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A COMPARISON OF THE CURRENT LEGAL REGULATIONS CONCERNING THE DRIVER'S WORKING TIME IN THE INTRA- COMMUNITY AND INTERNATIONAL TRANSPORT

Summary. In the article the newest legal regulations in force concerning the driver's working time were presented. A comparison was conducted of the directives in force in intra-community and international transport. A special attention was turned to underline the differences and similarities between those two types of road transportation.

PORÓWNANIE AKTUALNYCH REGULACJI PRAWNYCH DOTYCZĄCYCH CZASU PRACY KIEROWCÓW W TRANSPORCIE WEWNĄTRZSPÓLNOTOWYM I MIĘDZYNARODOWYM

Streszczenie. W artykule przedstawiono najnowsze obowiązujące regulacje prawne związane z czasem pracy kierowców. Dokonano porównania norm prawnych obowiązujących w przewozach wewnątrzspółnotowych i międzynarodowych. Zwrócono szczególną uwagę na zaakcentowanie różnic i podobieństw występujących dla obu typów przewozów drogowych.

1. INTRODUCTION

Driver's working time should be considered as the time lasting from the beginning of work to the end. During that time the driver, besides driving, performs a lot of other activities essential during the transportation of a load or transportation of people. Among the responsibilities of the driver there are, among others:

- loading, unloading of the goods and the supervision of such tasks – in case of the transportation of goods,
- the supervision and help during getting on and getting off the vehicle in case of transportation of people,
- activities connected with the day-to-day maintenance of the vehicle,
- administrative activities, shipping activities, customs activities etc. connected with given course of transportation.

Due to that, it should be remembered that the driver's working time does not mean only the time when the driver is driving. Lack of differentiation of those two tasks may lead to the false

interpretation of setting the timetables of driver's working time, and as a result may lead to imposing fines for the companies employing the drivers or when on the road.

The legal regulations concerning the driver's working time were included in:

- Drivers' working time Act from 16 April 2004, (Dz. U. from 2004. No. 92, point 879 with later changes),
- The legislative act of the European Parliament and European Board No. 561 from 15th March 2006 concerning the harmonisation of some social regulations referring to road transport (UE L 102 11.4.2006),
- AETR agreement concerning the work of the crew of vehicles performing international road transportation tasks from 1st July 1970 drawn up in Geneva (Dz. U. from 1999 No. 94, point 1087 – uniform text),
- Labour Code from 26th June 1974 (Dz. U. No. 21, point 94 with later changes).

The first legislative act dealing with the drivers' time of work, which was brought to the Polish legal regulations to the European was the regulation concerning the drivers' working time from 24th August 2001 (Dz. U. 123, point 1354). Its main aim was to prepare the Polish transportation industry as well as possible for the application of the EU regulations. On the day of the Polish accession to the European Union (1st May 2004) the necessity of application of the EU legal regulations became a fact. The regulation concerning the drivers' working time is a confirmation of the EU regulations implementation in the Polish legal system. In the period from 1st May 2004 to 10th April 2007 the legislation of the Board of EEC – European Economic Community No. 3820/85 from 20th December 1985 in reference to harmonisation of some social regulations concerning road transport was in force. The use of the mentioned regulation was justified by the necessity of the direct application in the Polish legal system of the regulations passed by the European Community bodies. The content of the legislative act in force was the repetition of the regulations within the AETR agreement concerning the work of the crew of vehicles performing international road transportation tasks. The AETR agreement was developed by the UNECE – United Nations Economic Commission for Europe and drawn up on 1st July 1970 in Geneva. Beside the EU countries the countries which signed the agreement were Andorra, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Kazakhstan, Moldavia, Russia, Turkmenistan and Uzbekistan. During the time when the mentioned regulations were in force the rules concerning the time of driving in the EU transport and the international transport were the same. But from 11th April 2007, a new legislation of the EC Board No. 561/2006 concerning the harmonisation of some social regulations referring to road transport from 15th March 2006 became applicable. This legislation overruled the previously applicable EEC legislative act No. 3821/85 from 20th December 1985 concerning the registering devices used in road transport. The aim of the introduction of the legislation was setting the clear EU regulations concerning the time of driving and the time of rest when being checked by the road control. The introduced legislation regulates the norms and obligations for carriers performing the road transportations on the EU area, on the area of Switzerland and the countries which are not members of the EU but which signed the agreement on the European Economic Area EEA, which are Norway, Iceland and Lichtenstein. On the day when the regulations of the legislative act No. 561/2006 came into force the carriers performing the road transportation within EC are obliged to act in accordance with two different legal regulations. In case when the road transportation is carried out only on the territory of the EC or between EC, Switzerland and the EEA member countries, no matter the country where the vehicle was registered, the rules of the legislative act No. 561/2006 apply. In case when the international transport is performed partly outside the mentioned territories the rules which should be applied are the AETR regulations. The range of the regulations within the AETR agreement is broader than in the legislative act No. 561/2006. The agreement contains additionally the issues concerning devices registering the time of driving – the tachographs. For the road transportations which are performed fully on the territory of the EC the legal regulations for the tachographs from the EEC Board legislative act No. 3821/85 should be applied. The application of the separate regulations depending on the area where the road transportation is performed makes the performance of the tasks much more complicated. The regulations of the AETR agreement, in accordance with the regulation No. 561/2006 should be adjusted to the content of the

