

FREQUENTLY ASKED QUESTIONS

ABOUT ARTICLE 15 OF THE LAW OF 10 JULY 2014 AIMING TO COMBAT UNFAIR SOCIAL COMPETITION

IN RELATION TO REGULAR WEEKLY REST PERIODS

1 The legal impacts of Article 15 of the Law of 10 July 2014 and its objectives in terms of regular weekly rest periods

1.1 To what provisions of Regulation (EC) 561/2006 of 15 March 2006 does Article 15 of the law of 10 July 2014 apply?

Article 8.8 of Regulation (EC) 561/2006 of 15 March 2006 requires drivers to take their regular weekly rest period away from the vehicle (the driver may only take daily rest periods and reduced weekly rest periods in the vehicle, at his/her choice, provided that the vehicle is stationary and has suitable sleeping facilities). Points 2 and 3 of Article 10 of the Regulation state that:

- a transport undertaking must organise the work of drivers in such a way that the drivers are able to comply with the Regulation on driving time and rest periods
- a transport undertaking must properly instruct the driver and must make regular checks to ensure that the Regulation is complied with
- a transport undertaking is liable for infringements committed by its drivers, even if the infringement was committed on the territory of another Member State or a third country.

Although the Regulation does not set out any explicit penalties, Article 19 requires Member States to lay down rules on penalties applicable to infringements of its provisions, and states that these penalties must be effective, proportionate, persuasive and non-discriminatory.

1.2 In practical terms, what obligations does this Law impose on drivers and road transport employers in terms of weekly rest periods?

For drivers, the Law of 10 July 2014 reminds drivers of their obligation to take their **regular** weekly rest period away from the vehicle, as required by Regulation (EC) 561/2006 of 15 March 2006. **It does not impose any additional requirements on drivers, nor does it introduce penalties against drivers.**

For employers, the Law seeks to ensure that drivers are able to comply with their obligation to take their regular weekly rest period away from the vehicle. It transposes into French law the obligation imposed by Article 10 of Regulation (EC) 561/2006 of 15 March 2006, i.e. that a transport undertaking "*shall organise the work of drivers in such a way that the drivers are able to comply with the provisions relating to regular weekly rest periods*". It also sets out the penalties for failure to comply with this provision. Under the terms of the Law, employers are liable to be sentenced to one year's imprisonment and a fine of €30,000.

These provisions have been introduced in two articles of the French Transport Code: L. 3313-3 (obligation concerning the organisation of work by employers) and L. 3315-4-1 (penalty for infringement of this obligation by employers).

1.3 What are the aims of this measure?

The Law will enable the prosecution of employers who use heavy goods vehicles as a permanent form of accommodation for the drivers they employ.

Its principal aim is to protect the living conditions of drivers, irrespective of where they live or work. Regulation (EC) 561/2006 of 15 March 2006 only authorises drivers to take daily rest periods and reduced weekly rest periods in the vehicle, provided that the vehicle is stationary and has suitable facilities. This decision is also left to the driver's discretion.

1.4 Why is this legislation necessary when Regulation (EC) 561/2006 of 15 March 2006 applies directly to European Union Member States?

Articles 8.8 and 10 of Regulation (EC) 561/2006 of 15 March 2006 set out the conditions governing regular weekly rest periods, but assign responsibility for setting penalties for infringement of these obligations to individual Member States (Article 19 of the Regulation).

This Law will ensure that employers can be prosecuted and sanctioned if, in contravention of Article 10.2, they fail to organise the work of drivers in such a way that the drivers are able to take their regular weekly rest period away from their vehicles, and are therefore unable to comply with Article 8.8 of Regulation (EC) 561/2006 of 15 March 2006.

2 Entry into force and scope

2.1 On what date will the Law enter into force

Article 15 of the Law, as codified in Articles L. 3313-3 and L. 3315-4-1 of the French Transport Code, does not include provisions for an implementing decree, nor does it state a particular date on which it will come into force.

