

GUIDANCE NOTE 1

Issue: Exceptional deviation from minimum rest and maximum driving limits in order to find a suitable stopping place.

Article: 12 of Regulation (EC) No 561/2006

Approach to be followed: Article 12 contains provisions that permit a driver to depart from the minimum rest requirements and maximum driving times contained in Articles 6 to 9 in order to find a suitable stopping place. This article does not authorize a driver to derogate from the Regulation for reasons known before the journey commenced. It is designed to enable drivers to deal with cases where it unexpectedly becomes impossible to comply with the Regulation during the course of the journey, that is in situations of abnormal difficulties, independent of the will of the driver and apparently unavoidable that may not be anticipated, even if all due care is taken. The derogation has also the function of ensuring the safety of persons, of the vehicle and of its load and the requirement that road safety must in any event be taken into account.

Three parties have certain obligations in relation to such situations:

1) A transport undertaking must plan carefully a driver's safe trip foreseeing, for instance, regular traffic jams, weather conditions and access to adequate parking places, that is, it must organize work in such a way that drivers are able to comply with the Regulation and should take into account the requirements of shippers and insurance companies concerning safe parking are satisfied.

2) A driver must rigorously stick to the rules and not deviate from driving time limits unless exceptional circumstances occur unexpectedly and it becomes impossible to comply with the Regulation without endangering road safety, the safety of persons, the vehicle or its load. If a driver decides that it is necessary to derogate from the Regulation and that this will not jeopardise road safety he/she must indicate the nature and reason for derogation manually (in any Community language, on the record sheet or on the print out from the recording equipment or on the duty roster) as soon as he/she stops.

3) An enforcer must apply professional discretion when controlling a driver and assessing whether the departure from driving limits is justified.

When assessing the legitimacy of the deviation on the basis of Article 12 all circumstances must be examined carefully by an enforcer including:

(a) a history of driver's driving records to establish the pattern of driver's performance and verify whether the driver normally complies with driving and rest time rules, and that the deviation is exceptional;

(b) the deviation from driving time limits must not be a regular occurrence and must be caused by exceptional circumstances such as: major traffic accidents, extreme weather conditions, road diversions, no place at the parking area, etc. *(This list of possible exceptional circumstances is only indicative. The principle for assessment is that the motive of possible deviation from driving limits must not be known or even possible to foresee beforehand);*

(c) daily and weekly driving limits should be respected, hence the driver should not have any 'time gains' by exceeding driving limit in search of a parking place;

(d) the deviation from the driving time rules must not lead to a reduction of the required breaks, daily and weekly rest.

Comment: European Court of Justice, Case C-235/94