legislative act. Unfortunately, in reality the regulations do not give the exact date of the change in the AETR agreement. There are plans to regulate those issues around the year 2010.

2. THE RANGE OF APPLICATION OF THE LEGISLATIVE ACT No. 561/2006 AND THE AETR AGREEMENT

Both the legislative act No. 561/2006 and the AETR agreement include the exclusions from the obligation of following the rules concerning the drivers being active at work. The crucial regulations are the rules dismissing the drivers from the use of the tachographs. Both mentioned legislative acts exclude from use: the transportation of goods by means of a vehicle weighing in total less than 3.5 tone, road transportation of people with the use of vehicle that is adjusted to transport of less than nine people including the driver and the regular transport of passengers within a radius of 50 km. The Act in force in Poland concerning the drivers' working time from 16th April 2004 is in accordance with the above mentioned regulations. Next exclusion concerns the vehicles with the permissible maximum speed of below 30 km/h in case of application of AETR agreement and 40km/h in case of legislative act No. 561/2006. The exclusion from the application of legislations refers also to vehicles, which:

- are under supervision of the armed forces, civil services, fire department and the services responsible for public security and public order,
- are used for picking up the milk on the farms, delivering the milk containers or dairy products being the fodder of animals,
- are used for sewage disposal, protection against floods and in the waterworks, gas-works or power industry,
- serve as means to maintain and control the roads,
- are connected with telegraphic services, radio or TV broadcast, detection of the radio and TV receivers and transmitters,
- are used for the transportation of the circus or the fun-fairs,
- are use for medicine or for rescue,
- are undergoing road tests in order to improve them technologically, as a part of repair work or in order to test before admission to use in traffic.

Both in the legislative act and in the agreement the exclusion of specialised vehicles for the technical assistance was included, but with one difference, which appears in case of the legislation, where the condition of exclusion can be applied only within the radius of 100km from the headquarters of the company. The mentioned difference in regulations caused the decrease in number of imported cars after accidents from the EU counties by means of emergency road service vehicles.

The differences in defining the exclusions of the rules of the agreement and the legislative act can be found also in the rules concerning the post transportation. The AETR agreement excludes from the rules the vehicles used for the transport of the post goods, and the legislative act No. 561/2006 defines the rules of such exclusion very precisely. According to the legislative act the exclusion can be applied only in case of vehicles with the permissible total weight of up to 7.5 tone, which are used within the radius of 50km from the headquarters, where the service is performed by the operators serving in public service defined in the directive of European Parliament and European Board 97/67/EC in the article 2 point 13 from 15th December 1997.

