

Til: Kathrine Aagaard Lise (KML@trm.dk), Frederik Find Leisner (fle@trm.dk)
Cc: Alexander Höilund (aho@dpt-dk.org), Michael Nielsen (mmn@dpt-dk.org)
Fra: Jens Hvid Bang (jhb@dpt-dk.org)
Titel: Opdatering: Kommissionens vurdering af Transportministeriets forslag til ændring af busloven
Sendt: 29-10-2024 09:25
Bilag: RE: Interpretation of 1071/2009.eml;

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Vær opmærksom på, at den kan indeholde links og vedhæftede dokumenter, som ikke er sikre, medmindre du stoler på afsenderen.

Kære begge

Vi har kontaktet Kommissionen for at få afklaret, hvordan EU-forordningerne skal tolkes i forhold til det forslag, vi har afgivet høringssvar til i sommers om at ændre buslovens definition af erhvervsmæssig buskørsel.

Vi har vedlagt vores korrespondance med Kommissionen som bilag, så I kan se detaljerne i vores dialog.

Kommissionens svar

I sit svar skriver Kommissionen, at man ikke kan ændre definitionen på den måde, som lovforslaget foreslår, og at de tre kriterier ikke kan gøres kumulative.

Faktisk forholder det sig lige omvendt, og ifølge Kommissionens fortolkning af EU-forordningerne skal følgende tre kriterier opfyldes kumulativt for at en befordring kan defineres som ikke-erhvervsmæssig (og dermed undtages for tilladelseskravet):

1. Ingen direkte eller indirekte vederlag for befordringen.
2. Befordringen må ikke generere direkte eller indirekte indkomst for føreren af køretøjet eller for andre.
3. Befordringen må ikke være forbundet med nogen professionel aktivitet.

Altså, enhver form for buskørsel, der kræver vederlag, genererer indkomst eller er forbundet med en professionel aktivitet, kræver en tilladelse.

Det er vigtigt at understrege, at Kommissionen åbner op for undtagelser, men der er tale om meget snævre undtagelser, som skal være underlagt strenge betingelser, hvilket ikke er opfyldt i lovforslaget, hvor at den nye definition skaber meget brede undtagelser.

Vi mener derfor fortsat, at den bedste løsning vil være at udvide de eksisterende undtagelser, så f.eks. pårørende på plejehjem kan køre med i plejehjemsbussen – som ministeren ønsker.

Vi håber selvfølgelig, at I vil tage ovenstående i betragtning i jeres arbejde med lovforslaget, og I må endelig sige til, hvis I har brug for mere materiale eller en uddybning. Vi står naturligvis til rådighed for yderligere information eller en drøftelse af sagen.

De bedste hilsner

Jens Hvid Bang

Kommunikations- og sektorchef

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Til: aho@dpt-dk.org (Alexander Höilund)
Cc: mmn@dpt-dk.org (Michael Møller Nielsen)
Fra: CABAU Emmanuel (Emmanuel.CABAU@ec.europa.eu)
Titel: RE: Interpretation of 1071/2009
Sendt: 24-10-2024 15:06
Bilag: image001.png; image002.gif; image003.png; image004.png;

Dear Colleague,

As I wrote to you previously, under the last paragraph of Article 1(4) to be considered a “carriage exclusively for non-commercial purposes”, a carriage must meet three conditions: it should be a carriage (i) for which no direct or indirect remuneration is receive, and (ii) which does not directly or indirectly generate any income for the driver of the vehicle or for others, and (iii) which is not linked to any professional activity.

These conditions are cumulative and should be interpreted strictly.

It appears for example that carrying out transport for passengers not for profit-making purposes would not fulfill these three conditions.

Kind regards

Emmanuel Cabau

From: Alexander Höilund <aho@dpt-dk.org>
Sent: Thursday, October 24, 2024 2:45 PM
To: CABAU Emmanuel (MOVE) <Emmanuel.CABAU@ec.europa.eu>
Cc: Michael Møller Nielsen <mmn@dpt-dk.org>
Subject: SV: Interpretation of 1071/2009

Dear Emmanuel

Once again thank you for taking your time to answer our questions.

