

COMMISSION CLARIFICATION 3

- Vehicles used as local shops at local markets -

Articles: 13 (f) of Regulation (EEC) No 3820/85 and 13 (d), second indent of Regulation (EC) No 561/2006

Issue raised: Vehicles used as local shops at local markets or for door to door selling could be exempt from drivers' hours rules under Article 13(f) of the repealed Regulation 3820/85. This possibility for exemption does not exist anymore under Regulation 561/2006. Drivers of such vehicles do not drive long distances and long hours, and their main professional activity is not transporting goods, but selling them.

Clarification:

Regulation (EC) No 561/2006 under Article 13 (1) (d), second indent allows for exemption of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying material, equipment or machinery for driver's use in the course of his work. These vehicles shall be used only within 50 km radius from the base of the undertaking and on condition that driving the vehicle does not constitute the driver's main activity.

The Court ruling, Case C-128/04, clarifies that the terms 'material or equipment' cover not only tools and instruments, but also goods which are required for the performance of the work involved in the main activity of the driver of the vehicle concerned.

In this context, vehicles used as local shops at local markets could be exempt under Article 13 (1) (d), provided that the distance travelled does not exceed 50 km radius from the base and that driving does not constitute the main activity of the driver.

It must be however recalled that this exemption is not automatic but subject to an individual Member State's decision whether to grant it or not on its own territory.

Comment: clarification provided by the European Commission services to Member of Parliament Patrick Döring (letter of 12 November 2007)

DISCLAIMER: The present note sets out the Commission services views on implementation and application of certain rules of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport. It should be noted that, in any event, interpretation of Union law is ultimately the role of the European Court of Justice.