



Note: Application of Exemptions – Directive 2003/59/EC

Background

Following discussion at the Committee on the Initial Qualification and Periodic Training of Drivers of Certain Road Vehicles for the Carriage of Goods or Passengers, it was decided to create a working group on exemptions in line with Article 6 of the rules of procedure of the Committee. This note reflects the discussion held at the working group on the practical application of the exemptions established in the Directive, but is not of course intended as a substitute for the legal text of the Directive.

General Considerations

The exemptions need to be applied in conformity with the provisions of the Directive as set out in its Article 2.

The exemptions in Article 2 of the Directive have to be read in context, together with the scope defined in Article 1 and the other provisions of the Directive. Article 1 stipulates that the Directive shall apply to drivers engaged in road transport on roads open to the public. Activities that are not transport or that take place on roads which are not open to the public therefore by definition do not fall under the Directive and do not need to be specifically exempted by one of the exemptions of Article 2.

The intention of the legislator should also be kept in mind when assessing which activities are exempted. As explained in recital 22, the purpose of the exemption regime is to exempt drivers of vehicles used in road transport "where this is considered to have a lesser impact on road safety" or "where the requirements of this Directive would impose a disproportionate economic or social burden".

Article 2 establishes that the Directive shall not apply to the drivers falling under the various cases listed in the said article, which means that these drivers are subject to national law only. At the same time the Directive does not foresee the possibility for the Member States to exempt additional categories of drivers on the basis of criteria not explicitly mentioned in the Directive. In accordance with Article 3.1a of the Directive, the only additional category of drivers that Member States may exempt is a driver driving within its territory before obtaining a CPC, when he or she is undergoing a national vocational training course of at least six months, for a maximum period of three years.

It should also be emphasised that as an exception to the general requirements of qualification and training, Article 2 should be restrictively interpreted.

Application of the single exemptions

Article 2a: The Directive shall not apply to drivers of vehicles with a maximum authorised speed not exceeding 45 km/h

It should be noted that an alignment with Article 3b of Regulation 561/2006 which establishes an exemption for vehicles with a maximum authorised speed not exceeding 40 kilometres per hour is not possible under the current legal framework.

Article 2b: The Directive shall not apply to drivers of vehicles used by, or under the control of, the armed forces, civil defence, the fire service and forces responsible for maintaining public order

Questions have arisen as to whether this exemption also covers the drivers of such vehicles, when they are used for other purposes, e.g. the use of fire department vehicles for tasks related to fund-raising or offering rides at public events, driving the vehicle to a fair stand, and similar usage. This must be assessed on a case-by-case basis, and depends upon the specific purpose of the use, and in particular whether this can still be considered to be on behalf of/under the control of the relevant service.

Article 2c: The Directive shall not apply to drivers of vehicles undergoing road tests for technical development, repair or maintenance purposes, or of new or rebuilt vehicles which have not yet been put into service

The exemption in this paragraph has to be read in context together with the scope defined in Article 1 of the Directive stipulating that it shall apply to drivers "engaged in road transport". Activities that are not transport such as driving an empty vehicle not carrying any goods or passengers for the purpose of testing therefore by definition do not fall under the Directive, and this specific exemption is not relevant for them. By way of contrast, vehicles that are loaded for the specific purpose of testing technical development, repair or maintenance, should be considered as falling under this exemption. In this regard, it should be noted that the training foreseen in the Annex of the Directive would be of little relevance to this specific kind of activity, further reinforcing this interpretation.

Article 2d The Directive shall not apply to drivers of vehicles used in states of emergency or assigned to rescue missions

The concept of "state of emergency" is a concept that refers to exceptional circumstances generally of a catastrophic nature. As an exception to the Directive, this notion should be interpreted restrictively.

Article 2e: The Directive shall not apply to drivers of vehicles used in the course of driving lessons for any person wishing to obtain a driving licence or a CPC, as provided for in Article 6 and Article 8(1)

This specific exemption only applies to the driver driving the vehicle in the course of driving lessons and wishing to obtain a driving licence or a CPC. The instructor is therefore by definition not covered by this exemption. It should also be noted that since the Directive in Article 1 stipulates that it only applies to *drivers*, it would apply to instructors only in case they were driving the vehicle and if they were not exempted through any of the other exemptions or by the fact that they are not carrying out transport. It should also be noted that if national legislation nevertheless establishes that the instructor is to be considered as the driver of the vehicle during the driving classes, he/she could not be exempted by means of this exemption as a specific condition is that it applies only to a driver wishing to obtain a driving licence or a CPC.

Article 2f: The Directive shall not apply to drivers of vehicles used for non-commercial carriage of passengers or goods, for personal use

A strict reading of the exemption is supported by the ruling of the European Court of Justice on the application of Article 3h of Regulation 561/2006 exempting vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for the non-commercial carriage of goods. In its judgment in Case C-317/12, the Court of Justice ruled that 'non-commercial carriage of goods' must be interpreted as covering the carriage of goods by a private individual for his own purposes purely as part of his hobby where that hobby is in part financed by financial contributions from external persons or undertakings and where no payment is made for that carriage per se. A similar interpretation of the concept of 'non-commercial carriage' should by analogy also be applied to Directive 2003/59/EC.

Article 2g: The Directive shall not apply to drivers of vehicles carrying material or equipment to be used by the driver in the course of his or her work, provided that driving the vehicle is not the driver's principal activity.

It should be emphasised that the notions of "material", "equipment" and "principal activity" must be assessed in relation to the driver and not to the company.

With a view to determining the applicability of the exemption to specific cases, Member States should consider the following elements:

- It should be examined whether the vehicle carries "material or equipment to be used by the driver in the course of his or her work", noting that there is no indication that such material or equipment should be separated from the vehicle. Therefore, a mobile crane which is attached to the vehicle may nevertheless be considered as "equipment".
- The criterion of the nature of the profession should apply in order to decide whether a driver is covered by this exemption: driving should not be the main professional activity of the driver. The cases where the driving activity has an ancillary nature compared to the main activity (e.g. mobile crane drivers who are mainly crane operators or farmers transporting their fruit and vegetables to the farmers' market) should be considered as exempted from the Directive. By way of contrast, the driver of a towing vehicle should be considered as not exempted from the Directive when driving is not ancillary to his profession but one of its fundamental elements.