

Basic information	
2003/0255(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Road transport, working time: enforcing social legislation (implem. Regulations (EEC) No 3820/85 and (EEC) No 3821/85/EEC, repeal. Directive 88/599/EEC) Amended by 2017/0121(COD) See also 2014/2859(RPS) Subject 3.20.05 Road transport: passengers and freight 3.20.06 Transport regulations, road safety, roadworthiness tests, driving licence 3.20.10 Transport undertakings, transport industry employees 4.15.03 Arrangement of working time, work schedules 4.15.04 Workforce, occupational mobility, job conversion, working conditions	

Key players			
European Parliament	Committee responsible		Rapporteur
	CODE EP Delegation to Conciliation Committee		MARKOV Helmuth (GUE/NGL)
	Former committee responsible		Former rapporteur
	TRAN Transport and Tourism		MARKOV Helmuth (GUE/NGL)
	RETT Regional Policy, Transport and Tourism		MARKOV Helmuth (GUE/NGL)
	Former committee for opinion		Former rapporteur for opinion
	EMPL Employment and Social Affairs (Associated committee)		SCHROEDTER Elisabeth (V/ALE)
Council of the European Union	Council configuration	Meetings	Date
	Transport, Telecommunications and Energy	2551	2003-12-05
	Transport, Telecommunications and Energy	2589	2004-06-10
	Transport, Telecommunications and Energy	2629	2004-12-09

European Commission	Commission DG	Commissioner
	Energy and Transport	

Key events			
Date	Event	Reference	Summary
21/10/2003	Legislative proposal published	COM(2003)0628 	Summary
03/12/2003	Committee referral announced in Parliament, 1st reading		
05/12/2003	Debate in Council		
17/03/2004	Vote in committee, 1st reading		Summary
17/03/2004	Committee report tabled for plenary, 1st reading	A5-0216/2004	
20/04/2004	Decision by Parliament, 1st reading	T5-0306/2004	Summary
20/04/2004	Debate in Parliament		
09/12/2004	Council position published	11336/1/2004	Summary
16/12/2004	Committee referral announced in Parliament, 2nd reading		
15/03/2005	Vote in committee, 2nd reading		
22/03/2005	Committee recommendation tabled for plenary, 2nd reading	A6-0073/2005	
11/04/2005	Debate in Parliament		
13/04/2005	Decision by Parliament, 2nd reading	T6-0121/2005	Summary
13/04/2005	Results of vote in Parliament		
09/09/2005	Parliament's amendments rejected by Council		
12/10/2005	Formal meeting of Conciliation Committee		
06/12/2005	Final decision by Conciliation Committee		
08/12/2005	Joint text approved by Conciliation Committee co-chairs	03672/2005	
24/01/2006	Report tabled for plenary, 3rd reading	A6-0005/2006	
01/02/2006	Committee referral announced in Parliament, 1st reading		
02/02/2006	Decision by Parliament, 3rd reading	T6-0034/2006	Summary
02/02/2006	Results of vote in Parliament		
02/02/2006	Debate in Parliament		
02/02/2006	Decision by Council, 3rd reading		
15/03/2006	Final act signed		
15/03/2006	End of procedure in Parliament		
11/04/2006	Final act published in Official Journal		

Technical information	
Procedure reference	2003/0255(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amended by 2017/0121(COD) See also 2014/2859(RPS)
Legal basis	EC Treaty (after Amsterdam) EC 071-p1 Rules of Procedure EP 57_o
Stage reached in procedure	Procedure completed
Committee dossier	CODE/6/32135

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0216/2004	17/03/2004	
Text adopted by Parliament, 1st reading/single reading		T5-0306/2004 OJ C 104 30.04.2004, p. 0038-0385 E	20/04/2004	Summary
Committee recommendation tabled for plenary, 2nd reading		A6-0073/2005	22/03/2005	
Text adopted by Parliament, 2nd reading		T6-0121/2005 OJ C 033 09.02.2006, p. 0324-0415 E	13/04/2005	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		A6-0005/2006	24/01/2006	
Text adopted by Parliament, 3rd reading		T6-0034/2006	02/02/2006	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	14781/1/2004	26/11/2004	
Council position	11336/1/2004 OJ C 063 15.03.2005, p. 0001-0010 E	09/12/2004	Summary
Draft final act	03672/3/2005	15/03/2006	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0628 	21/10/2003	Summary