The legislative act No. 561/2006 includes a much broader catalogue of exclusions from application than the one mentioned in the AETR agreement. The exclusion applies here also to the:

- vehicles used for the non-profit transport in humanitarian aid,
- vehicles with the permissible total weight of up to 7.5 tone used in non-profit transport of goods,
- old-timer vehicles used for non-profit transport of goods or people,
- vehicles owned be the public services or being rented by them without drivers,
- vehicles used for transport of goods as a part of individual business activity, agricultural activity or forest activity performed by the agricultural, gardening forest or fishing enterprises within the radius of 100km from the headquarters of the enterprise or the farm,

- vehicles moving only within the islands with an area of not more than 2300 km² within the areas not joined with the rest of the country by means of a bridge, ford or tunnel,
- vehicles powered by natural gas, liquid gas or with electric engine with the permissible total weight of up to 7.5 tone, which are used to transport goods within the radius of up to 50 km from the headquarters of the enterprise,
- driving course vehicles and driver's licence exam vehicles in the process of receiving the qualification certificate,
- vehicles which are specially equipped to serve for educational purposes when not in motion,
- vehicles equipped with 10 to 17 seats used for non-profit transportation of people,
- specialised vehicles used for money or valuables transportation,
- vehicles use for transport of waste and carcasses of animals not for human consumption,
- used only on the interior roads on the premises such as ports, port areas, rail terminals,
- vehicles used for transport of live animals between the farm and market or slaughterhouse within the radius of 50 km.

In case of transportations, which were excluded according to the regulation of the EEC legislation No. 3820/85, but according to the legislative act No. 561/2006 were not mentioned, the new rules of the regulation in force should be strictly applied.

3. THE DAY PERIOD OF DRIVER'S ACTIVITY IN INTRA-COMMUNITY AND INTERNATIONAL TRANSPORT

The term "driver's working time" was defined in article 6 of the Act concerning the driver's working time from 16th April 2004. In such a period the time of activities connected with driving the vehicle is included – "time of driving the vehicle" which should be registered automatically by the registering device defined in appendix I and IB or manually according to article 16 of the EEC regulation No. 3821/85. This definition was presented in article 4 letter "j" of the legislative act (EC) No. 561/2006. The AETR agreement does not define the term directly, but article 6 point 1 included the directives which should be met in relation to the period of driving the vehicle. According to article 6 point 1, the day period of driving the vehicle is defined as a period between two day periods of rest or between a day and week period of rest but not longer than 9 hours. It is permissible, however, to lengthen the time twice a week up to 10 hours. The period of a week should be understood according to article 1 letter 1 of the Act as a period between the hour 00:00 on Monday to the hour 00:00 on Sunday. The repetition of the definition of a "week" was included in the article 4 letter "i" of the legislative act No. 561/2006. Legislative act in article 6 point 1 defines the day period of driving the vehicle to a maximum of 9 hours with the possibility of prolonging it to a maximum of 10 hours, but not more than 2 times a week. It can be noticed that both AETR agreement and the legislative act 561/2006 assume identical regulations concerning the possibility of driving the vehicle within a 24hour period. Additionally the driver driving the vehicle is forced to have a break lasting at least 45 minutes after every period of 4.5 hour of driving (article 7 point 1 of AETR agreement, article 7 of legislative act No. 561). The exception is a situation, when the driver starts a day period or a week period of rest. The continuous break lasting at least 45 minutes may be substituted with shorter breaks, but the length and the number of breaks was differently defined in the legal regulations in force. According to the legislative act EC No. 561/2006 two separate breaks can be used, where the first should last at least 15 minutes and the second at least 30 minutes (article 7). In international transportation regulated by the AETR agreement the continuous break can be replaced by breaks lasting at least 15 minutes (article 7). Due to the mentioned regulations it may be concluded that in case of road transportation under the force of the AETR agreement, the continuous 45 minute break may be divided into 3 periods of 15 minutes or two periods: first period of 30 minutes and second of 15 or first of 15 and second of 30 minutes. The legislative act EC No. 561/2006 lets only to divide the continuous break in one way: into periods of 15 minutes for the first one and 30 for the second. Any change in the way of dividing the period will result in breaking the regulations. Simultaneously, it should be pointed out that according to the article 4 letter "d" or the legislative act No. 561/2006

