

Tachographs: A never-ending story

A look at the legislative procedure concerning permitted driving times – and the effect it has on the construction industry

When it comes to representing the interests of the European construction sector in Brussels, experience shows us that, until the very end of the story, you can never be sure of the final outcome. This is currently the case with a legislative procedure concerning the revision of the so called 'driving times' regulation and related 'tachograph' regulation.

Currently, the Regulation (EC) No 561/2006 of 15 March 2006, on the harmonisation of certain social legislation relating to road transport, applies to the carriage by road of "goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3,5 tonnes". It regulates, in particular, the driving time and rest periods of road transport drivers.

The Regulation impels transport companies to respect the rules, including in terms of administrative management, and of course to equip their vehicles with tachographs and the necessary related tools. This represents a very significant investment for companies – but fees in case of breach of the legislation are extremely high.

Obviously, construction companies are not road transport companies. Indeed, in principle, these rules do not apply to construction companies' drivers and light trucks. However, the scope of the legislation was formulated in such a broad way that it was necessary to introduce a series of exemptions.

One of them, which is quite general, also covers construction

companies. It says: "[This Regulation shall not apply to carriage by road by] vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for carrying materials, equipment, or machinery for the driver's use in the course of his work and which are used only within a 100 km radius from the base of the undertaking and on the condition that driving the vehicle does not constitute the driver's main activity."

EXEMPTION EXTENSION

The initial exemption provided for a 50 km radius, but on the occasion of the previous revision of this legislation, back in 2011, FIEC fought for and obtained an extension of this radius to 100 km. In spite of this, it appeared that, in a certain number of EU countries, the legislation is applied more extensively and includes "construction drivers", as though they belong to the transport industry.

In May 2017, the European Commission proposed a further revision with the aim of strengthening the driving time rules and the related positioning by means of tachographs. FIEC seized this opportunity to call for a further extension of the existing exemption. Together with its counterparts EBC, FIEC advocated that construction companies can be considered as small mobile factories which are covering a limited perimeter. In specific cases, they also transport perishable goods (i.e. ready-mixed concrete), which can clearly not be treated as "normal" merchandise.

Discussions on this issue started very slowly and the Council of the European Union only adopted its position in December 2018. It did not touch upon the existing exemption, but, in addition to it, it introduced a new possibility for Member States (i.e. discretionary power of each Member State to apply it at national level or not) to exclude "vehicles used for the delivery of ready-mixed concrete" from the scope of the Regulation.

In the European Parliament, discussions were much more chaotic due to strong divergences of views, even within the various political groups. From the publication of the initial draft report of the Rapporteur, the Dutchman Wim van de Camp (Christians-Democrats), in December 2017 until the adoption of the final resolution by the European Parliament in plenary session, in April 2019, uncertainty regarding both the content of the text and the various steps of the legislative procedure was at its highest point.

NEGOTIATIONS

In terms of lobbying activities amid this chaos, FIEC and EBC could do little but recall their messages on a regular basis, without having any guarantee that all this work would not be undone, due to politics.

The European Parliament eventually adopted its negotiation position on 4th April 2019. This position entails both negative and positive aspects. In particular, FIEC and EBC vigorously criticised the extension of the legislation to light commercial vehicles from 2.4 tonnes involved in international transport operations.

But at the same time, the European Parliament recognised the fact that construction companies are not road transport companies. Indeed, the specificities of construction enterprises and related crafts have been taken into account in this agreement.

The following new exemptions are foreseen in the Regulation from which construction enterprises benefit:

Exemption for light commercial vehicles used for the transport of goods (on the account of the company or driver), which alleviates the effects of the increased scope for construction enterprises operating in border regions; extension of the existing exemption for vehicles with a maximum permissible mass not exceeding 7.5 tonnes, from a 100 km to a 150 km radius, which facilitates the work of construction enterprises; possibility for national exemption of vehicles up to 44 tonnes, used by construction enterprises up to a 100 km radius, which alleviates burdens for construction enterprises when heavy vehicles are needed on the construction site.

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