

## Driving times and rest periods – Regulation N° 561/2006 common position paper ECFD-UPEI

The safety of European roads is among the highest priority of both ECFD and UPEI. In that respect, Regulation N°561/2006 on the harmonization of certain social legislation relating to road transport<sup>1</sup> plays a major role as it provides professional drivers with the assurance that their daily activities will not be hampered by a dangerous environment nor by degraded working conditions. The benefits of this regulation are not to be considered only through a social perspective. Guaranteeing reasonable driving times as well as regular breaks and rest periods for drivers are essential prerequisites to secure European roads from easily avoidable accidents linked to tiredness and reduced attention span.

Given the impact of the regulation on its members, ECFD and UPEI welcomed last summer the revised proposal of the European Commission. A closer examination however showed that the institution fell short in seizing this opportunity to adjust the regulation's provisions to particular sectorial needs, especially those of the off-grid heating fuel distributors. This is even more regrettable that both impact assessments and ex-post evaluation<sup>2</sup> conducted in view of the revision had clearly identified them, although the Commission obviously preferred to overlook them.

### **SMEs composed sector**

ECFD and UPEI represent the interests of heating fuels distributors which are mainly small and medium-sized, often family-owned, companies. This means that these enterprises work with only a few employees – highly-trained professional drivers delivering domestic heating oil to their customers.

The off-grid heating fuel distribution sector is locally-based, enabling the development of a strong bond of trust between the companies and their local customers. In that respect, deliveries do not entail long-distance deliveries for drivers as the customers are always situated within a limited perimeter. Hence, ECFD and UPEI members' drivers do not spend several hours of continuous driving. As a matter of fact, delivering heating fuels to households requires them to stop frequently in order to refill customers' fuel tanks. In that respect, a typical driver's day encompasses between 20 and 25 deliveries, keeping in mind that it takes on average more than 15 minutes to complete a delivery. Fuel distributors spend more time outside the cabin to deliver the energy to the households than behind the wheel of their truck.

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<sup>1</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonization 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

<sup>2</sup> Impact assessment SWD(2017) 186 final, part 1, page 24.

<https://ec.europa.eu/transport/sites/transport/files/swd20170186-ia-part1-driving-times.pdf>

Impact assessment SWD(2017) 186 final, part 2, page 113.

<https://ec.europa.eu/transport/sites/transport/files/swd20170186-ia-part2-driving-times.pdf>

Ex post evaluation SWD(2017) 184 final, page 39.

<https://ec.europa.eu/transport/sites/transport/files/swd20170184-ex-post-eval-driving-times.pdf>

## Delivering a basic commodity

Drivers are not granted any exemption under the existing regulation. Both ECFD and UPEI considers that due to the particular nature of the activity, the off-grid heating fuels distribution sector should benefit from an exception granted at Member State level as foreseen under article 13 (1) of Regulation N°561/2006.

ECFD and UPEI members' work is to guarantee the supply of a basic commodity to European households. Drivers have to ensure that households will have enough fuel to heat their house – especially during the winter months or during disruptions to the upstream supply lines. Unfortunately, not only is winter the peak demand period, but it is also synonymous of degraded weather conditions, potentially increasing delivery time due to less practicable roads. It is however precisely then that those deliveries should be the quickest, in order to prevent households to be left without heating during the coldest months of the year.

At present, the strict application of the current regulation's provisions prevents drivers from increasing their delivery capacity during peak demand. Even though winter is the busiest season for drivers, they are paradoxically forced to take breaks from their work precisely when customers running out of heating oil expect quick supply. The lack of flexibility in implementation leads to winter deliveries being delayed to satisfy the regulation's obligations, to the detriment of households.

National derogations provided by article 14 of the regulation on the temporary relaxation of drivers do not seem to ECFD and UPEI an appropriate solution. Indeed, both organizations strongly doubt that winter could be qualified as an "exceptional circumstance" or an "urgent case". Furthermore, interpretation and use of article 14 (2) seems to differ tremendously from one Member State to another according to the Commission's list<sup>3</sup> of temporary relaxation of drivers' hours rules. In any case, this provision only provides an ad hoc, short term and last minute solution to particularly extreme situations. It is therefore not fit to accommodate the heating fuels distribution sector specific needs.

## Commission's revised proposal

ECFD and UPEI have been fairly disappointed by the outcome of the Regulation evaluation process. On several occasions, be it during meetings or the evaluation process via public consultations and interviews, ECFD has explained to the Commission the recurrent problem its members have to face every winter: the stringent EU rules on weekly rest periods prevents the sector to increase its delivery capacity in times of peak demand. Market demand for heating oil inevitably increases in winter, and so should heating oil deliveries!

In spite of the Commission noting in its impact assessment that "weekly rest period provisions are regarded as particularly problematic, because of the seasonal peaks in demand"<sup>4</sup> for several

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<sup>3</sup> <https://ec.europa.eu/transport/sites/transport/files/temporary-relaxation-drivers.pdf>

<sup>4</sup> Impact assessment SWD(2017) 186 final, part 1, page 24.

