



COM (2020) 176

# Regulation on COVID-19 related temporary measures on the validity of certain documents and the postponement of periodic checks in the transport industry

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# The AK's position

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The European Commission (EC) cites as an objective of this draft regulation: "To lay down specific and **temporary measures applicable to the renewal and extension of the period of validity of certain certificates, licences and authorisations and the postponement of certain periodic checks and training** in response to the extraordinary circumstances caused by the COVID-19 outbreak in the area of road, rail and inland waterways transport and maritime security."

As a general rule, a **grace period of six months from the date of expiry** is laid down for the renewal and extension of the period of validity of certain certificates, licences and authorisations whose validity expires **between 1 March and 31 August 2020 ("the reference period")**. This means, for example, that if a limited driving licence becomes invalid on August 15, 2020, its validity will nevertheless be automatically extended until February 15, 2021.

**In two cases, even longer transitional periods are granted for the extension of validity:**

- According to EC Regulation 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the **occupation of road transport operator** (passenger and goods transport operator), one of the **conditions is financial standing**. If, during an inspection of a company, it is found that its financial standing is no longer guaranteed, the inspecting authority must grant a **period of grace of up to six months in accordance with the applicable law**. The current **proposal for a regulation** firstly establishes a reference period from **1 March to 31 December 2020** and, secondly, establishes a dispensation from the requirement of financial standing for a **further 12 months** (e.g. if the verification of financial standing on 15 December 2020 produces a negative result, the company has until 14 December 2021 to provide proof of its financial standing).

- According to EC Regulation 1073/2009 on common rules for **access to the international market for coach and bus services**, a **reference period** for authorisations for regular international services is set **from 12 December 2019 to 31 August 2020**, and the decision period for the authorising authority is six months.

If Member States (MS) consider that the time limits set out in the proposed Regulation are not sufficient, **the EC may, at the request of any MS, further extend both the reference period and the above extension periods on an individual basis.**

**This proposal for a regulation is viewed critically by the AK and is partly rejected for the following reasons:**

- Because it is an **EU Regulation**, the **provisions are directly applicable** and do not require transposition by the MS into national law. **On the one hand**, this can be seen partly in a **positive light**, as the extensions of the validity of certificates, licences and authorisations are **not purely national measures**, since the validity of the extensions are also recognised in other MS. **On the other hand**, the specific provisions establish exceptions; the **need** for these extensions **cannot be accepted**, e.g. with regard to the extension period or the **negative impact on road safety**. For example, **Austria** has not seen any need to extend the validity of the safety certificate under EU Directive 2016/798 (Railway Safety) or the expired certificates of train drivers under EC Directive 2007/59 (Certification of Train Drivers Directive); moreover, this would create a safety gap and therefore **no national exception was deliberately made** here. The current proposal for a regulation would also introduce the extension of invalidated certificates for Austria. This is rejected by the AK.
- The EC argues that, due to the urgency of the matter, no stakeholder consultation was carried out. However, there had been calls from the MS and stakeholders for action by the EC. As is the case in Austria, it is likely that at EU level, too,

there were **calls from business associations**, which see the emergency situation caused by COVID-19 as a welcome opportunity to remove necessary restrictions on transport. They usually only refer to “problems” or “difficulties”, without being able to prove these claims or give concrete figures.

- It should be noted that the above-mentioned **invalidated certificates, licences and authorisations, etc. do not represent the entire stock, but a small percentage of it**; namely only those documents or certificates that are due for renewal during the reference period. In its explanatory memorandum to the draft regulation, the EC is not able to say **how large the actual extent is**.
- As mentioned above, a **reference period between 1 March and 31 August 2020** will now be established **in mid-May**. Several questions arise in this respect, such as:
  - Have **transport collapses occurred** because the certificates, licences and authorisations that had become invalid meant that transport could not be operated? **How great is/was the extent?**
  - Currently, **restrictions on public life and the economy** are being **lifted in almost all MS**; is it necessary to set the reference period to run until 31 August in mid-May?
- **With education and training institutions, workshops, authorities etc. reopening this week in many MS**, the necessity and appropriateness of the proposed Regulation's current extensions of certificates, licences and authorisations of at least six months is questioned. **Halving this exemption to three months** should be quite sufficient in the view of the AK.
- **The necessity and expediency of the proposed Regulation** may also be questioned generally if each detailed provision stipulates that, **if these provisions of the Regulation are not sufficient**, each MS can submit **its own application to the EC by 15 July 2020 for further extensions** of the “emergency measures” and the EC will subsequently **approve** these applications **on an individual basis**. This is strongly reminiscent of the EC's approach to the current handling of exemptions from driving times and rest periods in MS. What is the point of a regulation with direct effect if national decisions can be taken subsequently? In the view of the AK, the

