and not the head office of the 'temporary employment undertaking'.

Comment: European Court of Justice, Case C-76/77 and Case C-297/99