

IRU POSITION

CONCERNING THE COMMISSION PROPOSAL FOR NEW DRIVING AND REST TIME RULES

IRU position concerning the Commission proposal for new driving and rest time rules, including an explanatory note on the main elements of the rules

Summary Position

The IRU is in favour of driving and rest time rules that meet the objectives in the field of road safety, fair competition and social protection, that take due account of the specific characteristics of road transport operations, and that can be effectively enforced in a harmonised and stringent manner.

The proposed provisions, those on breaks and rest time in particular, are unduly restrictive. Passenger transport in particular would be negatively affected by the abolition of specific provisions available in the existing Regulation 3820/85. Also, in their present form, the new rules would lead to considerable interpretation problems.

Furthermore observing that many of the provisions on details need to be reconsidered or rephrased, the IRU strongly advises against the adoption of this proposal, and presents alternative ways to increase the enforceability of EU driving and rest time rules.

1. General Observations

1.1 The objectives of EU driving and rest time rules

The IRU is in favour of European driving and rest time rules that

- contribute to road safety
- provide a level playing field between operators
- provide adequate operational conditions for widely differing road transport activities
- enhance the working time rules to safeguard the health and safety of the drivers
- can be, and indeed are, duly enforced

The IRU considers that the Commission proposal does not sufficiently recognise the specific characteristics of many road transport operations. A better balance must be found between the need to improve and harmonise enforcement and the need to provide adequate operational conditions.

1.2 The merits of the existing Regulation 3820/85

The existing Regulation 3820/85 is a coherent set of rules that is presently applied throughout Europe under the AETR Agreement. It takes account of specific characteristics of some types of road transport, and of passenger transport in particular. Also, it provides for general or national derogation in the case of atypical operations when other adequate means to ensure road safety, fair competition and social protection are available.

For all these reasons, the IRU considers that maintaining Reg. 3820/85 and adopting legislative measures to ensure uniform interpretation and harmonised enforcement is preferable to replacing Reg. 3820/85 by the rules now proposed by the EU Commission.

1.3 The implications of the digital tachograph

The proposed hours' rules are simpler than the existing ones. The main reason behind this simplification is that the full use of the forthcoming digital tachograph depends on software that can swiftly analyse many driver records. Acknowledging the difficulty in making software for dealing with the provisions of Reg. 3820/85, the IRU cannot accept that drivers' hours are determined more by computer programmers' desires than by the operational aspects of road transport.

Software analysis of driver data can assist but not replace enforcement authorities. Agreement on the interpretation of just some provisions in existing Reg. 3820/85 suffices for developing software that can vary the analysis in accordance with rules as they apply to a given driver in a given situation. Also, software may be made different for roadside checks, when the controlled period provisionally remains a maximum of 8 days, and for company checks.

The IRU considers that hours' rules must depend on the stated objectives of this Regulation and not on computer programmers' problems. The IRU considers and regrets that the latter have led to impractical rules being proposed.

1.4 The proposed amendments are unnecessarily substantive

Even though the proposed hours' rules may look like the existing ones, the changes in the definitions and the abolition of special provisions or derogations for specific activities would lead to substantive changes.

The full impact of these amendments depends on the interpretation of the texts proposed, in particular with respect to the 'week' (see point 1.5 below). However, the fact that short driving interruptions are no longer considered breaks in the meaning of the Regulation, and that periods of inactivity lasting between 1 and 9 hours are no longer considered rests in the meaning of the Regulation, implies substantive changes in the organisation of the drivers' work.

The effects of these changes will be felt most in the passenger transport sector, as special provisions now contained in Reg. 3820/85 would be removed (see point 1.7 below).

The IRU considers that changes to the present rules are far more substantive than can be justified by the change in enforcement practice and/or the need for clarification, and is opposed to this fact.

1.5 The need for clarification and interpretation

The IRU is concerned that the objective of simple and unambiguous rules will not be achieved if the Commission proposal is adopted. Indeed, there are major new uncertainties arising from the proposed definitions and hours' provisions with regard to their different possible interpretations at the national level, in addition to some existing uncertainties that have not been laid to rest:

- flexible weeks can be short periods, with the definition affecting the number of permissible driving hours every 7 and every 14 days;

- it remains unclear whether daily rests that are too short give rise to daily driving periods that are too long, and whether breaks that are too short imply continuous driving periods that are too long (the well-known press articles on 70 hours or more behind the wheel when rest periods taken were too short);
- break periods of under 30 minutes might be seen at national level as driving time;
- off duty periods of less than 9 hours would be 'rest' but not a (part of a) daily rest period.
- 'rests', 'breaks', and 'other periods of availability' become much the same under the new rules, but must or may be recorded differently under the provisions in Reg. 3821/85 and 2135/98.