during the break the driver cannot perform any other work, and the free time should be spent only on rest. If the driver used the breaks in driving, he is not entitled to an additional break mentioned in article 13 point 1 of the Act on drivers' working time. This article shows the necessity of assigning the driver a break at work (not only during driving the vehicle) lasting not less than 30 minutes – when the number of working hours is not exceeding 9 hours, or not less than 45 minutes – when the number of working hours exceeds 9 hours. It is allowed to use the break in shorter periods lasting at least 15 minutes when working 6 hours or directly after such period. The driver is also entitled to a rest period during the day when the time may be used freely. The AETR agreement in article 1 letter “m” defines the rest as the continuous period lasting minimum 1 hour and orders the driver in article 8 point 1 to use 11 hours of day period of rest in each 24-hour period. The day period of rest should last at least 11 hours. The period can be shortened to maximum of 9 hours, but not more often than 3 times a week. In case of shortening the period it should be remembered that it should be compensated for before the end of next week (article 8 point 1). The compensation should be added to some other rest period lasting at least 8 hours (article 8 point 6). Such rest period is granted on request of the driver either on the parking lot or in the place of residence. During the days, when the rest period is not shortened, the driver can use it in two or 3 parts within 24 hours. Article 8 point 1 states here, that in such a situation the length of day period of rest is increasing to 12 hours, and at least one of the periods to which the time was divided should last at least 8 hours. In case of the break in the day period of rest – not more than one time – it is obligatory to add 2 hours to it (article 8 point 8) The breaking of the day rest period may happen only in case of meeting the following conditions, that are:

- the vehicle is transported on a ferry or train,
- there is a possibility to spend the taken part of the rest period on the land before or after the part of day period of rest,
- the period between two following parts of the day rest must be as short as possible, not exceeding 1 hour before getting on board and getting off board (the customs formalities are included in the boarding procedures),
- during two parts of the time of the rest period the driver must have the possibility to use the bed or place to sleep.

The breaks used after 4,5 hours driving period should not be included in the day period of rest (article 7 point 4).

The definition of the rest period was also included in the legislative act EC No. 561/2006. On the contrary to the definition included in AETR agreement, the legislative act does not define the minimum time of rest period. According to the document the day period of rest, where the driver uses the time freely, includes both the regular and the extended period of rest (article 4 letter “g”). The regular time of rest should as a rule last at least 11 hours, but it is allowed to use it in two continuous parts. The legislator gives exact times of each of the breaks – where the first should last at least 3 hours and the second at least 9 hours. The shortened day period of rest is an uninterrupted period of a minimum of 9 hours but not shorter than 11 hours. In case, when the part of the day rest period included in the 24 period equals at least nine to below 11 hours, then the rest period is considered shortened (article 8 point 2). It should be remembered, though, that according to article 8 point 2, in each 24 hour period after the end of the previous day or week period of rest, the driver is obliged to use the next day rest period. Next issue which should be taken into account when the possibility of shortening the rest period is used, is the fact that it cannot be done more than 3 times between two week periods of rest (article 8 point 4).