Commission communication on Council's position	COM(2004)0815 	15/12/2004	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2005)0302 	27/06/2005	Summary
Follow-up document	COM(2009)0225 	15/05/2009	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0857/2004 OJ C 241 28.09.2004, p. 0065-0067	02/06/2004	
CSL/EP	Joint text approved by Conciliation Committee co-chairs	03672/2005	08/12/2005	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

[Directive 2006/0022](#)
[OJ L 102 11.04.2006, p. 0035-0043](#)

[Summary](#)

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) - 15/03/2006 - Final act

PURPOSE: to set out minimum conditions for the implementation of legislation relating to road transport activities.

LEGISLATIVE ACT: Directive 2006/22/EC of the European Parliament and of the Council on minimum conditions for the implementation of Council Regulation 3820/85/EC, 3821/85/EC and repealing Council Directive 88/599/EEC.

CONTENT: the purpose of this Directive is to lay down minimum conditions for implementing:

- Regulation 3820/85/EEC on the harmonisation of certain social legislation relating to road transport; and
- Regulation 3821/85/EEC on recording equipment in road Transport.

In adopting this Act the previous implementing Directive (88/599/EEC) has been repealed. The Directive seeks to achieve two objectives. Firstly, to improve road safety. Secondly, to harmonise working conditions that can be uniformly applied across the EU.

It intends to achieve these objectives by stepping up checks on lorries as well as improving cross-border inspections. This Directive, has been adopted alongside, and complements, Regulation 561/2006/EC on the harmonisation of certain social legislation relating to road transport. The two legislative acts were adopted on the same day. (For a summary of Regulation 561/2006/EC see COD/2001/0241)

In summary, the Directive, sets out the following provisions:

Checking systems: Member States will be obliged to set up a system of appropriate and regular checks, both at the roadside and on the premises of transport undertakings. The number of checks will increase gradually from 1% to 3% of days worked by drivers. As from 1 January 2012, this minimum percentage could be increased to 4% by the Commission, provided that statistics indicate that, on average, more than 90% of all vehicles checked are equipped with a digital tachograph.

Roadside checks: Roadside checks will be organised in various places and at any time. They will cover a sufficiently extensive part of the road network. In a new development, it will be possible for inspectors to check the driving time of drivers over the previous 28 days and to take the vehicle off the road immediately in the case of a serious infringement.

Checks at the premises of undertakings: Checks at an undertaking will take place based on past experience and in cases where a serious infringement of the two Regulations has been detected at the roadside. In future, at least 50% of all checks must take place on the premises of an undertaking.

Improved quality control: The Member States must ensure that the enforcement units carrying out the checks are properly equipped. They must carry with them equipment capable of downloading data from the vehicles unit and the driver card of the digital tachograph. They must be able to analyse and transmit their findings to a central database.

Concerted Checks and intra-Community liaison: At least six times a year the Member States must undertake concerted roadside checks on drivers and vehicles. They should be taken at the same time by two or more Member States, each operating in its own territory. A new designated body will be created to ensure coordination with equivalent bodies in the other Member States. The exchange of data and intelligence will be actively promoted through the establishment of a new electronic data and transmission system.

Risk rating system: the Member States must introduce a risk-rating system for undertakings based on the relative number and severity of any infringement. Undertakings with a high risk rating will be checked more closely and more often.

ENTRY INTO FORCE: 1 May 2006

TRANSPOSITION: 1 April 2007.

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) - 13/04/2005 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution drafted by Helmuth MARKOV (GUE/NGL, DE) making several amendments to the Council's common position, the principal ones being the following:

- Parliament incorporated Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities;
- a stronger co-ordinating enforcement body should be designated, acting as a national centre for enforcement, with responsibility for overseeing and implementing a coherent national enforcement strategy and achieving European interoperability of monitoring systems in consultation with other relevant competent authorities;
- checks will begin with 1% and will increase to 2 % from 1 January 2007 and to 3 % from 1 January 2009;
- from 1 January 2011 (instead of 2013) this minimum percentage may be increased to 4 % by the Commission;
- not less than of the total number of the working days checked shall be checked at the roadside and not less than 50 % (instead of 25%) of the total number of the working days shall be checked at the premises of undertakings;
- there are amendments on matters which have to be checked at the road;
- if infringements are repeatedly detected, they shall be more heavily penalised;
- where a Member State becomes aware of an infringement of Regulations 3820/85/EEC or 3821/85/EEC or of Directive 2002/15/EC committed on the territory of another Member State, it shall bring it to the attention of that Member State to enable the latter to impose penalties;
- there is inserted a list of serious infringements, such as exceeding the maximum daily, six-day or fortnightly driving time limits by a margin of 20 % or more;
- the Commission shall submit a proposal for a directive on the harmonisation of penalties on serious infringements.