The IRU is very concerned that major interpretation problems, and hence different situations per country, will remain.

1.6 Major and unnecessary reductions in accommodating specific needs

The new hours' rules are unduly reducing flexibility in organising transport operations, and for drivers, the possibility to follow personal preferences.

The rest hours in particular will turn out to be impracticable. Also, they could easily lead to perverse social effects and to a greater number of permissible driving hours for self-employed drivers and, in the future, for AETR drivers from outside the EU than for EU employed drivers:

- as successive day trips are each now based on respecting an 11-hour daily rest, they will have to be rescheduled, resulting in more irregular work patterns for drivers;
- the reduced daily spread will lead to schedules becoming tighter and to fewer possibilities for drivers to take a short rest when tired or needing to attend to personal matters;
- the obligation to always take a full 45-hour weekly rest when at base is particularly burdensome in the case of weekly delivery schedules over 6 days (to shops, hospitals, etc.). Even though daily driving will not normally be anything near the 9 or 10-hour limit, the revised weekly rest requirement prohibits working more than 5 days a week in this case;
- split daily rests now allowed under Reg. 3820/85 accommodate many specific needs of operators and drivers. The abolition of split rests would have serious consequences whenever longer periods of inactivity of the driver occur during the day and the daily spread is more than 12 hours (waiting times, off-peak driving, commuter transport, coach trips to attractions or events);
- reduced weekly rests without compensation when away from home may lead to drivers taking such weekly rests as much as possible at the employers' request or as self-employed drivers.

The IRU considers that the proposed rest provisions are an impediment to efficient road transport and that, if present provisions cannot be enforced, new concepts for ensuring enforceability and flexibility are preferable to simply and rigidly removing from the existing rules nearly all possibilities for adaptation to operational needs.

1.7 Major and unworkable setbacks in passenger transport

In Reg. 3820/85, the specific needs of passenger transport have, to some degree, been taken into account. Passengers, generally speaking, cannot be kept waiting. Driving and rest hours must take account of the passenger for collective transportation systems to remain a viable alternative to the private car, for competition with other modes of transport to be fair and for EU revenue from incoming tourism to be maintained.

Flexible break provisions are essential in the case of regular services (interurban, for example) where traffic density may make journeys last longer than scheduled.

Transport demand patterns in the transportation of commuters, school children or groups on one-day trips lead to longer hours of inactivity of the driver during the day and to daily rest periods that cannot be 12 hours long without implying that two drivers, instead of now one, are needed.

Indeed, uninterrupted daily rest needed after a working day of 9 or 10 hours' driving and some hours of other work is different from the need for rest in cases when daily driving and other work does not exceed 6 hours with the driver taking an uninterrupted long break in the course of the working day.

Also, in the case of round trips by coach through Europe for instance, when daily driving is not too long because tourists would not agree to this, and when daily rests are sufficiently long, there is no road safety, fair competition or social protection reason for lifting the present provision that a weekly rest may be postponed.

Generally speaking, coach tourism is an activity of a highly seasonal nature, implying that drivers work a lot during the season, often as a double crew, and less in the off-peak period. Present provisions in Reg. 3820/85 are already hardly adequate for this activity, and cannot be tightened up. Excesses now observed will effectively be remedied by the future driver card and can already be tackled today by a repressive combination of enforcement frequency and penalties.

The IRU considers that the proposed changes are particularly detrimental to the transport of passengers by road. Indeed, such changes run the risk of putting certain types of passenger transport by road in a position where they could no longer compete with other modes or the private car. The IRU calls for EU rules that allow passenger transport to be efficient and attractive to passengers, by means of specific provisions where appropriate.

1.8 Better solutions must be found

The Commission proposal is an unfortunate combination of a Regulation that has proven its value but is difficult to enforce, and the wish to clarify and simplify the rules, mainly for the sake of better enforcement.

The IRU considers that alternative new rules, based on the need for enforceability on the one hand and the need for taking specific aspects of road transport into account on the other, could provide equivalent levels of road safety protection, social protection and fair competition.