I hope I may ask you another follow-up question to make my understanding of the EU regulations clear.

Under the current Danish legislation, it is clearly defined when the national transport services of passengers by bus or coach are considered commercial or non-commercial. There are three criteria, any one of which can trigger a requirement for a license to engage in the commercial transportation of passengers by bus or coach (Community licence), as fulfilling just one of the following criteria defines the transport as commercial:

1. When transporting people who are not closely associated with the person, company, or organization performing the transport.
2. When the transport is carried out for profit-making purposes.
3. When the transport is the primary purpose of the person, company, or organization in question.

With regards to the EU regulation, would it be possible to change the national legislative definition of commercial road passenger transport by bus or coach so that the above mentioned three criteria must be met simultaneously (cumulative) for the transport of passengers to be considered commercial? I.e., if just one of the criteria is not fulfilled, transport by bus or coach could thus be carried out without a license for commercial passenger transportation, as it would be defined as non-commercial due to all criteria not being met cumulatively?

Thank you for your help!

Best regards,

Alexander Höilund

Political consultant
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Dansk PersonTransport

Fra: CABAU Emmanuel <Emmanuel.CABAU@ec.europa.eu>

Sendt: 24. oktober 2024 11:32

Til: Alexander Höilund <aho@dpt-dk.org>

Cc: Michael Møller Nielsen <mmn@dpt-dk.org>

Emne: RE: Interpretation of 1071/2009

Dear Colleague,

I am not aware of any case law or further definitions on these issues. These are exceptions and should be interpreted strictly.

Concerning Article 1(4)b please note that the condition is not precisely that “road passenger transport services become the main occupation of a transport provider” but that the main occupation of the undertakings is something else than that of road passenger transport. This is a very strict condition and can only apply to undertakings that are not road passenger transport undertakings and would normally concern own account operation. It is not possible to be active as a passenger transport undertaking under this exception.

Kind regards

Emmanuel Cabau

From: Alexander Höilund <aho@dpt-dk.org>

Sent: Wednesday, October 23, 2024 2:56 PM

To: CABAU Emmanuel (MOVE) <Emmanuel.CABAU@ec.europa.eu>

Cc: GARCIA DE SANDOVAL Aurora (MOVE) <Aurora.GARCIA-DE-SANDOVAL@ec.europa.eu>; TOMIC BIENKOWSKA Lana (MOVE) <Lana.TOMIC@ec.europa.eu>; PTASZYNSKA Ewa (MOVE) <Ewa.PTASZYNSKA@ec.europa.eu>; Michael Møller Nielsen <mmn@dpt-dk.org>

Subject: RE: Interpretation of 1071/2009

Dear Emmanuel

I was forwarded your mail by Michael.
Thank you for your answer. It helps immensely.

We understand your answer in such a way that it is possible to engage in profit-making road passenger transportation with bus and coach services without authorization under certain circumstances due to the exceptions provided in Article 1(4)b and Article 1(5). If this is indeed the correct understanding, then we do have a couple of follow-up questions, which we hope you are willing to help us with.

Concerning Article 1(4)b, are there any definitions or case law that outline when road passenger transport services become the main occupation of a transport provider? One could fear that the exception to entities with a main occupation other than that of road passenger transportation might lead to circumvention and misuse of the exception, as a substantial profit could be gained by commercial passenger transport by bus or coach under

the guise of other purposes?

Concerning Article 1(5), are there any definitions or case law regarding when road transport operators engaged exclusively in profit-making national transport operations only have “a minor impact on the transport market”? And concurrently, when are “the short distances involved” defined short enough to exempt commercial road passenger transportation for profit-making purposes as a main occupation (or ancillary occupation) from authorization?

I hope my questions make sense, otherwise feel free to ask me to elaborate.

Thank you in advance! We really appreciate your help.