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

PURPOSE : to lay down minimum conditions for the implementation of Directive 2002/15/EC and Council Regulations 3820/85/EEC and 3821/85/EEC concerning social legislation relating to road transport activities. **PROPOSED ACT** : Directive of the European Parliament and of the Council.

CONTENT : this proposal abrogates Directive 88/599/EC and replaces it with a new set of rules. It follows on from the Commission's White Paper on European transport policy for 2010: time to decide, in which the Commission indicated that it would tighten up on checks and penalties. It also responds to the generally perceived view - expressed consistently by the European Parliament - that an improvement in enforcement of Community law concerning road transport operations within the Union is imperative. The proposal aims to update and enhance the quantity and quality of enforcement operations. From the statistics provided for the Commission's biennial reports, it appears that some Member States have already reached or exceeded the proposed increase in checks on a regular basis. The introduction of the digital tachograph without retro-fitting will initially cause difficulties in enforcement given the need to check a mixture of old tachograph discs and the new electronic data to obtain a coherent picture. Hence it is proposed that the rise in quantity of checks is introduced in stages, reflecting the gradual replacement of vehicle fleets and the consequent predominance of the new tachograph. Deterrence is not only the potential fine imposed, it is also the likelihood of being detected. An increase in the number of checks can therefore encourage greater compliance. In order to enhance the quality of checks, it is essential that enforcement officers from all the relevant competent authorities be given sufficient training and equipment. Whereas it is in the first place up to Member States themselves to ensure that officers receive the necessary training in a national context, the proposal places a requirement on Member States to establish joint training programmes and exchanges with other Member States and to provide officers with a standard set of equipment. Only when enforcement officers have the means to address the increasing problem of offences against Community rules, can the Community rightly expect results. The list of equipment may be updated by the Commission acting on advice from the committee of national representatives. It is often the case that a number of competent authorities within a Member State are responsible for enforcing European road transport social legislation. This leads to a lack of coordination of checks within the Member State as well as difficulties for the enforcement authorities of neighbouring Member States to identify correctly the competent authority with which they should be maintaining dialogue. It can also mean that differing priorities are assigned to checks and that liaison between those checking at the premises and at the roadside is variable. Instead of a coherent enforcement strategy in road transport, separate agencies may pursue their own activities to enforce compliance, perhaps to the detriment of an effective and efficient use of the overall resources. The Commission's related proposal on enforcement in the field of roadsafety also recognises this as a problem and in both instances a common approach is proposed, namely via the designation by the Member States of an enforcement co-ordination point as explained below. The Commission proposal requires Member States to designate an enforcement coordination point and places upon the relevant competent authority the requirement to co-ordinate not only statistical returns but also the development and implementation, in consultation with other internal competent authorities, of a coherent enforcement strategy, to be communicated regularly to the Commission and other Member States. The Commission is aware that dialogue between enforcement agencies in different Member States is currently variable and recognises that a system should be put in place for a regular exchange of information and best practice between Member States. To that end it proposes four measures: - the promotion of electronic data exchange systems between enforcement coordinating points; and in any case the revision of the current Community common format data exchange document as set out in Commission Decision 93/172/EEC; - an increase in the minimum number of concerted checks by Member State competent authorities; - the setting up of a standing committee comprising representatives of enforcement agencies from all Member States to exchange experience, information and best practice and to address jointly any enforcement issues arising at a European level; and - encouragement of joint training initiatives between enforcement authorities, such as that currently undertaken by Euro Control Route.

FINANCIAL IMPLICATIONS : - Budget line : B2-704A. - Total allocation for action : EUR 40 000. - Staff and administrative expenditure : EUR 43 200. - Total : EUR 83 200.