1.8.1 For breaks

45 minutes can relate to a rolling 4½ driving hours' period and be split into maximum 3 (or 2) periods of any duration. This caters for short driver stops, guarantees that there is a longer break too if there are short ones, guarantees that 45 minutes are taken for any driving time totalling 4½ hours, rules out that short stops are counted as driving time and gives drivers greater possibilities for following personal preferences.

The proposal (30 minutes after a maximum of 3 hours of driving or 45 minutes after a maximum of 4½ hours of driving may reduce total break time per day (2 x 30 minutes for 10 hours of driving). But worse, when combined with a 12-hour daily rest obligation and because short interruptions reduce available driving time, it may lead to drivers not being given time for short stops. Also, delays in scheduled services cause infringements that drivers, reasonably speaking, must make in the interest of the passengers.

In such cases, Art. 12 of Reg. 3820/85 (which is maintained in the proposed Regulation) would be invoked more often, with obvious adverse consequences for enforcement.

1.8.2 For daily rest and weekly rest

11 hours a day and 35 hours a week are the accepted general standard values in Dir. 93/104, applying to employed drivers out of the scope of Reg. 3820/85 too. Minimum periods in that Directive are 9 and 24 respectively, and compensation of reduced rest is foreseen as a general rule.

Enforceable provisions in a new Reg. 3820/85 could be based on these values, by providing for minimum numbers of cumulative rest hours per day, 2 days, 3 days, etc., together with a minimum uninterrupted rest of 8 hours per (rolling) 24-hour period and per 10 driving hours.

Cumulative minimum values over longer periods (up to 28 days) would implicitly lead to compensations and provide for weekly rests, or an equivalent of prolonged daily rest periods for certain (passenger) transport operations.

The same minimum rest hours could apply to single drivers and double crews if rest in a moving vehicle were to count fully or partly as rest time. Thus, special provisions for double crews and related enforcement problems could be avoided.

Considering that the present proposals are impracticable in many cases, the IRU calls for a fresh approach to legislation that combines improved enforceability with achieving the other objectives of driving and rest times rules.

1.9 Opposition to other amendments and new elements

The IRU considers many provisions relating to other matters than the driving and rest hours themselves to be inadequate, even though it shares the objective in a number of cases:

- The Committee procedure (comitology) should not be applied. Driving and rest time legislation should remain the sole responsibility of the Council and the European Parliament, and the European Court of Justice should remain the competent authority for judging any problems of interpretation. A forum for discussing implementation problems and for advising the Commission when it prepares amendments to the Regulation for solving such problems, must include the social partners.
- Suing for infringements committed in another Member State cannot be based on making driving after an offence an infringement in itself.
- Drivers only must be liable for infringements they commit on their own initiative when instructions given allow for compliance.
- While accepting that penalties must be harmonised, proportionate and dissuasive, the IRU considers that impoundment of the vehicle for serious offences should be possible in a Member State with regard to vehicles registered in that Member State only. Experience has shown that, otherwise, anomalies may occur in some Member States with regard to foreign vehicles. However, immobilisation of the vehicle in the case of serious offences against the rest provisions should be possible in any Member State.

The IRU is in favour of maintaining the current involvement of the Council, the European Parliament and the European Court of Justice. It considers it necessary to amend many parts of the Proposal, including several important items, that relate to other aspects than minimum and maximum hours as such.

2. Detailed Observations

Art. 1 – Objective

While agreeing with the stated objectives (fair competition, improvement of working conditions and road safety), the IRU considers that they should remain part of the 'Recitals' if it is decided to set up a 'Committee' (ref. Art. 22 of the Commission Proposal). The IRU is very much concerned that the Committee procedure (comitology) will effectively determine driving and rest time rules and that Art. 1, as proposed, will trigger an overly restrictive interpretation of these rules.

Art. 2.2 – AETR

Content-wise, the article remains the same as in Reg. 3820/85. The IRU underlines the need for maintaining fair competition between operators from Member States and those from other AETR contracting parties. The IRU hence calls for the earliest possible EU initiatives for aligning the two sets of rules, and for taking account of the effects of EU working time rules on the competitive position of the EU road transport companies.

Art. 2.1 – Geographical scope

The provision in Art. 2 § 1, second b, is incompatible with the provision in Art. 2.2 (a) if both a non-AETR country and a non-EU AETR country are involved in a journey made by an EU-registered vehicle.

Art. 2.1 – Passenger vehicles

The IRU is concerned that 'passenger vehicles permanently adapted for carrying more than nine persons' will become a matter of continuous difficulty and need for interpretation. The IRU prefers that Art. 4.2 of the present Regulation 3820/85 be kept, or that the definition therein be used for the 'Scope' article.

