

Note of the Director-General: Exceptional measures in transport to deal with COVID-19; Inability to comply with certain provisions of EU legislation

27/03/2020

Member States have informed the Commission about difficulties to renew certain licenses or certificates for professional carriers, including vehicles and vessels certificates or transport workers, due to public measures that have become necessary in view of the COVID-19 outbreak. It has been reported to the Commission services that renewals or other steps necessary during the lifetime of a license or certificate have become impossible for different reasons. Thus, the competent national administration or body may not be in a position to deliver the necessary documents or because the person or entity concerned may be prevented from completing the necessary formalities or procedures.

The specific legal requirements (EU or national) liable to be affected by this situation will be identified and communicated as soon as possible.

To address this exceptional situation Member States are adopting, or have informed the Commission that they envisage to adopt, measures in order to ensure continuity of the transport of goods and persons.

The Commission services understand the need for the national authorities to take initiatives in order to ensure continuity of transport under the present extraordinary circumstances.

Based on the same objective, the Commission has adopted the [COVID-19 Guidelines for border management measures to protect health and ensure the availability of goods and essential services](#) and thereafter, on 23 March 2020, the [Communication on the implementation of the Green Lanes under those Guidelines](#).

It remains that several Union acts affected by the current situation do not contain a legal basis that would empower the Commission to authorise an exemption or a derogation in exceptional circumstances. (For the avoidance of doubt, we would underline that point 21 of the Communication of 23 March must be read in context and exclusively concerns the issue proof of the person concerned being active in international transport. This point, including its last sentence, does not concern the legal status of the certificates in and of themselves.)

However, in its capacity as the guardian of the Treaties, the Commission is entitled to take account of exceptional difficulties to which Member States are exposed during the current crisis.

The Commission services will suggest this approach, provided that the measures adopted by a Member State are limited to what is necessary in view of the current crisis, both on substance and in time.

On the substance, in particular, **it must be avoided that national measures taken in reaction to the crisis in fact result in unwanted consequences. Thus, for example, measures that would benefit transport carriers or transport workers who have never previously had an authorisation or qualification and have never even applied for one would not meet the above criteria.** Instead, measures of this kind should only apply to operators or persons who, because of measures taken in order to contain the epidemics, were prevented from completing the necessary formalities or procedures.

Generally speaking, all measures taken should as far as possible take into account the objectives of the relevant Union provisions, particular the safety of transport and of transport workers.

As regards the temporal aspect, similar considerations apply. **Generally speaking, periods covered by urgent measures in the area of certificates and licenses should remain sufficiently short, such as three months, so as to avoid that they benefit situations well after the termination of public measures intended to contain the epidemics.** If the duration of a specific measure turns out to be too short, an extension can be envisaged.

The specific aspects regarding aviation safety security are set out further below. **A large number of professional carriers and transport workers perform activities internationally and private individuals circulate in other Member States than their country of residence. Each Member State should therefore take into account that other Member States face the same situation and may have adopted or may adopt similar measures. This should be taken into account in the context of the enforcement of the relevant provisions.**

This latter principle should also apply when certificates for professional carriers, crew members and vessels are issued on the basis of national requirements.

When the national measures outlined above relate to licences and certificates issued in accordance with EU law, **the national authorities are requested to inform the Commission on the development and implementation of these measures adopted to face the Covid-19 outbreak.**

The functional mailbox to be used is: EU-COVID-TRANSPORT@ec.europa.eu

Information provided to the Commission should at least include:

1. The relevant EU [or national] legislation and specific provision(s)
2. A short description of the measure
3. The envisaged duration of the extension (date, from-to)

To ensure that national authorities are informed of exceptional measures taken by other Member States, the Commission will publish them on its Coronavirus transport platform: https://ec.europa.eu/transport/coronavirus-response_en

In respect of aviation safety, Regulation (EU) 2018/1139 (Basic Regulation) applies. Article 71(1) and (2) provides to Member States the possibility to derogate from implementing rules for up to eight months, subject to compliance with the criteria and procedures set out therein. In order to facilitate the submission of notifications under these provisions in the context of the COVID-19 outbreak, the European Union Aviation Safety Agency (EASA), in coordination with the Commission, has developed a corresponding template. All Member States have used this template in order to grant exemptions, for the purposes of allowing aircrews, maintenance engineers and air traffic control officers to extend their licence for four to six months, subject to mitigating measures intended to ensure safety. Similar notifications have been made in respect of airworthiness review certificates.

Finally, the Commission is very much committed to providing assistance to Member States and to find adequate solutions to face the effects of current crisis in the transport sector and it is not excluded that the Commission services might consider other horizontal solutions for these questions, notably to address the issuance of new licenses and certificates.

Please note that this is a position of the Commission Services. Moreover only the Court of Justice of the European Union is competent to ultimately interpret Union law in a binding manner.

(signed) Henrik HOLOLEI