<https://ec.europa.eu/transport/sites/transport/files/swd20170186-ia-part1-driving-times.pdf>

distribution sectors, and notably domestic heating oil, no new national exemption was created under article 13.

This choice is particularly questionable given the Commission's reason for discarding the creation of a new exception for the delivery of domestic heating oil. Indeed, the Commission does not foresee any issues in terms of legal, technical or political feasibility, nor in terms of proportionality<sup>5</sup>. The institution however considers that other existing measures are sufficient to deal with the identified problem. Further reading into the ex-post evaluation final report shows that the measure referred to by the Commission is actually article 14 of the Regulation, on temporary exemptions<sup>6</sup>.

ECFD and UPEI clearly disagree with this position as winter can hardly be qualified as "exceptional circumstances". Moreover, Member States triggering article 14 in case of particularly extreme winter weather conditions do not bring an appropriate response to consumers' needs. Article 14 only provides a last minute solution to a situation already causing harm to consumers as their heating fuel orders are being delayed for no valid reason. The EU should instead provide a framework enabling Member States to adopt a preemptive approach, as article 13 allows, for the off-grid heating fuels sector, instead of a last minute response. Cold fronts and snowstorms are not unexpected events in winter, they can easily be anticipated.

ECFD and UPEI also consider that the changes brought to article 14 are not relevant. The existing data<sup>7</sup> compiling all temporary exceptions granted by Member States and notified to the European Commission to date shows indeed a very reasonable and occasional use of article 14. Against that background, the additional requirement to "duly justify" the considered exemption does not seem relevant, and might deter even more Member States already reluctant to use it.

### ECFD and UPEI recommendations

The two organizations call for the inclusion of a new exception to article 13 for vehicles used to deliver off-grid heating fuels to the list of exceptions. Drivers should be granted the possibility to depart from the provisions of article 8 on daily and weekly rest periods when their customers' interests are at stake.

ECFD and UPEI are confident that such derogation would not go against the objectives set up in article 1 of the regulation. Since the only means of transportation used to deliver off-grid heating fuels are rigid trucks, competition in the road sector cannot possibly be hampered by such exception, especially as it would apply to all off-grid heating fuels distribution companies. Moreover, departing from the strict obligations on daily breaks would not be to the detriment of working conditions and road safety. On the contrary, it will enable drivers to complete more deliveries during a period where daylight is reduced, limiting risks related to filling tanks, dragging hoses and driving in the dark.

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<sup>5</sup> Impact assessment SWD(2017) 186 final, part 2, page 113.

<https://ec.europa.eu/transport/sites/transport/files/swd20170186-ia-part2-driving-times.pdf>

<sup>6</sup> Ex post evaluation final report, page 39.

<https://ec.europa.eu/transport/sites/transport/files/swd20170184-ex-post-eval-driving-times.pdf>

<sup>7</sup> <https://ec.europa.eu/transport/sites/transport/files/temporary-relaxation-drivers.pdf>

Lastly, monitoring, enforcement practices as well as working practices in the road sector will not be impacted by such exception.

Overall, ECFD and UPEI are convinced that a new exception under article 13 should benefit local transportation and distribution businesses under certain conditions. Indeed, their drivers are not subject to the same constraints as long-distance and international drivers whose quality of rest is necessarily impacted by the constant relocation.

Furthermore, ECFD and UPEI encourage co-legislators not to amend article 14 of the Regulation, and reject the changes brought by the Commission as they only bring little value.

### In summary

- **Include a new exemption in article 13 (1) for rigid off-grid heating fuels delivery tankers or for local distribution** – as long as they operate within 100 km from their base
- **Maintain the original wording of article 14** on temporary exemptions

#### **ECFD**

*The ECFD represents the interests of 10,000 distributors of petroleum products, including domestic heating oil, kerosene, petrol, diesel, gasoil and liquefied petroleum gases (butane, propane, LPG). Its members are essentially family-owned SMEs who supply from the refineries, terminals and their own storage directly to their customers' tanks. Members include the Austrian Association of fuel and petroleum distributors (WKO), the Belgian Federation of Fuel Suppliers (BRAFCO), Bundesverband mittelständischer Mineralölunternehmen e.V. (UNITI), the French Fédération Française des Combustibles et Carburants (FF3C), and the UK Federation of Petroleum Suppliers (FPS). [www.ecfd.be](http://www.ecfd.be)*

#### **UPEI**

*UPEI represents European importers and wholesale/retail distributors of refined petroleum products and their alternatives, supplying Europe's customers, independently of the major fuel producers. It was created in 1962 with the aim of ensuring a level playing field for the supply of energy on the European market and safeguarding a competitive approach. The organization brings together national associations and suppliers across Europe. Today UPEI also acts as an informed and responsible partner to Europe's decision-makers on the risks and opportunities involved in the transition to a low carbon economy. [www.upei.org](http://www.upei.org)*