Art. 3 – Exemptions

The IRU agrees that no undue exemptions should be maintained and that no distortions of competition or road safety risks should result from exemptions.

At the same time, however, the IRU considers it necessary to recall that exemptions foreseen in Reg. 3820/85 have been based on commonly recognised special characteristics that make compliance with the driving and rest time limits too burdensome an obligation. Turning it the other way around, the resulting driving and rest time rules could end up being adopted because specific activities were exempted. The presently proposed general rules, which are far more rigid, would require more exemptions rather than less if business is to continue in an efficient and cost-effective manner.

As the root of 'the problem' is the specificity of the transport operation, and not the public or private nature of the operator, the IRU is opposed to the latter distinction in the proposal, as it introduces unfair competition between the two categories of operators.

Also, a weight or distance threshold should not be generally envisaged as it will, in the case of professional drivers, complicate the analysis of driver records in view of 'in scope' and 'out of scope' driving. With regard to non-professional driving for personal use, however, considering the effect of the present general exemption on road safety and the demand for professional transport, the IRU supports a weight threshold despite likely problems in ensuring that non-professional drivers know the rules and record driving and rest data (driver card, etc.).

The milk collection exemption would be deleted and no suitable national derogation is foreseen. Milk storage at farms and collection have not been sufficiently "industrialised" in all Member States, and even less so in accession countries. Therefore, this exemption must be maintained, at national level at least.

Art. 4 – Definitions

- 4.1 Driving on roads not open to the public would fall under the new rules as “driving”, whereas at present it is “other work”. This may be especially relevant when deliveries are made to larger sites and require some driving on the premises, with non-driving periods being too short to qualify as a break (the more so if short interruptions in driving are interpreted as driving time). The IRU is not opposed to the principle of considering all driving as driving time, but requires that more flexible provisions regarding breaks be adopted so as to avoid disproportionate effects of very short driving periods.
- 4.3 In the IRU’s view, the change from ‘the’ vehicle to ‘a’ vehicle requires that ‘for driving if necessary’ be replaced by ‘for driving it if necessary’, thus foregoing unintended consequences like the driver already having to comply with driving and rest time rules when taking the bus to go to work.
- 4.4 The “fixed week” definition in Reg. 3820/85 is deleted, and a definition of a “flexible week” is introduced. This raises questions regarding the notion of “week” and “weekly” in the proposal. The answers to these questions are presently unknown and the IRU reserves its position on this issue.
- 4.5 “Other work” will include all availability periods, except for waiting time, second driver presence, and non-driving time on board a ferry or train. It seems that these latter could become “breaks”, and are no longer per definition “other periods of availability” as indicated in the tachograph regulation. The IRU is strongly opposed to these changes and considers that “breaks” and “rests” must remain in one and the same category, as at present.
- 4.7/8 The minimum length of daily and weekly rests would be set out in the ‘definitions’ article. In addition to the strong reservations included as general observations, the IRU is opposed to putting hours’ provisions in the definitions, as it leads to a single infringement like an overly short daily rest becoming a series of infringements (an overly short rest, by definition, would not be a rest but a break, implying an overly long driving day, too much driving in one day, etc.).
- 4.14 Multi-manning
- This new definition should bring uniform interpretation. It rules out that if one driver picks up another driver during the journey, and that, if a driver drives one vehicle alone during part of the daily driving period and in multi-manning during another part, this driver can apply the multi-manning daily rest provision. The IRU is in favour of allowing one hour single driving per driving day, thus allowing for the second driver to be picked up from home, instead of having to come to the transport company first.

Art. 5 – Minimum age

The standard minimum age becomes 18, instead of 21 in the present Regulation. There is no relation to vocational training anymore. This should be seen in relation to the Vocational Training Directive that is currently under preparation and that contains age-related minimum vocational training requirements. The IRU welcomes this new provision.

Art. 6 – Driving time

Daily driving times do not change. With regard to other driving hour limits, the IRU reserves its position as the implications of the notion of a flexible week cannot yet be assessed.

Art. 7 – Breaks

Further to the comments under ‘General observations’ and ‘definitions’, the IRU sees need to observe that the special provision for national regular passenger transport services cannot be deleted if these services are to remain an attractive alternative to the private car. Drivers concerned have hardly any ‘other work’ and there is no particular road safety risk or distortion of competition.

