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DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate C - Land
C.1 - Road Transport

Mobility Package I

Rule on the return of the vehicle

as applicable from 21 February 2022

Questions and Answers

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Article 5(1)b of Regulation (EC) No 1071/2009 as amended by Regulation (EU) 2020/1055

Version: 1

Target audience: Road transport undertakings, professional drivers, enforcers

General comment: this is intended for internet publication. It could be translated.

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Applicable rule: “in order to satisfy the requirement [of having an effective and stable establishment in a Member State] laid down in point (a) of Article 3(1), in the Member State of establishment an undertaking shall (...) organise its vehicle fleet’s activity in such a way as to ensure that vehicles that are at the disposal of the undertaking and are used in international carriage return to one of the operational centres in that Member State at least within eight weeks after leaving it” (Article 5(1)(b) of Regulation (EC) No 1071/2009)¹.

I. Substance of the rule

	Which vehicles fall under the rule?
1.	<p>This rule applies to</p> <ul style="list-style-type: none">• motor vehicles or combinations of vehicles used for the international carriage of goods for hire or reward that leave the Member State of establishment. As regards trailers or semi-trailers, this rule applies to them to the extent that they are at the disposal of the road haulage operators within the meaning of points (e) and (g) of Article 5 of Regulation (EC) No 1071/2009 and as such are registered or put into circulation and authorised to be used in conformity with the legislation of the Member State where the undertaking is established;• motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, when used for the international carriage of passengers in return for payment. <p>However, in application of Article 1(4) of Regulation (EC) No 1071/2009, unless otherwise provided for in national law, this rule does not apply to undertakings engaged in the occupation of road transport operator solely by means of:</p> <ul style="list-style-type: none">• in the case of road haulage operators, motor vehicles or combinations of vehicles, the permissible laden mass of which does not exceed 2,5 tonnes;• vehicles used by undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator²;• motor vehicles with a maximum authorised speed not exceeding 40 km/h.
2.	

¹ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, OJ L 300, 14.11.2009, p. 51.

² Under the Regulation, any carriage by road, other than carriage for hire or reward or on own account, for which no direct or indirect remuneration is received and which does not directly or indirectly generate any income for the driver of the vehicle or for others, and which is not linked to professional activity, is to be considered as carriage exclusively for non-commercial purposes.

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	<p>Where should the vehicle return?</p> <p>The vehicle should return to one of the operational centres in the Member State of establishment of the undertaking having the vehicle at its disposal.</p> <p>The Member State of establishment refers to the Member State in which the undertaking is established, regardless of whether its transport manager originates from another country (Article 2, point 8 of Regulation (EC) No 1071/2009). Article 5 of this Regulation lays down the criteria for road transport operators to have an effective and stable establishment in a Member State. It is also the Member State that granted to the undertaking the authorisation to engage in the occupation of road transport operator, under Article 11(1) of Regulation (EC) No 1071/2009.</p> <p>The requirement is not fulfilled if the vehicle returns to any branch or subsidiaries in a Member State other than the Member State of establishment.</p> <p>The vehicle can return each time to the same or to a different operational centre in the Member State where the undertaking is established.</p>
3.	<p>For how long should the vehicle return?</p> <p>The Regulation does not specify the length of time for which the vehicle should return, which can therefore be of short duration provided that the rules on driving time as set out in Regulation (EC) No 561/2006³ are complied with.</p> <p>As explained in recital 8 of Regulation (EU) 2020/1055⁴, the operators when planning the return can try to combine it with some activities to be carried out such as maintenance of the vehicle, technical inspection or transport operation ending in the Member State of establishment in order to optimize operations.</p> <p>Moreover, the requirement to return to the Member State of establishment should not require a specific number of operations to be conducted in the Member State of establishment or otherwise limit the operators' possibility to provide services throughout the internal market. The cycle for such returns should preferably be synchronised with the obligation on the transport undertaking in Regulation (EC) No 561/2006 to organise its operations in a manner that enables the driver to return home at least every four weeks, so that both obligations can be fulfilled through the return of the driver together with the vehicle at least every second four-week cycle.</p>
4.	<p>How should the vehicle return?</p> <p>The Regulation does not specify how the vehicle should return. It can therefore return by any other means of transport such as train, ferry or autotransporter, including for part of the journey.</p>

³ 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.

⁴ Regulation (EU) 2020/1055 of the European Parliament and of the Council of 15 July 2020 amending Regulations (EC) No 1071/2009, (EC) No 1072/2009 and (EU) No 1024/2012 with a view to adapting them to developments in the road transport sector, OJ L 249, 31.7.2020, p. 17.