Best regards,

Alexander Höilund

Political consultant
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Dansk PersonTransport

Fra: CBAU Emmanuel <Emmanuel.CBAU@ec.europa.eu>

Sendt: 23. oktober 2024 12:53

Til: Michael Møller Nielsen <mmn@dpt-dk.org>

Cc: GARCIA DE SANDOVAL Aurora <Aurora.GARCIA-DE-SANDOVAL@ec.europa.eu>; TOMIC BIENKOWSKA Lana <Lana.TOMIC@ec.europa.eu>; PTASZYNSKA Ewa <Ewa.PTASZYNSKA@ec.europa.eu>

Emne: RE: Interpretation of 1071/2009

Dear Colleague,

In accordance with Article 1(4)b), the Regulation can only not apply to “undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator”.

Under the last paragraph of Article 1(4) to be considered a “carriage exclusively for non-commercial purposes”, a carriage must meet three cumulative conditions: it should be a carriage (i) for which no direct or indirect remuneration is received, and (ii) which does not directly or indirectly generate any income for the driver of the vehicle or for others, and (iii) which is not linked to any professional activity.

As you indicate therefore all profit making road passenger transport services by bus or coach are covered by Regulation 1071/2009 and require an authorization under this Regulation.

The only possible exceptions would concern undertakings which have a main occupation other than that of road passenger transport operator, or road transport operators “engaged exclusively in national transport operations having only a minor impact on the transport market because of: (a) the nature of the goods carried; or (b) the short distances involved” (Article 1(5)).

As for Regulation 1073/2009, it applies to operations carried out for non-commercial and non-profit-making purposes. In any event it only concerns international carriage and allows for an authorisation to be granted, so it would both not be possible and not make sense for a Member State to restrict its scope.

I hope this helps.

Please let me know if I can be of any further assistance.

With kind regards

Emmanuel Cabau

From: PTASZYNSKA Ewa (MOVE) <Ewa.PTASZYNSKA@ec.europa.eu>
Sent: Tuesday, October 22, 2024 6:28 PM
To: Michael Møller Nielsen <mmn@dpt-dk.org>
Cc: GARCIA DE SANDOVAL Aurora (MOVE) <Aurora.GARCIA-DE-SANDOVAL@ec.europa.eu>; TOMIC BIENKOWSKA Lana (MOVE) <Lana.TOMIC@ec.europa.eu>; CABAU Emmanuel (MOVE) <Emmanuel.CABAU@ec.europa.eu>
Subject: RE: Interpretation of 1071/2009

Dear Michael,

Thank you for reaching out to me and sharing these interesting plans of the Danish government to change the access rules to passenger market by bus and coach. Actually, I am not working in the road transport policy unit any more. Shocking! I know. 😊 I have moved to transport investment unit on 16 October. But I am sure my colleagues in copy will be glad to address your question.

All the best

Ewa

Ewa Ptaszyńska
Deputy Head of Unit



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From: Michael Møller Nielsen <mmn@dpt-dk.org>
Sent: Tuesday, October 22, 2024 9:07 AM
To: PTASZYNSKA Ewa (MOVE) <Ewa.PTASZYNSKA@ec.europa.eu>
Subject: Interpretation of 1071/2009

Hi Eva

Trust that you are well and are enjoying autumn in Brussels even though it probably is gray at this time of year as usual.

I hope you can help me a bit about the interpretation of regulation 1071/2009 and regulation 1073/2009 regarding the definition of commercial and non-commercial road passenger transport by bus and coach services.

The reason for my inquiry is that the Danish Ministry of Transport is considering liberalizing the rules for bus and coach services with an upcoming legislative proposal. The upcoming proposal suggests that, in the future, it will be possible to conduct road passenger transport by bus and coach services for profit-making purposes without a license for commercial passenger transportation (Community license) under certain circumstances.

To my understanding, the EU regulations clearly indicate that road passenger transport services by bus or coach carried out for profit-making purposes are always considered commercial, no matter the circumstances, and thus require a license (Community license)?

Can you think of any circumstances, where it is possible to engage in profit making road passenger transport services by bus or coach, and still being defined as non-commercial and thus not require a Community license?

I will greatly appreciate any help you can provide on the matter and do not hesitate to contact me in case you have questions or need additional information. If you think someone else is better placed to answer, you are naturally free to forward the mail to them. However, I cannot think of anyone better placed to answer this than you ;o)

All best and do give me a buzz in case you visit Copenhagen in the future,

Michael

Michael Nielsen

Adm. Direktør / CEO
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