The new Articles L. 3313-3 and L. 3315-4-1 of the French Transport Code therefore entered into force on the date on which the Law of 10 July 2014 was published in the Official Journal, i.e. 11 July 2014.

2.2 Does the Law apply to foreign drivers in France?

The Law applies in French territory, irrespective of the driver's nationality or employer, or the country in which the vehicle is registered.

2.3 Does the Law apply to transport activities covered by the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR)?

Article 15 of the Law of 10 July 2014 refers to the definition of the regular weekly rest period as given in section h of Article 4 of Regulation (EC) 561/2006 of 15 March 2006; exactly the same definition is used in the AETR.

Furthermore, the rules set out in Article 15 of the Law of 10 July 2014 are intended to apply to transport undertakings covered by the AETR.

2.4 Does the Law apply to drivers of goods transport vehicles weighing less than 3.5 tonnes?

The Law of 10 July 2014 does not apply to light utility vehicles weighing less than 3.5 tonnes.

It applies to those vehicles covered by Regulation (EC) 561/2006 of 15 March 2006, as defined in Article 2 of the Regulation, and more specifically to heavy goods vehicles with a maximum permissible weight exceeding 3.5 tonnes.

Any discussions regarding extension of the provisions of Regulation 561/2006 of 15 March 2006 to cover light utility vehicles will need to take place at European level.

2.5 Does the Law apply to self-employed drivers?

The Law applies to employers responsible for organising work, and does not therefore apply to self-employed drivers as such.

However, it applies to any person who organises the work of self-employed drivers (including his or her own work), where the person acts as an employer of other drivers.

2.6 Does the Law apply to drivers "seconded" by an employer, to freight forwarders or to leased vehicles with driver?

The provisions of Regulation (EC) 561/2006 of 15 March 2006 concerning the regular weekly rest period apply to drivers "seconded" from a company.

Any person who organises the work of drivers, in whatever capacity, may be held liable.

2.7 If a driver takes a regular weekly rest period in his or her vehicle, does the Law punish the driver or his/her employer? Who has to pay the fine?

All penalties provided for under European social and employment regulations are applicable to the employer only, and never to the driver. The same applies to the penalties set out in the Law of 10 July 2014 (a fine of up to €30,000 and up to one year's

imprisonment), since it is the employer that has breached its requirement to organise the work of drivers in such a way that they are able to comply with the obligation to spend their regular weekly rest period away from the vehicle.

2.8 Can an employer be prosecuted if the driver has taken a regular weekly rest period in the vehicle while abroad, but the infringement is detected during an inspection in France?

The land transport enforcement officers mentioned in Article L. 3315-1 of the French Transport Code are authorised to observe infringements of Regulation (EC) 561/2006 of 15 March 2006. Where a driver has taken his/her regular weekly rest period in the vehicle, this may be observed during a roadside inspection to verify compliance with all road transport rules.

During roadside inspections, enforcement officers do not investigate the conditions surrounding regular weekly rest periods occurring prior to the period under inspection.

3 Enforcement and penalties

3.1 How will decisions be made about which vehicles and drivers to inspect? Will certain nationalities be given priority?

The Law of 10 July 2014 does not modify the enforcement procedures. Inspections may be performed on all vehicles travelling in French territory, irrespective of their origin.

3.2 Can a driver be inspected on board the vehicle during his/her daily and/or weekly rest period?

The Law of 10 July 2014 does not modify the enforcement procedures. In general terms, as is the case at present, inspections are performed in a manner that limits disruption to the quality of drivers' rest.

3.3 In practical terms, how will enforcement officers check that drivers are taking their regular weekly rest period away from the vehicle?

The purpose of inspections performed by land transport enforcement officers is to ensure compliance with European and French regulations (see point 2.8).

If a driver is found to be on board the vehicle during his/her regular weekly rest period, this is considered sufficient evidence that he/she is not taking his/her rest period away from the vehicle, as required under Article 8.8 of Regulation (EC) 561/2006 of 15 March 2006.

3.4 During these inspections, can the authorities check regular weekly rest periods occurring prior to the 28 days of tachograph data available in the vehicle?