4. WEEK PERIOD OF DRIVER'S ACTIVITY IN INTRA-COMMUNITY AND INTERNATIONAL TRANSPORT

The day rest period can be lengthened to a week period of rest. During that time the driver is entitled to use the time fully freely. According to the legislative act EC No. 561/2006 the week rest period can be divided into the regular periods of rest lasting at least 45 hours and shortened week period of rest lasting less than 45 hours (article 4 letter “h”). The week period of rest can be shortened

to not less than 24 hours, but before the end of the third week following the week when the time was shortened, it should be compensated for used the period of time that was lacking. Such rest should be used in one part (article 8 point 6) together with some other period of rest lasting at least 9 hours (article 8 point 7). Also in case of international transport (regulated by AETR agreement) the week period of rest may be shortened, but the compensation to which the driver is entitled to should appear before the end of the third following week after the necessity to shorten the rest time appeared (article 8 point 3). Differently to the legislative act, however, the AETR agreement orders to compensate that period together with other rest period of not less than 8 hours – on contrary to 9 hours in intra-community transport. The AETR agreement states clearly in article 8 point 6, that the rest period being a compensation of shortening the time of week rest period may be used by the driver on the parking lot or in the place of residence on demand. In the agreement the regulations can be found also concerning the length of shortening of the week rest time, depending on the place, where it is going to be used by the driver. If the driver uses the rest time in the headquarters of the company or the place of residence, such rest may be shortened to a minimum of 36 hours. In case when the place of rest is different than the ones mentioned, the rest time may be shortened to a minimum of 24 hours (article 8 point 3). There are no such regulations in the legislative act WE No. 561/2006. The differentiation of the places where the driver takes the rest period is visible only in the legislative act in article 8 point 8, where the driver is let to use the shortened period of rest when during the journey, but providing the driver the place to sleep, after his consent and providing the parking lot for the vehicle. According to the legislative act the week period of rest must be started not later than after finishing six 24 periods counting from the end of previous week period of rest (article 8 point 6). However the AETR agreement states that the week period of rest should be started after not more than 6 day periods of driving (article 6 point 1). In the formulation of the regulations one can notice significant differences in setting the obligatory periods of week rests. In the intra-community transport the driver must start the week rest no matter the number of real hours spent on driving the vehicle. In case of international transport, however, the driver uses the week rest period after working for six day periods of driving. It may be concluded that the driver performing the road transport in the union must start the week period of rest earlier than the driver doing the international road transport. In case when the week period of rest starts in one week and is continued in another, it may be joined to any of them – but only to one (article 8 point 4 of AETR agreement, article 8 point 9 or the legislative act WE No. 561/2006) Both the AETR agreement (article 6 point 2) and the legislative act WE No. 561/2006 (article 6 point 3) introduce the obligation of driving time control every two weeks. The overall time of driving is controlled in such periods of time and should not exceed 90 hours. Article 8 point 6 of the legislative act states additionally, that during two following weeks the driver is obliged to use two regular week rest periods or instead one regular and one shortened period of rest. The legislative act in article 6 point 2 orders to control the time of driving the vehicle also in a week period. The week period cannot exceed 56 hours. At the same time it should be remembered that according to the directive 2002/15/EC, the average time of work in a week as a rule cannot be longer than 48 hours. It can be prolonged up to 60 hours, but only in case, when during 4 months the average of 48 hours will not be exceeded.

5. WORK OF THE DRIVER AT NIGHT IN INTRA-COMMUNITY AND INTERNATIONAL TRANSPORT

The character of drivers' work often forces them to work at night. According to the Labour Code the night time is defined as 8 hours between 9 p.m. of one day and 7 a.m. of the next day (article 1517 §1). It should be noticed, that the legislator showed the period of 10 hours and the employer is obliged to limit the time to 8 following hours. The employer should define the night time in the working regulations – article 1041 §1 of Labour Code, and if he employs less than 20 people (article 1041 §2 of Labour Code) in a written information presented to the workers not later than in 7 days from the day of signing the job agreement – article 29 §3 of Labour Code.