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II. Timeframe

How is the 8 week period calculated?

5.

The vehicle should be returned to one of the operational centres of the undertaking in its Member State of establishment at least within eight weeks after leaving that Member State.

According to the EU rules on the calculation of periods, dates and time limits, the overall period of 8 weeks referred starts from 0h00 of the day following the exit of the vehicle from the Member State of establishment and ends at the end of the same day of the eighth following week⁵. The vehicle should therefore be back to this operational centre or to any other operational centre of the undertaking in its Member State of establishment, at the latest, at 23h59 of the same day of the week 8 weeks later.

For example, if the vehicle leaves the Member State of establishment at any time on Tuesday 29 March 2022, it should be back to any operational centre of the undertaking in its Member State of establishment at the latest at the end (23h59) of Wednesday 25 May 2022.

How are public holidays and weekends taken into account as regards the calculation of the 8 week period?

6.

According to the EU rules on the calculation of periods, dates and time limits⁶, if the last day of a period expressed in weeks is a public holiday, Sunday or Saturday, the period ends with the expiry of the last hour of the following working day. Given that the obligation concerns the return of the vehicle to the Member State of establishment, only public holidays in that Member State are relevant.

As a result, if the vehicle leaves the operational centre at any time on Friday 25 March 2022, the 8 weeks period would end on Saturday 21 May 2022. However, as the last day of that period is a Saturday, the period is considered to end at 23h59 of the next working day, namely Monday 23 May 2022.

III. Enforcement and control

How should a transport undertaking prove that it has fulfilled the obligation?

7.

The competent authorities of the Member States must carry out the requisite checks to verify and monitor compliance with the requirement set out in Article 5(1)(b) of Regulation (EC) No 1071/2009. For this purpose they can use all proportionate and effective means to check compliance with the obligation. Transport undertakings are required to produce clear evidence that the vehicles at their disposal return to one of the operational centres in their Member State of establishment at least within eight weeks after leaving the Member State. They should be able to use any evidence to prove compliance with this requirement. The assessment of this evidence

⁵ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

⁶ Regulation (EEC, Euratom) No 1182/71.

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	<p>is made by the controlling authorities of the Member State where the undertaking is established, under the control of the relevant judicial authorities.</p> <p>In practice, the undertakings can present, at the request of the authorities, any document showing the location of the vehicle at the place of establishment within the last 8 weeks and/or every 8 weeks. These documents may be for example tachograph records or duty rosters of the drivers, or consignment notes.</p>
8.	<p style="text-align: center;">Can tachograph data be used as an evidence?</p> <p>Tachograph data may be used to show that a given vehicle returned to the Member State where the undertaking having it at its disposal is established within the previous 8 weeks. For vehicles fitted with a smart tachograph in accordance with Regulation (EU) No 165/2014⁷, tachograph data may be further used to show that the vehicle returned to one of the operational centres of the undertaking in that Member State. The control of the tachographs can take place during roadside checks or checks at premises, and is a reliable and effective way to demonstrate compliance with the rule on the return of the vehicle.</p> <p>In case of a roadside check, the undertaking should always have the possibility to demonstrate compliance with the obligation at a later stage through documents and evidences available at the premises of the undertaking.</p>
9.	<p style="text-align: center;">How should cooperation between Member States take place?</p> <p>When data available in the vehicle or with the driver are not enough to certify the compliance or non-compliance with the provisions of the rule of the return of the vehicle control of compliance with the return of the vehicle obligation should take place through cooperation between the controlling authority of a Member State where the undertaking is active and the competent authorities of the Member State where the undertaking is established.</p> <p>Indeed, the competent authorities of the Member States have the obligation under Article 18 of Regulation (EC) No 1071/2009 to cooperate closely and to swiftly provide one another with mutual assistance and with any other relevant information in order to facilitate the implementation and enforcement of that Regulation. The competent authorities of any Member State must in particular reply to requests for information from all competent authorities of other Member States and carry out checks, inspections and investigations concerning compliance by road transport operators established in their territory with the requirement of effective and stable establishment in a Member State, including on the return of the vehicle.</p>

⁷ 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.

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This administrative cooperation and mutual assistance between the competent authorities of the Member States is implemented through the Internal Market Information System (IMI), established by Regulation (EU) No 1024/2012⁸.

⁸ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC, OJ L 316, 14.11.2012, p. 1