Roadside inspections conducted in French territory by land transport enforcement officers (Ministry of Transport officers, national police force, military police, etc.) will be limited to observing the conditions surrounding the current rest period. They will not address the conditions surrounding weekly rest periods occurring more than 28 prior to the inspection date.

3.5 How will the enforcement authorities handle cases where data are entered manually in a digital tachograph?

The Law of 10 July 2014 does not modify the tachograph inspection procedures.

3.6 How will the authorities ensure that penalties are proportionate to the offences committed?

The fine and term of imprisonment set out in the Law are maximum penalties.

Sentencing will be handled by a judge, following an investigation and a fair hearing during which the defence will have an opportunity to put forward its case.

The penalties imposed will be pursuant to the provisions of Article 132-24 of the French Penal Code:

"Within the limits fixed by Statute, the court imposes penalties and determines their regime according to the circumstances and the personality of the offender. When the court imposes a fine, it determines its size taking into account the income and expenses of the perpetrator of the offence.

The nature, quantum and regime of the penalties imposed are set in a manner that reconciles effective protection of society, punishment of the offender and the interests of the victim with the need to integrate or reintegrate the offender into society and prevent the commitment of further offences.

For criminal offences, other than sentences for repeat offences pursuant to [Article 132-19-1](#), an immediate custodial sentence may only be imposed as a last resort, where the severity of the offence and the personality of defender demand such a sentence, and where any other penalty is manifestly inadequate; in such cases, the custodial sentence must, where the offender's personality and situation permit and unless materially impossible, be subject to one of the measures set out in [Articles 132-25 to 132-28](#)."

3.7 How will the French authorities prosecute employers located abroad and impose the penalties provided for under French law?

Employers located in other Member States will be prosecuted via European-level administrative, police and judicial cooperation mechanisms.

The procedures surrounding administrative cooperation between governments or competent authorities are set out in Article 22.2 of Regulation (EC) 561/2006 of 15 March 2006.

These prosecutions may be based on the principle set out in Article 19 of the Regulation, which enables Member States to "*impose a penalty on an undertaking and/or a driver for an infringement of this Regulation detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of another Member State or of a third country*". Furthermore, cooperation between Member States in relation to criminal offences may be based on European judicial cooperation mechanisms.

4 Evidence requirements for drivers and transport undertakings

4.1 What physical evidence will be used to verify whether the driver has taken his/her regular weekly rest period away from the vehicle?

In order to ascertain whether an employer has breached its duty to organise the work of drivers in such a way that drivers are able to take their regular weekly rest period away from the vehicle, enforcement officers will gather clues during roadside inspections, focusing in particular on evidence that drivers employed by the same company frequently take their regular weekly rest periods in the vehicle.

Evidence of a single, isolated incident of a driver taking a regular weekly rest period in the vehicle is insufficient, in the absence of other evidence, to consider that the employer has committed an offence under Article 15 of the Law of 10 July 2014. As a result of the evidence gathered during roadside inspections, further investigations may be required involving the companies employing the drivers concerned.

4.2 Will evidence that the driver has taken his/her regular weekly rest period away from the vehicle (hotel bill, campsite bill, sworn statement that the driver has stayed with a friend or family member, etc.) be required?

Under existing law, there is no requirement to present specific evidence that the regular weekly rest period has been taken away from the vehicle.

The burden of proof is set out in Article 427 of the French Code of Criminal Procedure: "*Except where the law otherwise provides, offences may be proved by any mode of evidence and the judge decides according to his innermost conviction. The judge may only base his decision on evidence which was submitted in the course of the hearing and adversarially discussed before him.*"

If evidence of infringement of the regular weekly rest period rules is found, as with any other offence, the burden of proof will rest with the investigatory authorities and, where applicable, the competent prosecuting authorities.

Employers who are subject to investigation or prosecution may, at their initiative and pursuant to the general principles of criminal law, produce evidence or documents in order to demonstrate that they are not guilty of the alleged offence. The authorities will assess the evidentiary basis of these documents, under the supervision of the ultimate judge.