Labour Code defines also the worker working at night – article 1517 §2 of Labour Code. According to this regulation, a person working at night is someone, who has in the working timetable 3 hours of work at night time each 24 hours or for whom at least 25% of working time in clearing of accounts period is at night. If at that time the driver performs a job which is dangerous or demanding a lot of physical or mental effort – for example transport of dangerous materials (defined in article 1 of European Agreement concerning the international road transport of dangerous materials ADR – Dz. U. from 2002 No. 194 point 1629, and article 2 of a Bill from 28th October 2002 on road transport of dangerous goods – Dz. U. 02.199.1671 from 28th November 2002), his time of working activity cannot exceed 8 hours (article 1517 §3 of Labour Code). The legislator does not define, however, the catalogue of such works but only points out in article 1517 §4 of Labour Code, that the employer should set the time after consultation with trade union or if there is no trade union with the representatives of the employees. The settlement should be positively assessed by the doctor taking care of the prophylaxis and medical care over the employees. In case, where in the employer's company there is more than one trade union, the unions should set a decision in 30 days. It is does not happen the employer has the right to decide individually after taking into consideration of all the separate posts (article 30 point 5 of the Bill on Trade Unions from 23rd May 1991 – Dz. U. 1991 No. 55 point 234 with later changes).

Article 21 of the Act on drivers' working time from 16th April 2004 (Dz. U. from 2004 No. 92, point 879 with later changes) introduces, for the drivers employed on the basis of labour relations, some limitations concerning work at night. According to this regulation the driver's working time cannot exceed 10 hours in every 24 hours, if the work performed at night equals at least 4 hours. This article stands in opposition to the regulation in the directive of European Parliament and Board 2002/15/WE from 11th March 2002 on the organisation of working time of people performing road tasks en-route during road transport, (UE L 80/35 a from 23rd March 2002). It was pointed out by the European Commission which formulated in the procedure of article 226 of the Treaty establishing the European Community official charges against Poland. According to article 3 letter "i" of the directive, work at night is any work at night which is a period of minimum 4 hours between 00:00 and 7a.m. (article 3 letter "h" of the directive 2002/15/EC). When comparing the regulation to Polish legal system, the main difference is, according to the Polish legal system, the necessity of work at night for a minimum of 4 hours, so that the work could be perceived as one performed at night. The European Community regulations do not introduce such limitations. That is why the legislative process takes place in Poland which should adjust the Act on drivers' working time to the requirements from the directive 2002/15/EC. The project assumes the change of article 21 of the bill on drivers' working time from 16th April 2004 from the current wording: "In case when the work is done at night time for at least 4 hours, the time of work of a driver cannot exceed 10 hours in given 24 hours" to a new wording "in case when the work is done at night time, the time of work of a driver cannot exceed 10 hours in given 24 hours".

Working at night is connected with the necessity to compensate the worker for this inconvenience. The directive 2002/15/EC in article 7 defines, that the compensation should be granted according to the national legal regulations, collective agreements, settlements, but under a condition that it does not endanger the road safety. The national regulation included in article 1518 §1 of Labour Code imposes on the employer the obligation to pay for each hour of working at night an additional benefit sum of 20% of hour rate resulting from the minimum wages.

According to the article 1891 of Labour Code the driver who made a statement informing about child care over a child under 4 years of age cannot be granted work at night. Parallel situation occurs if a driver is a pregnant woman (article 178 of Labour Code)

The law in force for the Polish driver concerning work at night is the same for intra-community and international transport.

6. CONCLUSIONS

Non-adjustment to the regulations concerning the maximum time of driving and the minimum time of rest may lead to tragic road accidents caused by drivers being overtired. The amounts of the fines for breaking the regulations connected with the drivers' working time was defined in the appendix to the Bill on road transport from 6th September 2001 (Dz. U. 2004 No.204 point 2088 with later changes). The legal bodies entitled to control the drivers' working time, who act under regulations of AETR agreement or the legislative act EC No.561/2006 are the Inspection of Road Transport, police, customs services, border guard, National Labour Inspectorate. Detection of the violation connected with following the social regulations in connection with the drivers' work may result in initiation of proceedings intending to impose a fine both on the transportation enterprise and on the driver. It should not be forgotten that in case of severe violations of law the controlling body may lodge a motion to revoke an authorisation to transportation for a given enterprise.

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Received 7.10.2008; accepted in revised form 30.05.2009