Art. 8 – Rest periods

In addition to the comments and suggestions under ‘General observations’, the IRU considers that provision must be made for normal daily rest to exceed by a maximum of 3 hours the 24 hours since completion of the previous rest. Slight extensions of a working day may easily occur for reasons beyond the control of the operator or the driver and it would be an unreasonable burden if the subsequent full daily rest were considered a reduced rest only.

Also, in Article 8 § 6, the IRU favours that “*suitable sleeping facilities for each driver*” be amended to “*suitable sleeping facility for the driver or the drivers concerned*”, thus to allow for one driver to sleep in the vehicle and the other not.

Art. 9 – Interruption of daily rest in case of ferry or train

The IRU is opposed to the notion that interruptions under this article may occur in the case of a regular daily rest (12 hours) only. Reduced daily and reduced weekly rests should be included. Also, because vehicle bunks are increasingly inaccessible for drivers during the train or ferry journey, the access requirement should relate to the part of the rest taken on land only.

Art. 10.6 – Information to be given by the driver

According to this new provision, drivers employed or at the disposal of more than one transport undertaking must inform each of them such that they can avoid infringements of the driving and rest time rules. While acknowledging that this information is needed, the IRU observes that despite the broad definition of “transport undertaking” (ref. Art. 4 of the proposal), the transport undertaking will not always be capable of ensuring that rest time provisions are complied with (drivers employed by other than transport undertakings, drivers of vehicles in non-commercial activities). Furthermore, it is doubtful whether, for instance, fire brigade drivers or drivers in local public transport who drive lorries or coaches during their holidays, will inform both employers accordingly.

Therefore, if this provision is included, the IRU calls on Member States to make the driver solely responsible for giving this information and for avoiding the liability of operators in this respect.

Art. 15

The IRU supports the exclusion of local public transport and the obligation for Member States to introduce adequate national rules for the drivers concerned.

Generally speaking, the IRU is concerned that possibilities for exemption at the national level may lead to distortions of competition and hence would prefer that Art. 3 be used for exempting specific road transport operations. National exemptions are just a second best solution, not an equivalent to EU-wide exemption.

Art. 19

See ‘General observations’.

Art. 20

The new Art. 20 obliges Member States to inform the resident country of the undertaking of any breach of the driving and rest time rules observed in an infinite period before the control (“... *including any breach which occurred prior to the most recent weekly rest period*”) and of any penalties imposed. The IRU considers this to be too long a period and asks that the transport undertaking concerned receive the same information, in order to, for instance, avoid double penalties.

Art. 21 – Negotiations with third countries

The IRU welcomes this specific obligation to promote the application of the same rules to all operators and drivers where they compete.

Art. 22 & 23 – Committee procedure (Comitology) and implementing measures

In addition to what is said under 'General observations', the IRU considers that if a Committee is to be set up, the role of the social partners in the Committee procedure should be stated in this article.

Explanatory note on the main elements of the proposed driving and rest time rules

The effects of the proposed changes to the driving and rest time rules cannot all be easily understood. Surprising conclusions result from in-depth analysis. In the following paragraphs, the IRU presents its analysis and conclusions. The IRU confirms that the proposals should be treated with great caution and that the objectives can be reached by other approaches, leaving the core of the present Reg. 3820/85 unchanged.

1. Weekly rest provisions

The present legal minimum of 45 hours on average per calendar week is far higher than in any other EU industry. The Working Time Directive 93/104 (amended), which applies to rail transport too, requires a weekly rest of 35 hours that can be reduced to 24 hours, provided compensation is given.

The 45-hour average reflects the need to allow for recuperation and social life, at home, after a period with possibly many working hours (seasonal factors), and often away from home (long distance transportation).

The new weekly rest requirements would impose a compulsory weekly rest of 45 hours after every flexible week for 90% or more of the driver population. The only way for an operator or a self-employed driver to partly escape from that obligation, is to organise the operation such that rests are taken away from home, which would have obvious social disadvantages. Also, average weekly rest would diminish considerably ($\frac{1}{2} \times (24 + 45) = 34\frac{1}{2}$ h in the future, 45 h at present). Furthermore, the flexible week concept would allow for taking 45 hours' weekly rest after 144 hours of working (45 hours per 189 hours [144 + 45]) instead of 45 hours per 168 hours (7 x 24) at present. In total, weekly rest time as a percentage of total time could be substantially less.

