

Road transport, working time: enforcing social legislation (implem. Regulations (EEC) No 3820/85 and (EEC) No 3821/85/EEC, repeal. Directive 88/599/EEC)

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This report analyses the penalties for serious infringements against the social rules in road transport provided for in the legislation of the Member States, as required by Directive 2006/22/EC on minimum conditions for the implementation of social legislation relating to road transport activities. The infringements concern two regulations. Regulation (EC) No 561/2006 contains very precise rules on the maximum driving times and the minimum rest periods and breaks for drivers engaged in professional transport. Regulation (EEC) No 3821/85 concerns the instalment and use of the tachograph.

The report examines the types of penalties imposed by Member States, including financial penalties, and immobilisation of the vehicle, and the national penalty systems. With regard to the latter, it points out that national systems of penalties differ widely. A basic distinction can be made between Member States whose legislation does not specify any differences between the different infringements and Member States whose legislation distinguishes between specific infringements and applies different levels of penalties to these infringements.

The Commission concludes that **rules on penalties applicable to serious infringements of the social legislation vary appreciably between Member States** as regards the types of penalties, the level of fines and the categorisation of infringements.

While all Member States use fines as a penalty, not all of them provide for the immobilisation of vehicles or imprisonment, for example. In some Member States, withdrawal of a driver's driving licence (Bulgaria, Denmark, Greece, Italy and the United Kingdom) or driver card is possible (Slovakia).

When looking at how Member States grade the different types or levels of infringements, the situation becomes even more complex. The amounts of the fines vary significantly between Member States, in extreme cases by as much as 1:10. This disparity can partly be explained by the socio-economic differences between the Member States, which make the same fine dissuasive and proportionate for drivers and undertakings in one country, but not necessarily in another. However, this reasoning cannot be applied, for example, to the relatively high penalties in Spain or Hungary.

For infringements against rules on driving times and rest periods (Regulation (EC) No 561/2006), it is clear which infringements must be considered more serious than others. However, for infringements against Regulation (EEC) No 3821/85, the categorisation of infringements varies considerably between Member States. Some infringements are seen as serious infringements in one country, but not necessarily in another. Only for infringements involving fraud to the tachograph and cases of undertakings not keeping record sheets is categorisation similar in a majority of Member States, the highest level of penalties being applied to these very serious infringements.

Moreover, the penalties applied for infringement of the rules of Regulation (EEC) No 3821/85 do not correspond in many Member States with the Community guidelines on the categorisation of infringements as contained in Commission Directive 2009/5/EC amending Annex III to Directive 2006/22/EC.

For drivers and undertakings engaged in international transport, it is therefore very difficult to send a clear message concerning the gravity of possible infringements when they do not comply with certain provisions of Regulation (EC) No 561/2006 and Regulation (EEC) No 3821/85, as the penalties they risk in different Member States give contradictory feedback.

The **Commission considers this situation to be unsatisfactory in terms of equal conditions for drivers and undertakings**. The new Annex to Directive 2006/22/EC, introduced by Commission Directive 2009/5/EC, provides a basis for a common understanding of what should be considered as serious infringement. Member States are encouraged to take the necessary steps to provide for more harmonised application of the social rules in road transport and thus to improve observance of the social rules in road transport.

The Commission will continue to work on this issue, in particular by supporting dialogue between Member States concerning national interpretation and application of the social rules in road transport through comitology, and taking into account the limits of the competence that Member States and the legislators have decided to give to the Commission.