

COMMISSION

COMMISSION OPINION

of 21 June 1974

to the Government of the Netherlands concerning measures for the implementation of Council Regulation (EEC) No 543/69 on the harmonization of certain social legislation relating to road transport

(74/375/EEC)

1. In its letter of 9 July 1973 the Netherlands Permanent Representation sent the Commission draft provisions for the implementation of Council Regulation (EEC) No 543/69⁽¹⁾ of 25 March 1969, as amended by Council Regulation (EEC) No 515/72⁽²⁾ of 28 February 1972, for an Opinion. The purpose of the planned rules is to make provision for the exemptions referred to in Article 14a (b) of that Regulation for certain transport operations over short distances.

2. The proposed provisions stipulate, on the basis of the second indent of Article 14a (b), that in the following cases crew members engaged in transport operations over short distances shall be exempt from the obligation to make entries in an individual control book :

- (a) Test and demonstration drives by motor vehicle mechanics.

This applies to a group of employees whose working time is governed by the Labour Law of 1919. Such operations constitute only a small part of their daily work, so that there is no danger of the permissible driving periods being exceeded.

- (b) Transport operations on own account carried out by self-employed operators and senior employees.

This usually applies to small and medium-sized undertakings. Where such operations take place within a 50 km radius, exemption from the obligation to keep an individual control book shall be granted. Should it be necessary to exceed that distance occasionally, the exemption from the obligation to keep an individual control book shall be made subject to the proviso that a daily sheet is completed whenever that distance is exceeded. Exemptions shall be granted only to individuals and shall be valid for one year only.

- (c) Transport operations carried out by crews with fixed working hours.

Exemption has already been granted in numerous separate cases of transport operations by goods vehicles below 3.5 metric tons, which are outside the scope of Regulation (EEC) No 543/69, where the crew had fixed working hours not exceeding 12 hours (7 a.m. to 7 p.m.) on working days.

In the case of transport operations on own account this applies to crews tied to the working time in industrial or commercial firms (nowadays generally 42 hours per week). Driving often constitutes only a part of their daily work, so that the Labour Law applies to them, too. Exemption can also be granted in the case of carriage of goods for hire or reward where fixed working hours are less usual but may apply in the case of collection or delivery services. The intention is also to grant individual exemptions in the case of transport operations by goods vehicles with a weight exceeding 3.5 metric tons, with the actual working hours specified more precisely and also limited.

- (d) Occasional transport operations by goods vehicles for which so-called non-personal exemption is granted.

Exemptions in such cases are at present granted for goods vehicles having a permissible maximum all-up weight not exceeding 3.5 metric tons to those undertakings where checks have established that a particular motor vehicle is used at different times by various members of the personnel for short journeys (small building firms, craft undertakings, etc.). The staff concerned are covered by the Labour Law. As a result of this rule, persons who spend a few hours driving need not enter all their working and rest periods in full in an individual

⁽¹⁾ OJ No L 77, 29. 3. 1969, p. 49.

⁽²⁾ OJ No L 67, 20. 3. 1972, p. 11.

control book. Such exemption is to be indicated by a sticker on the vehicle.

3. The Commission finds that the proposed provisions are consistent with Regulation (EEC) No 543/69.

Nevertheless, it must first be pointed out, with reference to all the exemptions, in particular those referred to under (b), that they are restricted to transport operations carried out within a radius of 50 km from the place where the vehicle is based.

Secondly, it must be pointed out that, in the case of the transport operations on own account carried out by self-employed operators and senior employees referred to under (b), the proposed restriction of the validity of such exemption to one year and the grant of exemptions to individuals cannot be regarded as appropriate measures within the meaning of the second indent of Article 14a (b). Similarly, in the case of the transport operations referred to under (c) carried out by crews with fixed working hours, it is uncertain whether the fixing of a maximum daily working time would ensure adequate control over the maximum daily driving periods. The Netherlands Government is therefore requested to provide for additional control measures for such cases.

It must be pointed out, in conclusion, that, especially in the case of the transport operations referred to under (b), (c) and (d), in so far as they are subject to

the provisions of the Community Regulation, it is in the interest of road safety and the control of working hours that certain vehicles should be fitted with recording equipment, pursuant to the first indent of Article 14a (b). That Article provides for exemption from the obligation to keep an individual control book if the vehicles in question are fitted with recording equipment conforming to Article 20 of Council Regulation (EEC) No 1463/70⁽¹⁾ of 20 July 1970 on the introduction of recording equipment in road transport. Such equipment could have a greater and more certain effect as regards road safety and the protection of workers than would the proposed provisions. The Netherlands Government should therefore review the provisions in question from this angle before laying down the procedures for their implementation.

4. On these grounds the Commission hereby delivers a favourable Opinion subject to the reservations set out above.

Done at Brussels, 21 June 1974.

For the Commission

The President

François-Xavier ORTOLI

⁽¹⁾ OJ No L 164, 27. 7. 1970, p. 1.