



Brussels, 8 April 2020

## **Exceptional measures in transport to deal with COVID-19 Issuance of driver cards for the tachograph**

Some Member States have informed the Commission about difficulties for the national card issuing authorities to renew the tachograph driver cards due to the COVID-19 outbreak. This applies to cards which are due to expire or have been declared as lost, stolen or malfunctioning.

Driver cards aim to ensure compliance with the rules on driving time, working time and rest periods as set out in Regulation (EC) No 561/2006<sup>1</sup> and Directive 2002/15/EC<sup>2</sup>. Driver cards are personal and are issued by the national authorities for a period of five years. When a tachograph card expires, or is declared as malfunctioning, lost or stolen by the driver, it must be renewed or replaced with a new card. Article 28 of Regulation (EU) No 165/2014<sup>3</sup> ('Tachograph Regulation) provides for the procedure and deadlines for the renewal of drivers' cards to ensure that drivers get their new card before the expiry date. Article 29 of the Tachograph Regulation lays down the procedure and deadlines for replacement of stolen, lost or defective cards.

However, due to the exceptional circumstances created by COVID-19 outbreak, Member States might suffer delays in renewing or replacing drivers cards and might not meet the legal deadlines mentioned in the Tachograph Regulation.

It is essential to ensure continuity of transport under the present extraordinary circumstances. Based on this objective the Commission adopted the COVID-19 border management measures to protect health and ensure the availability of goods and essential

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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 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.

<sup>2</sup> Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.

<sup>3</sup> 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.

services<sup>4</sup> and thereafter, on 23 March 2020, the Communication on the implementation of the Green Lanes under those Guidelines<sup>5</sup>.

It is noted that the measures taken to contain the spread of the Covid-19 disease raise serious difficulties when it comes to complying with the time limits set in Articles 28 and 29 of the Tachograph Regulation.

It remains that that Regulation does not contain a legal basis that would empower the Commission to authorise a derogation from these time limits in exceptional circumstances.

However in its capacity as guardian of the Treaties, the Commission is entitled to take account of exceptional circumstances to which Member States are exposed during the current crisis. The Commission services will suggest this approach, provided that the measures are limited to what is necessary in view of the current crisis, both in terms of substance and in time.

The national competent authorities should therefore strive to supply a new card as soon as possible after the receipt of a detailed request to that effect. A deadline of 45 days after the receipt of the request could be considered reasonable under the current circumstances.

National enforcement authorities should take into account the current exceptional circumstances when performing controls of compliance with the Tachograph Regulation, to the extent that the driver has complied with his/her obligations.

Notwithstanding the impossibility to renew cards or replace them as appropriate, the objectives of the Regulation should be fully preserved.

In respect of stolen, lost or defective cards, this is achieved through Article 35(2) of the Regulation, whose application in practice is in no way affected by the current crisis.

In respect of cards that have expired, the objectives of the Regulation can only be achieved in case the relevant events and time periods are recorded by means such as those set out in in Article 35(2).

Other relevant elements concerning the two cases are as follows:

**1. Stolen, lost or defective card**

- a) If a driver card is damaged or if it is malfunctioning, the driver shall return it to the competent authority of the Member State of his or her normal residence (Article 29(1)). Theft of the driver card shall be formally declared to the competent authorities of the State where the theft occurred (*idem*). Any loss of the driver card shall be reported in a formal declaration to the competent authorities of the issuing Member State and to the competent authorities of the Member State of the driver's normal residence if this is different (Article 28(3)).
- b) If the driver card is damaged, malfunctions or is lost or stolen, the driver should, within seven calendar days, apply for its replacement to the competent authorities of the Member State of his normal residence (Article 29 (4)).

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<sup>4</sup> OJ C86I, 16.3.2020, p.1

<sup>5</sup> C (2020) 1897 final. OJ C 96I, 24.3.2020, p.1

When the request for replacement can be done online, and given in particular the current circumstances, this method should be preferred.

- c) The driver should keep the proof that the card was returned to the competent national authorities in case of damaged or malfunctioning card, or the declaration of theft or of loss.

## **2. Expired cards**

- a) The obligations set out in paragraphs 1 and 2 of Article 28 of the Tachograph Regulation apply. The submission of an online request is recommended and should be always preferred when available.
- b) Without prejudice to the need for Member States to ensure that the relevant periods and events are properly recorded (cf. above), the driver should always be in possession of the expired card and present it upon request of the control authorities.
- c) The driver should keep the proof of the request of replacement of the expired card to the competent national authorities and present it to control authorities upon request.