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) - 02/02/2006 - Text adopted by Parliament, 3rd reading

The European Parliament adopted a resolution approving the joint text and drew attention to the Commission statement on the text. (For details of the agreement reached, please see the summary of 06/12/2005.)

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) - 27/06/2005 - Commission opinion on Parliament's position at 2nd reading

Overall, the Commission can accept 26 amendments to the common position out of a total of 35. They aim in particular to:

- advocate interoperability and practicability in monitoring systems. In terms of enforcement officer equipment and electronic exchange of intelligence, interoperability is highly desirable. The objective would need redrafting to highlight the need for coordination at EU level through the proposed comitology procedure;
- include checks on weekly and fortnightly driving limits at the roadside, which the Commission strongly supports, particularly as a logical consequence of the introduction of the digital tachograph. Mention of checks of the preceding 28 days would have to be redrafted to take account of the staged approach to this provision;

- highlight that repeated offences should be more heavily penalised;

- set out in detail what the Commission's report on penalties for serious infringements should include. The issue raised in the amendment could form part of a more general aim of the report, but should not restrict it to this aspect;

- require enforcement staff at roadside checks to specify where their checks are carried out which might compromise their inspection regime. Moreover they are to demand information from the driver that he might not know (number of vehicles owned by the company). However the Commission could support noting the country of registration of the vehicle and country of origin of the driver and undertaking which could help inform enforcement operations, and serve to ensure non-discrimination;

- list a series of places for checks. The Commission could accept 'service stations' and 'other safe locations' which could indeed cover the other examples given.

On the other hand, the amendments rejected by the Commission aim to: set out the type of journeys to which this Directive should apply; introduce more ambitious deadlines for the staged increase in the percentage of checks; The Commission prefers a set of more realistic and achievable deadlines to enable all Member States to respect the rules; seek an immediate increase in the number of checks at company premises from 25% to 50% of all checks undertaken, the Commission prefers a more managed approach and one that includes an increase in the minimum percentage of roadside checks from 15% to 30%; introduce an unnecessary burden on undertakings and enforcement officers respectively; run counter to the principle of extraterritoriality in terms of sanctions introduced by the proposed new Regulation on driving times and rest periods. It returns to the largely ineffective and rarely used current system of exchange of information on infringements detected; advocate that the Commission make a proposal to harmonise penalties for serious infringements following its report on this issue. The Commission considers that this amendment would unduly restrict the right of initiative of the Commission; remove the provision enabling the Community to negotiate primarily within the context of the AETR agreement to ensure similar enforcement standards are also applied beyond the Union's borders.

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) - 20/04/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Helmuth MARKOV (EUL/NGL, D) making several amendments to the proposal: - Parliament inserted a new clause on the scope of the directive and the vehicles coming within the scope; - in so far as this is not already the case, Member States shall, not later than 1 January 2005, provide authorized inspecting officers with all necessary legal powers to enable them correctly to discharge their inspection obligations as required by the Directive; - where the Commission had proposed that not less than 30% of the working days checked should be checked at the roadside, Parliament wanted to change this figure to 15%. And it added that at least 50% of inspections on the premises of companies should be conducted in very small undertakings; - in order to counteract discrimination, records shall be kept of the Member State of origin of vehicles, drivers and undertakings subjected to roadside inspections; - hospitality and parking areas and other safe locations along motorways and service areas could be used as checkpoints; - Parliament agreed with the committee that the margin set by the Commission for exceeding the maximum weekly working time of 60 hours (20% or more) was too generous and would encourage widespread abuse of the maximum driving periods. It therefore proposed that it should be an offence to exceed the 60-hour maximum working week by a margin of 10% or more; - offences equally apply to self-employed drivers and drivers of goods vehicles with a permissible maximum weight exceeding 3.5 tonnes inclusive of trailer or semi-trailer; - within three years, the Commission shall submit a proposal for a directive on the harmonisation of the sanctions.

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) - 10/06/2004

The Council, by qualified majority, with the French delegation voting against and the German delegation stating a parliamentary reservation, reached political agreement on its common position on the draft Directive.

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) - 15/12/2004 - Commission communication on Council's position

While it would have preferred the inclusion of enforcement of working time rules, a common list of serious infringements and an earlier increase in minimum checking levels, the Commission considers that the common position adopted by qualified majority largely follows the aims and approach of its proposal and so can support it.

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.

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) - 15/05/2009 - Follow-up document

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.