4.3 What evidence will the company need to produce in order to prove that it does not systematically organise regular weekly rest periods in the vehicle?

No specific list of evidence will be produced in relation to the taking of rest periods away from the vehicle.

The burden of proof remains with the prosecuting authority, which must demonstrate that the employer has committed an offence with regard to the organisation of work (the offence relates specifically to the organisation of work in such a manner that drivers are required to take their regular weekly rest period in the vehicle). In particular, clear evidence will be sought that drivers working for the same employer have repeatedly taken their regular weekly rest period in the vehicle. This organisation of work offence may be proven, during further investigations, by recurring observations made at vehicle parking sites.

Since no fixed list of evidence is imposed on the undertaking, employers may use any evidentiary documents at their disposal to demonstrate that they have met their obligation to organise the work of drivers in such a manner that drivers are not required to take their regular weekly rest period in the vehicle.

4.4 Will drivers need to leave their card in the tachograph during their regular weekly rest period, or should it be removed? Will the driver need to provide an attestation of activities?

The Law of 10 July 2014 does not modify the rules surrounding the handling of drivers' cards.

4.5 Can an employer be held liable if a driver chooses to spend his/her regular weekly rest period in the vehicle despite being offered suitable accommodation?

Pursuant to Article 10.2 of Regulation (EC) 561/2006 of 15 March 2006, the employer is responsible for organising the work of drivers in such a way that they are able to comply with rest period rules in particular. Transport undertakings must therefore give proper instructions to their drivers and conduct regular checks. In light of these obligations, the employer may not decline responsibility on the basis of its employee's "free choice". The employer must ensure, through regular checks, that its employees follow all instructions given in order to comply with the binding requirements of the Regulation. Failing that, the employer must take all necessary steps to enforce compliance with these requirements and, where applicable, impose disciplinary sanctions against employees who use the vehicle in contravention of the instructions received.

5 Driver accommodation and vehicle parking

5.1. What types of accommodation may employers provide for drivers who are required to spend their regular weekly rest period away from the base of the undertaking?

Employers must provide decent, hygienic and comfortable accommodation conditions for any drivers required to spend their regular weekly rest period away from the base of the undertaking.

Articles R. 4228-26 to R. 4228-34 of the French Labour Code set out details of the types of accommodation that employers may provide to workers (minimum dimensions, facilities, etc.).

The attention of employees is drawn in particular to the obligation of prior declaration to the Prefect of the department concerned in relation to collective housing, as required under Law no. 73-548 of 27 June 1973 concerning collective housing.

An employer will be in breach of the requirements of Article 8.8 of Regulation (EC) 561/2006 of 15 March 2006 if it requires its drivers to take their regular weekly rest period by parking their vehicles at a dedicated site, irrespective of the access conditions and facilities of this site, and requiring them to sleep in the vehicle.

Furthermore, Article R. 111-41 of the French Urban Planning Code prohibits camping at the roadside and on public highways. It is also considered an offence, under the French Penal Code, to impose unfit accommodation and working conditions.

5.2. How can the driver monitor his/her vehicle and its contents if he/she does not take his/her rest period on board or nearby the stationary vehicle?

Pursuant to the provisions of point f of Article 4 of Regulation (EC) 561/2006 of 15 March 2006, a driver may, during his/her rest period, "*freely dispose of his time*". The employer may not require the driver to perform any tasks or activities during this time. If drivers are required to monitor or guard their vehicle, they will therefore be deprived of their right to "freely dispose" of their time.

Employers are therefore responsible for organising the security of parked vehicles and their contents, including hazardous materials, during statutory rest periods.

5.3. Given the lack of secure car parks, how can the security of vehicles be guaranteed during rest periods if drivers are not able to monitor their vehicles?

The Law does not modify the conditions surrounding vehicle monitoring. Since its entry into force in April 2007, Regulation (EC) 561/2006 of 15 March 2006 has required employers to allow drivers to "freely dispose of [their] time" during their rest period.