

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

2003/0255(COD) - 09/12/2004 - Council position

The Council made some substantive changes relative to the Commission's proposal that are for the most part acceptable because they ensure its aims are ultimately met.

The first concerns the provisions on sanctions and serious infringements. The Council has taken the provisions relating to vehicle immobilisation, the range of sanctions available to competent authorities, as well as co-liability and appropriate financial sanctions for the transport chain for infringements and inserted them in the sister proposal for a Regulation on driving times and rest periods which will replace the current Regulation 3820/85/EEC. As these issues relate more to infringements of the Regulation's provisions and sit better in this proposal, the Commission is content that they are put there. Moreover as the Regulation's provisions are directly applicable, there will be a greater measure of uniformity in implementation. The Commission regrets that the Council did not see fit however to include a common definition of serious infringements of the social rules. This renders less focused the subsequent Article requiring the Commission to report on Member State's sanctions for serious offences.

The second change is the linkage of an increase in the overall minimum percentage of checks, as well as the greater minimum proportion of checks to be conducted on the premises or at the roadside, with the introduction of the digital tachograph. For this reason the Council has proposed a staged increase, firstly in the proportion of the minimum checks to be taken at the roadside and on the premises as from 1.1.2008, and secondly in terms of an increase in minimum checking levels from 1.1.2009 onwards. The move to a minimum of 3% is no longer immediate, as the Commission proposed, but only by 2011, with an interim stage of 2% only from 1.1.2009. Given that several Member States currently already check more than 2% without the benefit of the digital tachograph, this demonstrates a lack of ambition by the Member States. However the Commission is prepared to live with the long delay, in the knowledge that given this long lead-in period, all Member States should be able to organise themselves to easily meet the increased minimum requirements. The Council also limited to 4% any further possible increase in the minimum percentage of checks through comitology, on condition that it could only come about from 2013 onwards, and if over 90% of vehicles checked were equipped with a digital tachograph.

In order to secure a good balance of checks at roadside and at premises of undertakings the common position contains a provision fixing the total number of working days checked at the roadside at 30% (minimum) and the total number of working days checked at premises at 50% (minimum) as of 1 January 2008.

Council rejected the inclusion of Directive 2002/15/EC, the "Working Time Directive" into the scope of this draft Directive, as it wanted to focus on the enforcement of actual driving and resting times. Moreover, "working time" can not be checked with any degree of certainty through the use of the digital tachograph and would therefore render roadside checks rather difficult.

Furthermore, the Council distinguished between on the one hand designating a co-ordinating body for international liaison to gather enforcement statistics from the relevant competent authorities and liaise with their opposite numbers in other Member States and on the other hand an optional co-ordinating body

to develop and oversee the implementation of a national enforcement strategy. For some Member States these two functions might be undertaken by two different organisations. The Commission welcomes the commitment to a national enforcement strategy and a measure of coordination between competent authorities, at least in relations with other Member States and the Commission.

However it indicates Council's willingness to consider higher enforcement levels and to that extent is to be welcomed as a positive, if delayed, signal regarding commitment to enforcement. It is likely that by 2013, the condition concerning digital tachographs will have been fulfilled. For this reason, within Article 3, Member States have added that statistics on type of tachograph used should be collected during checks and that checks should not discriminate on the basis of tachograph used.

The final major change is the exclusion of the enforcement of the sectoral working time rules in Directive 2002/15/EC from the scope of the proposed Directive. It should be noted that while the Commission could not see the logic of a Directive aimed at enhanced enforcement of Community social rules which nevertheless excluded some core social elements, in the face of opposition from the majority of Member States, and to facilitate agreement on the dossier within the Council, the Commission agreed to the exclusion of these rules from the proposal.

The Commission accepted wholly or in part 21 out of the 38 amendments proposed by the European Parliament at its first reading. The Council has included 7, as they stand, in principle, or in part, in its common position.

Council could accept Parliament's request to reduce the minimum number of working days checked at roadside down to 15%. In this context it may be noted that Council fixed the number of days checked at premises at 25% and introduced a transitional period (until 1 January 2008) for an increase to 30% (roadside) and 50% (premises of undertakings).

In addition, statistics collected on checks will now also include the type of tachograph used to avoid discrimination and will help determine whether the condition for a further increase in the percentage of checks set out has been fulfilled.

On the other hand, the Council rejected the amendments which aimed to :

- include a definition of "driver" and a provision concerning vehicles from third countries; set as a goal interoperability in national monitoring systems; reinforce the aim of the proposal through the use of more definite language; place a requirement on Member State enforcement authorities to ensure a balanced approach to checks at the premises of enterprises, by stipulating that at least 50 % of checks cover SMEs; propose various examples where provision for checkpoints should be made; ensure that sleeping drivers are not unnecessarily disturbed by checks; emphasize that in terms of mutual assistance between Member States, potential infringements will be investigated by the Member State of establishment by means of a check on the relevant undertaking's premises; place an obligation on Member States to publish the data collected. The Council considered that the Commission's biennial report, incorporating specific data from Member States, was sufficient; ensure that any sanction, including the temporary immobilisation of a vehicle will be carried out without discrimination; be more inclusive in what constitutes a serious offence against the maximum working time provision within Directive 2002/15/EC; elaborate the nature of the Commission report on sanctions. The common position retains the bare requirement for a report on serious sanctions while eliminating the common list of serious sanctions; allow the Commission the flexibility of publishing guidelines on enforcement practice in a separate document from its current biennial report.