EC could also communicate to the other MS the exemptions in question concerning the validity periods for certificates, licences and authorisations in tabular form without having to adopt a regulation for a relatively short reference period.

With regard to the following specific provisions on certificates, licences and authorisations, Austria should, in the view of the AK, reject the current proposal:

### EU legal provisions in the road sector:

#### EC DIRECTIVE 2003/59

Austria takes a much stricter approach set out in the decree of 25 March 2020. In the opinion of the AK, the **reference period** should therefore be limited **to the end of July, as is the case in Austria**, and the **extension of expired driver qualification certificates** should be limited to a **maximum of three months**. Advanced training courses are already available again.

#### EU REGULATION 165/2014

In Austria workshops are open, tachograph driver cards can be applied for online from mid-April, i.e. the necessary **regular inspections of tachographs** can be carried out again and there are no bottlenecks in the **issuing of driver cards**. From the AK's point of view, there is, therefore, no need to create a corresponding exemption here.

#### EU DIRECTIVE 2014/45

**The periodic roadworthiness tests for motor vehicles and their trailers** can be carried out again, and there is no need for an extension provision that exceeds the Austrian regulation.

#### EC REGULATION 1071/2009

As mentioned above, there is **no justification** for the long suspension of the requirement of **financial standing**.

#### EC REGULATION 1073/2009

Also, the excessively long reference period for expired **authorisations in regular international transport services** appears, as mentioned above, to be far too long and is therefore rejected.

## Regulations in the railway sector:

In general, the impression is also being created in the railway sector that the corona crisis is to be used to get rid of “burdensome” rules for the safety authorities and particularly for the railway companies. **However, they remain safety-related provisions.**

As already mentioned, **the AK rejects the inclusion of the provisions concerning the EU Directive 2016/798 (Railway Safety Directive) and the EC Directive 2007/59 (Train Drivers Directive) in the current proposal for a regulation.** The period of validity of the safety certificate (currently five years) is to be extended by six months without any inspection. The reason given is that it would allow the Authority to complete “other administrative work”. The conclusion that “other activities” in a safety authority would be more important than a safety review **is incomprehensible and incompatible with railway safety.**

Similarly, train drivers’ certificates are also to be extended “automatically” by six months. Some of these are only valid for one year. This also includes medical examinations (eyesight, hearing, predisposition to cardiovascular diseases such as heart attacks, etc.). Difficulties in testing are cited as a reason. A physical and mental examination of train drivers who may be carrying over 1,000 passengers or dangerous goods is essential for safety.

The planned regulations on market access for railway companies (EU Directive 2012/34) include simplified proof of the company’s financial standing. This proof is to be suspended for six months, provided that safety is not jeopardised. In this respect, it is important to ensure in all events that the provisions of Art 22 (Insurance) remain unaffected. Similarly, infrastructure operators should be indemnified if the infrastructure charge can no longer be paid.

In the opinion of the AK, measures for the immediate assignment of costs to the originator in transport and the suspension of the ruinous price war resulting from the liberalisation of the rail transport market would be the most suitable means of putting railway companies on a sound financial footing.

## Regulations in the shipping sector:

Similar to train drivers, a simplified process to obtain boatmasters’ certificates (EC Directive 96/50) and the technical inspection of ships (EU Directive 2016/1629) are rejected.



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## About us

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The Austrian Federal Chamber of Labour (AK) is by law representing the interests of about 3.8 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.