The two measures combined could mean that weekly rests become 24 hours after 144 hours plus 45 after another 144 hours, i.e. 69 out of a total of 357 hours (19.3%, equalling 32½ hours per 7-day period). This is instead of the current average of 45 hours.

This may seem like a highly theoretical outcome. Fierce competition may easily drive the industry to use the Regulation to the extreme, however, and weekly rests would not even equal those foreseen in Dir. 93/104 (35 hours) or the 36 hours that have allegedly become the standard, in the absence of enforcement of the 45-hour average. Considering that the total duration of daily rests would hardly change (6 x 11 now, 3 x 12 + 3 x 9 in the future), the IRU sees only social disadvantages and road safety risks in the new weekly rest provisions. In addition, these provisions seriously limit the possibilities for adapting to the specific characteristics of, for instance, distribution activities, longer coach tours, and passenger transport operations that typically take place on weekends, like sporting and cultural events.

For the IRU, the apparent enforcement problem is not a good enough reason to accept all these undesirable consequences. The recording of driver data over 28 days in the digital system should be enough to check compliance with the present rules, provided it is understood that different software can and must be developed for goods transport drivers and passenger transport drivers respectively.

The IRU hence urges that the present weekly rest provisions be maintained. Alternatively, and in order to establish equal terms of competition between road and rail transport, and between road activities within the scope of Reg. 3820/85 and those outside the scope, the weekly rest provisions in Working Time Directive 93/104 (amended), as laid down in its Articles 5 and 17, could apply.

2. Removal of the split daily rest

The split daily rest was introduced to accommodate:

- the need for a longer daily spread if activities were interrupted for a number of hours during the working day;
- driver preferences, which may relate to the (in)adequateness of a resting place underway, personal business, or longer breaks during the working day.

The new daily rest provisions would remove the possibility of splitting a daily rest. Enforcement is one of the main arguments for this (checking only that 8 hours' consecutive rest are taken in 24 hours has become common practice). Another argument is that, because of meals and such like, there is not enough sleeping time left.

For the IRU, the enforcement argument is not good enough to do away with this flexible requirement. Checks at the roadside can reveal whether, in the case of a rest of 8 hours, other rest periods of at least one hour make a total of 12 in 24 hours. Complications are caused more by the reduced daily rest and the related need for compensation than by difficulties to find 12 rest hours in 24 if the continuous daily rest period is 8 hours only. During roadside checks, enforcers today often concentrate on the short term, thus ensuring that there are no road safety risks (continuous driving, daily driving, daily rest over the last day or two). This means that they only look at a longer period in the case of considerable non-compliance. Control possibilities at the roadside are limited to the current week and the last driving day of the week before. It is therefore almost irrelevant whether a continuous rest period of 10 hours and 4 other rest hours in 24 may be a 9-hour reduced daily rest or a split rest together with 2 hours' compensatory rest for a reduced daily rest earlier on. This can and should be analysed over a longer period than roadside checks normally cover. In this respect, it must be borne in mind that the forthcoming digital recording equipment will facilitate enforcement.

The 'length of sleep period' issue provides no strong arguments either. The driver himself will decide how many of any given number of rest hours he spends on personal care, meals, meeting others, reading, etc. on the one hand, and sleeping on the other. 6 or 7 hours' sleep is quite feasible and, if drivers feel that way, short rest in the other 4 compulsory rest hours can be more relaxing.

The IRU therefore considers that the split daily rest must be maintained and that harmonised interpretation and enforcement of this provision must be agreed, for the purpose of roadside checks in particular.

3. Other daily rests

3.1 *Single driver*

At present, normal (non-split) daily rests must be 11 hours long. They may be reduced to 9 hours, no more than 3 times per fixed week, if the reduction is compensated before the end of the next week.

According to the proposal, a regular daily rest must be 12 hours long. It may be reduced to 9 hours no more than 3 times per flexible week. No compensation is required.

The reason for the change is the problem that enforcers have in establishing that there is compensation for reduced rests. The total number of daily rest hours per week would hardly change, and could be even less than at present. So this proposed amendment does not seem to be driven by any social objective.

The change would have far-reaching consequences for all operations now scheduled in the framework of a 13-hour daily spread, of which there are many. In goods transport, opening hours of stores, urban lorry bans and transport efficiency considerations lead drivers to perform regular daily operations that commence early in the morning and last until early in the evening. In passenger transport, commuter traffic and one-day trips (excursions) lead to frequent use of the 13-hour daily spread now available if a regular 11-hour daily rest is observed.

These operations often cannot be rescheduled such that there is a 15-hour daily spread on some days, and a 12-hour spread on others. Cities will not implement the flexible lorry restrictions that would be required, commuters will not adapt their working hours, and delivery requirements of industry and commerce will not change. More drivers will hence be needed for no more working hours than at present, with the related increase in costs and in the driver shortage, and reductions in earnings per driver. Also, importantly, drivers would have more irregular working patterns in the future, without longer compensatory rests now often taken as days off.

The IRU does not share the enforcers' view that present daily rest rules are too difficult to control, and considers that the principle of compensatory rest can be incorporated in software, by checking cumulative rest hours per day, 2 days, 3 days, etc.

Therefore, the IRU considers that the present daily rest provisions can be kept for the most part, and that rephrasing to guarantee uniform interpretation and computability is all that is needed.

3.2 Multi-manning

At present, each double crew member must have 8 hours' rest in 30 hours.

In the future, this would become 9 hours each no more than 3 times per flexible week, and 12 hours each the other days. The idea behind the existing provision is that two drivers alternate driving, reaching the total number of permissible daily driving hours (maximum 2 x 10) before taking a rest. When not at the wheel, drivers can in fact take a rest, which formally qualifies as an availability period.

Double crews are especially common in long distance passenger transport (tourism), as passengers want to spend most of their holiday week or fortnight at the holiday destination and not on board a coach. In goods transport, double crews are engaged most in the case of long distance transportation of perishable goods, high value goods and other urgent operations (e.g. removals).

A 12-hour daily rest obligation reduces the advantage of double crews over a single driver, as total driving time before a daily rest will in practice be less than 18 hours, versus 20 at present. In the coach sector, this means a 150 to 200 km reduction of the radius within which operators can offer journeys without accommodation. In goods transport, the reduction is considerable too.

Relay drivers are a purely theoretical alternative in many cases, and using them increases transport costs substantially. Business in the sectors concerned would simply decrease by 10 to 30%.

Therefore, the IRU considers that the present provisions must be kept.

Finally, with regard to multi-manning, the requirement that drivers shall not be single drivers at any moment of the driving day is unnecessarily restrictive. During the first driving period of Driver 1, the presence of Driver 2 serves none of the objectives of the driving and rest time regulation. Clearly, abuse of the double crew provision must be avoided. In particular, care should be taken that a single driver, having completed a large part of his driving day, does not finish that day under the multi-manning provision. However, this should not prevent drivers from being picked up – at home for instance – instead of having to come to the company premises first.

This is why the IRU requests that each driver of the multi-manning crew be permitted one hour single driving.

4. Breaks

At present, 45 minutes of break must be taken after a maximum of 4½ hours' driving or during that driving period, in split break periods of at least 15 minutes each.

According to the proposal, breaks cannot be split and shall be at least 30 minutes after 3 hours' driving or 45 minutes after 4½ hours' driving.

The IRU is in favour of putting an end to the present possibility that almost 9 hours' driving is possible with an interruption of 15 minutes only. The IRU also considers that a break of more than 15 minutes is normally required for a driver to effectively break the work rhythm.

Concerns regarding the proposed provision are substantial, however:

- driver may not be free to choose the stopping place (e.g. interurban bus services, high value goods);
- blocks of 3 driving hours, instead of 4½, increase the frequency of breaks and hence the risk of unintended non-compliance;
- no provision is made for very short driving (some meters at a parking place, in a queue, at a site to free a slot for another vehicle);
- the qualification of breaks of less than 30 minutes as ‘other work’ or even ‘driving time’;
- as a consequence, because breaks are often unpaid under national law or collective agreements, an increase in the total wage cost;
- and, as a further consequence, a reduction in effective driving time.

There are no particular enforcement problems in respect of breaks at present. Both the present tachograph and the forthcoming digital equipment note the duration of breaks, and this can easily be checked against the legal standard. The proposed rule, because of new definitions, may well be more difficult to enforce than the present one.

The IRU considers that the present provision for a 45-minute break for 4½ hours’ driving is the right approach. Linking those 45 minutes to a rolling rather than a fixed period would ensure that driving is not too long. Provision should be made for at least one short interruption as part of the 45-minute break. There is no need to prescribe a minimum duration of split break periods: indeed, a break of some 30 minutes is likely to be effectively taken if other parts of the 45-minute break can be as short as the driver likes.

5. The flexible week

Reg. 3820/85 is based on the concept of a fixed week. The maximum of 6 consecutive daily driving periods means that, generally speaking, weekly rests are taken with a 5 to 6 day interval.

The proposal makes this interval explicit. It is the period between two weekly rests and it can be no longer than 144 hours. The reason for the amendment is that, already at present, enforcement practice often looks at this flexible week, rather than the fixed week.

The IRU observes that the proposal, as worded, leaves room for many uncertainties. The least one can say is that the enforcers’ ideas have not been clearly expressed in the proposal.

But more fundamentally, one may doubt the wisdom of that idea. The possible reduction of average weekly rests to no more than 32½ hours, versus 45 hours at present, has already been pointed out.

Also, flexible weeks could be chosen such that they end after taking all permissible reduced daily rests and the 2 x 10 daily driving hours, instead of 9. After a reduced weekly rest of 24 hours, new reduced daily rests and prolonged driving days would be allowed.

For instance, when full use is made of the rules as proposed, this could mean the following:

driving day 1	10 h driving + 1 h break + 9 h daily rest	=	20 h
driving day 2	10 h driving + 1 h break + 9 h daily rest	=	20 h
driving day 3	9 h driving + 45’ break + 9 h daily rest	=	18 ¾ h
driving day 4	9 h driving + 45’ break	=	9 ¾ h
Total until reduced weekly rest			68 ½ h

When the week starts on Monday at midnight, the reduced weekly rest commences on Wednesday at 8.30 p.m. Flexible week n°2 then commences on Thursday at 8.30 p.m. Until the end of the calendar week, driving days from flexible week n°1 can be repeated, and finish on Sunday at 5.00 p.m. In total, 76 driving hours will have been legally made.

And in the following calendar week, even if a regular weekly rest of 45 hours is observed first, and driving is hence resumed on Tuesday at 2.00 p.m. only, the remaining 130 hours of that week suffice for another ± 46 driving hours, which including breaks and $3 \times 9 + 1 \times 12$ hours' daily rest, would be completed on Saturday before 3.00 a.m. After again a regular 45-hour weekly rest, the two-week cycle of 122 driving hours could start again on Monday at midnight. But this is only true for self-employed drivers. Employed drivers are restricted to 60 working hours per calendar week, and would be prevented from driving the same number by the night time working limit. For the IRU, more than 90 permissible driving hours per fortnight is a welcome change. Indeed, the geographical scope of the EU has broadened substantially since 1985, and will broaden further still during the lifetime of a new Regulation. The related increase in distances in EU road transport should be taken into account, in the interest of the peripheral countries, and of drivers who should not be away from home for unnecessarily long periods of time. However, no discrimination should arise between employed and self-employed drivers.

6. Flexibility needs in passenger transport

Reg. 3820/85 contains a number of specific provisions relating to certain types of passenger transport, on top of the derogation for urban public transport.

The derogation is maintained in the proposal, but all other specific provisions have been removed. This seriously endangers the continuation of certain coach operations, deteriorating the quality of services. Passengers, unlike – in many cases – goods, cannot be kept waiting. Timetables for regular services must be kept. The objective of providing an alternative to private car use and of securing the mobility of the elderly or disabled will be more difficult to achieve if rigid driving and rest hours must be complied with.

A number of undesirable effects result from the changes addressed in the preceding paragraph:

- 30-minute breaks after 3 hours' driving imply that bus passengers on many interurban regular services will be kept waiting;
- commuter peaks will require more drivers;
- the radius of a double crew, on a one-day journey, to and from a given destination (city, event) or for reaching a holiday destination, is reduced by up to 100 km or 200 km respectively.

And on top of this, the removal of specific provisions will force operators to discontinue, for instance, the 10-day or 2-week closed-door roundtrip tours through Europe now frequently made by intercontinental tourists (USA, Japan, etc.). Other modes of transport cannot replace the coach here, and major losses for the EU tourism industry as a whole will result.

The unavoidably seasonal characteristics of road passenger transport were already insufficiently addressed in Reg. 3820/85. The 'one size fits all' concept implied by the proposal will create even more problems.

The IRU therefore urgently calls for driving and rest time rules that allow bus and coach transport to remain a viable alternative to the private car, and a mobility asset for the economically or socially weaker parts of the EU population.

Indeed, the setback implied by the proposed rules for the viability of important parts of the road passenger transport market is such that the alternative of a separate set of driving and rest time provisions for passenger transport deserves serious attention.
